

AMENDED

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Issues: Competitive Status  
Witness: John Van Eschen  
Sponsoring Party: MO PSC Staff  
Type of Exhibit: Direct Testimony  
Case No.: TO-2006-0093 & 0102  
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**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY OPERATIONS DIVISION**

**DIRECT TESTIMONY**

**OF**

**JOHN VAN ESCHEN**

**MISSOURI PUBLIC SERVICE COMMISSION**

**CASE NO. TO-2006-0093 & 0102**

**Jefferson City, Missouri  
September 2005**

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**OF**  
**JOHN VAN ESCHEN**  
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Q. Please state your name and business address.

A. My name is John Van Eschen. My business address is 200 Madison Street, Jefferson City, Missouri 65102-0360.

Q. By whom are you employed?

A. I am employed by the Missouri Public Service Commission (Commission) as Manager of the Telecommunications Department.

Q. What are your duties and responsibilities?

A. I direct and coordinate activities and work within the Telecommunications Department. More specifically, I assist in the development of these recommendations in response to tariff filings, certificate applications, interconnection agreements, formal complaints, various telecommunications company transactions, and other matters pending before the Commission. I also assist in the development of rulemakings, comments before the Federal Communications Commission, and the analysis of proposed legislation pertaining to telecommunications regulation. My duties also involve overseeing the monitoring of quality of service provided by basic local telecommunications companies. I have led various roundtable meetings and groups intended to study and discuss various issues related to the telecommunications industry. Most recently I chaired the Calling

1 Scope Task Force formed in Case No. TW-2004-0471 for the purpose of studying  
2 expanded calling issues in Missouri.

3 Q. What is your educational background?

4 A. I have a Bachelor of Arts degree in Psychology from the University of  
5 Iowa. I also have a Master of Arts degree in Economics from Kansas State University.

6 Q. Have you previously testified before the Commission?

7 A. Yes.

8 Q. What is the purpose of your testimony?

9 A. The Commission Staff (Staff) has evaluated Southwestern Bell's (SBC's)  
10 Petition for Competitive Classification. The purpose of this testimony is to respond to  
11 SBC's request for competitive classification in both the 30-day proceeding and the  
12 60-day proceeding. In the 30-day proceeding, Staff recommends the Commission grant  
13 competitive status to 25 exchanges for the provisioning of residential services and 43  
14 exchanges for the provisioning of business services. In the 60-day proceeding, Staff  
15 recommends competitive status be granted to one additional exchange for residential  
16 services and 12 additional exchanges for business services using the same standards as  
17 applied in the 30-day proceeding. The specific exchanges are identified in bold in  
18 Schedule 1. Schedule 1 also shows an additional three exchanges that qualify for  
19 competitive status for business services; however SBC failed to specifically request these  
20 exchanges for competitive status. My testimony will attempt to explain these  
21 recommendations as well as simultaneously address SBC's competitive requests in both  
22 the 30-day proceeding and the 60-day proceeding.

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1 Q. Please explain your understanding of SBC's petition for competitive  
2 classification.

3 A. On August 30, 2005, SBC filed a petition for competitive classification.  
4 SBC's petition contains a request for certain exchanges to be classified as competitive in  
5 a 30-day proceeding and others in a 60-day proceeding. In the 30-day proceeding, SBC  
6 is requesting 28 exchanges and 51 exchanges be classified as competitive for the  
7 respective provisioning of residential and business basic local telecommunications  
8 services. In the 60-day proceeding, SBC is requesting an additional 49 exchanges and 26  
9 exchanges be classified as competitive for the respective provisioning of residential and  
10 business basic local telecommunications services.

11 Q. What is your understanding of what it means to receive competitive  
12 classification?

13 A. Competitive status, if granted to an exchange, will allow an incumbent  
14 local exchange telecommunications company greater pricing flexibility than under price  
15 cap regulation or rate of return regulation. Depending upon whether competitive status is  
16 granted to residential services, business services or both, the company will gain the  
17 ability to raise the applicable tariffed rate for all such services, except exchange access  
18 service, upon ten days notice to the Commission and to potentially affected customers. In  
19 this respect, an incumbent local exchange telecommunications company will essentially  
20 have the same pricing flexibility within the exchange as a competitively classified  
21 company.

22 SB 237 further expands a company's pricing flexibility for business services  
23 depending upon whether competitive status has been granted. For example, the new law

1 allows an incumbent local exchange telecommunications company to price all business  
2 services offered within the exchange on a customer specific basis if competitive status  
3 has been granted in the exchange for business services. Competitively classified  
4 companies will also be able to price all business services in the exchange on a customer  
5 specific basis if the incumbent's business services have been declared competitive in the  
6 exchange.

7 Competitive status should not impact a company's ability to price bundles or  
8 packages of telecommunications services. SB 237 provides new pricing flexibility that  
9 previously was unavailable to telecommunications carriers. The new law essentially  
10 states that rates associated with bundles of telecommunications will not be regulated by  
11 the Commission, regardless of competitive classification, as long as each  
12 telecommunications service included in the package is available apart from the package  
13 of services. For example, if an incumbent local telephone company bundles its basic  
14 local telecommunications service with other regulated or non-regulated  
15 telecommunications services (or non-telecommunications services) then the company is  
16 free to charge whatever rate it sees fit for the bundle. Staff still believes the bundles need  
17 to be tariffed; however, the Commission would not have the ability to establish the prices  
18 for these bundles. Pricing flexibility for bundled telecommunications services is  
19 available to all telecommunications carriers throughout their service territory regardless  
20 of whether competitive status is granted or not. The only criterion appears to be that the  
21 services contained in the bundle must be available on a stand alone basis; hence, the  
22 distinction between the company's ability to raise the price for stand alone services  
23 pursuant to competitive status versus pricing for bundles under SB 237. Conceptually,

1 the rates associated with stand alone services will act as a price ceiling until competitive  
2 status has been granted. When the Commission grants competitive status to an exchange,  
3 then this price ceiling is essentially removed for services offered on a stand alone basis  
4 because the company will gain the ability to increase the price for each stand alone  
5 service based on its competitive status.

6 Competitive status, if granted, should also not affect the Commission's ability to  
7 control or regulate various aspects of a company's telecommunications offerings. For  
8 example competitive status will not affect the Commission's ability to control the rates  
9 for exchange access service. The relevant statutes outlining the process for obtaining  
10 competitive status exclude exchange access service as part of a company's request for  
11 competitive status. If the Commission ultimately grants competitive status to an  
12 exchange, it should not impact the Commission's current ability to control or set the rates  
13 for exchange access service. Likewise, competitive status, if granted, should not affect  
14 the Commission's ability to maintain standards for quality of service, service termination  
15 for nonpayment, billing and other requirements. These standards will continue to apply  
16 regardless of whether an exchange has received competitive status.

17 **The 30-Day Proceeding**

18  
19 Q. What is your understanding of the criteria for qualifying for competitive  
20 status in a 30-day proceeding?

21 A. Section 392.245.5 describes the general process for achieving competitive  
22 status for an exchange. Specifically, two non-affiliated entities in addition to the  
23 incumbent local exchange company must be providing basic local telecommunications  
24 service within the exchange. One of the entities can be a commercial mobile service

1 provider as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24. The  
2 second entity can be any entity providing local voice service in whole or in part over  
3 telecommunications facilities or other facilities in which it or one of its affiliates have an  
4 ownership interest. This portion of the statutes directs the Commission to make a  
5 determination within 30-days of the request as to whether the requisite number of entities  
6 are providing basic local telecommunications service to business or residential customers,  
7 or both, in the exchange. The statute lists specific instances whereby the provider of  
8 local voice service should not allow the exchange to qualify for competitive status at least  
9 under the thirty day process. For example, companies only offering prepaid  
10 telecommunications service or only reselling telecommunications service shall not be  
11 considered entities providing basic telecommunications service. Likewise, a provider of  
12 local voice service that requires the use of a third party, unaffiliated broadband network  
13 or dial-up Internet network for the origination of local voice service shall not be  
14 considered a basic local telecommunications service provider.

15 Q. Do you believe SBC has met the criteria that one of the two entities can be  
16 a commercial mobile service provider?

17 A. Yes. The company's petition for competitive status provides information  
18 regarding the presence of wireless providers in the exchanges where competitive status is  
19 sought. Staff finds the company's evidence convincing and does not dispute the presence  
20 of at least one wireless provider in any of SBC's exchanges where competitive status is  
21 sought.



1           Q.     Do you believe SBC has met the criteria that the second entity can be any  
2 entity providing local voice service in whole or in part over telecommunications facilities  
3 or other facilities in which it or one of its affiliates have an ownership interest?

4           A.     Yes and no. For some exchanges SBC has met this criterion but for other  
5 exchanges Staff has found no evidence that such an entity is actually providing local  
6 voice service.

7           Q.     Please explain your criteria for determining if an entity is providing local  
8 voice service in whole or in part over telecommunications facilities or other facilities in  
9 which it or one of its affiliates have an ownership interest.

10          A.     Staff considers lines served on a full facility basis or UNE-L basis as the  
11 minimum threshold to meet for competitive status in a 30-day proceeding. Full facility  
12 based lines involve lines owned by the company. A company providing voice service on  
13 a full facility based basis also generally owns the switching facilities used to switch calls.  
14 UNE-L basis refers to "unbundled network element loops" a situation where the company  
15 leases a local line or loop from an incumbent local telephone company but may own the  
16 switching facilities. I will also use the term to describe a situation where the company  
17 may own the switching facilities to provide local voice service but lease a local line or  
18 loop from an unaffiliated company. In most UNE-L situations, a company may own one  
19 switch but serve several exchanges from the switch. The switch may be the only  
20 equipment owned by the company.

21          The provisioning of service on a full facility basis or UNE-L basis has been  
22 selected by the Staff as the minimum threshold to meet for competitive status in a 30-day  
23 proceeding because it reflects a situation where the company, or its affiliate, owns certain

1 facilities in the provisioning of service. Although a company providing service on a  
2 UNE-L basis generally only has ownership interest in a switch, a switch can probably be  
3 included as qualifying as telecommunications facilities as defined by 386.020(52)  
4 because a switch can be considered a receiver, machine, apparatus or device. This  
5 statutory definition specifically defines "telecommunications facilities" as "...includes  
6 lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments,  
7 machines, appliances and all devices, real estate, easements, apparatus, property and  
8 routes used, operated, controlled or owned by any telecommunications company to  
9 facilitate the provision of telecommunications service." A strict application of this  
10 definition may lead to questionable results from the perspective that a company may not  
11 own a switch or lines but rather simply some real estate that may be used to facilitate the  
12 provisioning of telecommunications service. For instance, a company may own some  
13 office space for taking orders for telecommunications service and meet the definition of  
14 telecommunications facilities. Regardless, Staff is considering the provisioning of  
15 service on a full facility basis or UNE-L basis as the minimum threshold to meet for  
16 competitive status in a thirty day proceeding.

17 Q. What records did Staff rely on in order to determine what wireline entities  
18 are providing local voice service in an exchange?

19 A. Section 392.245.5(6) directs the Commission to maintain records of  
20 regulated providers of local voice service, including those regulated providers who  
21 provide local voice service over their own facilities, or through the use of facilities of  
22 another provider of local voice service. Staff's response to this directive has been to rely  
23 on the annual reports submitted by telecommunications companies to the Commission.

1 Specifically, all local exchange carriers are required to report the number of access lines  
2 served on an exchange-specific basis as of December 31<sup>st</sup> of the proceeding year.  
3 Companies are expected to identify the number of voice grade equivalent lines based on  
4 the following categories: pure resale, UNE-L, UNE-P, and full facility based. Attached  
5 in Schedule 2 is a blank copy of the Commission's annual report form which attempts to  
6 describe most of the access line-related terms used in the annual report form.

7       The annual reports due on April 15, 2005, are the reports focused upon by Staff  
8 for this proceeding. Staff has attempted to follow up with many competitively classified  
9 companies providing local voice service to ensure their respective annual report  
10 information is correct. For example, in some situations a company may have identified  
11 an unknown exchange(s) or alternatively simply identified the total number of lines  
12 served without identifying lines served on an exchange-specific basis. In all known  
13 instances where there may have been an issue, we have attempted to ensure a company's  
14 annual report was compiled accurately and completely. Some companies reported  
15 serving "0" lines in their annual report but show a positive revenue in the company's  
16 annual statement of revenue. In such circumstances, Staff followed up with the  
17 telecommunications company to inquire how the revenue was generated and specifically  
18 if the company was providing local voice service. When appropriate, companies re-  
19 submitted their annual report information. Staff also contacted companies who reflect  
20 providing local voice service on either a full facility based basis or on a UNE-L basis.  
21 Staff's contact with facility based and UNE-L providers attempted to ensure these  
22 companies properly categorized lines served.

1 Q. Are there any potential issues with solely relying on the data submitted by  
2 companies in their annual report?

3 A. Yes. The timing of the annual reports may be an issue in some instances  
4 since access line data may be considered somewhat dated in the sense that it captures  
5 access lines as of December 31, 2004. A company's annual report will not capture access  
6 lines implemented during 2005. In addition, the annual report information may be  
7 deficient if the competitive company is providing service but has failed to obtain proper  
8 certification.

9 Q. If SBC is requesting competitive status for a particular exchange but  
10 Staff's records do not reflect SBC's identified competitor is providing service in the  
11 exchange, did Staff take any action?

12 A. Yes. In such situations, Staff attempted to directly contact the competing  
13 company and verify if it was providing local voice service. Cross-checks were also  
14 conducted on the competing company's tariff and web site for additional verification as  
15 to whether the competing company offers local voice service in the exchange. In general,  
16 Staff does not rely on a company's tariff and web site as a sole indicator the company is  
17 providing service in the exchange. Staff views such information as an additional source  
18 to verify that the company may offer service in the exchange. Corroborating evidence  
19 from other sources was needed to ensure the competing company is actually providing  
20 service in the exchange.

21 Q. Are there certain issues that should be brought to the Commission's  
22 attention regarding disagreements between Staff and SBC on whether a competitor is  
23 actually providing local voice service in an exchange?

1           A.    Yes.  Such disagreements with SBC primarily concern whether the  
2 competitor is solely providing a data service rather than a local voice service.  Section  
3 392.245.5(3) defines local voice service as two-way voice service capable of receiving  
4 calls from a provider of basic local telecommunications services as defined by  
5 subdivision (4) of section 386.020, RSMo.  Under the 30-day track, Missouri law  
6 specifically excludes certain types of providers of local voice service.  For example,  
7 Section 392.245.5(2) does not consider a provider of local voice service as providing  
8 basic local telecommunications service for determining competitive classification under  
9 the 30-day track if the provider requires the use of a third party, unaffiliated broadband  
10 network or dial-up Internet network for the origination of local voice service.  SB 237  
11 also indicates other types of services that should not be considered as providing basic  
12 local telecommunications service for purposes of determining competitive criteria, such  
13 as companies only offering prepaid service or only reselling telecommunications service  
14 shall not be considered entities providing basic telecommunications service.  In any  
15 event, Staff did not consider any competitor's lines as qualifying an exchange for  
16 competitive status if the company's lines are solely used for data purposes.

17           Q.    What steps did Staff take in order to identify companies solely providing  
18 service to an internet service provider in the exchange?

19           A.    Staff directly contacted companies to see if there are any situations where  
20 a company is solely serving an internet service provider in the exchange.  We discovered  
21 there are some exchanges where a company is only providing service to an internet  
22 service provider.  In Staff's opinion, competition within an exchange from a competing  
23 company who solely provides service to an internet service provider should not allow the

1 exchange to qualify for competitive status. Such a provider would not be providing local  
2 voice service pursuant to Section 392.245.5(2).

3 Q. Are there any specific companies Staff excluded from its list of qualifying  
4 competitive companies?

5 A. Yes. Among companies providing service on a UNE-L or full facility  
6 basis Staff considers AT&T to be affiliated with SBC and therefore AT&T was not  
7 considered in Staff's analysis for competitive status in any SBC exchanges. SBC  
8 likewise noted this affiliation and has not attempted to claim competitive status based on  
9 the existence of competition from AT&T.

10 Q. Please identify the specific exchanges where Staff believes SBC meets the  
11 criteria for the Commission to grant competitive status to the exchange.

12 A. Schedule 1 identifies the list of exchanges SBC has requested competitive  
13 classification under the 30-day proceeding. In response to SBC's request, the list has  
14 been expanded to include any exchange where Staff believes SBC meets the criteria of  
15 having at least one wireline competitor providing local voice service on either a full  
16 facility basis or a UNE-L basis. Schedule 1 identifies exchanges meeting competitive  
17 criteria by an "X" in the Yes box. In addition qualifying exchanges are identified in bold  
18 type. The column titled "Local Voice Competitor(s)" identifies the specific wireline  
19 companies providing local voice service on either a full facility basis or a UNE-L basis.  
20 A company is listed in this column if it is serving at least one line within the exchange.  
21 Schedule 3 provides a brief description of Staff's understanding of how these competitors  
22 are providing service. As shown on Schedule 1, Staff recommends competitive status be  
23 granted to the following exchanges in the 30-day proceeding:

Direct Testimony of  
John Van Eschen

1 Residential: Advance, Bell City, Chesterfield, Delta, Eureka, Fenton,  
2 Fredericktown, Harvester, Kansas City, Manchester, Monett, Nevada, Pacific, Perryville,  
3 Pocohontas-New Wells, Pond, Smithville, Springfield, St. Charles, St. Genevieve, St.  
4 Louis, Valley Park, Washington and Wyatt.

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5 Business: Antonia, Camdenton, Cape Girardeau, Chesterfield, Clever, Eldon,  
6 Eureka, Fenton, Farmington, Festus-Crystal City, Flat River, Fredericktown, Fulton,  
7 Grain Valley, Gravois Mills, Greenwood, Harvester, Herculaneum-Pevely, High Ridge,  
8 Imperial, Jackson, Joplin, Kansas City, Lake Ozark-Osage Beach, Manchester, Maxville,  
9 Monett, Nevada, Pacific, Perryville, Pond, Poplar Bluff, Scott City, Sedalia, Sikeston,  
10 Smithville, Springfield, St. Charles, St. Genevieve, St. Joseph, St. Louis, Valley Park and  
11 Washington.

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12 Schedule 1 does show three additional exchanges that appear to qualify for  
13 competitive status; however SBC did not specifically identify these exchanges in its  
14 petition. SBC's petition states a generic request for competitive status for additional  
15 exchanges in which SBC qualifies for competitive status but data is unavailable to SBC.  
16 In Staff's opinion, an incumbent company should be expected to identify the specific  
17 exchanges before competitive status is granted and provide some sort of supporting  
18 evidence. For the record the three exchanges qualifying for competitive status for  
19 business services are: Chaffee, Linn and Montgomery City. Staff did not find any  
20 additional exchanges qualifying for competitive status for residential services.

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21 Staff recommends the Commission grant competitive status to the following  
22 exchanges in the 60-day proceeding. These are exchanges SBC has specifically  
23 requested competitive status in the 60-day proceeding; however these exchanges have a

competitor providing local voice service on a UNE-L or full facility basis. These exchanges are as follows:

Residential: Joplin.

Business: Archie, Ash Grove, Billings, Boonville, Carthage, Cedar Hill, Farley, Marshall, Mexico, Moberly, St. Clair and Union.

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In granting competitive status, the Commission should identify the conditions for granting competitive status. In these instances competitive status is granted on the basis that at least one wireline company is providing local voice service on a full facility basis and/or on a UNE-L basis. In addition, at least one wireless company is providing service in the exchange. The exchanges identified above reflect exchanges requested by SBC for competitive status in both its 30-day and 60-day proceedings. The Commission should deny competitive status for all other exchanges requested by SBC in its petition.

Q. In contrast to SBC's request for competitive classification in the 30-day proceeding, what exchanges should not receive competitive classification at this time?

A. The exchanges that should not receive competitive classification in the 30-day proceeding are listed in Schedule 1 and are not bolded. These exchanges have an "X" in the column entitled "No" for "Meet Competitive Criteria". In this same column, the name of the competitor as identified by SBC is shown in parenthesis. Staff has directly contacted these companies and inquired whether they provided local voice service in these exchanges and if so, whether such service would be considered on a UNE-L or full facility based basis. In certain instances, we are still waiting for confirmation from these companies that qualifying local voice service is being provided in the exchange.



1 Q. Explain why you have not found these exchanges to meet the criteria for  
2 competitive status.

3 A. A qualifying competitor is not providing business local voice service on  
4 full facility basis or UNE-L basis in the exchanges of Advance, Bell City, Delta,  
5 Pocahontas-New Wells and Wyatt. Big River Telephone Company is using SEMO's  
6 loop facilities and Big River's switch to provide residential local voice service in these  
7 exchanges. However, according to Big River officials the company is not providing local  
8 voice service to any business customers in these exchanges.

9 A qualifying competitor is not providing residential local voice service on a full  
10 facility basis or UNE-L basis in the exchanges of Farmington and Sikeston. According to  
11 a Big River official the company is providing residential local voice service in these  
12 exchanges on a UNE-P basis. In addition, a qualifying competitor is not providing  
13 business local voice service on a full facility basis or UNE-L basis in the exchanges of  
14 Marble Hill and Bonne Terre. According to a Big River official, Big River is providing  
15 business local voice service in these exchanges on a UNE-P basis.

16 Staff has been unable to confirm that a qualifying competitor is providing  
17 business local voice service on a full facility basis or UNE-L basis in the exchange of  
18 Excelsior Springs. SBC claims NuVox is providing local voice service in this exchange.  
19 Staff has contacted NuVox to confirm the company is providing service to this exchange  
20 on a UNE-L or full facility basis. A NuVox official responded to Staff's inquiry by  
21 stating, "To the best of our knowledge, NuVox does not have any customers in the  
22 Excelsior Springs exchange. We do have some customers in nearby areas (e.g. Kearney),  
23 but as far as we can tell, none in the Excelsior Springs area."

**Deleted:** Currently, Staff is unable to confirm that a

**Deleted:** SBC claims SEMO is providing local voice service in these exchanges. SEMO has not been granted any type of certificate of service authority to provide basic local telecommunications service by the Missouri Commission. Staff has contacted SEMO and has learned that SEMO may be contracting with a competitive local exchange carrier for the provision of local voice service to its cable customers. Should SEMO actually be providing basic local telecommunications service in these exchanges Staff would expect SEMO to immediately apply for proper authorization to provide such services. Failure of SEMO to seek such authorization may require further action by the Staff and the Commission. If Staff is able to verify local voice service is provided in these exchanges on a full facility or UNE-L basis by a qualifying competitor, it would be appropriate to recommend competitive classification. Until such issues are resolved, Staff recommends these three exchanges not receive competitive classification.¶

**Deleted:** At this time, Staff has been unable to confirm that a

**Deleted:** Perryville,

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**Deleted:** Staff has been unable to confirm that

**Deleted:** Farmington, Flat River, Fredericktown,

**Deleted:** , Scott City, St. Genevieve and Washington

**Deleted:** SBC claims Big River Telephone Company is providing local voice service in these exchanges. Staff has contacted Big River to confirm the company is providing service to these exchanges on a UNE-L or full facility basis. If Staff is able to confirm Big River is providing qualifying local voice service in these exchanges, Staff will amend its recommendation to include these exchanges in the list of exchanges qualifying for competitive status; however, to date, Staff has not been able to independently verify that these exchanges qualify for competitive status.¶

**Deleted:** If Staff is able to confirm NuVox is providing qualifying local voice service in this exchange, Staff will amend its recommendation to include this exchange in the list of exchanges qualifying for competitive status; however, to date, Staff has not been able to independently verify that this exchange qualifies for competitive status.

1 Staff has been unable to confirm that a qualifying competitor is providing  
2 residential local voice service on a full facility basis or UNE-L basis in the exchanges of  
3 San Antonio and St. Joseph. SBC claims Sprint is providing local voice service in these  
4 exchanges. Staff has contacted Sprint. Sprint's response to a Staff data request indicates  
5 the company is not providing service to these exchanges on a UNE-L or full facility  
6 basis.

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**Deleted:** If Staff is able to confirm Sprint is providing qualifying local voice service in these exchanges, Staff will amend its recommendation to include these exchanges in the list of exchanges qualifying for competitive status; however, to date, Staff has not been able to independently verify that these exchanges qualify for competitive status.

7 **The 60-Day Proceeding**

8  
9 Q. What is your understanding of the criteria for achieving competitive status  
10 in the 60-day proceeding?

**Deleted:** Staff has been unable to confirm that a qualifying competitor is providing business local voice service on a full facility basis or UNE-L basis in the exchange of St. Joseph. SBC claims Birch is providing local voice service in this exchange. Staff has contacted Birch to confirm the company is providing service to this exchange on a UNE-L or full facility basis. If Staff is able to confirm Birch is providing qualifying local voice service in this exchange, Staff will amend its recommendation to include this exchange in the list of exchanges qualifying for competitive status; however, to date, Staff has not been able to independently verify that this exchange qualifies for competitive status.¶ SBC has requested Fulton receive competitive classification for business services. SBC claims Socket is providing local voice service in this exchange. Staff's contact with Socket reveals Socket is only providing service to an internet service provider. Therefore, Staff recommends the Fulton exchange not receive competitive status for business services.¶

11 A. According to 392.245.5(6), an incumbent local exchange company may  
12 petition the commission for competitive classification within an exchange based on  
13 competition from any entity providing local voice service in whole or in part by using its  
14 own telecommunications facilities or other facilities or the telecommunications facilities  
15 or other facilities of a third party, including those of the incumbent local exchange  
16 company as well as providers that rely on an unaffiliated third-party Internet service. The  
17 commission shall approve such petition within 60-days unless it finds that such  
18 competitive classification is contrary to the public interest.

19 Q. What evidence has SBC provided in support of its petition for competitive  
20 classification in the 60-day proceeding?

21 A. SBC identifies a minimum number of competitors for these various types  
22 of service provisioning. For example, SBC identifies the respective minimum number of  
23 competitors providing service in the exchange based on whether the provider is using a  
24 commercial agreement, UNE-P, wireless or VoIP. According to SBC's figures, the total

1 number of providers within an exchange would be five or more providers of local voice  
2 service. SBC does not identify any of the providers; however, SBC notes its competitor  
3 counts exclude "...resellers, prepaid providers, AT&T companies and SBC affiliates  
4 including Cingular." SBC goes on to say that the count of wireless competitors excludes  
5 companies that do not have their own network. SBC indicates VoIP providers were  
6 counted only where cable modem service was available (excluding exchanges where only  
7 DSL was available) and only where a customer can port their number or obtain a local  
8 telephone number.

9 Q. Has SBC attempted to justify how the public interest would be served if  
10 competitive classification is granted to these additional exchanges?

11 A. No.

12 Q. In a 60-day proceeding should companies be required to justify how  
13 granting competitive status will not be contrary to the public interest?

14 A. Yes. In my opinion, such justification should be required. Absent such  
15 justification, the criteria for achieving competitive classification in a 60-day proceeding  
16 appears to be very low if non-existent. Without a requirement to justify its request, a  
17 company simply has to ask for competitive classification under a 60-day proceeding.  
18 Petitions in a 60-day proceeding should be required to specifically identify the companies  
19 the company believes should allow it to qualify for competitive status in the exchange.  
20 Applicants should be required to explain why these companies should allow it to qualify  
21 for competitive status. In addition, applicants should be expected to explain how  
22 granting competitive status to these exchanges is not contrary to the public interest.

1           Q.     Do you have any reasons why such competitive classification is contrary  
2 to the public interest?

3           A.     Yes. The Commission should keep in mind a couple of basic ideas in its  
4 deliberations for considering the granting of competitive status to these exchanges. The  
5 Commission should keep in mind what it means to grant competitive status to an  
6 exchange and whether potentially affected customers have reasonable alternatives for  
7 service. The Commission should also be aware how its decision may impact other  
8 incumbent local telephone companies and the difficulty in revoking competitive status if  
9 the Commission later changes its mind.

10          Q.     Further explain your statement that the Commission should keep in mind  
11 what it means to grant competitive status to an exchange and whether potentially affected  
12 customers have reasonable alternatives for service.

13          A.     As previously discussed in my testimony, the granting of competitive  
14 status to an exchange essentially allows the incumbent local telephone company to gain  
15 the ability to raise rates within the exchange. More specifically, competitive  
16 classification allows the company to raise the applicable tariff rate for all such services,  
17 except exchange access service, upon 10-days notice to the Commission and to  
18 potentially affected customers. Competitive classification for business services within an  
19 exchange means the incumbent, as well as competing companies, can price business  
20 services on a customer specific basis.

21               Conceptually, a competitive market will help ensure customers pay reasonable  
22 prices for services. As long as customers have legitimate alternatives for local voice  
23 service the incumbent company will be constrained by the prices offered by other local

1 voice providers. Although an incumbent local company may point out that some  
2 customers are solely using such technologies as wireless or VoIP services, it remains  
3 unclear whether most customers find the services offered by alternative providers  
4 substitutable for the incumbent's local voice service. The Commission needs to be  
5 comfortable with the existence of these other providers as reasonable alternatives for the  
6 incumbent's local voice service before granting competitive status to exchanges based on  
7 the existence of a particular type of technology or provider. If the Commission grants  
8 competitive status to an exchange and the incumbent local telephone company raises  
9 rates, customers should likewise view these alternative providers as reasonable  
10 substitutes for the incumbent's local voice service and be able to easily switch to these  
11 other providers if they choose.

12 Q. Is it in the public interest to grant competitive status based on the  
13 existence of wireless providers or VoIP providers?

14 A. No, not at this time. In Case No. TO-2005-0035, *In the Matter of the*  
15 *Second Investigation Into the State of Competition in the Exchanges of Southwestern Bell*  
16 *Telephone, L.P., d/b/a SBC Missouri*, evidence suggests a relatively small fraction of  
17 customers are solely using these services. In that case both Staff witness  
18 Adam McKinnie and SBC witness Harry Shooshan quote a figure from the Federal  
19 Communications Commission that five to six percent of households have totally  
20 substituted wireless service for wireline service. This figure really hasn't grown to the  
21 level most people have expected. A June 2, 2005, Wall Street Journal article entitled  
22 "Cutting the Phone Cord Isn't as Popular as Once Predicted" states:

23 When the Federal Communications Commission in November  
24 2003 began allowing customers to switch their home phone

1           number to a cellphone, a huge shift to wireless-only customers was  
2           expected. About 820,000 people did make the move through the  
3           end of last year, according to the FCC, but that was only a fraction  
4           of what was predicted.  
5

6           The Commission should also realize prices for wireless services can be more  
7           expensive than wireline services. Wireless service can have higher monthly fees. In  
8           addition, most wireless service plans charge a usage fee if the phone's usage exceeds a  
9           pre-designated level.

10          Service quality for wireless service can also be an issue. Although wireless  
11          service may be available in an exchange, signal strength can be an issue. Some areas of  
12          an exchange may not even be able to receive a wireless signal. Emergency service may  
13          be another issue, for some wireless providers do not have the ability to pinpoint the  
14          caller's location when the caller dials "911".

15          Similar statements could be made for VoIP service. The VoIP Industry Task  
16          Force Report filed March 30, 2004, in Case No. TW-2004-0324, cited a projection that  
17          VoIP subscribers will represent approximately 2.4% of current wireline access lines in  
18          the United States by 2007. VoIP service also requires the subscriber to subscribe to  
19          broadband service. Therefore, the price of VoIP service should take into account the fee  
20          charged by the VoIP service provider plus the additional fee needed to obtain broadband  
21          service. In this respect, VoIP may be considered to be more expensive than wireline  
22          service. Some telephone companies do not offer their Digital Subscriber Line or  
23          broadband service to customers unless the customer also subscribes to the company's  
24          landline service. Service quality can be an issue with VoIP service. Broadband  
25          availability can be an issue. In addition, VoIP service may also contend with pinpointing  
26          the caller's location when the caller dials "911".

1           Q.     Do you have any comments about whether it is in the public interest to  
2 grant competitive status based on the presence of providers using the incumbent's  
3 facilities either on a UNE-P basis or through commercial agreements?

4           A.     In my opinion, providers using the incumbent's facilities either on a UNE-  
5 P basis or through a commercial agreement are essentially resellers. Resellers, UNE-P  
6 providers and providers using a commercial agreement are solely using the incumbent's  
7 facilities. Admittedly, there are some differences between pure resellers and UNE-P  
8 providers. For example, the rates an incumbent company charges a pure reseller versus a  
9 UNE-P provider differ in the sense a reseller simply receives a discount off of SBC's  
10 retail rates while the rates charged to UNE-P providers are based on a negotiated or  
11 arbitrated rate. Pure resellers do not charge switched access charges to interexchange  
12 carriers while UNE-P providers apply such charges. However, despite these differences,  
13 pure resellers and UNE-P providers are both leasing from the incumbent all the facilities  
14 necessary for the provisioning of telephone service and the incumbent is getting paid for  
15 the use of these facilities.

16           The statutes, as well as this Commission, appear to place greater weight on  
17 providers who have invested in their own facilities. In Case No. TO-2001-461, *In the*  
18 *Matter of the Investigation of the State of Competition in the Exchanges of Southwestern*  
19 *Bell Telephone Company*, the Commission acknowledged that resale is a form of  
20 substitutable service and the mere presence of resellers is not substantial evidence for the  
21 Commission to determine that effective competition exists. Furthermore, resellers lack  
22 the ability to significantly differentiate the service customers receive from the incumbent  
23 company. Resellers do not provide the incumbent with significant incentives to improve

1 their own facilities to respond to potential competitive pressures from these competitors.  
2 SBC appears to have acknowledged this prior Commission decision because the company  
3 has specifically excluded resellers in its petition. SBC should also exclude UNE-P  
4 providers for there is little distinction between resellers and UNE-P providers.

5 Q. Please explain your earlier statement that the Commission should be aware  
6 how its decision may impact other incumbent local telephone companies.

7 A. I'd like to preface my remarks by saying that in contrast to SBC's petition,  
8 establishing a threshold for competitive status based on the existence of a certain number  
9 of providers will be difficult to determine. If the Commission tries to establish a  
10 threshold based on a certain number of providers the question will be always be raised  
11 about the rationale for that certain number. Granting competitive status on the mere  
12 existence of wireless providers and/or VoIP providers will probably allow most  
13 exchanges served by all incumbents to qualify for competitive status. If the Commission  
14 makes that sort of decision, then the Commission needs to realize the difficulty in  
15 revoking competitive classification.

16 Q. Please explain why it may be difficult to revoke competitive classification.

17 A. Section 392.245.5(6) describes a subsequent process where the  
18 Commission completes a review to determine if the conditions continue to exist for  
19 retaining competitive classification for an exchange. In this section, the Commission  
20 shall at least every two years or where an incumbent local exchange telecommunications  
21 company increases rates for basic local telecommunications services in an exchange  
22 classified as competitive, review those exchanges where an incumbent's services have  
23 been classified as competitive, to determine if the conditions continue to exist. Staff's



1 understanding of this process is that if the Commission determines that Exchange X  
2 should be classified as competitive because Competitor Y is serving lines in the exchange  
3 then the Commission can only revoke competitive status in the exchange if competitors  
4 provisioning service in the same manner as Competitor Y cease to provide service within  
5 the exchange. Stated differently, the Commission cannot simply revoke competitive  
6 status on the basis that it doesn't like the fact that the incumbent has raised rates or  
7 because the Commission considers the rates to be unjust or unreasonable. The evidence  
8 or condition the Commission has identified for granting competitive status to the  
9 exchange must no longer exist in order for the Commission to revoke competitive status  
10 for an exchange. In other words, for competitive status granted under the 30-day track,  
11 Staff would view this as an expectation that the Commission would determine that UNE-  
12 L and/or full facility based competition from any competitor no longer exists within the  
13 exchange. In a similar manner, if the Commission determines the existence of wireless  
14 providers or VoIP providers are sufficient for competitive classification, then these  
15 providers as a group or in the requisite number used as a threshold would need to no  
16 longer operate within the exchange in order for competitive status to be revoked.

17 Q. Do you have any additional comments regarding whether it is in the public  
18 interest to grant competitive status to the exchanges requested by SBC in the 60-day  
19 proceeding?

20 A. Yes. One area that Staff is unsure of the implications of granting  
21 competitive status concerns the Commission's desire to entertain expanded local calling  
22 requests as shown by the Commission's recent approval of a rulemaking in Case No.  
23 TX-2005-0194. If the Commission grants competitive status to an exchange and the

1 Commission entertains a request to establish a new calling scope plan or change an  
2 existing calling scope plan, then competitive status may make it more difficult for the  
3 Commission to require a company to provide any service at a specified rate in the  
4 exchange.

5 Another comment is that the new statute provides a significant amount of pricing  
6 flexibility for all companies, including incumbent telephone companies. For example,  
7 the Commission can no longer control the prices for bundles of services. I suspect a  
8 significant percentage of company's customers subscribe to bundled services. Prices for  
9 stand-alone services are really the only services that are affected by the Commission's  
10 granting of competitive status. In my opinion, it would be in the public interest to deny  
11 SBC's request for competitive status in the 60-day proceeding with the exception of the  
12 exchanges I previously identified. The Commission should observe how prices react  
13 under the significant pricing flexibility already allowed by the new statute.

14 Q. Can you please summarize your testimony?

15 A. Yes. As shown on Schedule 1, Staff recommends competitive status be  
16 granted as follows to the following exchanges in the 30-day proceeding:

17 Residential: Advance, Bell City, Chesterfield, Delta, Eureka, Fenton,  
18 Fredericktown, Harvester, Kansas City, Manchester, Monett, Nevada, Pacific, Perryville,  
19 Pocohontas-New Wells, Pond, Smithville, Springfield, St. Charles, St. Genevieve, St.  
20 Louis, Valley Park, Washington and Wyatt.

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21 Business: Antonia, Camdenton, Cape Girardeau, Chesterfield, Clever, Eldon,  
22 Eureka, Farmington, Fenton, Festus-Crystal City, Flat River, Fredericktown, Fulton,  
23 Grain Valley, Gravois Mills, Greenwood, Harvester, Herculaneum-Pevely, High Ridge,

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John Van Eschen

1 Imperial, Jackson, Joplin, Kansas City, Lake Ozark-Osage Beach, Manchester, Maxville,  
2 Monett, Nevada, Pacific, Perryville, Pond, Poplar Bluff, Scott City, Sedalia, Sikeston,  
3 Smithville, Springfield, St. Charles, St. Genevieve, St. Joseph, St. Louis, Valley Park and  
4 Washington.

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5 In response to SBC's 30-day petition, Staff did identify three additional  
6 exchanges that appear to qualify for competitive status; however SBC did not specifically  
7 identify these exchanges in its petition. SBC's petition states a generic request for  
8 competitive status for additional exchanges in which SBC qualifies for competitive status  
9 but data is unavailable to SBC. In Staff's opinion, an incumbent company should be  
10 expected to identify the specific exchanges before competitive status is granted and  
11 provide some sort of supporting evidence. For the record, the three exchanges qualifying  
12 for competitive status for business services are: Chaffee, Linn, and Montgomery City,  
13 Staff did not find any additional exchanges qualifying for competitive status for  
14 residential services.

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15 Staff also recommends the Commission grant competitive status to the following  
16 exchanges in the 60-day proceeding:

17 Residential: Joplin.

18 Business: Archie, Ash Grove, Billings, Boonville, Carthage, Cedar Hill, Farley,  
19 Marshall, Mexico, Moberly, St. Clair and Union.

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20 In granting competitive status, the Commission should identify the conditions for  
21 granting competitive status. In these instances, competitive status is granted on the basis  
22 that at least one wireline company is providing local voice service on a full facility basis  
23 and/or on a UNE-L basis. The exchanges identified above reflect exchanges requested by

1 SBC for competitive status in both its 30-day and 60-day proceedings. The Commission  
2 should deny competitive status for all other exchanges requested by SBC in its petition.

3 Incumbent companies requesting competitive status under the 60-day proceeding  
4 should be required to provide evidence as to why such competitive classification is not  
5 contrary to the public interest. Petitions in a 60-day proceeding should be required to  
6 specifically identify the companies the Applicant believes would allow it to qualify for  
7 competitive status in the exchange. Applicants should be required to explain why these  
8 companies would allow it to qualify for competitive status. In addition, applicants should  
9 be expected to explain how the public interest would be served if competitive status is  
10 granted to these exchanges.

11 My testimony has identified reasons why granting competitive status to any  
12 additional exchanges based on SBC's request in a 60-day proceeding would be contrary  
13 to the public interest. Competitive status provides an incumbent with the ability to raise  
14 rates. In granting competitive status potentially affected customers should have  
15 reasonable alternatives for service. The Commission's decision to grant competitive  
16 status in this 60-day proceeding may have a significant impact on the requests of other  
17 incumbent local telephone companies. In my opinion, it may be difficult to revoke  
18 competitive status if the Commission later changes its mind. Competitive status may  
19 limit the Commission's ability to address calling scope requests. In addition, the new  
20 statute provides significant pricing flexibility to incumbent companies. The Commission  
21 should allow some time to evaluate the impact of the new statute before granting  
22 competitive status to significantly more exchanges under a 60-day proceeding.

23 Q. Does this conclude your testimony?

1           A.     Yes, it does.

**SBC's Request for Competitive Status  
Residential**

<b>Exchange<sup>1</sup></b>	<b>Meet Competitive Criteria?</b>		<b>Local Voice Competitor(s)<sup>2</sup></b>
	<b>Yes</b>	<b>No</b>	
<b>Advance</b>	X		<i>Big River</i>
<b>Bell City</b>	X		<i>Big River</i>
<b>Chesterfield</b>	X		Charter, <i>McLeodUSA</i>
<b>Delta</b>	X		<i>Big River</i>
<b>Eureka</b>	X		Charter
Farmington		X (Big River)	*
<b>Fenton</b>	X		Charter
<b>Fredericktown</b>	X		<i>Big River</i>
<b>Harvester</b>	X		Charter
<b>Joplin **</b>	X		<i>McLeodUSA</i>
<b>Kansas City</b>	X		Everest, <i>McLeodUSA</i> , Time Warner
<b>Manchester</b>	X		Charter, <i>McLeodUSA</i>
<b>Monett</b>	X		<i>Missouri Telecom, Inc.</i>
<b>Nevada</b>	X		<i>Missouri Telecom, Inc.</i>
<b>Pacific</b>	X		Charter
<b>Perryville</b>	X		<i>Big River</i>
<b>Pocohontas-New Wells</b>	X		<i>Big River</i>
<b>Pond</b>	X		Charter
San Antonio		X (Sprint)	*
Sikeston		X (Big River)	*
<b>Smithville</b>	X		Time Warner
<b>Springfield</b>	X		<i>McLeodUSA</i>
<b>St. Charles</b>	X		Charter, <i>McLeodUSA</i>
<b>St. Genevieve</b>	X		<i>Big River</i>
St. Joseph		X (Sprint)	*
<b>St. Louis</b>	X		Charter, <i>McLeodUSA</i>
<b>Valley Park</b>	X		Charter
<b>Washington</b>	X		<i>Big River</i>
<b>Wyatt</b>	X		<i>Big River</i>

\* Staff has been unable to verify from independent evidence that a qualifying UNE-L or facilities-based provider is providing local voice service within the exchange.

\*\* SBC requested competitive status under the 60-day track.

<sup>1</sup> Exchanges listed in bold type indicate the exchange qualifies for competitive status according to Staff.

<sup>2</sup> Identified wireline companies are providing local voice service in the exchange on either a full facility basis or on a UNE-L basis. Company names listed in italics are offering service in the exchange solely on a UNE-L basis where the company is leasing lines from SBC and the company has its own switch.

**SBC's Request for Competitive Status  
Business**

Exchange <sup>3</sup>	Meet Competitive Criteria?		Local Voice Competitor(s) <sup>4</sup>
	Yes	No	
Advance		X (SEMO)	*
<b>Antonia</b>	X		<i>Birch</i>
<b>Archie **</b>	X		MCImetro
<b>Ash Grove**</b>	X		<i>NuVox</i>
Bell City		X (SEMO)	*
<b>Billings**</b>	X		<i>NuVox</i>
Bonne Terre		X (Big River)	*
<b>Boonville**</b>	X		MCImetro
<b>Camdenton</b>	X		<i>McLeodUSA, Socket</i>
<b>Cape Girardeau</b>	X		<i>Big River</i>
<b>Carthage**</b>	X		MCImetro
<b>Cedar Hill**</b>	X		MCImetro
<b>Chaffee***</b>	X		MCImetro
<b>Chesterfield</b>	X		<i>Birch, Ionex, MCImetro, McLeodUSA, NuVox</i>
<b>Clever</b>	X		<i>NuVox</i>
Delta		X (SEMO)	*
<b>Eldon</b>	X		<i>Socket</i>
<b>Eureka</b>	X		<i>Birch, MCImetro</i>
Excelsior Springs		X (NuVox)	*
<b>Farley**</b>	X		<i>McLeodUSA, NuVox</i>
<b>Farmington</b>	X		<i>Big River</i>
<b>Fenton</b>	X		<i>Birch, Ionex, MCImetro, McLeodUSA,</i>
<b>Festus-Crystal City</b>	X		<i>Big River</i>
<b>Flat River</b>	X		<i>Big River</i>
<b>Fredericktown</b>	X		<i>Big River</i>
<b>Fulton</b>	X		<i>Socket</i>
<b>Grain Valley</b>	X		<i>Birch, McLeodUSA, NuVox</i>
<b>Gravois Mills</b>	X		<i>Socket</i>
<b>Greenwood</b>	X		<i>NuVox, Everest</i>
<b>Harvester</b>	X		<i>Birch, MCImetro, McLeodUSA, NuVox</i>
<b>Herculaneum-Pevely</b>	X		<i>NuVox, Birch</i>
<b>High Ridge</b>	X		<i>Birch, Ionex, MCImetro,</i>

<sup>3</sup> Exchanges listed in bold type indicate the exchange qualifies for competitive status according to Staff.

<sup>4</sup> Identified wireline companies are providing local voice service in the exchange on either a full facility basis or on a UNE-L basis. Company names listed in italics are offering service in the exchange solely on a UNE-L basis where the company is leasing lines from SBC and the company has its own switch.

			<i>NuVox</i>
<b>Imperial</b>	X		<i>Birch, NuVox</i>
<b>Jackson</b>	X		<i>Big River</i>
<b>Joplin</b>	X		<i>MCImetro, McLeodUSA</i>
<b>Kansas City</b>	X		<i>Birch, Everest, Global Crossing Local Services, Ionex, MCImetro, McLeodUSA, NuVox, Xpedius</i>
<b>Lake Ozark-Osage Beach</b>	X		<i>NuVox, Socket, MCImetro</i>
<b>Linn***</b>	X		<i>MCImetro</i>
<b>Manchester</b>	X		<i>Birch, MCImetro, McLeodUSA</i>
<b>Marble Hill</b>		X (Big River)	*
<b>Marshall**</b>	X		<i>MCImetro</i>
<b>Maxville</b>	X		<i>Birch, NuVox</i>
<b>Mexico**</b>	X		<i>MCImetro, McLeodUSA</i>
<b>Moberly**</b>	X		<i>MCImetro</i>
<b>Monett</b>	X		<i>Missouri Telecom, Inc.</i>
<b>Montgomery City***</b>	X		<i>MCImetro</i>
<b>Nevada</b>	X		<i>Missouri Telecom, Inc.</i>
<b>Pacific</b>	X		<i>MCImetro</i>
<b>Perryville</b>	X		<i>MCImetro</i>
<b>Pocohontas-New Wells</b>		X (SEMO)	*
<b>Pond</b>	X		<i>Birch, McLeodUSA, NuVox</i>
<b>Poplar Bluff</b>	X		<i>Big River, MCImetro</i>
<b>Scott City</b>	X		<i>Big River</i>
<b>Sedalia</b>	X		<i>Socket</i>
<b>Sikeston</b>	X		<i>Big River</i>
<b>Smithville</b>	X		<i>NuVox</i>
<b>Springfield</b>	X		<i>MCImetro, McLeodUSA, Missouri Telecom, NuVox</i>
<b>St. Charles</b>	X		<i>Birch, MCImetro, McLeodUSA, NuVox</i>
<b>St. Clair**</b>	X		<i>MCImetro</i>
<b>St. Genevieve</b>	X		<i>Big River</i>
<b>St. Joseph</b>	X		<i>Birch</i>
<b>St. Louis</b>	X		<i>Birch, Charter, Global Crossing, Ionex, MCImetro, McLeodUSA, NuVox, Socket, Winstar, XO</i>
<b>Union**</b>	X		<i>MCImetro</i>
<b>Valley Park</b>	X		<i>Birch, MCImetro, NuVox</i>
<b>Washington</b>	X		<i>Big River</i>
<b>Wyatt</b>		X (SEMO)	*



- \* Staff has been unable to verify from independent evidence that a qualifying UNE-L or facilities-based provider is providing local voice service within the exchange.
- \*\* SBC requested competitive status under the 60-day track.
- \*\*\* SBC did not specifically request competitive status for this exchange in either the 30-day or 60-day tracks.