

REBUTTAL TESTIMONY
OF
BARABARA A. MEISENHEIMER

Southwestern Bell Telephone, L.P. d/b/a SBC Missouri

CASE NO. TO-2005-0035

INTRODUCTION

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

A. Barbara A. Meisenheimer, Chief Economist-Telecommunications, Office of the Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102. I am also employed as an adjunct Economics Instructor for William Woods University.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.

A. I hold a Bachelor of Science degree in Mathematics from the University of Missouri-Columbia (UMC) and have completed the comprehensive exams for a Ph.D. in Economics from the same institution. My two fields of study are Quantitative Economics and Industrial Organization. My outside field of study is Statistics. I have taught Economics courses for the following institutions: University of Missouri-Columbia, William Woods University, and Lincoln University. I have taught courses at both the undergraduate and graduate levels.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?

A. Yes. I have submitted well over 100 pieces of prefiled testimony to the Commission and provided live testimony in dozens of proceedings. Primarily, I have testified on

telecommunications issues. However, I have also testified on issues related to natural gas, water and electric utilities.

Q. PLEASE SUMMARIZE YOUR EXPERIENCE RELATED TO TELECOMMUNICATIONS ISSUES.

A. Since 1996, I have regularly submitted testimony on behalf of Public Counsel on various telecommunications issues, including adherence to and application of the price cap statute, other competitive issues, universal service, numbering, calling scopes and rate case related issues.

Specific to satisfaction and application of the price cap statute, I testified in Case No. TO-97-397, in which the Commission approved Southwestern Bell's petition for price cap status. I also testified in case TO-2001-467 in which the Commission initially evaluated the state of competition in SBC's local telephone exchange areas. In addition, I have testified and assisted in the preparation of comments related to the price cap statute as it applies to Sprint Missouri Inc., Century-Tel, Spectra Communications, and BPS.

My experience related to other competitive issues includes but is not limited to implementation of the universal service, numbering resource, unbundling and interconnection requirements of the Federal Telecommunications Act of 1996 and the provisions of the Missouri Telecommunications Act which sought to expand local competition for instate telecommunications.

1 I have served on the Federal/State Universal Service Joint Board Staff for a number of years.

2 In this capacity, I have reviewed information on various issues related to the Federal
3 Universal Service Fund including, but not limited to, carrier eligibility, federal high cost
4 support, and the federal Lifeline and LinkUp programs. I have assisted the Federal/State
5 Joint Board in preparing recommendations for the FCC in implementing the Universal
6 Service related provisions of the 1996 Telecommunications Act. As a Federal/State Joint
7 Board staff member, I also reviewed Joint Board Monitoring Reports and FCC Telephone
8 Penetration Report designed to evaluate the performance of the Federal and state programs
9 in assisting low-income customers. At the State level, I participated in industry workshops
10 to develop recommendations on components of the Missouri Universal Service Fund. I
11 currently assist the Public Counsel in his duties as a member of the Missouri Universal
12 Service Board.

13 I am also a past member of the North American Numbering Council. The North American
14 Numbering Council advises the FCC on numbering issues related to both wireline and wireless
15 services.

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

17 A. To advise the Commission on the current state of competition in SBC's exchanges and to
18 respond to SBC's petition requesting the Public Service Commission to approve additional
19 competitive classifications for SBC's services pursuant to Section 392.245.5, RSMo 2000.

Public Counsel wants to primarily address the issue of effective competition for residential and small business customers. While large business customers or customers with high usage are prime targets for competition, competitors have not actively sought the small business customer or residential customer to the same extent. The goal of the 1996 Act is for competition to benefit the broad range of consumers and not just the most lucrative business customers.

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

A. I have reviewed the direct testimony of Southwestern Bell Telephone Company witnesses Craig Unruh, Silvia Acosta Fernandez, Dr. Debra Aron, Harry Shooshan, Elizabeth Stoia and Sandra Moore. I have also reviewed information from the Commission, including, but not limited to, portions of the tariffs and annual reports filed with the Commission by local exchange companies, information regarding certifications of service authority, interconnection agreements and tariff filings maintained by the Staff as well as responses to data requests issued by Public Counsel and the Staff of the Missouri Public Service Commission.

Q. WHAT IS THE PURPOSE OF THIS PROCEEDING?

A. The Commission established this proceeding for the purpose of again investigating the state of competition in SBC's exchanges for SBC's telecommunications services in accordance with the "Price Cap Statute," Section 392.245, RSMo 2000. in order to determine whether

1 or not effective competition exists for each telecommunications service provided by SBC in
2 each SBC exchange.

3 **Q. WHAT PORTION OF SECTION 392.245 IS AT ISSUE IN THIS CASE?**

4 A. The full text of the Subsection 5 of Section 392.245 is the focus of this case. I have
5 highlighted the portion of statute that my testimony will primarily address. Section
6 392.245.5 states:

7 “Each telecommunications service of an incumbent local exchange
8 telecommunications company shall be classified as competitive in any
9 exchange in which at least one alternative local exchange
10 telecommunications company has been certified under section 392.455 and
11 has provided basic local telecommunications service in that exchange for at
12 least five years, unless the commission determines, after notice and a
13 hearing, that effective competition does not exist in the exchange for such
14 service. **The commission shall, from time to time, on its own motion or**
15 **motion by an incumbent local exchange telecommunications company,**
16 **investigate the state of competition in each exchange where an**
17 **alternative local exchange telecommunication company has been**
18 **certified to provide local exchange telecommunications service and shall**
19 **determine,** no later than five years following the first certification of an
20 alternative local exchange telecommunication company in such exchange,
21 **whether effective competition exists in the exchange for the various**
22 **services of the incumbent local exchange telecommunications company.**
23 If the commission determines that effective competition exists in the
24 exchange, the local exchange telecommunications company may thereafter
25 adjust its rates for such competitive services upward or downward as it
26 determines appropriate in its competitive environment. If the commission
27 determines that effective competition does not exist in the exchange, the
28 provisions of paragraph (c) of subdivision (2) of subsection 4 of section
29 392.200 and the maximum allowable prices established by the provisions of
30 subsections 4 and 11 of this section shall continue to apply. **The**
31 **commission shall from time to time, but no less than every five years,**
32 **review the state of competition in those exchanges where it has**
33 **previously found the existence of effective competition, and if the**
34 **commission determines, after hearing, that effective competition no**

1 **longer exists for the incumbent local exchange telecommunications**
2 **company in such exchange, it shall re-impose upon the incumbent local**
3 **exchange telecommunications company, in such exchange, the**
4 **provisions of paragraph (c) of subdivision (2) of subsection 4 of section**
5 **392.200 and the maximum allowable prices established by the**
6 **provisions of subsections 4 and 11 of this section, and, in any such case,**
7 **the maximum allowable prices established for the telecommunications**
8 **services of such incumbent local exchange telecommunications**
9 **company shall reflect all index adjustments which were or could have**
10 **been filed from all preceding years since the company's maximum**
11 **allowable prices were first adjusted pursuant to subsection 4 or 11 of**
12 **this section. “ (emphasis supplied.)**

13 **Q. PLEASE EXPLAIN WHY YOU EMPHASIZED PORTIONS OF THE STATUTE IN**
14 **YOUR TESTIMONY IN BOLD TEXT.**

15 A. The Commission is at an intermediate step in the process of transitioning from price caps to
16 a greater reliance on effective competition to sustain pricing constraints. The Commission
17 has already met the initial hurdle of within a 5-year window evaluating the state of
18 competition for each of SBC's telecommunications services in each exchange In TO-
19 2001-467, the Commission determined, after notice and hearing, that effective competition
20 did exist for some services in a limited number of exchanges. A list of these services and
21 the relevant exchange is provided later in this testimony. Likewise, in TO-2001-467, the
22 Commission determined, within the initial 5-year window, after notice and hearing, that
23 effective competition did not exist for basic local residential and business services and other
24 local services in the majority of SBC's local telephone exchange areas. In this case, the
25 Commission is not bound by the initial 5-year requirement and is instead responding to
26 SBC's request consistent to its ongoing responsibility to occasionally review the state of
27 competition. I believe it is also reasonable that the scope of this case also include

1 reconsideration of the status of effective competition for those services in those exchanges
2 for which SBC has previously been granted competitive classifications. Such
3 reconsideration of the status of effective competition is allowed according to the third
4 portion of the price cap statute that is shown in bold text above.

5 **Q. WHICH PARTY BEARS THE BURDEN OF PROOF IN DETERMINING WHETHER**
6 **OR NOT EFFECTIVE COMPETITION EXISTS FOR A SERVICE IN A**
7 **SPECIFIC EXCHANGE?**

8 A. I am not an attorney, however, the Report and Order in TO-2001-467 addresses that issue:
9 “Generally, the party seeking relief from the Commission bears the burden of proof. The burden of
10 proof remains upon the party asserting the affirmative of the ultimate issue throughout a
11 proceeding.” As I understand it, SBC has the burden to persuade the Commission to determine that
12 effective competition exists for a service in an exchange for which effective competition was found
13 not to exist.

14 **Q. EVEN THOUGH THERE WOULD BE NO SUBSTANTIAL CONSEQUENCE IN THIS**
15 **CASE, WOULD YOU ADVISE THE COMMISSION TO REAFFIRM THAT**
16 **EFFECTIVE COMPETITION DOES NOT EXIST FOR ANY ADDITIONAL**
17 **SERVICES IN EXCHANGES NOT SPECIFICALLY FOUND TO FACE**
18 **EFFECTIVE COMPETITION IN THIS CASE?**

19 A. I believe for clarity in this ongoing process, the Commission should consider taking this
20 opportunity to reaffirm that effective competition does not exist for those services and in
21 those exchanges other than those for which effective competition has been found to exist.

1 **Q. WHY MIGHT THE COMMISSION WANT TO MAKE A FINDING THAT**
2 **EFFECTIVE COMPETITION DOES NOT EXIST FOR THOSE SERVICES AND**
3 **IN THOSE EXCHANGES OTHER THAN THOSE FOR WHICH EFFECTIVE**
4 **COMPETITION HAS SPECIFICALLY BEEN FOUND TO EXIST?**

5 A. By reaffirming its previous findings regarding a lack of effective competition, the
6 Commission can avoid potential confusion regarding its compliance with the requirement
7 for an initial review to be conducted within 5-years.

8 **Q. FROM AN ECONOMIC AND PUBLIC POLICY PERSPECTIVE, HOW SHOULD**
9 **THE COMMISSION INTERPRET SECTION 392.245.5?**

10 A. In my opinion, the statute sets forth reasonable requirements and consumer protections that
11 allow an incumbent local exchange carrier greater flexibility in an effectively competitive
12 environment and also minimizes the use of unnecessary resources. While the statute serves
13 to accommodate effective competition for services, it also clearly envisions that effective
14 competition may not develop within all exchanges or for all services. It recognizes that
15 there is no certainty of effective competition on an ongoing basis.

16 Section 392.245.5 initially protects the development of competition and protects consumers
17 by requiring that within the first five of existence of a certified alternative basic local
18 exchange company (ALEC) in the exchange a service may not be automatically granted
19 competitive status. Instead, the Commission must first conduct a proceeding to investigate
20 and make a determination of whether or not effective competition exists for the service. If
21 the Commission determines that effective competition exists, then the incumbent company

1 gains competitive status for the relevant service. The Commission has already fulfilled this
2 component of the statute as it applies to SBC.

3 Following the initial determination regarding each service in each exchange, periodic
4 reviews are conducted to ensure that effective competition still exists thereby warranting
5 continued full flexible pricing status for the incumbent. In this case, the Commission may
6 consider if effective competition continues to exist for a service if it is that SBC no longer
7 faces effective competition in an exchange.

8 After the first five years during which an ALEC has provided service in an exchange, the
9 incumbent can petition for competitive service status. Under that circumstance, the petition
10 may be granted without a mandatory review if unchallenged. This aspect of the statute
11 works to eliminate unnecessary reviews thus conserving regulatory and carrier resources.
12 This is the scenario I believe is currently before the Commission.

13 **Q. IF THE COMMISSION FINDS OR REAFFIRMS THAT EFFECTIVE**
14 **COMPETITION DOES NOT EXIST FOR A SERVICE IN AN EXCHANGE AT**
15 **THIS TIME, HOW CAN SBC ATTEMPT TO GAIN COMPETITIVE STATUS FOR**
16 **SERVICES IN THE FUTURE?**

17 **A.** Just as SBC did in this case. An ongoing process is available if an ALEC has been providing basic
18 local service in the exchange for at least five years. An ILEC can re-petition for competitive service
19 status for the service in the exchange.

1 **Q. THIS PROCESS FOR ACHIEVING COMPETITIVE STATUS FOR SERVICES**
2 **APPEARS TO BE ONGOING AND CAN RESULT IN A NUMBER OF CONTESTED**
3 **PROCEEDINGS. IS THIS NECESSARY?**

4 A. Yes it is, both under the price cap statute and under the public policy aspects of the price
5 cap statute. If an incumbent is granted competitive status absent effective competition for
6 services in its exchanges, the incumbent will be free to raise prices above the levels
7 currently allowed by the price cap formula and customers would not have adequate
8 protection against unreasonable price increases. Under the resale obligations for an
9 incumbent local exchange company, the ALEC's wholesale cost are tied to the incumbents
10 retail prices and would rise along with increases in the incumbents retail prices. If basic
11 local rates increase, customers will be forced to pay the higher prices or lose access to a
12 service that is essential in ensuring safety, health, and meaningful participation in society.
13 Increases in basic local rates could also negatively impact the welfare of small businesses.
14 If residential basic local rates increase, Lifeline rates also rise, which is contrary to the
15 specific intent of providing a more affordable discounted rate to low-income customers. If
16 an incumbent increases access rates, IXCs will be forced to absorb the loss or attempt to
17 pass through the increases to all of their customers. Given the links that exist between an
18 incumbent's rates and CLEC wholesale rates and charges, it is paramount to protect
19 ratepayers to ensure that effective competition actually exists prior to granting competitive
20 service status.

1 **Q. DURING THE INITIAL INVESTIGATION INTO THE STATE OF**
2 **COMPETITION IN SBC'S EXCHANGES, FOR WHICH OF SBC'S SERVICES**
3 **AND IN WHICH EXCHANGES DID THE COMMISSION FIND THAT EFFECTIVE**
4 **COMPETITION EXISTED?**

5 A. Southwestern Bell sought a competitive classification for local services and for several non-
6 local services on a statewide basis. The Commission found that effective competition
7 existed for the following services.

8 1) The core business switched services in the Kansas City and St. Louis exchanges.

9 2) The business line-related services in the Kansas City and St. Louis exchanges.

10 3) The directory assistance services for business customers in the Kansas City and St.
11 Louis.

12 4) Busy Line Verification and Busy Line Interrupt services for business customers in the
13 Kansas City and St. Louis exchanges.

14 5) The residential access line services in the Harvester and St. Charles exchanges.

15 6) The residential access line-related services in the Harvester and St. Charles exchanges.

16 7) The Optional Metropolitan Calling Area service for residential customers in the
17 Harvester and St. Charles exchanges.

18 8) The directory assistance services for residential customers in the Harvester and St.
19 Charles exchanges.

20 9) The Busy Line Verification and Busy Line Interrupt for residential customers in the
21 Harvester and St. Charles exchanges.

22 10) Common Channel Signaling/Signaling System 7 services in all SBC's
23 exchanges.

24 11) Line Information Database in all SBC's exchanges.

1
2 Q. IF THE ULTIMATE OUTCOME OF THIS PROCEEDING IS A DETERMINATION
3 THAT ANY ADDITIONAL SBC SERVICES ARE SUBJECT TO EFFECTIVE
4 COMPETITION IN AN EXCHANGE, SHOULD ANY ADDITIONAL PRICING
5 RESTRICTIONS BE IMPOSED ON SBC PRIOR TO ALLOWING IT
6 FLEXIBILITY FOR THE SERVICE IN THE RELEVANT EXCHANGE?

7 A. None beyond those restrictions imposed on its competitors.

8 Q. WHAT TYPES OF EVIDENCE WOULD YOU FIND PERSUASIVE IN
9 DEMONSTRATING THAT AN ALTERNATIVE BASIC LOCAL EXCHANGE
10 CARRIER IS "PROVIDING" SERVICE IN AN EXCHANGE.

11 A. Based on my investigation in the previous case, I found that simply demonstrating that a
12 carrier was certified or that the Commission at some point approved a tariff does not in
13 itself demonstrate that an alternative local exchange carrier is actually providing basic local
14 service. For example, many carriers that initially sought certification never completed the
15 series of remaining steps necessary to actually serve customers such as securing
16 interconnections that codify the terms and conditions for the exchange of traffic over the
17 telecommunications network or setting forth the terms of service in a required tariff filing.
18 Even when a carrier has been certified and has approved tariffs on file, services are not
19 always provided throughout the area for which the tariff applies and tariffs are not always
20 withdrawn when a carrier cancels its service offerings in an area or goes out of business
21 entirely. Additionally, the existence of alternative facilities in the exchange, such as

1 switching equipment or fiber networks, alone does not ensure that the facilities are actually
2 being used to provide an alternative basic local service.

3 In this case, a more complete investigation reveals that even the list of directory listings
4 attached to Mr. Unruh's testimony is inadequate to demonstrate that a carrier is providing
5 service. As I will discuss later, a number of the carriers from Mr. Unruh's directory listing
6 are not providing service despite appearing in the directory.

7 I believe that acknowledgement by the competing carrier that it serves customers in an
8 exchange is the surest method for demonstrating that the "providing" requirement is met.
9 Other evidence of "providing service" would be verifiable information that the incumbent
10 provides more than an insignificant number of resold lines or unbundled network elements
11 in the relevant exchange.

12 **Q. WHY IS THERE DIFFERENT TREATMENT FOR SBC THAN ITS**
13 **COMPETITORS?**

14 **A.** A potential need for different treatment of competitors and incumbents on an ongoing basis
15 was codified in the price cap statute as a necessary requirement until effective competition
16 can be relied upon to ensure that consumers would not be harmed by the elimination of
17 regulatory protections for the sustained availability and affordability of basic local
18 telecommunications services. The high standard for the ongoing existence of "effective
19 competition" established by statute is completely reasonable given the history and
20 characteristics of the local telecommunications industry in Missouri.

1 SBC has for decades built and controlled vast local exchange and interexchange networks in
2 Missouri. Network facilities include switches and other central office equipment, trunking
3 lines that link local switching offices and the “loop” which is comprised of the outside plant
4 facilities, including outside terminals, conduit, copper and fiber cables all of which
5 complete the end to end connection from the central offices to customer’s homes and
6 businesses. Over time, technological improvements in existing systems and the
7 development of alternative technologies have reduced the economies of scale and scope
8 inherent in providing some services once characterized as natural monopolies. Such
9 advances tend to diminish the past economic justification for operation of regulated
10 monopolies since a competitive paradigm becomes both more feasible in terms of cost and
11 more attractive in terms of customer choice.

12 Unfortunately, there are still significant barriers to achieving effectively competitive
13 markets. For example, in many areas “bottle neck” facilities controlled by incumbents are
14 still the norm and portions of the network are still subject to scale and scope economies that
15 are exacerbated in geographic areas with low population densities. In addition, incumbent
16 providers have developed name recognition and customer loyalty which reduces the
17 effective operation of a competitive market.

18 For decades, SBC has enjoyed an exclusive service territory in the State of Missouri,
19 developing longstanding relationships with customers and, albeit under regulatory
20 oversight, generally becoming known for ubiquitous basic local service offerings, affordable

1 prices, reliable services, and timely installations and repairs. Reasonably, these attributes
2 constitute a significant competitive advantage over lesser-known competitors. I believe
3 dissatisfaction with slamming, cramming, and a continuous stream of sales calls during the
4 dinner hour have also made less sophisticated telecommunications users wary (and weary)
5 of changing providers. This also obviously works to the advantage of an incumbent
6 monopoly when its market is opened to alternative providers. It is also imperative to
7 consider issues of market dominance and the potential for SBC, either alone or in concert
8 with other carriers, to successfully exert market power once SBC is released from price
9 caps.

10 It is important to keep in mind that simply because an incumbent faces a single or a few
11 competitors who are effective in winning some customers away does not mean that the
12 market is effectively competitive. The primary economic benefit of truly effective
13 competition is that no single firm or group of firms has the ability to profitably sustain price
14 increases to any significant degree above cost. I believe this is a relevant factor for the
15 Commission to consider in its deliberations.

16 **Q. WHAT ARE THE STATUTORY CRITERIA FOR EVALUATING "EFFECTIVE**
17 **COMPETITION?"**

18 **A.** Section 386.020.13, RSMo 2000 provides the following direction:

19 (13) "Effective competition" shall be determined by the commission based on:

(a) The extent to which services are available from alternative providers in the relevant market;

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;

(c) The extent to which the purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in section 392.185, RSMo, are being advanced; and

(d) Existing economic or regulatory barriers to entry; and

(e) Any other factors deemed relevant by the commission and necessary to implement the purposes and policies of chapter 392, RSMo.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS ON THE STATUS OF COMPETITION IN SBC'S EXCHANGES IN TERMS OF THE CRITERIA FOR "EFFECTIVE COMPETITION" LISTED IN SECTION 386.020(13), RSMO.

A. SWBT again falls short in meeting the criteria for effective competition for local service. SBC continues to present generalized information and not specific exchange-based data on the elements relevant to an effective competitive analysis. SBC continues to retain significant control over the local loop for both residential and business service in the vast majority of its exchanges. Customers have long been captive to the company that controls the loop. Alternative providers for local service must win away those captive customers. In the local market, alternative local exchange providers have made only minor inroads, and virtually no progress in the residential market. Recent FCC decisions removing UNE, unbundling obligations and wholesale discounts for residential lines further diminish the future of residential competition.

While alternative providers compete with SWBT in some exchanges for business service, there is an absence of equivalent or substitutable service available to residential customers and small business customers at comparable rates, terms and conditions. The prepaid service providers

1 appear to constitute the lion's share of available alternatives to residential consumers. But that
2 service is designed and marketed to customers with credit problems. Customers pay an exorbitant
3 amount for prepaid service and do not receive the full range of services as available under SWBT's
4 local service. Mandatory toll blocking and restricted access to 0+ and 1+ calls do not make the
5 prepaid service a functionally equivalent service at comparable rates, terms and conditions.

6 Vertical services, service packages, local operator, local directory, directory listings and flat-
7 rate or discounted local services established by the Commission to satisfy local calling
8 needs are all services which are closely associated with the basic local service. As the
9 Commission said in Case No. TO-2001-467,

10 "The Commission finds that vertical services and custom calling features are
11 inseparable from the underlying basic local service because vertical services
12 and custom calling features are not available to the customer without that
13 customer being provided the basic local service."

14 Cellular service is not a functionally equivalent or substitute service as set forth in Section
15 386.020.13, RSMo 2000 since it does not meet the same criteria for 911 service or access to
16 a presubscribed interexchange carrier that wireline service provides. In addition, cellular
17 carriers generally do not recognize the Commission's regulatory authority in the coverage,
18 price, terms or conditions or even reporting of wireless service offerings. Wireless
19 companies require long-term contracts in excess of a year to obtain a reasonable price and
20 service package. Cellular companies require use of specific brands of customer equipment
21 so a change in carriers requires a change in equipment. Based on my experience, I believe
22 that generally consumers do not use cellular phones as a substitute for landline basic local

1 service to their home. Instead, consumers primarily rely on cellular as a mobile connection
2 to the network and as a means to avoid toll charges for placing calls outside the landline
3 local calling scope. This is especially true in the rural areas. Neither purpose is an attribute
4 of basic local service. For these reasons, I believe it would be inappropriate and contrary to
5 the Commission's charge to give the existence of cellular service much weight in its
6 determination of effective competition for basic local service.

7 E-mail cannot reasonably be classified as the functional equivalent of voice communication.
8 The same can be said about text messaging via wireless phones. Voice telephoning over
9 the internet suffers from poor signal quality and is not a functional equivalent. As far as
10 consumer perception of VIOP, VOIP is still a new option for consumers and the greater
11 number of telephone consumers have not had sufficient experience with it so they can make
12 an informed judgment on its substitutability.

13 Section 392.185, RSMo. sets out the purposes of Chapter 392, RSMo. and is the best
14 statement of the intent of regulation in Missouri. The level of competition in the SBC
15 exchanges has not fulfilled or advanced meaningfully these goals. SBC's price cap
16 regulatory scheme has as its purpose flexibility for downward pricing to meet competition.
17 This has not occurred to any significant degree. In fact, rates for many services, including
18 basic local service have increased under the pricing options available to SBC under the
19 price cap statute. SBC has not taken advantage of the price flexibility under the price caps
20 which leaves me to believe that the outcome of the reclassification is not flexibility to meet

1 competition at lowered prices, better service, and more options, but instead provides an
2 unfettered opportunity to raise prices for services with little or no competition.

3 After consideration of the data presented here about CLECs and their operations in SBC exchanges,
4 and the other considerations relevant to effective competition, I believe that the Commission should
5 decline to declare additional SBC basic local business and associated services competitive. The
6 possible exceptions would be multi-line business services in Harvester, Fenton, Chesterfield,
7 Greenwood, Valley Park and Manchester. In these exchanges, there appears to be a reasonable
8 amount of fully facilities based competition for landline service coupled with UNE-P and resale
9 offerings. This provides some comfort that sustainable competition exists for services offered to
10 multiline business customers. However, I believe that the Commission should give weight to the
11 testimony of CLECs operating in these areas regarding any barriers that they face or other factors
12 that may limit their ability to compete prior to granting a competitive classification.

13 **Q. HAVE YOU PERFORMED ANY ANALYSIS THAT CAN ASSIST THE**
14 **COMMISSION DETERMINE WHETHER EFFECTIVE COMPETITION EXISTS IN**
15 **SBC'S EXCHANGES FOR WHICH IT SEEKS A COMPETITIVE**
16 **CLASSIFICATION?**

17 **A.** Yes. I considered information from a number of sources, including information regarding
18 access line counts provided by SBC, Annual Reports, and Central Office Code Assignment
19 data available from the NANPA webpage.

20 **Q. PLEASE DESCRIBE YOUR ANALYSIS.**

1 A. Although it is in and of itself not conclusive, one indicator of market dominance (and in
2 turn, the absence of effective competition) is the Herfindahl-Hirschman Index. (HHI) It is
3 calculated as the sum of the market shares squared for firms in what is determined to be the
4 relevant geographic and product market. In this case, I believe it is relevant to consider both
5 the statewide market and a geographic market defined at the exchange level. The statewide
6 market can provide some insight as to the degree to which CLECs have been effective in
7 establishing a statewide presence. This will help to demonstrate the likelihood of effective
8 competition to develop across the state and not simply in isolated pockets. While based on
9 the statute, it appears that evaluating the extent to which effective competition exists at the
10 exchange level, in my opinion, it is also worthwhile to consider the extent to which CLECs
11 have committed to provide services throughout Missouri.

12 Although consumers do not buy access lines, access lines or “loops” provide the conduit for
13 carriers to offer consumers a multitude of services, including local services, toll services,
14 operator services, directory services, and a host of custom calling features. That same
15 conduit is required by other carriers to terminate calls. Historically, incumbent local
16 exchange carriers such as SWBT have retained virtually exclusive control of this bottleneck
17 facility. This provides the potential for SWBT to exercise some form of market power in
18 the provisioning of virtually every intrastate retail or wholesale service offered over the
19 switched network within its exchanges, potentially allowing SWBT to overcharge both
20 retail consumers and wholesale consumers and ward off meaningful competition. The 1996

1 Federal Telecommunications Act attempted to address this concern by requiring the
2 incumbents to open their markets to competition, including the requirement that the
3 incumbent lease parts of its network to competitors. Senate Bill 507 attempted to mitigate
4 potential market power by imposing restrictions in the form of price caps that would impose
5 an upper bound on the incumbent while also allowing the incumbent an opportunity to
6 respond to competitive pressures to lower price.

7 Although competitive basic local service providers have met with some success in acquiring
8 market share in some exchanges, the local service market remains highly concentrated and
9 SWBT continues to dominate the business market and monopolize the residential market on
10 a statewide basis. In total, an estimate of SWBT's share of statewide business access lines
11 is ** _____ ** (See, Schedule BAM-4HC) For residential SWBT's share of
12 statewide access lines is ** _____ * based on SBC reported line counts less prepaid
13 offerings. SBC's share of the statewide residential local market dwarfs the combined total
14 of its CLEC competitors including prepaid, regular resale, UNE-P, and CLEC switched
15 service as estimated based on the number of E-911 listings. (See, Schedule BAM-3HC) On
16 an exchange basis SWBT's market share of total residential access lines in ** _____
17 _____ ** the roughly 80% measure of market share
18 that the FCC found to indicate that AT&T monopolized the interstate, domestic,
19 interexchange market in 1993. (See Schedule BAM-3HC) Estimates indicate that for
20 residence access lines ** _____

1 _____ ** the 1800 threshold
2 which indicates a highly concentrated market. The HHI floor for SWBT's market share of
3 business access lines, ** _____

4 _____
5 _____ ** (See, Schedule BAM-4HC) CLEC market share based
6 on access lines served at least partially by UNEs or exclusively over the CLECs own
7 facilities produces even higher HHI indicators of market concentration. (See Schedule
8 BAM-3HC and BAM-4HC) The information contained in Schedule BAM-3 HC and
9 Schedule BAM-4 HC is based on SWBT line count data and CLEC line counts provided by
10 SWBT to the Staff and Public Counsel.

11 Another source of information I reviewed but did not rely on as heavily in this case as in
12 TO-2001-467 is numbering assignment data from NANPA identifying which CLECs have
13 received numbering resources in anticipation of servicing customers using their own
14 switching facilities. The insight provided by this information is somewhat diminished since
15 the Commissions last review of the state of competition in SBC's exchanges. Due to the
16 implementation of number pooling the informational content of NXX assignments is diluted
17 due to sharing of NXX codes by landline carriers offering service in the same rate center. I
18 would point out that my review of this information does raise concerns regarding Craig
19 Unruh's schedule Unruh – Schedule 5 that purports to show rate center numbering
20 assignments associated with competitors in SBC's exchanges. Based on a review of

1 numbering assignments I found cases where CLECs have numbers assigned in exchanges
2 that are not included in the list of exchanges they serve according to the CLEC's own
3 tariffs. Intermedia, for numerous rate centers, appears to be one such example. It may be
4 that affiliated carriers are utilizing codes assigned to Intermedia. Mr. Unruh's maps also
5 appear to include the existence of wireless carriers as well as wireline. For example, Mr.
6 Unruh indicates that Vienna has competitive numbering resources assigned to it. Upon
7 review of the numbering assignments I found that the only carrier besides SBC with a code
8 assigned in Vienna is Verizon Wireless. Mr. Unruh's Schedule 5 should not be relied upon
9 as definitive in establishing that CLECs are provisioning on a facilities basis in a particular
10 exchange.

11 I have also reviewed CLEC tariffs and ALEC annual reports. Comparing this to SWBT
12 witness Craig Unruh's schedules Unruh – Schedule 7 and Unruh – Schedule 8, regarding
13 the number and offerings of CLEC competitors, I discovered that in numerous cases the
14 CLECs identified as providing service in Missouri are not. For example, he lists numerous
15 carriers with cancelled certificates for both business and residential including Tel-Link,
16 Quintelco, Net-Tel and IG2. (See, Commission Staff information regarding cancellations in
17 Schedule BAM-6.)

18 Another area of concern with Mr. Unruh's schedules relates to the thick attachment of
19 directory pages purporting to demonstrate the CLECs that hold themselves out to offer
20 service in SBC's exchanges. I found a comparison of these listings to be a strong indication

1 of how bleak the competitive landscape in Missouri generally is rather than evidence of
2 robust competition. A large portion of the listings are for prepaid services. Other companies
3 listed are piece parts of larger entities due to mergers or acquisitions. Some “providers” on
4 SWBT’s lists are in bankruptcy or their certificate has been cancelled. Some simply no
5 longer provide service in Missouri. Examples of discrepancies between actual service
6 offering availability for carriers shown in Mr. Unruh’s schedule of directory listings is
7 provided in Schedule BAM-1HC and BAM -2HC of my testimony.

8 The weight of the evidence I found and have provided here demonstrates that SBC’s
9 information and evidence creates a picture of the “paper competition” versus the reality of
10 the lack of competition faced by Missouri’s residential and low use business customers.
11 Although CLECs may be certified and may have tariffs filed, that does not mean that they
12 are actually providing service or providing service at a level that constitutes effective
13 competition. The Commission should not be persuaded by SBC’s exaggerated claims of a
14 strong competitive market in Missouri. I recommend that the Commission reject SBC’s
15 petition for competitive classification of basic local residential service and the other services
16 closely associated with it including vertical services, service packages, local operator, local
17 directory, directory listings and flat-rate or discounted local services established by the
18 Commission to satisfy local calling needs.

1 **Q. BASED ON YOUR ANALYSIS OF THE STATE OF COMPETITION IN**
2 **MISSOURI, WHAT ARE YOUR CONCLUSIONS REGARDING EFFECTIVE**
3 **COMPETITION FOR BASIC LOCAL SERVICE?**

4 A. The loop continues to be a bottleneck facility primarily controlled by SBC. The HHI
5 analysis I conducted on an exchange-by-exchange basis shows that the market for
6 residential basic local services is highly concentrated and not subject to effective
7 competition. Business services in the majority of exchanges are still dominated by SBC.
8 Notwithstanding the potential exceptions I identified earlier in my testimony, I would not
9 recommend approving a competitive classification in this proceeding.

10 **Q. WHAT ARE THE IMPLICATIONS OF YOUR STUDY ON SERVICES OTHER**
11 **THAN BASIC LOCAL SERVICE?**

12 A. The competitive status of vertical services and class features depends on and is intertwined
13 with the status of competition for basic local service. A customer must have basic local
14 service to obtain vertical services; those services are not bought independently, and like
15 basic local, should not be designated as subject to effective competition.

16 **Q. SBC WITNESS ELIZABETH STOIA INDICATES ON PAGE 2 OF HER**
17 **TESTIMONY THAT SHE WILL DISCUSS A CATEGORY OF RESIDENTIAL**
18 **SERVICE CALLED RESIDENTIAL ACCESS LINES INCLUDING DIAL TONE**
19 **AND LOCAL USAGE. DOES SBC OFFER "RESIDENTIAL ACCESS LINE**
20 **SERVICE"?**

21 A. No. An SBC access line or "loop" is a connecting facility between the Company's local switching
22 office and a customer's premise. The access line facility is used to provide a variety of services to

1 different customers. Certainly, one such customer is a subscriber to the Company's basic local
2 service. Basic local service includes dial tone and usually unlimited local calling within the local
3 calling scope for a flat rate. In this case, SBC acts as a retail provider. One of the other types of
4 customers that SBC serves with access lines are interexchange carriers. Interexchange carriers pay
5 to use the Company's access line facilities to originate and terminate incumbent's long distance
6 messages. Another customer SBC might serve with its access line is a competitive or an alternative
7 local exchange provider. In the two previous examples SBC acts as a wholesale provider.

8 Ms. Stoia's testimony appears to focus on a comparison of the price of bundled service offerings
9 and on emphasizing services that in some cases have limited substitutability for consumers. While I
10 acknowledge that many customers like the convenience of bundled products, and have access to and
11 are comfortable with newer technologies, I believe Ms. Stoia's analysis glosses over some
12 important consideration

13 I did not find a comparison of the lowest cost option for local calling as an exhibit to Ms. Stoia's
14 testimony despite that the availability and affordability of such a service was a primary goal related
15 to implementing the provisions of the federal and state universal service funds. Universal service
16 and Price Caps each offer a protection for the customer who choose to purchase basic local service
17 or can only afford it as a stand-alone service. The goal of universal service is to promotes the
18 ubiquitous availability and affordability of a core set of basic services. Currently the definition of
19 the core set of universal services aligns well with basic local service as a stand-alone service.

20 SBC already has the authority to lower rates to meet competition and to assemble bundled
21 offerings. SBC has not used that flexibility very often since it came under price cap regulation. The

1 history of rates under price cap regulation has seen a generally steady trend upward. There has
2 been little discipline exercised by competition.

3 There is a real risk that SBC will attempt to increase rates for such services as local basic service
4 more than the CPI-TS and increase nonbasic service rates more than the 8% cap per 12-month
5 period. If the Commission approves SBC petition, it is difficult to see how competition will
6 discipline prices and protect the basic local service customer from escalating rates beyond the
7 consumer price index rates.

8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 **A.** Yes, it does.