

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Investigation of the)
State of Competition in the Exchanges of)
Southwestern Bell Telephone Company)

Case No. TO-2001-467

STAFF’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON REMAND

Comes Now the Staff of the Missouri Public Service Commission and proposes the following findings of fact and conclusions of law:

Introduction

This case began in 2001 when the Commission opened an investigation into whether any of Southwestern Bell Telephone (SWB or SWBT) Company’s services in any of its exchanges could be classified as competitive under Section 392.245.5 RSMo based on a finding of “effective competition” from alternative companies. The Commission’s Report and Order held, *inter alia*, that certain SWB services previously classified as “transitionally competitive” had converted to “competitive” status in 1999 by operation of law under Section 392.370 RSMo. Those services consist of interLATA private line/dedicated services, intraLATA toll services, Wide Area Telecommunications Services (“WATS”) and 800 services, special access services, and certain operator services. The Office of the Public Counsel sought judicial review of the Report and Order.

The Court of Appeals reversed this holding. The Court stated, “When SWB became subject to price-cap regulation in 1997, all its services became subject to price-cap regulation at that time, and the Commission erred in finding competitive status under the old statutes.” The Court directed:

In remanding, we ask the Commission to re-examine the competitive status of these particular services by applying the “effective competition” factors to the evidence the Commission has already accumulated with regard to these

services both from the 1993 “transitionally competitive” hearing in Case No. TO-93-116 as well as from the hearing in this underlying case. Consistent with the requirements of section 392.245.5, it will be necessary for the Commission to determine whether these services are effectively competitive on an exchange-by-exchange basis. Since the original finding of transitionally competitive applied to the entire service area, we assume sufficient evidence for such a finding is available. *State of Missouri ex rel. Acting Public Counsel Coffman v. Public Service Commission*, 154 S.W. 3d 316, 329 (Mo. App. W.D. 2004)

The Commission has directed the parties to file proposed findings of fact and conclusions of law including a list of exchanges and services determined to be competitive under amended Section 392.245, and which ones remain to be determined.¹ The Staff agrees that SWB has provided competent and substantial evidence to support a finding that effective competition exists for the services at issue on remand. Accordingly, the Staff’s proposed findings of fact are drawn from SWBT’s Brief.

Findings of Fact

Issue 5: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell’s intraLATA private line/dedicated services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

SWBT presented evidence that its intraLATA private line/dedicated services face effective competition in all of its Missouri exchanges. Staff agrees that the Commission should confirm a competitive classification for these services.² No party presented any evidence to support a different conclusion.

Description of Private Line Services. Private line services are nonswitched, dedicated circuits, for which SWBT furnishes the requisite facilities, including channels and network terminating equipment, to enable customers and authorized users to communicate between specified locations within a LATA on a continuous basis. They are most frequently utilized for

¹ These lists are attached as Appendices A and B.

² Ex. 18, Voight Rebuttal, p. 54.

data transmissions, but are also utilized for transporting voice or integrated data/voice communications in private networks.³ Private line services include Analog Service;⁴ DS0 Service;⁵ DS1 Service;⁶ DS3 Service;⁷ Network Reconfiguration Service (“NRS”);⁸ and GigaMAN Service.⁹

The Legislature and the Commisison have found the Private Line market competitive. In 1996, the Missouri Legislature recognized the private line market to be sufficiently competitive to permit all carriers, including SWBT, to freely price private line services:

Customer-specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange (“PBX”) services, provided such customer-specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.¹⁰

The Commisison recognized the existence of competition in the intraLATA private line market even earlier. In a December 1992 Order, the Commission found that services provided by interexchange carriers (“IXCs”) were “equivalent” and completely interchangeable with SWBT’s private line services. Accordingly, the Commission granted SWBT’s request for reclassification of private line services to a “transitionally competitive” classification.¹¹

³ Ex. 3, DeHahn Direct, pp. 3-5.

⁴ Analog Service is a voice grade channel typically used for low level data transmission or telemetry, i.e., meter reading. Ex. 3, DeHahn Direct, p. 3.

⁵ DS0 Service is a data service with transmission speeds of up to 64 Kbps, typically used for low volume data transmission such as file transfer and transaction processing, i.e., point of sale terminals Id., pp. 3-4.

⁶ DS1 Service is a high capacity digital service with transmission speed of 1.544 Mbps, typically used in private network applications such as tie lines between PBXs or local area network connectivity. Id., p. 4.

⁷ DS3 Service is a high capacity data service with transmission speed of 44.736 Mbps, typically used in private networking applications. Id.

⁸ NRS is a service that provides customers with the ability to reconfigure their dedicated network services from their own premises. Id.

⁹ GigaMAN Service is a high capacity data service providing a transmission speed of 1 Gbps, typically used to provide LAN-to-LAN interconnection service. Id., p. 5.

¹⁰ Section 392.200(8) RSMo (2000).

¹¹ Report and Order, Case No. TO-93-116, issued December 21, 1992; Ex. 3 DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

Competition in the Private Line market has existed for years. Significant competition has existed in the retail intraLATA private line market in Missouri for nearly 15 years, dating back to the emergence of competitive access providers (“CAPs”) in the mid-1980s. CAPs, such as TCG, MFS and Brooks Fiber initially focused on providing alternative access to long distance companies. They also targeted commercial business customers as they completed their fiber ring build outs and gained access to multi-tenant buildings with their own facilities. In the late 1980s, the major interexchange carriers such as AT&T, Sprint and MCI also began to compete for retail intraLATA private line services as they bid on data networks covering intrastate services as well as interstate long haul services.¹²

Undisputed evidence shows that many alternative providers, which existed before CLECs entered the local market, offer non-switched, dedicated private line type services, and the services and functionality they provide are substitutable for or functionally equivalent to SWBT’s private line services. These alternatives, against which SWBT competes, are either not regulated by the Commission or at least not price regulated in the same manner as SWBT.¹³

Given the extensive nature of competition for private line services and the prior determination of transitionally competitive status, the Commission finds that SWBT’s private line services face effective competition in all of its Missouri exchanges.

Issue 8: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell’s intraLATA toll services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

¹² Ex. 3, DeHahn Direct, p. 5.

¹³ E. 3, DeHahn Direct, pp. 2, 5-11 and Schedules 1 and 2.

SWBT presented evidence that its intraLATA toll services face effective competition in all of its Missouri exchanges. Staff agrees that the Commission should approve a statewide competitive classification for SWBT's intraLATA toll services.¹⁴

Description of IntraLATA Toll Services. IntraLATA toll service furnishes telecommunications between points in different local service areas within the same LATA. It provides a customer with the ability to make a telephone call to someone outside that customer's local calling scope, but within the LATA.¹⁵

The Commission has previously found intraLATA toll services to be competitive. The Commission recognized the existence of competition in the intraLATA toll market in the early 1990's. In a December 1992 Order, the Commission found that services provided by interexchange carriers ("IXCs") were "substitutable" for SWBT's intraLATA toll services. Accordingly, the Commission granted SWBT's request for classification of its toll services as "transitionally competitive".¹⁶

Competition in the IntraLATA Toll Market has Existed for Years. Competition has existed in the intraLATA toll market since July 24, 1986 when the Commission authorized intraLATA toll competition in Missouri.¹⁷ There, the Commission found that intraLATA toll competition was in the public interest and would result in new and improved services, lower prices and faster response to customers' needs.¹⁸

Currently, there are over 600 interexchange carriers certified to provide intrastate interexchange service in Missouri.¹⁹ These include AT&T, MCI, Sprint and many others that

¹⁴ Ex. 18, Voight Rebuttal, pp. 3-4, 65

¹⁵ Ex. 9, Jablonski Direct, p. 5.

¹⁶ Report and Order, Case No. TO-93-116, issued December 21, 1992; Ex. 3, DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

¹⁷ Case No. TO-94-222, et al., Report and Order, issued July 24, 1986.

¹⁸ Id.; Ex. 16, Hughes Direct, p. 5.

¹⁹ Ex. 9, Jablonski Direct, p. 6 and Schedule 2, which is a list of IXCs certified in Missouri.

offer both intraLATA and interLATA toll service, enabling them to offer one-stop shopping to customers. The intraLATA toll services provided by AT&T, MCI, Sprint, WorldCom and other IXC's are equivalent to or substitutable for SWBT's interLATA toll service, in that all these services provide customers with the ability to place intraLATA toll calls.²⁰ This large number of certified IXC's indicates that customer choices are widely available and reflects the relative ease of entry for firms wishing to enter the intraLATA toll market.²¹

With the implementation of intraLATA presubscription in July 1999, IXC's now offer their customers the ability to make intraLATA toll calls without dialing extra digits. (Even prior to presubscription, customers had the ability to program their PBX's and key systems to automatically route intraLATA toll calls to the IXC of their choice or to dial around the incumbent's interLATA toll service by using 10XXX dialing. Now, customers can dial around using 101XXXX, e.g., 10-10-AT&T permitting customers to use the IXC of their choice, even if they retain SWBT as their 1+intraLATA toll provider.)²² In every SWBT exchange, there are a minimum of 73 IXC's available to be selected by the customer as a 1+intraLATA toll provider. Some exchanges have up to 140 IXC's. Based on a number of available IXC's in each SWBT exchange, it is very apparent that robust competition exists for SWBT's intraLATA toll services.²³

Given the extensive nature of competition for intraLATA toll services and the prior determination of transitionally competitive status, the Commission finds that SWBT faces effective competition for intraLATA toll services in all of its Missouri exchanges.

²⁰ Ex. 9, Jablonski Direct, p. 9.

²¹ Ex. 9, Jablonski Direct, pp. 6-7.

²² Ex. 9, Jablonski Direct, p. 7.

²³ Ex. 9, Jablonski Direct, p. 9 and Schedule 3, which is a list of the number of IXC's that are available in each SWBT exchange.

Issue 11: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Wide Area Telecommunications Services (WATS) and 800 services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

SWBT presented evidence that its WATS and 800 services face effective competition in all of its Missouri exchanges. Staff agrees that the Commission should approve a statewide competitive classification for SWBT's WATS services.²⁴ No party presented any evidence that would support a different conclusion.

Description of WATS and 800 services. Wide Area Telecommunications Services ("WATS") includes both 800 service and outward WATS ("OUTWATS"). 800 service provides the subscribers with the ability to receive incoming intraLATA interexchange calls that are toll-free to the calling party. OUTWATS service provides subscribers with the ability to place outgoing intraLATA, interexchange calls that are billed on a usage sensitive basis.²⁵

The Commission has previously found WATS and 800 service to be competitive. The Commission recognized the existence of substantial competition in the WATS and 800 service markets in the early 1990s. In a December 1992 Order, the Commission found that WATS and 800 service provided by IXC's was "substitutable" for SWBT's WATS and 800 services. Accordingly, the Commission granted SWBT's request for classification of its WATS and 800 services as "transitionally competitive".²⁶

Competition has long existed in the WATS and 800 service markets. IXC's are the dominant WATS and 800 service competitors. There are over 600 certified IXC's authorized to provide interexchange services in Missouri. As part of their interexchange services, IXC's typically provide WATS and 800 services to customers. CLECs can also offer WATS and 800

²⁴ Ex. 18, Voight Rebuttal, pp. 4, 74.

²⁵ Ex. 9, Jablonski Direct, p 15.

service. For example, Excel Telecommunications offers 800 services.²⁷ These providers have the advantage of offering both intraLATA and interLATA calling capabilities, which provides a significant advantage over SWBT's services. These services provided by IXC's and CLECs are functionally equivalent to and substitutable for SWBT's WATS and 800 service. This large number of certified companies indicates that customer choices are available and reflects the relative ease of entry for firms wishing to enter the WATS and 800 markets.²⁸

Given the extensive nature of competition for WATS and 800 service and the prior determination of transitionally competitive status, the Commission finds that SWBT faces effective competition for WATS and 800 services in all of its Missouri exchanges.

Issue 12: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's special access services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

SWBT presented evidence that its special access services face effective competition in all of its Missouri exchanges. Staff supports confirmation of this status pursuant to Section 392.200.8 RSMo (2000).²⁹ No party presented any evidence that would support a different conclusion.

Description of Special Access Services. Special access services are dedicated, nonswitched services used to connect one or more end-user customer premises with an IXC's location, commonly referred to as a point of presence ("POP"). Special access services connecting one customer location to an IXC are referred to as point-to-point configurations. When they connect multiple end-user locations with an IXC via a hub, they are referred to as multipoint configurations. Special access services are used to carry voice and data applications

²⁶ Case No. TO-93-116, Report and Order, issued December 21, 1992; Ex. 9, Jablonski Direct, pp. 15-16; Ex. 16, Hughes Direct, pp. 9-10.

²⁷ See, Section 4.7 of Excel Telecommunication, Inc. tariff, PSC Mo.-No. 2.

²⁸ Ex. 9, Jablonski Direct, p. 16.

and, at higher speeds, video. SWBT offers eight categories of special access services; Metallic,³⁰ Telegraph Grade,³¹ Voice Grade,³² Wideband Analog,³³ Wideband Data,³⁴ MegaLink Data (DS1),³⁵ High Capacity (DS3),³⁶ and DovLink service (data over a voice grade facility).³⁷

The Legislature and the Commission have found the Special Access Market competitive.

In 1996, the Missouri Legislature recognized the special access market to be sufficiently competitive to permit all carriers, including SWBT, to freely price special access services:

Customer-specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private brand exchange (“PBX”) services, provided such customer-specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.³⁸

²⁹ See Staff’s Statement of Position, filed September 18, 2001 at p. 3; Exhibit 18, Voight Rebuttal, p. 4.

³⁰ Metallic service provides an analog channel capable of transmitting data at rates up to 30 baud. These services are typically used for alarm, metering, supervisory control and signaling communications. Ex. 7, Douglas Direct, Schedule 2, p. 4; PSC Mo. – No. 36, Section 7.2.1.

³¹ Telegraph service provides an analog connection capable of transmitting binary signals at rates up to 150 baud. This service is used by customers for teletypewriters, data, metering, supervisory control and signaling purposes. Ex. 7, Douglas Direct Schedule 2, p. 5; PSC Mo. – No. 36, Section 7.2.2.

³² Voice Grade service provides an analog two-wire or four-wire circuit with a 300 to 3,000 Hertz band with channel. This service is used by customers wanting a few private voice lines between locations or who want to exchange large amounts of data between locations up to 19.2 kilobits per second. Ex. 7, Douglas Direct Schedule 2, pp. 5-6; PSC Mo. – No. 36, Section 7.2.3.

³³ Wideband Analog service provides an analog channel with a bandwidth measured in kilohertz for the transmission of a wideband signal, with the actual band width being a function of the channel interface order by the customer. Ex. 7, Douglas Direct Schedule 2, p. 6; PSC Mo. – No. 36, Section 7.2.5.

³⁴ Wideband Data service provides an analog channel for transmission of synchronous or asynchronous serial data at speeds up to 230.4 kilobits per second. Ex. 7, Douglas Direct Schedule 2, p. 5; PSC Mo. – No. 36, Section 7.2.6.

³⁵ MegaLink Data service provides for the duplex four-wire transmission of synchronous serial data up to 64 kilobits per second. DS1 service is a 24-channel digital connection that can transmit at speeds up to 1.544 MBPS. It can also be multiplexed down to 24 individual voice grade channels. DS1 is used by customers to transmit voice, data and video. Ex. 7, Douglas Direct Schedule 2, pp. 6-7; PSC Mo. – No. 36, Section 7.2.7.

³⁶ High Capacity service provides for the transmission of data at speeds up to 44.736 MBPS. A high capacity facility can also be multiplexed down to 28 individual DS1 channels or 672 voice grade circuits. High capacity service is used to transmit data, voice and video. It also enables a provision of more advanced services such as network reconfiguration service and transport resource management service, which provides customers with the ability to manage their network configurations from their own premises. Ex. 7, Douglas Direct Schedule 2, pp. 7-8; PSC Mo. – No. 36, Section 7.2.8.

³⁷ DovLink service provides customers with data channels to handle synchronous or asynchronous data at speeds of 2.4, 4.8 or 9.6 kilobits per second. Ex. 7, Douglas Direct Schedule 2, p. 8; PSC Mo. – No. 36, Section 7.2.9.

³⁸ Section 392.200(8) RSMo (2000).

The Commission recognized the existence of competition in the intraLATA special access market even earlier. In a December 1992 Order, the Commission found that services provided by interexchange carriers (“IXCs”) were “equivalent” to and completely interchangeable with SWBT’s special access services. Accordingly, the Commission granted SWBT’s request for reclassification of special access services to a “transitionally competitive” classification.³⁹

Competition for Special Access Services is well established. Competition for special access service is well established. As described under Issue 5 above (Private Line Services), competition for non-switched dedicated services began in the 1980s with the emergence of CAPs, like TCG, MFS and Brooks Fiber, which provided special access services to IXCs. In the late 1980’s, large IXCs, such as AT&T, Sprint and MCI began to offer dedicated, non-switched services that compete with SWBT’s special access services. Undisputed evidence shows that there are numerous providers offering services throughout SWBT’s service area that are substitutable for or functionally equivalent to SWBT’s special access services.⁴⁰

Given the extensive nature of competition for special access services and the prior determination of transitionally competitive status, the Commission finds that SWBT faces effective competition for special access services in all of its Missouri exchanges.

Issue 17: In which Southwestern Bell Telephone Company exchange, if any, should Southwestern Bell’s operator services (OS) be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

On remand, the issue is whether SWBT’s station-to-station, person-to-person and calling card operator services should be classified as competitive. SWBT presented evidence that these

³⁹ Report and Order, Case No. TO-93-116, issued December 21, 1992; Ex. 7, Douglas Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10

⁴⁰ Ex. 7, Douglas Direct, pp. 6-9; Ex. 3, DeHahn Direct, pp. 5-11.

operator services face effective competition in every SWBT exchange in Missouri.

Description of Operator Services. Operator Services refer to a variety of call completion services that SWBT offers its customers in Missouri.⁴¹ These services facility the completion of a call, often using live operators or through an automated Interactive Voice System.⁴² SWBT's operator services in Missouri include calling cards, collect calls, calls billed to a third number, sent paid calls, person-to-person, line status verification, and busy line interrupt services.⁴³ Callers are billed a service charge (often referred to as a surcharge in the industry) in addition to a usage charge where applicable for these types of services.⁴⁴ Users of operator services are often people in motion – anyone away from their own home or business telephone and in need of any alternate method of making and billing telephone calls.⁴⁵ The majority of callers requesting alternative billing originating calls from public telephones at locations such as airports, hotels, and shopping malls.⁴⁶ A significant number of operator services calls are also generated from college and university dormitories, hotel guestrooms, and hospital patient rooms.⁴⁷ A customer may use operator services by dialing “0” or “0+ number” from any telephone, but generally customers utilize operator services when placing a call when away from their home or office.⁴⁸

Competitive Alternatives to SWBT's Operator Services. There are numerous competitive alternatives to SWBT's operator services which are available throughout SWBT's exchanges in Missouri.⁴⁹ These alternatives are provided by numerous local and toll telecommunication providers, including AT&T, Sprint and MCIWorldCom, as well as wireless

⁴¹ Ex. 5, Moore Direct, p. 20.

⁴² Id.

⁴³ Id.

⁴⁴ Ex. 5, Moore Direct. P. 21.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

service providers, specialized operator service providers, pay telephone providers, pre-paid and post-paid calling card providers and others.⁵⁰ Considering both function and price, end users throughout Missouri have substitutable and functionally equivalent alternatives for operator services, offered by numerous providers, including cellular telephone service, pre-paid calling cards, and personal 800 numbers. These services compete directly with SWBT's operator services in the state of Missouri.⁵¹

For example, "00" service was established as a dialing pattern in order to route calls to the operator of a customer's presubscribed interexchange carrier.⁵² "00" service may be used to provide end users through the state of Missouri with the complete range of calling card, third number billing, collect and person-to-person calling options, as well as other types of operator assistance, such as busy line, verify and interrupt services, and call completion services. There are over 600 interexchange service providers certificated to provide service in Missouri.⁵³ Another competitive alternative is AT&T's 1-800-Call ATT Service. This service is available to all end user throughout Missouri.⁵⁴ Dialing 1-800-Call ATT enable customers, irrespective of their choice of local or toll provider to obtain alternative billing services, such as calling cards, collect, bill to a third number, person-to-person services, line status verification, busy interrupt, and AT&T customer service.⁵⁵ AT&T extensively promotes its operator services, as reflected on Schedule 9 to SWBT witness Sandy Moore's direct testimony.

⁵⁰ Id.

⁵¹ Ex. 5, Moore Direct, p. 22.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

Similar competitive alternatives are offered by MCIWorldCom and Sprint. MCIWorldCom's 1-800-Collect Service is also available to all end users throughout Missouri, irrespective of their choice of local or toll carrier.⁵⁶ This service provides end user the ability to make collect calls from anywhere in the United States. Callers also have access to a complete range of other services including calling cards, bill to a third number, person-to-person services, line status verification, and busy interrupt. Sprint's 1-800-2Sprint is similar to both the AT&T and MCIWorldCom competitive alternatives.⁵⁷ Both MCI and Sprint extensively promote their operator services, which compete directly with SWBT's operator services.⁵⁸

Operator services, including collect, bill to a third number, person-to-person service, line status verification, and busy interrupt are also available from wireless carriers throughout Missouri. Typically, wireless customers access their wireless carrier's operator services by dialing "0" from their wireless phone.⁵⁹ Moreover, wireless service, itself, has become a significant, competitive alternative to operator services, particularly for operator services originating from pay telephones.⁶⁰ Before wireless services became ubiquitous, customers who are away from their home or business telephone frequently used the alternative billing arrangements through operator services to place calls.⁶¹

⁵⁶ Id.

⁵⁷ Ex. 5, Moore Direct, pp. 22-23.

⁵⁸ Ex. 5, Moore Direct, p. 23: See Scheds. 10-11.

⁵⁹ Ex. 5, Moore Direct, p. 23.

⁶⁰ Id.

⁶¹ Id.

Another competitive alternative for operator services is “0+” and “0-” services from pay telephones.⁶² Pay telephone providers have the option of selecting the operator services provider of their choice for specific pay telephone locations.⁶³ Customers can, in effect, choose an operator service provider through their choice of a payphone provider.⁶⁴ Prepaid calling cards have also become an increasingly popular choice for alternative billing arrangements historically provided by operator service providers.⁶⁵ Prepaid calling cards are sold at a variety of outlets.⁶⁶ Live or automated operator assistant is typically available as required to assist in call completion relating to prepaid calling cards.⁶⁷ Prepaid cards are frequently branded in the name of well known retail establishments, and are offered by all major telecommunication carriers, including AT&T, MCIWorldCom, and Sprint, as well as hundreds of other lesser known companies.⁶⁸ Example of prepaid card providers were provided in Schedule 12 to Ms. Moore’s direct testimony.

Finally, irrespective of the presubscribed carrier on a particular telephone line, end users can always reach the operator service provide of their choice by dialing “10-10-XXX-00”. The XXX selected by the end user routes the call to the appropriate interexchange.⁶⁹ Many telecommunication carriers, including MCIWorldCom, AT&T and Sprint also offer personal 800 numbers. These number function as a competitive alternative to one type of operator services, i.e., collect calls.⁷⁰

⁶² Ex. 5, Moore Direct, p. 24.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Ex. 5, Moore Direct, p. 25.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Ex. 5, Moore Direct, p. 28.

It is important to remember that most if not all of the competitive alternative described above are available to an end user customer, irrespective of whether that customer is a SWBT local customer or is a local customer of a CLEC. However, if the customer is a CLEC local customer, the customer will likely also have a competitive alternative of operator services provided by that CLEC.⁷¹ Moreover, operator services are provided by facilities-based interexchange carriers, resale and switched-base CLECs and specialized operator service providers that utilize their own facilities to provide operator services directly to end users or other providers, pay telephone providers, and places of public accommodation. All of these operator services directly compete with SWBT's operator services throughout Missouri, and offer substitutable or functionally equivalent operator services to the operator services provided by SWBT in Missouri.

The FCC has found the operator services marketplace to be competitive.⁷² In its UNE Remand Order, the FCC eliminated operator services from the list of unbundled network elements based on the competitive nature of the operator services marketplace.⁷³ In the UNE Remand Order, the FCC stated that incumbent LECs “need not provide access to its operator services and directory assistance as an unbundled network element.”⁷⁴ Operator services are currently price deregulated in Arkansas, Texas and Kansas, among other states.⁷⁵

⁷¹ Id.

⁷² Ex. 5, Moore Direct, p. 28.

⁷³ Id.

⁷⁴ UNE Remand Order, par. 441.

⁷⁵ Ex. 5, Moore Direct, p. 28.

SWBT's state-to-station, person-to-person, and calling card operator services were found to be transitionally competitive in 1992 in Case No. TO-93-116. The highly competitive nature of the operator services marketplace has directly impacted SWBT's operator services call volumes. Since 1996, SWBT's operator services call volumes have declined by a significant percent.⁷⁶ This decline in SWBT's operator service call volume can be directly attributed to competitive alternatives that exist in the marketplace, described above.⁷⁷

Given the extensive nature of competition for station-to-station, person-to-person and calling card operator services and the prior determination of transitionally competitive status, the Commission finds that SWBT faces effective competition for these operator services.

Conclusions of Law

The Commission has jurisdiction under § 392.245.5 RSMo to determine whether effective competition exists for each telecommunications service of Southwestern Bell in each of its exchanges. Prior to amendment, the first two sentences of subsection 5 of this statute read:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been certified under Section 392.455 and has provided basic local telecommunications service in that exchange for at least five years, unless the Commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such service. The commission shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange telecommunication company has been certified to provide local exchange telecommunications service and shall determine, no later than five years following the first certification of an alternative local exchange telecommunications company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.

⁷⁶ Ex. 6(HC), Moore Surrebuttal(HC), Sched. 1(HC).

⁷⁷ Ex. 6, Moore Surrebuttal, p. 6.

Senate Bill 237, Laws 2005, amended § 392.245.5 to create an expedited two-track procedure when a price-cap regulated local exchange company seeks competitive classification for its services within one or more exchanges. Amended Section 392.245 takes away a price-cap regulated telecommunications company's right to a competitive classification of its services in those exchanges where the services face effective competition. This is a substantive statute. Substantive statutes have prospective application. *Pierce v. State Dept. of Social Services*, 969 S.W. 2d 814, 822-23 (Mo. App. W.D. 1998). Therefore, the Commission applies the prior version of Section 392.245 to its determination in this case.

Section 386.020(53) defines "telecommunications service" as:

(53) "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

(a) The rent, sale, lease, or exchange for other value received of customer premises equipment except for customer premises equipment owned by a telephone company certificated or otherwise authorized to provide telephone service prior to September 28, 1987, and provided under tariff or in inventory on January 1, 1983, which must be detariffed no later than December 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and except for customer premises equipment owned or provided by a telecommunications company and used for answering 911 or emergency calls;

(b) Answering services and paging services;

(c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;

(d) Services provided by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests;

- (e) Services provided by a private telecommunications system;
- (f) Cable television service;
- (g) The installation and maintenance of inside wire within a customer's premises;
- (h) Electronic publishing services; or
- (i) Services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission;

Section 386.020(13) provides:

(13) "Effective competition" shall be determined by the commission based on:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) The extent to which the purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in section 392.185, RSMo, are being advanced;
- (d) Existing economic or regulatory barriers to entry; and
- (e) Any other factors deemed relevant by the commission and necessary to implement the purposes and policies of chapter 392, RSMo;

Section 392.185 states that the provisions of this chapter shall be construed to:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;

(5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;

(7) Promote parity of urban and rural telecommunications services;

(8) Promote economic, educational, health care and cultural enhancements; and

(9) Protect consumer privacy.

A finding under § 392.245.5 RSMo that competition exists in an exchange for a service would authorize SWBT to thereafter adjust its rates for such competitive service upward or downward as it determines appropriate in its competitive environment.

ORDER

IT IS THEREFORE ORDERED:

1. That SWBT's intraLATA private line/dedicated services are classified as competitive in all of its Missouri exchanges.
2. That SWBT's intraLATA toll services are classified as competitive in all of its Missouri exchanges.
3. That SWBT's Wide Area Telecommunications Services (WATS) and 800 services are classified as competitive in all of its Missouri exchanges.
4. That SWBT's special access services are classified as competitive in all of its Missouri exchanges.
5. That SWBT's station-to-station, person-to-person and calling card operator services are classified as competitive in all of its Missouri exchanges.

Respectfully submitted,

/s/ William K. Haas
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed this 11th day of December 2006.

/s/ William K. Haas
William K. Haas

ILEC Competitive Exchanges

Exchange

Competitive Classifications

Company: AT&T Missouri

1 Advance	Residential	0
2 Antonia	Residential	Business
3 Archie	Residential	Business
4 Ash Grove	Residential	Business
5 Bell City	Residential	0
6 Billings	Residential	Business
7 Bonne Terre	Residential	Business
8 Boonville	Residential	Business
9 Camdenton	Residential	Business
10 Cape Girardeau	Residential	Business
11 Carthage	Residential	Business
12 Cedar Hill	Residential	Business
13 Chaffee	0	Business
14 Chesterfield	Residential	Business
15 Chillicothe	Residential	Business
16 Clever	Residential	Business
17 Delta	Residential	0
18 DeSoto	Residential	Business
19 Dexter	Residential	Business
20 Eldon	Residential	Business
21 Eureka	Residential	Business
22 Excelsior Springs	Residential	Business
23 Farley	Residential	Business
24 Farmington	Residential	Business
25 Fenton	Residential	Business
26 Festus-Crystal City	Residential	Business
27 Flat River	Residential	Business
28 Fredericktown	Residential	Business
29 Fulton	Residential	Business

Exchange

Competitive Classifications

30 Grain Valley	Residential	Business
31 Gravois Mills	Residential	Business
32 Gray Summit	Residential	Business
33 Greenwood	Residential	Business
34 Hannibal	Residential	Business
35 Harvester	Residential	Business
36 Herculaneum-Pevely	Residential	Business
37 High Ridge	Residential	Business
38 Hillsboro	Residential	Business
39 Imperial	Residential	Business
40 Jackson	Residential	Business
41 Joplin	Residential	Business
42 Kansas City Metropolitan	Residential	Business
43 Kennett	Residential	Business
44 Kirksville	Residential	Business
45 Lake Ozark-Osage Beach	Residential	Business
46 Linn	0	Business
47 Manchester	Residential	Business
48 Marble Hill	0	Business
49 Marionville	Residential	Business
50 Marshall	Residential	Business
51 Maxville	Residential	Business
52 Mexico	Residential	Business
53 Moberly	Residential	Business
54 Monett	Residential	Business
55 Montgomery City	0	Business
56 Neosho	Residential	Business
57 Nevada	Residential	Business
58 Pacific	Residential	Business
59 Perryville	Residential	Business
60 Pocahontas-New Wells	Residential	0
61 Pond	Residential	Business

Exchange

Competitive Classifications

62 Poplar Bluff	Residential	Business
63 Portage Des Sioux	Residential	Business
64 Richmond	Residential	Business
65 San Antonio	Residential	0
66 Scott City	0	Business
67 Sedalia	Residential	Business
68 Sikeston	Residential	Business
69 Smithville	Residential	Business
70 Springfield Metropolitan	Residential	Business
71 St Charles	Residential	Business
72 St Clair	Residential	Business
73 St Joseph	Residential	Business
74 St Louis Metropolitan	Residential	Business
75 Ste Genevieve	Residential	Business
76 Union	Residential	Business
77 Valley Park	Residential	Business
78 Walnut Grove	Residential	0
79 Ware	Residential	Business
80 Washington	Residential	Business
81 Webb City	Residential	Business
82 Wyatt	Residential	0

Non-Competitive Exchanges

Exchange

Company: **AT&T Missouri**

- 1 Adrian
- 2 Agency
- 3 Altenburg-Frohna
- 4 Argyle
- 5 Armstrong
- 6 Beaufort
- 7 Benton
- 8 Bismarck
- 9 Bloomfield
- 10 Bloomsdale
- 11 Bowling Green
- 12 Brookfield
- 13 Campbell
- 14 Cardwell
- 15 Carl Junction
- 16 Carrollton
- 17 Caruthersville
- 18 Center
- 19 Charleston
- 20 Clarksville
- 21 Climax Springs
- 22 Deering
- 23 DeKalb
- 24 Downing
- 25 East Prairie
- 26 Edina
- 27 Elsberry
- 28 Essex
- 29 Fayette
- 30 Fisk
- 31 Frankford
- 32 Freeburg
- 33 Gideon
- 34 Glasgow
- 35 Hayti

Exchange

- 36 Higbee
- 37 Holcomb
- 38 Homersville
- 39 Jasper
- 40 Knob Noster
- 41 Lamar
- 42 LaMonte
- 43 Lancaster
- 44 Leadwood
- 45 Lilbourn
- 46 Lockwood
- 47 Louisiana
- 48 Macks Creek
- 49 Malden
- 50 Marceline
- 51 Marston
- 52 Meta
- 53 Morehouse
- 54 New Franklin
- 55 New Madrid
- 56 Oak Ridge
- 57 Old Appleton
- 58 Oran
- 59 Patton
- 60 Paynesville
- 61 Pierce City
- 62 Portageville
- 63 Puxico
- 64 Qulin
- 65 Richwoods
- 66 Risco
- 67 Rushville
- 68 Senath
- 69 Slater
- 70 St Marys
- 71 Stanberry
- 72 Trenton
- 73 Tuscumbia

Exchange

- 74 Versailles
- 75 Vienna
- 76 Wardell
- 77 Wellsville
- 78 Westphalia