

**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)	Case No. TO-2006-0093
Competitive Classification Pursuant to Section)	Tariff File No. YI-2006-0144
392.245.6, RSMo (2005) – 30 day Petition.)	

**STAFF’S PRETRIAL BRIEF, LIST OF WITNESSES, AND
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW the Staff of the Missouri Public Service Commission and for its pretrial filing states:

Pretrial Brief

On August 30, 2005, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri filed its Petition for Competitive Classification pursuant to Section 392.245.5 RSMo, as amended by Senate Bill 237. This case involves SBC Missouri’s request under the 30-day track of Section 392.245.5.

Under this track, each telecommunications service offered to business customers, other than exchange access, of a price cap regulated incumbent local exchange telecommunications company (ILEC) shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the ILEC are providing basic local telecommunications service to business customers within the exchange. One of the entities may be a wireless company. One entity shall be providing local voice service in whole or in part over telecommunication facilities or other facilities in which it or one of its affiliates have an ownership interest. This track has an identical provision for services provided to residential customers.

SBC Missouri has 160 exchanges. Its petition asks for competitive classification for 28 exchanges for residential services and 51 exchanges for business services.

The Missouri Supreme Court has stated that “[t]he law in this state as to the burden of proof is clear and designed to assure that hearings on contested matters provide the parties with predictable rules of procedure. The party asserting the positive of a proposition bears the burden of proving that proposition.” *Dycus v. Cross*, 869 S.W. 2d 745, 749 (Mo. banc 1994)

SBC Missouri asserts that there are the requisite number of entities providing basic local service to business or residential customers, or both, in an exchange. Therefore, SBC Missouri has the burden of proof.

The Staff agrees that a non-affiliated wireless company is providing basic local telecommunications service to residential customers in each of the 28 exchanges where SBC Missouri seeks competitive classification of residential services and to business customers in each of the 51 exchanges where SBC Missouri seeks competitive classification of business services. (Direct Testimony of Unruh, p. 9).

The Staff considers lines served on a full facility or UNE-L basis as the minimum basis as the minimum threshold for a non-affiliated wireline company to qualify an ILEC’s exchange for competitive status in the 30-day proceeding. Full facility based lines involve lines owned by the company. A company providing voice service on a full facility basis also generally owns the switching facilities used to switch calls. UNE-L basis refers to “unbundled network element loops,” a situation where the company leases a local line or loop from an ILEC but may own the switching facilities. In most UNE-L situations, a company may own one switch but serve several exchanges from the switch. The switch may be the only equipment owned by the company. (Direct Testimony of Van Eschen, pp. 7-8).

The Staff confirmed the presence of a wireline company providing local voice service to the designated customer class on either a UNE-L or full facility basis in the following exchanges:

Residential: Chesterfield, Eureka, Fenton, Harvester, Kansas City, Manchester, Monett, Nevada, Pacific, Pond, Smithville, Springfield, St. Charles, St. Louis and Valley Park.

Business: Antonia, Camdenton, Cape Girardeau, Chesterfield, Clever, Eldon, Eureka, Fenton, Festus-Crystal City, Grain Valley, Gravois Mills, Greenwood, Harvester, Herculaneum-Pevely, High Ridge, Imperial, Jackson, Joplin, Kansas City, Lake Ozark-Osage Beach, Manchester, Maxville, Monett, Nevada, Pacific, Perryville, Pond, Poplar Bluff, Sikeston, Smithville, Springfield, St. Charles, St. Louis, and Valley Park. (Direct Testimony of Van Eschen, pp. 12-13 and Schedule 1)

In the other requested exchanges, the Staff was unable to confirm the presence of a wireline company providing local voice service to the designated customer class on either a UNE-L or full facility basis. (Direct Testimony of Van Eschen, pp. 14-17).

List of Witnesses

The Staff will call John Van Eschen.

Proposed Findings of Fact

1. SBC Missouri is an ILEC that is regulated under Section 392.245 RSMo, the Price Cap Statute.
2. An unaffiliated commercial mobile service provider as identified in 47 U.S.C. Section 332 (d) (1) and 47 C.F.R. Parts 22 or 24 is providing service in each exchange where SBC Missouri has requested competitive classification. (Direct Testimony of Unruh, p. 9)
3. An unaffiliated wireline company is providing local voice service on either a UNE-L or full facility basis in the following exchanges:

Residential: Chesterfield, Eureka, Fenton, Harvester, Kansas City, Manchester, Monett, Nevada, Pacific, Pond, Smithville, Springfield, St. Charles, St. Louis and Valley Park.

Business: Antonia, Camdenton, Cape Girardeau, Chesterfield, Clever, Eldon, Eureka, Fenton, Festus-Crystal City, Grain Valley, Gravois Mills, Greenwood, Harvester, Herculaneum-Pevely, High Ridge, Imperial, Jackson, Joplin, Kansas City, Lake Ozark-Osage Beach, Manchester, Maxville, Monett, Nevada, Pacific, Perryville, Pond, Poplar Bluff, Sikeston, Smithville, Springfield, St. Charles, St. Louis, and Valley Park. (Direct Testimony of Van Eschen, pp. 10-11 and Schedule 1)

4. Where the Staff was unable to confirm that a wireline company is providing local voice service on either a UNE-L or full facility basis in a requested exchange, the Commission finds there is a lack of competent and substantial evidence that a wireline company is providing such service in the exchange.

Proposed Conclusions of Law

1. This case involves SBC Missouri's request for competitive classification of certain exchanges under the 30-day track of Section 392.245.5 RSMo, as amended by Senate Bill 237. The relevant part of that statute provides:

5. Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access

service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. For purposes of this subsection:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange;

(2) Any entity providing local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the commission. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider. For purposes of this subsection only, a broadband network is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(3) Regardless of the technology utilized, local voice service shall mean two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo;

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service as defined in subdivision (46) of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service; and

(5) Prepaid telecommunications service shall mean a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(6) Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access service, as competitive within such exchange.

2. The Missouri Supreme Court has stated that “[t]he law in this state as to the burden of proof is clear and designed to assure that hearings on contested matters provide the parties with predictable rules of procedure. The party asserting the positive of a proposition bears the burden of proving that proposition.” *Dycus v. Cross*, 869 S.W. 2d 745, 749 (Mo. banc 1994). SBC Missouri asserts that there are the requisite number of entities providing basic local service to business or residential customers, or both, in an exchange. Therefore, SBC Missouri has the burden of proof.

3. “The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the

words used in their plain and ordinary meaning. When constructing a statute, the Court considers the object the legislature seeks to accomplish and aims to resolve the problems addressed therein.” *State ex rel. Nixon v. Quiktrip Corp.*, 133 S.W. 3d 33, 37 (Mo. banc 2004). (internal citations omitted). “The plain and ordinary meaning of a word is derived from the dictionary.” *Id.*

4. As noted, subdivision (2) of 392.245.5 requires the wireline entity to provide local voice service in whole or in part “over” telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest. The *American Heritage College Dictionary, Third Edition*, provides the following applicable definition of “over”: “Through the medium of.” The Commission concludes that a wireline entity providing local voice service through either a full facilities basis or a UNE-L basis meets the standard. Where the wireline entity and its affiliates own neither the loops nor the switch, the wireline entity is not providing local voice service “over,” i.e., through the medium of, facilities in which it or its affiliates have an ownership interest.

Conclusion

WHEREFORE, the Staff requests the Commission to grant, in part, and to deny, in part, SBC Missouri’s Petition for Competitive Classification under the 30-day track of Section 392.245.5 RSMo, as amended.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ William K. Haas

William K. Haas
Deputy General Counsel
Missouri Bar No. 28701

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7510 (Telephone)
(573) 751-9285 (Fax)
william.haas@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 14th day of September 2005.

/s/ William K. Haas