

**REBUTTAL TESTIMONY
OF
BARBARA MEISENHEIMER**

SOUTHWESTERN BELL TELEPHONE, L.P.,

D/B/A SPRINT MISSOURI

CASE NO. TO-2006-0102

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. Barbara A. Meisenheimer, Public Utility Economist, Office of the Public Counsel,
3 P. O. Box 2230, Jefferson City, Missouri 65102. I am also employed as an
4 adjunct Economics Instructor for William Woods University.

5 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT**
6 **BACKGROUND.**

7 A. I hold a Bachelor of Science degree in Mathematics from the University of
8 Missouri-Columbia (UMC) and have completed the comprehensive exams for a
9 Ph.D. in Economics from the same institution. My two fields of study are
10 Quantitative Economics and Industrial Organization. My outside field of study is
11 Statistics. I have taught economics courses for the University of Missouri-
12 Columbia, William Woods University, and Lincoln University, mathematics for
13 the University of Missouri-Columbia and statistics for William Woods University.

1 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

2 A. Yes, I have testified on behalf of the consumer in telecommunication before the
3 Missouri Public Service Commission. (PSC or Commission) for almost ten years
4 and on a large number of telecom issues.

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 A. To present Public Counsel's comments and positions regarding Southwestern Bell
7 Telephone L.P.'s (SBC's) petition to have the Public Service Commission
8 approve a competitive classification for business services in 30 exchanges and
9 residential services in 51 pursuant to Section 392.245.5, as revised by Senate Bill
10 237.

11 Primarily Public Counsel wants to address the issue of competition for residential
12 and small business customers. While large business customers or customers with
13 high usage are prime targets for competition, competitors have not actively sought
14 the small business customer or residential customer to the same extent.

15 **Q. IN PREPARATION OF YOUR TESTIMONY, WHAT MATERIALS DID**
16 **YOU REVIEW?**

17 A. I have reviewed the direct testimony of Southwestern Bell Telephone Company
18 witnesses Craig Unruh and PSC Staff witness John Van Eschen. I have also
19 reviewed information available from the Commission, including portions of the
20 tariffs and annual reports filed with the Commission by local exchange
21 companies, previous testimony filed in other cases containing information
22 regarding certifications, interconnection agreements and tariff filings. Also I
23 reviewed data gathered from public sources including carrier websites, the US

Postal Service website and the North American Numbering Plan Administrator's website.

Q. WHAT IS THE PURPOSE OF THIS PROCEEDING?

A. The Commission established this proceeding for the purpose of evaluating SBC's petition for competitive classification in certain exchanges in accordance with the "Price Cap Statute," Section 392.245.5, RSMo.

Q. WHAT PORTION OF SECTION 392.245 IS CURRENTLY AT ISSUE?

A. The full text of the subsection at issue is Section 392.245.5 that states:

"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. For purposes of this subsection:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange;

1 **(2) Any entity providing local voice service in whole or in part**
2 **over telecommunications facilities or other facilities in which it**
3 **or one of its affiliates have an ownership interest shall be**
4 **considered as a basic local telecommunications service**
5 **provider regardless of whether such entity is subject to**
6 **regulation by the commission. A provider of local voice service**
7 **that requires the use of a third party, unaffiliated broadband**
8 **network or dial-up Internet network for the origination of**
9 **local voice service shall not be considered a basic local**
10 **telecommunications service provider.** For purposes of this
11 subsubsection only, a broadband network is defined as a connection
12 that delivers services at speeds exceeding two hundred kilobits per
13 second in at least one direction;

14
15 (3) Regardless of the technology utilized, local voice service shall
16 mean two-way voice service capable of receiving calls from a
17 provider of basic local telecommunications services as defined by
18 subdivision (4) of section 386.020, RSMo;

19
20 **(4) Telecommunications companies only offering prepaid**
21 **telecommunications service or only reselling**
22 **telecommunications service as defined in subdivision (46) of**
23 **section 386.020, RSMo, in the exchange being considered for**
24 **competitive classification shall not be considered entities**
25 **providing basic telecommunications service; and**

26
27 (5) Prepaid telecommunications service shall mean a local service
28 for which payment is made in advance that excludes access to
29 operator assistance and long distance service;

30
31 (6) Upon request of an incumbent local exchange
32 telecommunications company seeking competitive classification of
33 business service or residential service, or both, the commission
34 shall, within thirty days of the request, determine whether the
35 requisite number of entities are providing basic local
36 telecommunications service to business or residential customers, or
37 both, in an exchange and if so, shall approve tariffs designating all
38 such business or residential services other than exchange access
39 service, as competitive within such exchange.

1 **Notwithstanding any other provision of this subsection, any**
2 **incumbent local exchange company may petition the**
3 **commission for competitive classification within an exchange**
4 **based on competition from any entity providing local voice**
5 **service in whole or in part by using its own telecommunications**
6 **facilities or other facilities or the telecommunications facilities**
7 **or other facilities of a third party, including those of the**
8 **incumbent local exchange company as well as providers that**
9 **rely on an unaffiliated third-party Internet service. The**
10 **commission shall approve such petition within sixty days**
11 **unless it finds that such competitive classification is contrary to**
12 **the public interest. The commission shall maintain records of**
13 **regulated providers of local voice service, including those**
14 **regulated providers who provide local voice service over their**
15 **own facilities, or through the use of facilities of another**
16 **provider of local voice service. In reviewing an incumbent**
17 **local exchange telephone company's request for competitive**
18 **status in an exchange, the commission shall consider their own**
19 **records concerning ownership of facilities and shall make all**
20 **inquiries as are necessary and appropriate from regulated**
21 **providers of local voice service to determine the extent and**
22 **presence of regulated local voice providers in an exchange. If**
23 the services of an incumbent local exchange telecommunications
24 company are classified as competitive under this subsection, the
25 local exchange telecommunications company may thereafter adjust
26 its rates for such competitive services upward or downward as it
27 determines appropriate in its competitive environment, upon filing
28 tariffs which shall become effective within the timelines identified
29 in section 392.500. The commission shall, at least every two years,
30 or where an incumbent local exchange telecommunications
31 company increases rates for basic local telecommunications
32 services in an exchange classified as competitive, review those
33 exchanges where an incumbent local exchange carrier's services
34 have been classified as competitive, to determine if the conditions
35 of this subsection for competitive classification continue to exist in
36 the exchange and if the commission determines, after hearing, that
37 such conditions no longer exist for the incumbent local exchange
38 telecommunications company in such exchange, it shall reimpose
39 upon the incumbent local exchange telecommunications company,
40 in such exchange, the provisions of paragraph (c) of subdivision
41 (2) of subsection 4 of section 392.200 and the maximum allowable
42 prices established by the provisions of subsections 4 and 11 of this
43 section, and, in any such case, the maximum allowable prices
44 established for the telecommunications services of such incumbent
45 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. (Emphasis supplied.)

Q. WHY ARE PORTIONS OF THE STATUTE IN YOUR TESTIMONY IN BOLD TEXT?

A. I wanted to clearly show to the Commission the full text of the statute as well as the highlighted portions that I believe are particularly relevant in this proceeding.

Q. WHAT IS THE SIGNIFICANCE IN THIS PROCEEDING OF THE FOLLOWING PORTIONS OF 392.245.5?

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange;

(2) Any entity providing local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the commission. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider.

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service as defined in subdivision (46) of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service;

1 A. These are the criteria that the Legislature found to be sufficient for the 30-day
2 petition to ensure the public interest, absent Commission discretion regarding the
3 extent and quality of competition that exists in each exchange. The primary
4 characteristics of these criteria are that sufficient competition must exist for basic
5 local service and that the service offerings must be provided by facilities directly
6 controlled by the carriers or their affiliates, independent of the incumbent. I view
7 the 30-day petition criteria as the strictest standard the Commission can use to
8 evaluate positions on the 60-day track. These standards should be used when the
9 Commission believes that imposing less restrictive standards would be contrary to
10 the public interest.

11 I am not proposing that the Commission should adhere to the strict 30-day petition
12 standards in evaluating competitive classification on the 60-day track in cases
13 where it believes that more relaxed standards would not jeopardize the public
14 interest. Clearly, Section 392.245.5 sets forth additional factors that the
15 Commission should consider in the 60-day proceedings as it evaluates petitions
16 where competition is based on service offerings that are not basic local service or
17 where services are provisioned at least in part with third-party facilities, including
18 potentially those of the incumbent. The statute provides:

19 **Notwithstanding any other provision of this subsection, any**
20 **incumbent local exchange company may petition the**
21 **commission for competitive classification within an exchange**
22 **based on competition from any entity providing local voice**
23 **service in whole or in part by using its own telecommunications**
24 **facilities or other facilities or the telecommunications facilities**
25 **or other facilities of a third party, including those of the**
26 **incumbent local exchange company as well as providers that**
27 **rely on an unaffiliated third-party Internet service. The**
28 **commission shall approve such petition within sixty days**
29 **unless it finds that such competitive classification is contrary to**
30 **the public interest. The commission shall maintain records of**
31 **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 and 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.

Q. WHAT THEN DO YOU VIEW AS THE COMMISSION'S TASK IN THIS PROCEEDING?

A. I believe the Commission's task on an exchange by exchange basis is to analyze the competitive status and determine where it may approve a competitive classification based on competition from service offerings that are not basic local service or where services that are provisioned at least in part with third-party facilities (including potentially those of the incumbent), that are not contrary to the public interest.

Q. DOES THE MERE EXISTENCE OF SERVICE OFFERINGS THAT ARE NOT BASIC LOCAL SERVICE OR SERVICES THAT ARE PROVISIONED AT LEAST IN PART WITH THIRD-PARTY FACILITIES REQUIRE THE COMMISSION TO GRANT COMPETITIVE STATUS?

A. No. The statute calls on the Commission to exercise discretion in evaluating the quantity and quality of competition presented by services other than basic local service or services that are provisioned at least in part with third-party facilities.

1 **Q. FROM AN ECONOMIC PERSPECTIVE, DO YOU BELIEVE IT IS**
2 **IMPORTANT IN THE 60-DAY TRACK PETITIONS FOR THE**
3 **COMMISSION, IN ITS DISCRETION, TO EVALUATE THE QUALITY**
4 **AND QUANTITY OF COMPETITION BEFORE IT GRANTS A**
5 **COMPETITIVE CLASSIFICATION?**

6 A. Yes. For competition to be meaningful and not contrary to the public interest, it
7 should constrain the price a monopoly provider might otherwise charge for
8 service. The Legislature apparently sought to protect against basic local price
9 increases in directing that the Commission review the qualifications for
10 competitive classification if an incumbent increases rates for basic local
11 telecommunications services in an exchange classified as competitive.

12 **Q. IS THERE A REAL RISK THAT SBC WILL SEEK TO INCREASE**
13 **PRICES AFTER RECEIVING COMPETITIVE STATUS?**

14 A. Yes. Under price cap regulation, the Company has increased many of the prices
15 for its nonbasic services year after year often up to the maximum ceiling. Also,
16 the Company has repeatedly increased the prices for certain services for which it
17 has already been granted competitive status. For example, in 2003, SBC sought to
18 increase some operator services by up to 13% which greatly exceeds the 5% now
19 allowed under the price cap statute.

1 **Q. FROM AN ECONOMIC PERSPECTIVE, ARE THERE OTHER**
2 **IMPORTANT REASONS FOR THE COMMISSION TO EVALUATE THE**
3 **QUALITY AND QUANTITY OF COMPETITION BEFORE GRANTING A**
4 **COMPETITIVE CLASSIFICATION?**

5 A. Yes. In addition to promoting affordability, for competition to be meaningful and
6 not contrary to the public interest, it should promote availability, better quality and
7 more variety for consumers. I believe that the purposes identified in Section
8 392.185, RSMo, serve as a reasonable yardstick in evaluating what is in the public
9 interest. To the extent that the Commission believes that granting a competitive
10 classification for services in an exchange would be contrary to the goals
11 established by Section 392.185, RSMo, it should reject the petition for
12 competitive classification;

13 **Q. WHAT ARE THE GOALS AND PURPOSES OF THE MISSOURI**
14 **TELECOMMUNICATIONS LAW AS PROVIDED IN SECTION 392.185,**
15 **RSMO?**

16 A. (1) Promote universally available and widely affordable telecommunications
17 services;
18 (2) Maintain and advance the efficiency and availability of telecommunications
19 services;
20 (3) Promote diversity in the supply of telecommunications services and products
21 throughout the state of Missouri;
22 (4) Ensure that customers pay only reasonable charges for telecommunications
23 service;
24 (5) Permit flexible regulation of competitive telecommunications companies and
25 competitive telecommunications services;
26 (6) Allow full and fair competition to function as a substitute for regulation when
27 consistent with the protection of ratepayers and otherwise consistent with the
28 public interest;
29 (6) Allow full and fair competition to function as a substitute for regulation when
30 consistent with the protection of ratepayers and otherwise consistent with the
31 public interest;
32 (6) Allow full and fair competition to function as a substitute for regulation when
33 consistent with the protection of ratepayers and otherwise consistent with the
34 public interest;
35 (6) Allow full and fair competition to function as a substitute for regulation when
36 consistent with the protection of ratepayers and otherwise consistent with the
37 public interest;

(7) Promote parity of urban and rural telecommunications services;

(8) Promote economic, educational, health care and cultural enhancements; and

(9) Protect consumer privacy.

Q. ON PAGE 2 OF HIS DIRECT TESTIMONY, MR. UNRUH CLAIMS THAT THE COMMISSION IS NOT TO REVIEW THE “EXTENT” OF COMPETITION. DO YOU AGREE?

A. Absolutely not. The criteria for competitive classification under the 60-day track allow incumbents (such as SBC) an additional opportunity to gain competitive classifications for exchanges that do not meet the stricter criteria required for the 30-day petition. With this additional opportunity comes a greater burden on SBC to demonstrate that granting competitive classification will not be contrary to the public interest.

Q. ON PAGE 2 AND IN VARIOUS OTHER PLACES IN HIS DIRECT TESTIMONY, MR. UNRUH APPEARS TO ARGUE THAT “CHOICE” IS THE PRIMARY DETERMINANT FOR DECIDING WHERE SBC SHOULD BE GRANTED COMPETITIVE STATUS. FROM AN ECONOMIC PERSPECTIVE, WHAT SHOULD BE CONSIDERED IN DETERMINING IF CONSUMERS HAVE CHOICE?

A. The Commission should consider if comparable services are available at comparable price, terms and conditions. Mr. Unruh has provided no evidence regarding the comparability of services or prices, terms and conditions.

1 **Q. MR. UNRUH LISTS A NUMBER OF WIRELESS PROVIDERS IN HIS**
2 **TESTIMONY. WHAT ARE YOUR OBSERVATIONS ON THE**
3 **ACCURACY AND CREDABILITY OF HIS INFORMATION?**

4 A. I found much of his information on wireless offerings to be incorrect and
5 incomplete. Mr. Unruh appears to rely heavily on a third-party equipment
6 vendor/reseller website that provides information on the coverage of wireless
7 carriers. However, that information deviates substantially from the information I
8 obtained from the actual wireless carriers. In some cases, the difference in the
9 number of exchanges served by a particular carrier differed by more than 20%. I
10 believe that a likely cause of the discrepancies is due to an overzealous use of the
11 information obtained from the vendor/reseller. The vendor/reseller describes its
12 service as one that identifies carriers serving in the “area.” It does not guarantee
13 that service is available in a particular exchange. By calling the actual wireless
14 carriers, I was able to identify providers by default zip codes which are generally
15 associated with the location of the post office in a particular city or town. This is
16 the same information that is frequently used in mapping and geographic locator
17 software. Historically, telephone exchanges were named based on the town they
18 served so they align well with the default postal zip code associated with the
19 respective town. Based on calls to Sprint/Nextel and Verizon wireless, I was able
20 to identify where service availability was spotty or nonexistent for these two
21 carriers. One wireless carrier, T-Mobile, provides detailed local service maps
22 online. From reviewing this information, I was able to evaluate the variation in
23 quality of service in limited geographic areas. The quality of coverage varied
24 radically even in limited geographic areas. A summary of my findings for the
25 wireless carriers I surveyed is provided in Schedules BAM-1 and BAM-2.

1 **Q. BASED ON YOUR RESEARCH, WHAT ARE YOUR CONCLUSIONS**
2 **ABOUT SBC’S TESTIMONY ABOUT WIRELESS SERVICE**
3 **AVAILABILITY?**

4 A. SBC paints an overly broad picture of wireless service availability and fails to
5 address issues regarding deficiencies in the availability and quality of coverage.

6 **Q. DO YOU BELIEVE THAT RELYING TOO HEAVILY ON THE**
7 **EXISTENCE OF WIRELESS CARRIERS IN DETERMINING WHERE**
8 **TO GRANT COMPETITIVE CLASSIFICATION WOULD BE**
9 **CONTRARY TO THE PUBLIC INTEREST?**

10 A. Yes, I do. It is particularly important in ensuring the public interest that wireless
11 service is available and is of high quality where limited facilities-based
12 alternatives are available or where landline alternatives rely heavily on the
13 incumbent’s network.

14
15 **Q. ARE THERE ADDITIONAL CONSIDERATIONS THAT YOU BELIEVE**
16 **ARE RELEVANT IN CONSIDERING THE LEVEL OF LOCAL**
17 **COMPETITION PROVIDED BY WIRELESS CARRIERS?**

18 A. Yes. Wireless carriers tend to require long-term contracts, conduct credit checks
19 as a condition of service, and bundle services in a manner that results in package
20 prices higher than the incumbent’s basic local service. I believe that for these
21 reasons, in addition to those discussed above, the Commission should be cautious
22 in relying too heavily on wireless carriers when evaluating competitive status.

1 **Q. DO YOU HAVE CONCERNS REGARDING THE LANDLINE CARRIERS**
2 **THAT SBC IDENTIFIES AS COMPETITORS?**

3 A. Yes. SBC lists Sage as a competitor in all its Residential exchanges and in all
4 Business exchanges except Billings, Farley, Marionville and Portage Des Sioux.
5 Based on information from the Sage website and calls placed to Sage, I found that
6 Sage only offers service by conversions of active lines from other carriers. They
7 do not allow customers to sign up for service unless they have existing service.

8 **Q. SHOULD THE COMMISSION RELY ON PREPAID LOCAL SERVICE**
9 **PROVIDERS IN GRANTING A COMPETITIVE CLASSIFICATION**
10 **UNDER THE 60-DAY TRACK?**

11 A. No. Prepaid providers target a niche market and charge a substantially higher
12 price for a lesser service. Therefore, prepaid providers do not provide a suitable
13 substitute or “choice” for consumers.

14 **Q. SHOULD THE COMMISSION RELY ON RESOLD LOCAL SERVICE**
15 **PROVIDERS IN GRANTING A COMPETITIVE CLASSIFICATION**
16 **UNDER THE 60-DAY TRACK?**

17 A. The Commission can consider this type of service, but SBC should have to
18 provide evidence that demonstrates that the resold services are adequate
19 substitutes. Resale is an early entry method not for meaningful competition in the
20 long run. It is too dependent on the pricing structure and network of the
21 incumbent.

22 **Q. SHOULD THE COMMISSION RELY ON COMPETITION PROVIDED**
23 **THROUGH UNE-P TO GRANT A COMPETITIVE CLASSIFICATION**
24 **UNDER THE 60-DAY TRACK?**

1 A. No. Simply because a carrier is providing service by UNE-P, there is no
2 assurance that when UNE-P is no longer available that the carrier will continue to
3 serve the exchange. The continued availability of competitive alternatives is a
4 relevant consideration for evaluating the public interest. Further, UNE-P does not
5 necessarily provide competitive alternatives to all customers. For example, Sage,
6 as described in this testimony, serves only conversion customers. This type of
7 resold service is not available to all local customers.

8 **Q. IS UNE-L A RELEVANT FACTOR TO CONSIDER IN GRANTING**
9 **COMPETITIVE STATUS IN THE 60-DAY TRACK?**

10 A. Based on the information to date, UNE-L appears to be the most meaningful
11 alternative to providing facilities-based services independent of the incumbent's
12 network. It is most likely to ensure protection of the public interest. Therefore,
13 based on the available information, Public Counsel does not disagree with Staff's
14 recommendation based upon service by UNE-L.

15 **Q. WHAT ADDITIONAL FACTORS SHOULD THE COMMISSION**
16 **CONSIDER IN THIS PROCEEDING?**

17 A. If SBC is granted competitive status absent meaningful competition for services in
18 its exchanges, the Company will be free to raise prices above the levels currently
19 allowed by the price cap formula. In resale, where the resellers' wholesale costs
20 are tied to and would rise along with SBC's retail prices, customers would not
21 have adequate protection against unreasonable price increases. If basic local
22 increases occur, customers will be forced to pay the higher prices or lose access to
23 a service that is essential in ensuring safety, health, and meaningful participation
24 in society. Increases in basic local rates could also negatively impact the welfare
25 of small businesses. If residential basic local rates increase, lifeline rates also rise,

1 which is contrary to the specific intent of providing a more affordable discounted
2 rate to low-income customers.

3 **Q. WHAT ARE THE IMPLICATIONS OF GRANTING COMPETITIVE**
4 **CLASSIFICATION TO SERVICES OTHER THAN BASIC LOCAL?**

5 A. Access to vertical services and class features is intertwined with subscription to
6 basic local service. A customer must have basic local to obtain vertical services;
7 those services are not bought independently. If competitive classification is
8 granted, then the 5% annual price cap no longer applies for nonbasic service.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**
10

11 A. Yes, it does.
12