

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

In the Matter of the Second Investigation)
Into the State of Competition in the) TO-2005-0035
Exchanges of Southwestern Bell Telephone,)
L.P., d/b/a SBC Missouri.)

SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A
SBC MISSOURI'S RESPONSE TO CHALLENGES TO CONFIDENTIAL
NATURE OF SBC'S PREFILED DIRECT TESTIMONY

Comes now Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and, for its Response to Challenges to Confidential Nature of SBC's Prefiled Direct Testimony, states as follows:

1. On November 24, 2004, MCImetro Access Transmission Service, L.L.C., Intermedia Communications, Inc., MCI WorldCom Communications, Inc., NuVox Communications of Missouri, Inc., XO Missouri, Inc., Big River Telephone Company, L.L.C., Socket Telecom, L.L.C. and Allegiance Telecom (jointly referred to as "CLECs") filed their Challenges to Confidential Nature of SBC's Prefiled Direct Testimony ("Pleading") in this case.

2. In their Pleading, CLECs state that SBC untimely filed its Grounds for Classifying Testimony Out of Time. As the Commission is aware, SBC Missouri filed its prefiled testimony in this case on October 29, 2004. In that testimony, SBC Missouri designated portions of the testimony of SBC Missouri witnesses Sylvia Fernandez, Sandy Moore, Elizabeth Stoia, and Craig Unruh as either "Highly Confidential" or "Proprietary." SBC Missouri subsequently discovered that it had not supplied the reasons for such classifications and on November 16, 2004, SBC Missouri filed its Motion to Accept Grounds for Classifying Testimony Out of Time ("Motion"). As SBC Missouri indicated in its Motion, the Commission's acceptance of the grounds for classifying its prefiled testimony as either Highly Confidential or Proprietary did not prejudice any party to this proceeding. SBC Missouri

supplied full copies of each piece of its Direct Testimony, including the “Highly Confidential” and “Proprietary” portions, to counsel representing all parties in this proceeding by e-mail on the day of the filing. Thus, any part wishing to challenge any of SBC Missouri’s “Highly Confidential” or “Proprietary” designations could have done so. Yet no party challenged SBC Missouri’s designations prior to SBC Missouri filing its Motion. Moreover, in CLEC’s pleading, CLECs fail to articulate even one basis regarding why the Commission should not approve SBC Missouri’s Motion. The reason is clear; the CLECs were not prejudiced by SBC Missouri’s delay in classifying its grounds for classifying its prefiled testimony as either Highly Confidential or Proprietary.

3. In general, the designated portions of SBC Missouri’s Direct Testimony contain marketing analyses or market-specific data pertaining to services that SBC Missouri and its CLEC competitors offer in competition with each other or contain SBC Missouri’s business information. None of the information that SBC Missouri designated as Highly Confidential or Proprietary is readily available to the public. Moreover, much of the information that SBC Missouri designated as Highly Confidential or Proprietary in this proceeding is information that SBC Missouri previously designated, and the Commission treated, as Highly Confidential or Proprietary in SBC Missouri’s prior competitive classification case (Case No. TO-2001-467) and the reasons for the designations are generally the same as those advanced in the prior case. Public disclosure of this information would result in competitive harm to SBC Missouri as outlined in Attachment 1 to SBC Missouri’s Motion. Finally, for the reasons set forth below, the Commission should deny the CLECs challenges to SBC Missouri’s designations of portions of its testimony as Highly Confidential or Proprietary.

4. First, CLECs challenge SBC Missouri’s designation of Schedule 6HC to the prefiled testimony of witness Craig Unruh as Highly Confidential. CLECs state: “[i]t is implicit

in his testimony that specific CLECs are not even identified.”¹ CLECs subsequently argue that this information is not specific market share information. CLECs’ argument misses the mark. Witness Craig Unruh’s Schedule 6HC is a map identifying the minimum number of CLECs (within a range) actively serving customers in each of SBC Missouri’s exchanges.”² This is information that is internal to SBC Missouri and is confidential because it is: “. . .market-specific information relating to services offered in competition with others” under the express terms of the Protective Order. Specifically, this information would be useful to SBC Missouri’s competitors offering competitive services in that it would help them identify whether to enter or exit specific markets based on the number of competitors that are already competing in each exchange. Moreover, it would help CLECs set the price for the services that they either offer or plan to offer based on the level of competition in each particular exchange. Thus, it does not matter that specific CLECs are not identified. So long as CLECs are aware of the number of competitors that are already competing in each exchange, each CLEC would be able to identify whether to enter or exit specific markets based on the number of competitors already in each exchange and price services accordingly. Disclosure of such information would harm SBC Missouri because it would enable CLECs to concretely identify which exchanges they should enter or exit in order to either offer services in competition with SBC or refrain from offering services in competition with SBC and other CLECs. Moreover, disclosure of such information would harm SBC Missouri because it would enable CLECs to price services based on the level of competition in each exchange. For all of these reasons, the Commission should uphold SBC Missouri designation of witness Craig Unruh’s Schedule 6HC as Highly Confidential.

5. Second, CLECs challenge SBC Missouri’s designation of Schedule 9HC to the prefiled testimony of witness Craig Unruh as Highly Confidential. Witness Craig Unruh’s

¹ See Pleading, paragraph 2.

Schedule 9HC is a map identifying the exchanges in which CLECs have established collocation.”³ This information is internal to SBC Missouri and is confidential because it is: “. . .market-specific information relating to services offered in competition with others” under the express terms of the Protective Order. Specifically, this information would be useful to SBC Missouri’s competitors offering competitive services in that it would help them identify where specific CLECs have collocation facilities with SBC Missouri and, therefore, would help them identify where CLECs are either offering services in competition with SBC Missouri and other CLECs and/or where other CLECs intend to offer competitive services on an exchange basis. Thus, it does not matter that specific CLECs are not identified. So long as CLECs are aware of the collocation facilities in each exchange, each CLEC would be able to identify where its competitors are either operating and/or intend to offer competitive services. CLECs could price their services accordingly. Disclosure of such information would harm SBC Missouri because it would enable CLECs to concretely identify which exchanges they should enter or exit in order to either offer services in competition with SBC and other CLECs or refrain from offering services in competition with SBC and other CLECs. Moreover, disclosure of such information would harm SBC Missouri because it would enable CLECs to price services based on the level of competition in each exchange. For all of these reasons, the Commission should uphold SBC Missouri designation of witness Craig Unruh’s Schedule 9HC as Highly Confidential.

6. Third, CLECs challenge SBC Missouri’s designation of Schedules 10HC-13HC to the prefiled testimony of witness Craig Unruh as Highly Confidential under the terms of the Protective Order. Schedules 10HC-13HC provide the number of access lines that SBC Missouri serves by exchange and estimates the number of access lines that the CLECs serve by exchange. Each Schedule also provides the minimum estimated market share of SBC Missouri and the

² See Unruh Direct, p. 24.

CLECs by exchange. This information is internal to SBC Missouri and is confidential because it is: “. . .market-specific information relating to services offered in competition with others” under the express terms of the Protective Order. As the CLECs are well aware, the Commission has routinely determined that access line counts in annual reports shall be treated as highly confidential.⁴ In fact, at least three of the CLECs that are currently objecting to SBC Missouri’s designation of its access line count information as Highly Confidential have themselves sought and received a Highly Confidential designation of their access line count information when filing their annual reports.⁵ Moreover, 6 out of the 8 CLECs, that are currently objecting to SBC Missouri’s designation of its access line count information as Highly Confidential, redacted access line count information from their 2003 Annual Reports that they filed with the Commission on the basis that such information is Highly Confidential.⁶ In other words, the CLECs are talking out of both sides of their mouths. Furthermore, the Commission

³ See Unruh Direct, p. 29.

⁴ See Order Granting Leave to File Annual Reports Out of Time and Granting Partial Confidential Treatment of Annual Reports, In the Matter of the Annual Report for 2001 of MCI WorldCom Communications, Inc., Brooks Fibers Communications of Missouri, Inc., Metropolitan Fiber Systems of St. Louis, Inc., Metropolitan Fiber Systems of Kansas City, Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, L.L.C., Teleconnect Long Distance Services & Systems Company, MCI WorldCom Network Services, Inc., TTI National, Touch 1 Long Distance, Inc., and BLT Technologies, Inc., Case No. LO-2002-1141, October 18, 2002; see also Order Granting Confidential Treatment, In the Matter of Southwestern Bell Telephone Company’s Motion for Permission to File a Portion of its Annual Report Under Seal, Case No. TE-2001-520, December 4, 2001; see also Order Granting Confidential Treatment and Late Filing, In the Matter of the 2000 Annual Report of AT&T Communications of the Southwest, Inc., Case No. TE-2001-525, October 24, 2001; see also Order Accepting The Filing of Late-Filed Annual Reports and Granting Confidential Treatment of Portions of those Reports, In re: Matter of Late Filed Annual report of MCI Telecommunications Corporation, n/k/a MCI WorldCom Network Services, Inc., Teleconnect Long Distance Service and Systems Company, WorldCom Network Services, Inc., n/k/a MCI WorldCom Network Services, Inc., WorldCom Technologies, Inc., n/k/a MCI WorldCom Communications, Inc., TTI National, Inc., Touch 1 Long Distance, BLT Technologies, Inc., Brooks Fiber Communications of Missouri, Inc., Metropolitan Fiber Systems, Inc. of St. Louis and Kansas City, and MCImetro Access Transmission Services, L.L.C., Case No. TE-2000-784, November 20, 2000.

⁵ See Order Granting Leave to File Annual Reports Out of Time and Granting Partial Confidential Treatment of Annual Reports, In the Matter of the Annual Report for 2001 of MCI WorldCom Communications, Inc., Brooks Fibers Communications of Missouri, Inc., Metropolitan Fiber Systems of St. Louis, Inc., Metropolitan Fiber Systems of Kansas City, Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, L.L.C., Teleconnect Long Distance Services & Systems Company, MCI WorldCom Network Services, Inc., TTI National, Touch 1 Long Distance, Inc., and BLT Technologies, Inc., Case No. LO-2002-1141, October 18, 2002

⁶ MCImetro Access Transmission Services, L.L.C., Intermedia Communications, Inc., MCIWorldCom Communications, Inc., XO Missouri, Inc., Socket Telecom, L.L.C. and Allegiance Telecom, L.L.C.

has determined that market share of each provider of a competitive service in a particular area is “market-specific information relating to services offered in competition with others” and, therefore, is properly designated as “Highly Confidential” pursuant to the Commission’s standard protective order.⁷ The Commission should, therefore, uphold SBC Missouri’s designation of this information as Highly Confidential.

SBC Missouri notes that the CLECs argue that specific CLECs are not even identified.⁸ This assertion is completely irrelevant. The number of access lines that SBC Missouri serves is identified and estimates of the number of access lines that the CLECs serve are identified. If either the number of access lines that SBC Missouri serves or the estimated number of access lines that the CLECs serve is revealed to the CLECs, the CLECs would be able to perform a simple mathematical equation to reflect the unknown quantity. Moreover, if the CLECs knew by exchange the number of access lines that SBC Missouri serves and/or the estimated number of access lines that the CLECs serve, such information could be used to determine whether to enter or exit a specific exchange and how to price a service within an exchange. Such information may also help CLECs with their marketing plans, e.g. how successful a certain marketing approach worked (door-to-door selling, direct mail, etc.). For all of these reasons, the Commission should uphold SBC Missouri’s designation of Schedules 10-13HC to the prefiled testimony of witness Craig Unruh as Highly Confidential under the terms of the Protective Order.

7. Fourth, CLECs challenge SBC Missouri’s classification of pages 30-34 of the prefiled testimony of witness Craig Unruh as Highly Confidential under the terms of the Protective Order, citing the same arguments that they advanced with regard to Schedules 10HC-

⁷ See Order Setting Prehearing Conference, Regarding Filing of Proposed Procedural Schedule and Regarding Protective Order, Alma Telephone Company, et al. v. Southwestern Bell Telephone Company, et al., Case No. TC-2002-194, June 21, 2002.

13HC of the prefiled testimony of witness Craig Unruh. As SBC Missouri indicates in paragraph 6 above, the Commission has determined that access line counts and market share information is Highly Confidential.⁹ For the same reasons that access line counts and market share information is Highly Confidential, testimony related to access line counts and market share information is also Highly Confidential. Thus, the Commission should uphold SBC Missouri's designation of pages 30-34 of the prefiled testimony of witness Craig Unruh as Highly Confidential.

8. Fifth, CLECs challenge SBC Missouri's classification of Schedule 4P to the prefiled testimony of witness Elizabeth Stoia as Proprietary. Schedule 4P contains an estimate of the number of households in Missouri with access to cable modem service and DSL service. SBC Missouri obtained this information from internal sources and from external copyrighted material that SBC Missouri purchased. As such, this information is confidential business information under the terms of the Protective Order because SBC purchased this information and it is not readily available to the public. Moreover, disclosure of this information would be harmful to SBC Missouri because it would help CLECs determine whether to enter the VoIP

⁸ See Pleading, paragraph 4.

⁹ See Order Setting Prehearing Conference, Regarding Filing of Proposed Procedural Schedule and Regarding Protective Order, Alma Telephone Company, et al. v. Southwestern Bell Telephone Company, et al., Case No. TC-2002-194, June 21, 2002; see also Order Granting Leave to File Annual Reports Out of Time and Granting Partial Confidential Treatment of Annual Reports, In the Matter of the Annual Report for 2001 of MCI WorldCom Communications, Inc., Brooks Fibers Communications of Missouri, Inc., Metropolitan Fiber Systems of St. Louis, Inc., Metropolitan Fiber Systems of Kansas City, Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, L.L.C., Teleconnect Long Distance Services & Systems Company, MCI WorldCom Network Services, Inc., TTI National, Touch 1 Long Distance, Inc., and BLT Technologies, Inc., Case No. LO-2002-1141, October 18, 2002; see also Order Granting Confidential Treatment, In the Matter of Southwestern Bell Telephone Company's Motion for Permission to File a Portion of its Annual Report Under Seal, Case No. TE-2001-520, December 4, 2001; see also Order Granting Confidential Treatment and Late Filing, In the Matter of the 2000 Annual Report of AT&T Communications of the Southwest, Inc., Case No. TE-2001-525, October 24, 2001; see also Order Accepting The Filing of Late-Filed Annual Reports and Granting Confidential Treatment of Portions of those Reports, In re: Matter of Late Filed Annual report of MCI Telecommunications Corporation, n/k/a MCI WorldCom Network Services, Inc., Teleconnect Long Distance Service and Systems Company, WorldCom Network Services, Inc., n/k/a MCI WorldCom Network Services, Inc., WorldCom Technologies, Inc., n/k/a MCI WorldCom Communications, Inc., TTI National, Inc., Touch 1 Long Distance, BLT Technologies, Inc., Brooks Fiber Communications of Missouri, Inc., Metropolitan Fiber Systems, Inc. of St. Louis and Kansas City, and MCImetro Access Transmission Services, L.L.C., Case No. TE-2000-784, November 20, 2000.

market. The Commission should, therefore, uphold SBC Missouri's designation of Schedule 4P to the prefiled testimony of witness Elizabeth Stoia.

9. Finally, CLECs challenge SBC Missouri's classification of Schedule 10HC to the prefiled testimony of witness Elizabeth Stoia as Highly Confidential. Schedule 10HC provides information regarding lines that SBC Missouri has lost to its competitors on a monthly basis, by exchange.¹⁰ This information is internal to SBC Missouri and is confidential because it is: ". . . market-specific information relating to services offered in competition with others" under the express terms of the Protective Order. Specifically, this information would be useful to SBC Missouri's competitors in that it would help them determine whether to enter or exit specific exchanges and how to price services based on the estimate of the level of competition per exchange. It is irrelevant that specific competitors are not identified. If the CLECs know the number of competitive losses that SBC Missouri has experienced on a monthly basis on an exchange level basis, each CLECs could use such information to determine whether to enter or exit each exchange and how to price services based on SBC Missouri's estimate of the level of competition per exchange. Such information may also help CLECs with their marketing plans, e.g. how successful a certain marketing approach has worked (door-to-door selling, direct mail, etc.). The CLECs argument that: "this schedule provides information regarding lines lost to competitors—meaning information about competitors rather than SBC"¹¹ is disingenuous. This Schedule provides information about SBC Missouri—the number of access lines that SBC Missouri has lost, thus reducing the number of access lines that SBC Missouri serves. As previously indicated, the Commission has routinely determined that access lines counts should

¹⁰ See Stoia Direct, page 21.

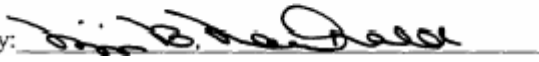
¹¹ See Pleading, paragraph 7.

be afforded a Highly Confidential classification.¹² For all of these reasons, the Commission should uphold SBC Missouri's classification of Schedule 10 to the prefiled direct testimony of Elizabeth Stoia as Highly Confidential under the terms of the Protective Order.

Wherefore, SBC Missouri prays that the Commission upholds the designations regarding witnesses Craig Unruh's and Elizabeth Stoia's Schedules and testimony as outlined above, together with any further relief the Commission deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

¹² See Order Granting Leave to File Annual Reports Out of Time and Granting Partial Confidential Treatment of Annual Reports, In the Matter of the Annual Report for 2001 of MCI WorldCom Communications, Inc., Brooks Fibers Communications of Missouri, Inc., Metropolitan Fiber Systems of St. Louis, Inc., Metropolitan Fiber Systems of Kansas City, Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, L.L.C., Teleconnect Long Distance Services & Systems Company, MCI WorldCom Network Services, Inc., TTI National, Touch 1 Long Distance, Inc., and BLT Technologies, Inc., Case No. LO-2002-1141, October 18, 2002; see also Order Granting Confidential Treatment, In the Matter of Southwestern Bell Telephone Company's Motion for Permission to File a Portion of its Annual Report Under Seal, Case No. TE-2001-520, December 4, 2001; see also Order Granting Confidential Treatment and Late Filing, In the Matter of the 2000 Annual Report of AT&T Communications of the Southwest, Inc., Case No. TE-2001-525, October 24, 2001; see also Order Accepting The Filing of Late-Filed Annual Reports and Granting Confidential Treatment of Portions of those Reports, In re: Matter of Late Filed Annual report of MCI Telecommunications Corporation, n/k/a MCI WorldCom Network Services, Inc., Teleconnect Long Distance Service and Systems Company, WorldCom Network Services, Inc., n/k/a MCI WorldCom Network Services, Inc., WorldCom Technologies, Inc., n/k/a MCI WorldCom Communications, Inc., TTI National, Inc., Touch 1 Long Distance, BLT Technologies, Inc., Brooks Fiber Communications of Missouri, Inc., Metropolitan Fiber Systems, Inc. of St. Louis and Kansas City, and MCImetro Access Transmission Services, L.L.C., Case No. TE-2000-784, November 20, 2000.

Copies of this document were served on the following parties via United States mail, postage prepaid, on November 29, 2004.


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