

**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 392.245.6    )  
RSMo (2005) – 30 day petition                        )

**Case No. TO-2006-0093**

**DISSENTING OPINION OF COMMISSIONER STEVE GAW**

In its Report and Order in the above-captioned docket, the majority grants SBC Missouri's request for competitive classification for business services in 44 exchanges and for residential services in 26 exchanges. Under the recently passed SB 237 (Section 392.245.5 RSMo), an incumbent provider may seek competitive classification based upon the presence of two other carriers providing basic local telecommunications service in the exchange. For purposes of determining whether two such entities are operating in an exchange, the Commission may consider the presence of a commercial mobile radio service provider as an entity providing basic local telecommunications service. The second provider must, therefore, be an entity providing local voice service "in whole or in part" over facilities in which it or one of its affiliates has an ownership interest.

In SB 237 the legislature drastically reduced the level of proof necessary for consumers to lose protection against significant price increases. As a consequence, it is more important than ever to ensure that the requirements for removal of price increase protections that do remain are fully met before these protections are removed.

As I previously indicated in my dissent in Case No. IO-2006-0092, I have significant concerns regarding the nature of the services provided by any wireless entity counted by the Commission in its determination of competitive status. The majority of the Commission appear willing to include any wireless provider with a presence in an exchange as a competitor to the

incumbent. It appears under the majority's Order that this presence may as little as a cellular tower used to provide service to those customers traveling through the exchange. I continue to assert that Section 392.245.5 requires a greater competitive presence for such wireless competitors.

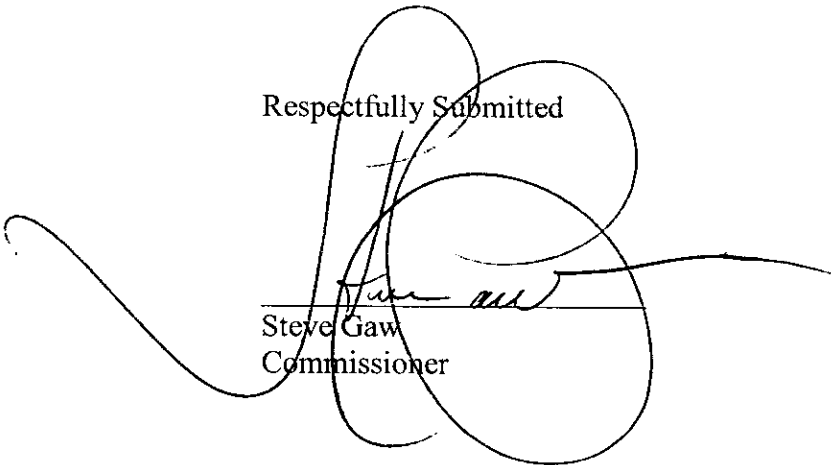
Section 392.245.5 specifically requires that the Commission find two alternative carriers providing "basic local telecommunications service" within an exchange prior to granting competitive classification. Section 386.020(4) defines basic local telecommunications service as a "two-way switched voice service within a local calling scope." Thus the wireless service must be offered to customers having an address within the exchange. Moreover, this definitional section clearly contemplates that basic local telecommunications service should be provided without the incurrence of a toll charge. Therefore, the requirement that the wireless carrier provide basic local telecommunications service must necessarily require more than the mere presence of a cellular tower used to provide service to travelers. Rather, the statute requires that the wireless carrier be an actual competitive alternative for the residents of that exchange. That is to say, a customer within an exchange must be able to obtain service from the wireless carrier at an address in the exchange such that the customer may make and receive a "two-way switched voice" call within the exchange at no additional charge to the caller.

The evidence in this proceeding was not adequate for the Commission to determine whether this is the wireless service offered in each exchange in question. While there may be such wireless competitors, a more in-depth review of the services offered by those wireless entities should have been undertaken.

As a final note this case will result in a number of exchanges having residential services without protection against price increases even though the market share of SBC in that exchange is more than 90% compared to wireline competition. Business services in an exchange may be in a similar position. Some wireline business competitions only market or serve very large

businesses. This means that in some exchanges small businesses may in fact have no other wireline competition seeking to serve them other than SBC. This is not sufficient competition to act as a substitute for price oversight and does not ensure just and reasonable prices. The only other safety valve for consumers in the legislation is the extent of wireless presence in the exchange. This Commission should require that the wireless carriers activity in the exchange have a minimum level of presence. Because this decision makes no such requirement, I must dissent.

Respectfully Submitted



Steve Gaw  
Commissioner

Dated at Jefferson City, Missouri,  
on this 8<sup>th</sup> day of February, 2006.