

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

OFFICE OF THE PUBLIC COUNSEL'S STATEMENT OF POSITION

ISSUE:

Section 392.245.5 (6) RSMo 2005 Supp. provides that the Commission shall, at least every two years, or where an incumbent local exchange telecommunications company increases rates for basic local telecommunications services in an exchange classified as competitive, review those exchanges where an incumbent local exchange carrier's services have been classified as competitive, to determine if the conditions of this subsection for competitive classification continue to exist in the exchange and if the commission determines, after hearing, that such conditions no longer exist for the incumbent local exchange telecommunications company in such exchange, it shall re-impose price cap regulation upon the incumbent local exchange telecommunications company, in such exchange. Do the conditions for competitive classification continue to exist in AT&T Missouri's competitively classified exchanges?

OPC POSITION:

No. The Office of the Public Counsel submits that the conditions for competition that existed when the Public Service Commission no longer exist in the designated exchanges and the services in those exchanges should be returned to price cap regulation as provided in Section 386.245, RSMo 2000 (2005). Key circumstances have changed

since the grant of competitive status and now continuing the competitive classification in the 60-day petition is contrary to the public interest. (Barbara A. Meisenheimer Direct, 2, 4). A competitive classification that results in circumstances that are contrary to the goals established by Section 392.185, RSMo, should set aside and the services returned to price cap regulation. (BAM Direct 9)

Under Section 386.245.5, RSMo, from an economic perspective and from a regulatory and public policy view, the Commission should consider the public interest implications, as required in the original 60-day reclassification petition case, to determine if “*such competitive classification is contrary to the public interest.*”

Consideration all relevant factors affecting the public interest should be made to make the proper and necessary public policy analysis. The Commission should at the minimum consider key changes in the circumstances as relevant factors in its public interest analysis. *State ex rel. Utility Consumers Council, Inc. v. Public Service Commission*. 585 S.W.2d 41, 49 (Mo 1979); *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 535 S.W.2d 561 (Mo. App. 1976)

These factors include:

1. AT&T increased prices for basic local service in many of the exchanges reclassified in the first 60-day petition case. (BAM Direct 7). AT&T's price cap increases do not advance the goals of telecommunication legislative intent and purpose and are inconsistent with Section 392.185(1)(4) and (6) (BAM Surr. 14-16)
2. Extent of competition must be considered. (BAM Direct 12-13)
 - i. The Staff's updated investigation continues to demonstrate that AT&T has little to no local facilities based competition. (BAM Surr.6-7)
 - ii. The “competitors” that still provide local services in those exchanges have dwindled and do not have the relative strength as compared to AT&T. (BAM Surr.6-7)
 - iii. Net loss in lines served by competitive CLECs for both residential and business consumers in the exchanges classified as competitive under the 60-day petition.

3. Recent events in the industry that affect the competitive environment must be considered.

- i. Since the reclassification, Missouri customers have seen their choice of competitive alternatives dwindle or become diluted through AT&T's merger with the legacy AT&T and BellSouth that created a formidable incumbent provider with dominant market power and resources. (BAM Direct, 10-11; Surr 14-16).
- ii. There is little to no local facilities-based competition and weak facilities-based competition so that in many of the exchanges there has been no growth or negative growth in facility-based CLEC lines. (BAM Surr 6-7)

4. There should be cautious reliance on wireless providers as wireline competition due to gaps in coverage for all requesting customers in exchange because local basic service is ubiquitous and reliable and readily available in all parts of all exchanges. (BAM Direct, 14-15; Surr. 8)

5. AT&T represented to the Commission, legislators, and customers that competitive classification in these exchanges will mean that prices will decrease and local service prices will not increase because of competition and AT&T's ability to act like a CLEC. These reasonable expectations have not materialized due to price increases made shortly after reclassification. (BAM Direct, 16-17; Surr 8-10)

6. Customers who are dissatisfied with AT&T have no real choice of local service due to market dominance and monopoly. (BAM Direct, 18; Surr 14-16) Competition has not protected ratepayers by providing real choices and lower prices and continuation of this competition is contrary to public policy. Regulation acts as a substitute for competition to protect consumer. May Dep't Stores Co. v. Union Electric Light & Power Co., 341 Mo. 299, 107 S.W.2d 41, 48 (1937), Public dissatisfaction and political and regulatory pressure has not restrained price increases as represented by AT&T. (BAM 11-19)

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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Certificate of Service

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

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