BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

OFFICE OF THE PUBLIC COUNSEL'S MOTION TO DECLASSIFY IDENTIFICATION OF COMPETING COMPANIES AND THE AT&T EXCHANGES IN WHICH THEY PROVIDE SERVICE

The Office of the Public Counsel asks the Public Service Commission of Missouri to declassify and make part of the public record in this case the identification of competing companies, including Competitive Local Exchange Companies (CLEC), and the specific AT&T exchanges in which they provide service. Notwithstanding AT&T's cover letter indicating the reasons for designating that data high confidential, the identify of competing companies the specific AT&T exchanges and how they provide service are key facts to review the status of competition under Section 386.245.5, RSMo 2000 (2005). In making a determination of the continuation of competition in the designated exchanges, the public record and the evidence should reflect the competent and substantial evidence that is the basis for the Commission's ultimate findings of the number of competitors and the public interest analysis.

AT&T stated in a filing letter accompanying Unruh's testimony that the exhibits are labeled Highly Confidential because it contended "they contain private business information that cannot be found in any format in any public document and their public disclosure would harm AT&T Missouri's and other companies' respective business interests." The exhibits identify the specific CLECs using AT&T Missouri's facilities

under a commercial agreement to provide service in each of the exchanges under review and also contain information from its business records of the means of providing service. AT&T contends this constitutes "information relating directly to specific AT&T Missouri wholesale customers.

The company also contends that they contain "market-specific information relating to services offered in competition with others." It contends that Schedules 2(HC), 3(HC) 4(HC) and 5(HC)'s identification of AT&T Missouri's specific wholesale customers in each exchange for residence and/or business services would be valuable to other wholesale service providers in the marketing of their wholesale services and may give other retail telecommunications carriers insight into the exchanges being targeted by AT&T.

AT&T's rational for keeping the identity of competing companies and the specific AT&T exchanges in which they provide service and how they provide service is tenuous. The names and locations where CLECS, cable, Voip, and wireless companies provide service is typically available on many public websites, in advertising brochures, and in other promotional material that indicate the availability of these "triggering" and other competitors for communication service. How these competitors provide service may be evident by the technology employed and by the fact that commercially available agreements between AT&T and specific CLECs are in place is a matter of public record even though the specific terms are not. The public disclosure of the basis of the Commission's decision, either continuing competitive classification rather than returning to the price cap regulation or reinstatement of price caps, is consistent with the public interest and sound public policy and is not contrary to the public interest.

Once AT&T filed its testimony in the case file it becomes a public record as part of the official record of this case. Of course, once that testimony is adduced and admitted at the hearing, it will also be part of the Commission's record on which it should base its decision. The Missouri Sunshine law states the public policy for open records. (Section 610.022.5, RSMo "Public records shall be presumed to be open unless otherwise exempt pursuant to the provisions of this chapter." or as otherwise permitted by law. Since exceptions and exclusions to open records, meetings, and hearings are not favored in the law, the Commission should take a hard look at HC designations that are not required to protect a proprietary interest or have a tenuous relationship to the protection of that interest.

In addition, that data should be available to show the basis of the Commission's decision in this investigation into the competitive status. The Public Service Commission law provides that the results of any investigation shall be reported in writing, stating the conclusions that underlies the decision. (Section 386.420.2, RSMo: "Whenever an investigation shall be made by the commission, it shall be its duty, to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises. . . ."

The Missouri Administrative Procedure Act provides in Section 536.090:

> Every decision and order in a contested case shall be in writing, and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. **The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order.** Immediately upon deciding any contested case the agency shall give written notice of its

> decision by delivering or mailing such notice to each party, or his attorney of record, and shall upon request furnish him with a copy of the decision, order, and findings of fact and conclusions of law." (emphasis supplied)

For these reasons, Public Counsel asks the Commission to declassify this information and make it part of the public record.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Michael F. Dandino

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Certificate of Service

I hereby certify that a copy of the foregoing was mailed, emailed and/or hand delivered this 1st day of March, 2007 to the following attorneys of record:

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