

Exhibit No.:

Issues: Competitive Status

Witness: John Van Eschen

Sponsoring Party: MO PSC Staff

Type of Exhibit: Rebuttal Testimony

Case No.: TO-2006-0102

Date Testimony Prepared: October 3, 2005

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

JOHN VAN ESCHEN

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. TO-2006-0102

Jefferson City, Missouri

October 2005

Exhibit No. 6
Case No(s) TO-2006-0102
Date 10-2-05 Rptr KF

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

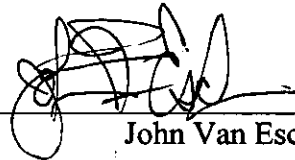
In The Matter Of The Request Of)
Southwestern Bell Telephone, L.P., D/B/A)
SBC Missouri, For Competitive)
Classification Pursuant To Section)
392.245.6 RSMO (2005) - 60-Day)
Petition)

Case No. TO-2006-0102

AFFIDAVIT OF JOHN VAN ESCHEN

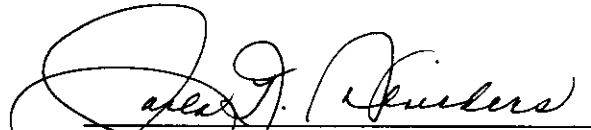
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

John Van Eschen, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 10 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



John Van Eschen

Subscribed and sworn to before me this 3rd day of October, 2005.



Notary Public

My commission expires

June 7, 2008

CARLA K. SCHNIEDERS
Notary Public - Notary Seal
State of Missouri
County of Cole
My Commission Exp. 06/07/2008

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29

12

13

14

15

16

17

18

19
20
21
22

23
24
25

26
27
28
29

Rebuttal Testimony of
John Van Eschen

1 status will also make it easier for SBC to discriminate in its rates for business services
2 because competitive status allows SBC to price all business services within the exchange
3 on a customer specific basis. Therefore, competitive status will allow an incumbent to
4 more selectively price its business services. Unreasonable discriminatory pricing may be
5 more likely to occur if business customers in the exchange lack realistic alternatives for
6 local voice service.

7 Later in my testimony, I intend to further explore the reasonableness of the
8 alternative providers identified by Mr. Unruh. I have reservations about whether the
9 alternative providers identified by Mr. Unruh will be viewed as reasonable alternatives by
10 customers most affected by the granting of competitive status. If the alternative providers
11 are not viewed as reasonable alternatives and these alternative providers do not have a
12 significant impact on SBC's prices then competitive status will make it easy for an
13 incumbent to significantly raise rates for such customers. In this respect, SBC's request
14 for competitive status will be contrary to the public interest.

15 Q. Has SBC provided any evidence as to why competitive classification is in
16 the public interest?

17 A. No. SBC has provided minimal evidence for the Commission to grant
18 competitive status. From Mr. Unruh's perspective, a company should simply ask for
19 competitive status without attempting to explain or justify the request. Essentially,
20 Mr. Unruh's position is that SBC bears no burden in requesting competitive status.
21 Mr. Unruh even believes it is not relevant for SBC to identify the names of its
22 competitors. I realize the issue of who bears the burden of proof is a legal issue. If the

Rebuttal Testimony of
John Van Eschen

1 Commission doesn't place any burden or expectations on the company, then the bar will
2 be set extremely low for competitive status applications under the 60-day track.

3 Q. What evidence or explanation has Mr. Unruh provided to justify the
4 granting of competitive status?

5 A. Mr. Unruh's criterion for the Commission to grant competitive status
6 appears to be the presence of at least five competitors in the exchange. Mr. Unruh's
7 testimony presents an over-riding theme that as long as the customer has a choice in
8 providers then competitive status is justified.

9 Q. Do you agree with Mr. Unruh's basic premise that as long as the customer
10 has a choice in providers then competitive status is justified?

11 A. It depends. In theory, this concept makes sense if the customer views the
12 choices in providers as reasonable substitutes. For example, if SBC raises rates to an
13 unreasonable level the customer can switch to another provider. In this respect,
14 competitive choice should help hold prices to reasonable levels. If the customer does not
15 view the service offerings of any alternative providers as substitutable or reasonable, then
16 competitive status is not justified. It really doesn't matter how many alternative
17 providers exist within a particular exchange if none of the providers are viable
18 alternatives for these customers. Conceptually, one good viable alternative might be
19 enough to justify competitive status. What I think needs to be considered is the type of
20 customer who is likely to be most affected by competitive classification. In addition,
21 consideration should be given to how these alternative choices will impact SBC's prices.
22 SBC's testimony ignores these issues but I will briefly discuss them.

Rebuttal Testimony of
John Van Eschen

1 Q. What type of customer is likely to be most affected by the granting of
2 competitive status?

3 A. To answer this question, we should review the significant pricing
4 flexibility recently authorized by the passage of SB 237. All local exchange companies
5 now have unrestricted pricing flexibility for bundles of telecommunications services
6 regardless of whether competitive classification is granted. In other words, SBC already
7 is not constrained by price cap regulation if the customer subscribes to more than one
8 telecommunications service. If SBC wants to generate additional revenue from any
9 customers who subscribe to packages or bundles of services, then SBC already has the
10 ability to raise the applicable rates for those bundles without Commission approval.

11 Given this pricing flexibility, the type of customer who will be most affected by
12 competitive classification will be the customer who subscribes to few, if any, additional
13 services. This customer probably does not make a significant amount of toll calls but
14 simply wants phone service without any additional services or features. Therefore, from
15 my perspective competitive classification is really targeted at the customer who just
16 subscribes to basic local telecommunications service.

17 Q. Why is it important to consider the type of customer who will be most
18 affected by competitive classification?

19 A. These customers should be kept in mind as one considers the alternative
20 choices presented by Mr. Unruh. More specifically, the Commission should consider
21 whether these choices are reasonable alternative providers for these customers. The sheer
22 number of alternative providers within an exchange is irrelevant if none of these
23 providers would be seriously considered as viable alternatives for the targeted customer.

Rebuttal Testimony of
John Van Eschen

1 Q. Do you have any comments about the general types of alternative
2 providers cited by Mr. Unruh?

3 A. Yes. I anticipate that few customers will actually switch to an alternative
4 provider if the consumer is expected to pay more for local voice service. For example,
5 the least expensive wireless plan offered by most of the wireless providers used as
6 support for SBC's competitive classification request is approximately \$30 per month
7 along with per minute usage fees if usage exceeds certain levels. In contrast, SBC's
8 monthly rates for residential basic local exchange service range from \$7.29 to \$12.07.
9 SBC could significantly raise its rates for basic local telecommunications service before
10 such customers would seriously consider cutting the cord and switch entirely to wireless
11 service.

12 Similar rate comparisons can be made with VoIP offerings to demonstrate that
13 such an offering is not a reasonable alternative for the customer who simply subscribes to
14 basic local telecommunications service. For example, in order to subscribe to a VoIP
15 service the customer must also subscribe to broadband service. In addition, the customer
16 may need to subscribe to an internet service provider. On top of the charges for
17 broadband and internet service, the customer will need to subscribe to the VoIP
18 provider's service which can run from \$14.99 to \$49.99 depending on the service plan.
19 Ironically, if the customer currently subscribes to SBC's DSL broadband service the
20 customer is still required to subscribe to SBC's local voice service. In such situations,
21 the customer will not save any money by switching to a VoIP provider's services unless
22 the consumer has significant toll usage.

Rebuttal Testimony of
John Van Eschen

1 Service quality is another issue to consider in whether these alternatives are really
2 viable choices for the customers SBC appears to want to target for rate increases.
3 Wireless service can be spotty and inconsistent. Wireless service may be offered within a
4 particular exchange but there are no guarantees that the wireless service will be available
5 in all parts of an exchange. Many VoIP offerings have improved over the years; however
6 VoIP and wireless service offerings still have issues regarding 911 capabilities.
7 Customers have established expectations that when they dial "911" the Public Service
8 Answering Point will readily know the caller's location. Many wireless providers and
9 VoIP providers do not have such capabilities and efforts continue at the state and federal
10 level to address 911 issues.

11 Q. Do you have any comments about competition from UNE-P providers or
12 providers using wholesale services of SBC?

13 A. Yes. In my original Direct Testimony, page 22, I attempt to explain my
14 understanding of UNE-P providers. UNE-P is similar to a reseller who is also solely
15 using the incumbent's facilities in providing local voice service. "UNE-P" refers to
16 Unbundled Network Element – Platform and applies to a situation where the competitor
17 orders loop, switching and other facilities and services from the incumbent local
18 telephone company. In regards to facility ownership, the UNE-P provider and resale
19 provider are essentially identical in the sense that neither the UNE-P provider nor the
20 resale provider owns any facilities in the provisioning of local voice service. Competitors
21 using wholesale services from SBC under a commercial agreement might also be
22 considered similar to UNE-P providers and resale providers. Such competitors using

Rebuttal Testimony of
John Van Eschen

1 commercial agreements also may not own any facilities in the provisioning of local voice
2 service.

3 UNE-P providers, resale providers and providers using a commercial agreement
4 may have similar retail rates in comparison to SBC's retail rates. However, the ability of
5 these providers to hold SBC's prices in check may be questionable. These providers
6 typically rely solely on SBC's facilities in the provisioning of their services and SBC
7 receives wholesale revenues from these providers. Therefore, if a consumer switches
8 from SBC to a UNE-P provider, resale provider or a provider using a commercial
9 agreement, the impact is minimized to SBC because SBC will receive wholesale revenue
10 rather than the retail revenue from this customer. Consideration should be given to the
11 effectiveness of these types of providers in minimizing SBC's apparent desire to raise
12 rates to SBC's retail customers.

13 If the Commission is seriously considering granting competitive status based on
14 competition from UNE-P providers and providers using a commercial agreement, the
15 question should be raised as to whether competition from resale providers could also
16 trigger competitive status. In my opinion, there is little distinction between UNE-P
17 providers and providers using a commercial agreement. Based on the evidence presented
18 in Case No. TO-2005-0035, *In the Matter of the Second Investigation into the State of*
19 *Competition in the Exchanges of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri,*
20 most, if not all, of SBC's exchanges would qualify based on such criteria.

21 Q. Do you have any comments about Mr. Unruh's Schedules 2 and 3
22 contained in his Direct Testimony?

Rebuttal Testimony of
John Van Eschen

1 A. Yes. Mr. Unruh states that these schedules identify the names of the
2 competitors operating in the exchanges identified in SBC's request for competitive status
3 under the 60-day track. His testimony and these schedules state that they also identify the
4 CLECs that have their own switching equipment. My comment is that these CLECs may
5 have their own switching equipment; however no evidence has been presented indicating
6 these CLECs are actually using this switching equipment for the provisioning of local
7 voice service within the identified exchange. Some CLECs with their own switching
8 facilities use their switch for the provisioning of local voice service in some exchanges
9 but not other exchanges. For example, a CLEC could offer local voice service via
10 UNE-L in one exchange but in another exchange the same CLEC might provide local
11 voice service on a UNE-P basis. Therefore, in the UNE-L exchange the CLEC is using
12 its own switching facilities but in the UNE-P exchange the CLEC is using SBC's
13 switching facilities. Although it could be argued the CLEC could use its switch to serve
14 all exchanges in which it offers service, it may not be economically or technically
15 efficient to provision service to an exchange in that manner.

16 Q. Mr. Unruh appears to be critical of Staff's position in this case because
17 Staff's position is moving to fully competitive markets at a very slow pace. Do you have
18 any comments?

19 A. Yes. Mr. Unruh's criticism should be directed to the Legislature.
20 However, I would not consider such movement as slow pace. SB 237 did make
21 significant changes to expand a company's pricing flexibility so that SBC and all other
22 incumbent telephone companies are already able to set prices for bundles without
23 interference from the Missouri Commission. Given such pricing flexibility it is curious

Rebuttal Testimony of
John Van Eschen

1 why competitive classification is even significant to many incumbent local telephone
2 companies. Nevertheless, the Commission recently granted competitive status to 45
3 exchanges for business services and 26 exchanges for residential services. In addition,
4 my amended Direct Testimony recommends the Commission grant competitive status to
5 an additional 12 exchanges for business services and an additional exchange for
6 residential services. I have also identified additional exchanges that I believe qualify for
7 competitive status if SBC had only specifically requested such status for these exchanges.
8 Put all these exchanges together and SBC will have competitive status for a significant
9 percentage of its lines.

10 Q. What criteria did you use for recommending competitive status be
11 extended to 12 exchanges for business services and an additional exchange for residential
12 services?

13 A. As pointed out in my Direct Testimony, this recommendation is based on
14 the presence of at least one non-affiliated entity providing local voice service in whole or
15 in part over facilities in which it or one of its affiliates has an ownership interest.

16 Q. Do you have any comments about Mr. Unruh's statements about the
17 application of this criterion in this proceeding?

18 A. Yes. On page 12 of his Direct Testimony, Mr. Unruh is critical of
19 applying this criteria in this proceeding because it is the same criteria used in the 30-day
20 proceeding. He states such application is contrary to the law. I don't know if such a
21 position is contrary to the law. Section 392.245.5(6) states, "...any incumbent local
22 exchange company may petition the commission for competitive classification within an
23 exchange based on competition from any entity..." In my opinion, the extent of

Rebuttal Testimony of
John Van Eschen

1 competition generated by these entities should be a consideration in this proceeding.
2 Unfortunately minimal, if any, evidence has been presented on the amount of competition
3 generated by the entities cited by SBC.

4 Q. Can you summarize your recommendation by specifically identifying the
5 exchanges the Commission should grant competitive status in this case?

6 A. Yes. I recommend competitive status be granted to the following
7 exchange for residential service: Joplin. In addition, I recommend competitive status be
8 granted to the following exchanges for business services: Archie, Ash Grove, Billings,
9 Boonville, Carthage, Cedar Hill, Farley, Marshall, Mexico, Moberly, St. Clair and Union.
10 In granting competitive status, the Commission should state the conditions for granting
11 competitive status. In this instance, competitive status should be granted based on the
12 presence of at least one wireless entity and one non-affiliated entity providing local voice
13 service in whole or in part over facilities in which it or one of its affiliates has an
14 ownership interest.

15 Q. Does this conclude your Rebuttal Testimony?

16 A. Yes it does.