BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Request of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, for Competitive Classification Pursuant to Section 392.245.6, RSMo (2005) – 60-day Petition.	))))	**Case No. TO-2006-0102** TariffFileNo.YI-2006-0145

OFFICE OF THE PUBLIC COUNSEL'S OBJECTIONS AND RECOMMENDATIONS

The Office of the Public Counsel asks the Missouri Public Service Commission to hold SBC Missouri to strict proof under Section 392.245, RSMo 2000 (as amended 2005) for its claim for that certain of its exchanges should receive competitive classification under the 60 day petition investigations designated in its application and the attached exhibits.

The reclassification of business and residential services in these exchanges from price cap regulated to competitive has significant impact on the Missouri competitive marketplace and for the business and residential customers in those exchanges. With competitive status, the statutory protections that limited price increases will no longer apply. Even though the PSC will retain some measure of pricing oversight under Section 392.200.1, RSMo as provided in *State ex rel. Coffman v. PSC, 150 S.W.3d 92, 100 (Mo. App. 2004).* SBC will be able to raise and lower prices without regard to the Consumer Price Index for Telecommunications Services for local basic services and without the annual 5% limit on the price increases for nonbasic telecommunications services.

SBC is relying upon HC data to support its qualification of competitive status. As reflected in Public Counsel's motion to declassify the information used to support SBC's application, Public Counsel suggests that the information upon which the Commission

will decide the competitive status of SBC's exchanges should be public information.

The revised price cap statute does not provide for information in support of the competitive classification to be withheld from public scrutiny. The statute is silent on this matter. However, if such information remains sealed and unavailable not only to the general public, but also to the customers in those exchanges and to the other telecommunications companies operating in those exchanges and the state, the very persons and corporations most affected by the reclassification are unable to know the supporting qualifying facts. These affected persons would be deprived of the ability for meaningful comment or to contest the application as they will be denied the information upon which the Commission will consider and base its decision.

Public disclosure of the information that serves as the basis for the reclassification will promote confidence in the process and strengthen its credibility. The PSC may find it difficult to issue adequate findings of fact and conclusions of law to support the final decision if the essential underlying information supporting competitive classification remains sealed. Public policy and the need to protect the ratepayer while encouraging the development of a competitive environment as provided in Section 392.185, RSMo 2000, supports public disclosure of the number of residential total competitors, the number of CLECs providing residential commercial agreements, the number of CLECs providing residential services through UNE-P, and the names of the qualifying competitors including wireless and VOIP providers. This information should be made public and part of the record.

The Commission should determine this significant issue with a full and complete record as to the information. The names and numbers of competitors does not appear to

be HC and should be part of the public record as key evidence for competitive classification.

The price cap statute revisions for the 60 day competitive petition provides for reclassification "unless it [PSC] finds such competitive classification is contrary to the public interest." The disclosure of the number and name qualifying competitors together with the number of customers served would provide the public and the Commission "the extent and presence of regulated local voice providers in the exchange." The public should not be left in the dark over the basis of PSC's decision-making and should not be left in the dark over the extent and presence of the competitor's activity that supports the lifting of price cap regulation. The Commission can then make a judgment as to whether the competition present will carry out the objectives of the telecommunications law in Section 392.185, RSMo. The Commission should insist that this information be made part of the record so that it can make an informed decision on whether or not the competitive classification is "contrary to the public interest."

For these reasons, Public Counsel urges the Commission to take the necessary steps to make public the underlying competitor names and number information that supports the competitive application and to make a record of the relative strength of the competition as evidenced by the number of competitors and customers so that the decision to remove the consumer protections afforded by the price cap regulatory system will be based on publicly available competent and substantial evidence and so the Commission's findings can be based upon public facts.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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BY:_____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, emailed and/or hand delivered this 13th day of September 2005 to the following attorneys of record:

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