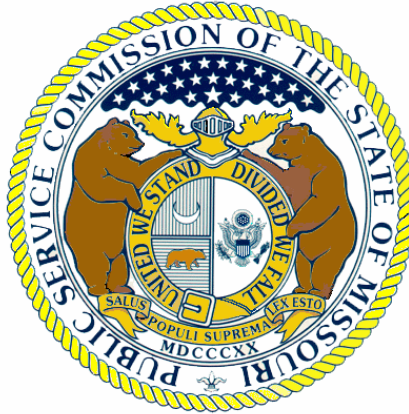


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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.)

REPORT AND ORDER

Issue Date: July 12, 2007

Effective Date: July 22, 2007

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OF THE STATE OF MISSOURI

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

APPEARANCES

William K. Haas, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Paul G. Lane, General Counsel-Missouri, **Leo J. Bub**, Senior Counsel, and **Timothy P. Leahy**, Counsel, Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, One AT&T Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri.

Michael F. Dandino, Deputy Public Counsel, Office of the Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

REGULATORY LAW JUDGE: Nancy Dippell, Deputy Chief Regulatory Law Judge .

REPORT AND ORDER

Syllabus: This order finds that the conditions in Subsection 392.245.5, RSMo, for competitive classification continue to exist in each exchange which has previously been designated as competitive.

Procedural History

This case begin when the Staff of the Missouri Public Service Commission filed a report on August 8, 2006, after an investigation of the competitive classification of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri's exchanges. The review was

implemented under Subsection 392.245.5, RSMo,¹ after Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, raised its basic local rates in some of its exchanges.

The Office of the Public Counsel filed a request for local public hearings and a request for an evidentiary hearing. The request for local hearings was denied. An evidentiary hearing was held March 8-9, 2007, and briefs were submitted April 18, 2007.

Pending Motions and Exhibits

During the evidentiary hearing, the Commission requested several exhibits be submitted. The parties were given an opportunity to file any objections to those exhibits. Staff presented late-filed exhibits, Exhibits 9HC, 9NP, 10HC, 10NP, 11HC, 11NP, 12HC, and 12NP, at the Commission's request showing the specific line counts in each exchange, for each CLEC, as well as for AT&T Missouri. No objections were received and those exhibits are admitted into evidence.

Also during the evidentiary hearing, Staff's Exhibit 14 was admitted into evidence with the caveat that AT&T Missouri was allowed to file any objections to the actual figures once it had an opportunity to review them. AT&T Missouri filed corrections to Exhibit 14, which were received without objection. On the third, fourth, and fifth lines of Staff's spreadsheet, under the dates 7/19/2004, 6/14/2004, and 5/21/2004, AT&T indicated that the rate for Speed Calling 8 should be \$3.75. Staff filed a Revised Exhibit 14 showing the corrected vertical services rates. No one objected to the revised exhibit. Revised Exhibit 14 is admitted into evidence and substituted for the original Exhibit 14.

¹ All statutory references are to the Missouri Revised Statutes 2006 Cumulative Supplement unless otherwise indicated.

The record was also left open for the filing of Exhibit 17 by Staff. Exhibit 17 is a compilation of information showing the change in AT&T's prices for non-basic services from 1999 to 2001. No objection to Exhibit 17 was received; however, Public Counsel filed a supplement to that exhibit. Public Counsel filed the source documents from Case Nos. TO-2001-467 and TO-2005-0035 showing the non-basic services rate changes from 1996 to 2004. Public Counsel asked to supplement Exhibit 17 with this information. No objection was received to Public Counsel's filing. The Commission will admit Exhibit 17 as submitted by Staff. In addition, the Commission will admit Public Counsel's Supplement to Exhibit 17.

In addition, the parties stipulated in their *Joint Motion to Establish Procedural Schedule*, filed on October 5, 2006, that the *Staff Report* filed on August 8, 2006, could be admitted into evidence. The parties later clarified this stipulation at the evidentiary hearing.² Therefore, the Commission admits the *Staff Report* into evidence.

Finally, when Staff made its original recommendation in this case it requested that the Commission direct it to complete a review of each competitive exchange on an annual basis. The Commission will authorize its Staff to conduct an investigation of each competitively classified exchange at least as frequently as required by statute. Furthermore, the Commission authorizes its Staff to conduct an annual review if, in Staff's discretion, that is the most administratively efficient manner of complying with the statutory requirements.

² Transcript, pp. 302-303.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

1. AT&T Missouri is engaged in providing basic local telecommunications service as an incumbent carrier in the areas of Missouri certificated to it by the Commission.

2. In Commission Case No. TO-2006-0093, effective September 29, 2005, the Commission granted AT&T Missouri competitive classification under the “30-day track” of Subsection 392.245.5, RSMo, for business services in 45 exchanges and for residential services in 26 exchanges.³

3. In Commission Case No. TO-2006-0102, effective October 29, 2005, the Commission granted AT&T Missouri competitive classification under the “60-day track” of Subsection 392.245.5, RSMo, for business services in 30 exchanges and for residential services in 51 exchanges.⁴

4. During the hearing in Case No. TO-2005-0035, AT&T Regulatory Executive Director, Craig Unruh, testified that AT&T Missouri had no plans to increase rates in conjunction with the reclassification of exchanges.⁵

5. In Tariff File No. JI-2006-0638, filed on February 21, 2006, and Tariff File No. JI-2007-0011, filed on July 11, 2006, AT&T Missouri increased the monthly rates for

³ The 30-day track business and residential exchanges are set out in the table attached to this Report and Order as Attachment A.

⁴ The 60-day track business and residential exchanges are set out in the table attached to this Report and Order as Attachment A.

⁵ Meisenheimer Direct, Exhibit 3, pp. 15-16, citing to the Transcript, p. 561 in TO-2005-0035 (*In the Matter of the Second Investigation into the State of Competition in the Exchanges of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri*).

business and residential services in its Rate Group B and larger competitively classified exchanges.⁶

6. The increase was one dollar for all business services rate groups and varied for residential services rate groups from 4.8% to 19%.⁷

7. AT&T Missouri decreased basic local service rates in September 2005 by 1.95% in its price cap regulated exchanges as required by statute to reflect the reduction in the Consumer Price Index for Telecommunications Service (CPI-TS).⁸

8. AT&T Missouri also increased rates for unbundled non-basic services, such as customer calling features, local operator services, and payphone services by about 5% after the competitive status was granted.⁹

9. Staff began its review because of the increase in basic local rates. Even though not every exchange had a rate increase, Staff analyzed every exchange classified as competitive in the Commission Case Nos. TO-2006-0093 (30-day proceeding) and TO-2006-0102 (60-day proceeding) in order to simplify the administrative burdens under the statute.

10. Staff used 2005 annual reports of the competitive local exchange carriers to determine how many lines were being served.

11. Annual reports from 2004 had been used as supporting evidence when competitive status in the exchanges was granted.

⁶ Meisenheimer Direct, Exhibit 3, pp. 6-7; *Staff Report* (filed August 8, 2006), para. 3.

⁷ *Id.*

⁸ Meisenheimer Direct, Exhibit 3, p. 9.

⁹ Meisenheimer Direct, p. 10 and Schedules 4 and 5.

12. The number of providers shown on Schedules 3 and 4 of Mr. Van Eschen's Rebuttal Testimony are somewhat different than the number of providers listed in Exhibits 9HC through 12HC. Because the latter exhibits are more detailed, showing CLEC-specific line counts and distinguishing facilities-based carriers from "other resale" carriers for both 2004 and 2005, the Commission finds that these exhibits are the most reliable and finds that the CLECs identified by Staff in each exchange are as set out in Exhibits 9HC, 10HC, 11HC, and 12HC. The line counts for 2005 in the two sets of exhibits are the same.

13. The number of facilities-based CLECs and "other resale" CLECs proven to exist by Staff for each exchange is as shown in Attachment A.

14. The 2005 annual report data shows that, with the exception of the Marble Hill and Fulton exchange for business services and the Farmington and Washington exchanges for residential services, for each of the exchanges previously granted competitive classification under the 30-day track, there was at least one unaffiliated full- or partial-facilities-based competitive local exchange carrier (CLEC) providing local voice service to at least one customer.¹⁰

15. For business services in the Marble Hill and Fulton exchange, and for residential services in the Farmington and Washington exchanges, the 2005 annual report data showed no facilities- or partial-facilities-based unaffiliated CLEC providing service.¹¹

16. AT&T also provided evidence of the carriers competing in each exchange.¹² That evidence came from its internal records identifying CLECs that have 911 listings, or

¹⁰ Exhibits 9HC and 10HC.

¹¹ *Id.*

¹² Unruh Rebuttal, Exhibit 5, Schedules 2-5.

ported telephone numbers within each exchange. This was the same type of evidence that the Commission relied upon in the original grant of competitive status.¹³

17. Staff's evidence from 2004 and 2005 annual reports is reliable.

18. AT&T's evidence from its internal records and from its wireless investigation is reliable.

19. Updated routing information from AT&T Missouri provided evidence that the Marble Hill exchange continues to have business services provided to at least one customer by Big River Telephone Company, LLC, a provider using its own facilities in whole or in part.¹⁴

20. Updated routing information from AT&T Missouri provided evidence that the Fulton exchange continues to have business services provided to at least one customer by XO, a provider using its own facilities in whole or in part.¹⁵

21. Updated routing information from AT&T Missouri provided evidence that the Washington exchange continues to have residential services provided to at least one customer by Big River Telephone Company, LLC, a provider using its own facilities in whole or in part.¹⁶

22. Updated routing information from AT&T Missouri provided evidence that the Farmington exchange continues to have residential services provided to at least one customer by Charter, a provider using its own facilities in whole or in part.¹⁷

¹³ Van Eschen Rebuttal, Exhibit 1, pp. 6-7.

¹⁴ Unruh Rebuttal, Exhibit 5, Revised Schedule 5.

¹⁵ Unruh Rebuttal, Exhibit 5, Revised Schedule 5.

¹⁶ Unruh Rebuttal, Exhibit 5, Revised Schedule 4.

¹⁷ Unruh Rebuttal, Exhibit 5, Revised Schedule 4.

23. The 2005 annual report information also suggested that business services in the Clever exchange are not being provided to more than one customer on a full- or partial-facilities-basis.¹⁸

24. The Clever exchange has one facilities-based CLEC providing service to at least one customer and at least two “other resale” CLEC providing service in the exchange to more than one customer.¹⁹

25. Staff concluded that based on its review, competitive conditions continue to exist in all of AT&T Missouri exchanges designated as competitive.²⁰

26. Staff did a very limited review of the wireless carriers providing service in the exchanges because there were sufficient numbers of other carriers in each exchange to meet the 30- or 60-day track criteria without counting the wireless carriers.²¹

27. The Commission found that at least one wireless carrier was providing service to customers for each service in each of the 30-day exchanges granted competitive status in Case No. TO-2005-0093.

28. Mr. Van Eschen stated that “Staff is unaware of any wireless provider withdrawing service from any exchange.”²²

¹⁸ *Staff Report* (filed August 8, 2006); Van Eschen Rebuttal, p. 14; Exhibit 12HC.

¹⁹ Exhibit 12HC.

²⁰ *Staff Report* (filed August 8, 2006); Van Eschen Rebuttal, p. 14.

²¹ Van Eschen Rebuttal, p. 14.

²² Van Eschen Rebuttal, Exhibit 1HC, p. 13, Ins. 6-7.

29. There is at least one wireless carrier in each 30-day exchange as identified by AT&T by confirming the wireless service availability within the respective exchanges through each wireless carrier's individual website.²³

30. The 2005 annual report data shows that at least two providers are providing service via unbundled network element platform (UNE-P), interconnection agreements or other commercial agreements (referred to as "other resale")²⁴ to multiple business and residential customers in each of the examined exchanges for each service, either business or residential.²⁵

31. "Other resale" is not the same as "pure resale." "Pure resale" is where the CLEC offers the incumbent telephone company's service under the CLECs name and rates.²⁶

32. There are at least two wireless carriers in each 60-day exchange as identified by AT&T by confirming the wireless service availability within the respective exchanges through each wireless carrier's individual website.²⁷

33. There are at least two voice over Internet protocol (VoIP) providers in each 60-day business exchange except that there is only one VoIP provider in the Montgomery City exchange and none in the Portage Des Sioux exchange.²⁸

²³ Ex. 5, Unruh Rebuttal, p. 5, schs. 4 and 5; Tr. Pp. 198-199.

²⁴ Van Eschen Rebuttal, Exhibit 1HC, p. 5.

²⁵ Van Eschen Rebuttal, Exhibit 1HC, Schedules 3 and 4.

²⁶ Van Eschen Rebuttal, Exhibit 1HC, p. 5.

²⁷ Unruh Rebuttal, Exhibit 5, p. 5, schs. 4 and 5; Tr. Pp. 198-199.

²⁸ Unruh Rebuttal, Exhibit 5, Schedule 3.

34. There are at least two voice over Internet protocol (VoIP) providers in each 60-day residential exchange except for the Portage Des Sioux exchange where there are none.²⁹

35. Business and residential basic local prices have increased since the grant of competitive classification in the exchanges indicated in Attachment A.³⁰

36. Exhibits 9HC – 12HC show the specific line counts from 2004 and 2005 for business and residential services in each exchange for each CLEC and AT&T Missouri.³¹ Attachment A shows whether the change has been positive, negative, or remained constant with regard to the number of facilities-based and “other resale” CLECs in each exchange.

37. The total number of lines provided to customers by CLECs in the 30-day business exchanges has decreased from 171,063 in 2004 to 153,020 in 2005.³²

38. The total number of lines provided to customers by AT&T Missouri in the 30-day business exchanges has increased from 2004 to 2005.³³

39. The total number of lines provided to customers by CLECs in the 30-day residential exchanges has increased from 103,954 in 2004 to 132,583 in 2005.³⁴

²⁹ Unruh Rebuttal, Exhibit 5, Schedule 3.

³⁰ *Staff Report* (filed August 8, 2006), Appendices A-D.

³¹ The number of lines served is Highly Confidential information and is therefore not revealed in this Report and Order.

³² Exhibit 12HC.

³³ Exhibit 12HC.

³⁴ Exhibit 11HC.

40. The total number of lines provided to customers by AT&T Missouri in the 30-day residential exchanges has decreased from 2004 to 2005.³⁵

41. The total number of lines provided to customers by CLECs in the 60-day business exchanges has decreased from 3,626 in 2004 to 3,500 in 2005.³⁶

42. The total number of lines provided to customers by AT&T Missouri in the 60-day business exchanges has increased from 2004 to 2005.³⁷

43. The total number of lines provided to customers by CLECs in the 60-day residential exchanges has decreased from 19,212 in 2004 to 17,714 in 2005.³⁸

44. The total number of lines provided to customers by AT&T Missouri in the 30-day residential exchanges has decreased from 2004 to 2005.³⁹

45. The number of facilities-based carriers providing business service to at least one customer within each 30-day exchange has increased with the exception of six exchanges. In only one of those exchanges, Lake Ozark-Osage Beach, has the number of “other resale” carriers also decreased.⁴⁰

46. The Lake Ozark-Osage Beach exchange has at least two facilities-based and nine “other resale” providers.⁴¹

47. The number of facilities-based CLECs providing residential service within each 30-day residential exchange has either increased or stayed constant and the number

³⁵ Exhibit 11HC.

³⁶ Exhibit 10HC.

³⁷ Exhibit 10HC.

³⁸ Exhibit 9HC.

³⁹ Exhibit 9HC.

⁴⁰ Exhibit 12HC.

⁴¹ Exhibit 12HC.

of “other resale” CLECs has also increased, with the exception of the Pond and Valley Park exchanges.⁴²

48. In the Pond exchange, there is at least one facilities-based CLEC providing residential service and at least ten (a decrease of one) “other resale” CLECs.⁴³

49. In the Valley Park exchange, there is at least one facilities-based CLEC providing residential service and at least eleven (a decrease of one) “other resale” CLECs.⁴⁴

50. In the 30-day residential exchanges AT&T Missouri increased its lines in only two exchanges, Fredericktown and Bell City.⁴⁵

51. The Fredericktown exchange has at least one facilities-based carrier and ten “other resale” carriers providing residential service.⁴⁶

52. The Bell City exchange has at least one facilities-based carrier and five “other resale” carriers providing residential service.⁴⁷

53. In the 60-day business exchanges, CLECs lost lines and AT&T Missouri gained lines in only 11 out of 30 exchanges. Those exchanges are: Billings, Cedar Hill, Chaffee, Chillicothe, Desoto, Gray Summit, Hannibal, Hillsboro, Marionville, Moberly, and Richmond.⁴⁸

⁴² Exhibit 11HC.

⁴³ Exhibit 11HC.

⁴⁴ Exhibit 11HC.

⁴⁵ Exhibit 11HC.

⁴⁶ Exhibit 11HC.

⁴⁷ Exhibit 11HC.

⁴⁸ Exhibit 10HC.

54. In the 60-day business exchanges the total number of providers or the number of facilities-based providers increased in all but 12 of the 30 exchanges.⁴⁹

55. Of those twelve exchanges, AT&T Missouri gained lines in only five. Those exchanges are: Billings, Cedar Hill, Hannibal, Linn, and Marionville.⁵⁰

56. The Billings exchange has at least three “other resale” CLECs (a decrease of one facilities-based CLEC from 2004) providing service to at least one customer according to the 2005 annual report data.⁵¹ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁵²

57. AT&T Missouri has not raised its basic local business rates in the Billings exchange.⁵³

58. The Cedar Hill exchange has at least one facilities-based CLEC and six “other resale” CLECs providing service to at least one customer according to the 2005 annual report data.⁵⁴ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁵⁵

59. AT&T Missouri has raised its basic local business rates by \$1.00 in the Cedar Hill exchange.⁵⁶

⁴⁹ Exhibit 10HC.

⁵⁰ Exhibit 10HC.

⁵¹ Exhibit 10HC.

⁵² Unruh Rebuttal, Exhibit 5, Schedule 3.

⁵³ *Staff Report* (filed August 8, 2006).

⁵⁴ Exhibit 10HC.

⁵⁵ Unruh Rebuttal, Exhibit 5, Schedule 3.

⁵⁶ *Staff Report* (filed August 8, 2006).

60. The Hannibal exchange has at least one facilities-based CLEC and nine “other resale” CLECs (a decrease of two “other resale” CLECs from 2004) providing service to at least one customer according to the 2005 annual report data.⁵⁷ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁵⁸

61. AT&T Missouri has raised its basic local business rates by \$1.00 in the Hannibal exchange.⁵⁹

62. The Linn exchange has at least one facilities-based CLEC and three “other resale” CLECs (a decrease of one “other resale” CLEC from 2004) providing service to at least one customer according to the 2005 annual report data.⁶⁰ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁶¹

63. AT&T Missouri has not raised its basic local business rates in the Linn exchange.⁶²

64. The Marionville exchange has at least one facilities-based CLEC and five “other resale” CLECs (a decrease of one “other resale” CLEC from 2004) providing service to at least one customer according to the 2005 annual report data.⁶³ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁶⁴

⁵⁷ Exhibit 10HC.

⁵⁸ Unruh Rebuttal, Exhibit 5, Schedule 3.

⁵⁹ *Staff Report* (filed August 8, 2006).

⁶⁰ Exhibit 10HC.

⁶¹ Unruh Rebuttal, Exhibit 5, Schedule 3.

⁶² *Staff Report* (filed August 8, 2006).

⁶³ Exhibit 10HC.

⁶⁴ Unruh Rebuttal, Exhibit 5, Schedule 3.

65. AT&T Missouri has not raised its basic local business rates in the Marionville exchange.⁶⁵

66. In the 60-day residential exchanges as a whole, both the CLECs and AT&T Missouri lost lines.⁶⁶

67. In the 60-day residential exchanges, CLECs lost lines and AT&T Missouri gained lines in only nine out of 51 exchanges. Those exchanges are: Antonia, Cedar Hill, Desoto, Excelsior Springs, Festus-Crystal City, Greenwood, Hillsboro, Union and Ware.⁶⁷

68. In the 60-day residential exchanges the total number of providers or the number of facilities-based providers increased in all but 19 of the 51 exchanges.⁶⁸

69. Of those 19 exchanges, CLECs gained lines in one exchange, Lake Ozark-Osage Beach. AT&T Missouri gained lines in only six exchanges: Antonia, Excelsior Springs, Festus-Crystal City, Hillsboro, Union, and Ware. In the remaining 26 exchanges, both CLECs and AT&T Missouri lost lines.⁶⁹

70. The Antonia exchange has at least three “other resale” CLECs (a decrease of three “other resale” CLECs from 2004) providing service to at least one customer according to the 2005 annual report data.⁷⁰ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁷¹

⁶⁵ *Staff Report* (filed August 8, 2006).

⁶⁶ Exhibit 9HC.

⁶⁷ Exhibit 9HC.

⁶⁸ Exhibit 9HC.

⁶⁹ Exhibit 9HC.

⁷⁰ Exhibit 9HC.

⁷¹ Unruh Rebuttal, Exhibit 5, Schedule 3.

71. AT&T Missouri has not raised its basic local residential rates in the Antonia exchange.⁷²

72. The Excelsior Springs exchange has at least ten “other resale” CLECs (a decrease of one “other resale” CLEC from 2004) providing service to at least one customer according to the 2005 annual report data.⁷³ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁷⁴

73. AT&T Missouri has raised its basic local residential rates in the Excelsior Springs exchange.⁷⁵

74. The Festus-Crystal City exchange has at least nine “other resale” CLECs (a decrease of one “other resale” CLEC from 2004) providing service to at least one customer according to the 2005 annual report data.⁷⁶ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁷⁷

75. AT&T Missouri has raised its basic local residential rates in the Festus-Crystal City exchange.⁷⁸

76. The Hillsboro exchange has at least five “other resale” CLECs (a decrease of one “other resale” CLEC from 2004) providing service to at least one customer according

⁷² *Staff Report* (filed August 8, 2006).

⁷³ Exhibit 9HC.

⁷⁴ Unruh Rebuttal, Exhibit 5, Schedule 3.

⁷⁵ *Staff Report* (filed August 8, 2006).

⁷⁶ Exhibit 9HC.

⁷⁷ Unruh Rebuttal, Exhibit 5, Schedule 3.

⁷⁸ *Staff Report* (filed August 8, 2006).

to the 2005 annual report data.⁷⁹ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁸⁰

77. AT&T Missouri has not raised its basic local residential rates in the Hillsboro exchange.⁸¹

78. The Union exchange has at least ten “other resale” CLECs (a decrease of one “other resale” CLEC from 2004) providing service to at least one customer according to the 2005 annual report data.⁸² AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁸³

79. AT&T Missouri has raised its basic local residential rates in the Union exchange.⁸⁴

80. The Ware exchange has at least five “other resale” CLECs (a decrease of one “other resale” CLECs from 2004) providing service to at least one customer according to the 2005 annual report data.⁸⁵ AT&T Missouri data shows at least four CLECs, two wireless, and two VoIP providers in the exchange.⁸⁶

81. AT&T Missouri has not raised its basic local residential rates in the Ware exchange.⁸⁷

⁷⁹ Exhibit 9HC.

⁸⁰ Unruh Rebuttal, Exhibit 5, Schedule 3.

⁸¹ *Staff Report* (filed August 8, 2006).

⁸² Exhibit 9HC.

⁸³ Unruh Rebuttal, Exhibit 5, Schedule 3.

⁸⁴ *Staff Report* (filed August 8, 2006).

⁸⁵ Exhibit 9HC.

⁸⁶ Unruh Rebuttal, Exhibit 5, Schedule 3.

⁸⁷ *Staff Report* (filed August 8, 2006).

82. The number of competitors in the telecommunications market is expected to fluctuate over time.⁸⁸

83. The number of lines held by any given competitor is expected to fluctuate over time.⁸⁹

84. Revised Exhibit 14⁹⁰ shows the current (as of the date filed) vertical services rates; Exhibit 17, and the Supplement to Exhibit 17, show the non-basic services rate changes over time.

85. Southwestern Bell Telephone Company and AT&T Communications recently merged to become one company, Southwestern Bell Telephone Company, L.P., d/b/a AT&T Missouri.⁹¹

86. MCI, a competitor to AT&T Missouri, was acquired by Verizon, another competitor of AT&T Missouri.⁹²

87. In Case Nos. TO-2006-0093 and TO-2006-0102, AT&T Communications of the Southwest, Inc., and its affiliates were not part of the evidence of competition considered.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

⁸⁸ Transcript, p. 42.

⁸⁹ Transcript, p. 42.

⁹⁰ AT&T offered corrections to Exhibit 14, which were received without objection. On the third, fourth, and fifth lines of Staff's spreadsheet, under the dates 7/19/2004, 6/14/2004, and 5/21/2004, the rate for Speed Calling 8 was therefore revised by Staff to \$3.75.

⁹¹ Meisenheimer Direct, Exhibit 3, p. 10.

⁹² Meisenheimer Direct, p.10.

AT&T Missouri is an incumbent basic local telecommunications service provider under the jurisdiction of the Commission pursuant to Chapter 392, RSMo.

The Commission must periodically review the exchanges in which it grants competitive classification to determine if conditions as provided under the statute have changed. Subsection 392.245.5, RSMo, states in relevant part:

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 reimpose upon the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the provisions of subsections 4 and 11 of this section . . .⁹³

In Commission Case No. TO-2006-0093, the Commission granted AT&T Missouri competitive classification under the “30-day track” of Subsection 392.245.5, RSMo, for business services in 45 exchanges and for residential services in 26 exchanges. In Commission Case No. TO-2006-0102, the Commission granted AT&T Missouri competitive classification under the “60-day track” of Subsection 392.245.5, RSMo, for business services in 30 exchanges and for residential services in 51 exchanges.

The “30-day track” requires that the Commission designate the business and/or residential services in an exchange as competitive within 30-days of a request if the Commission finds that “two nonaffiliated entities in addition to the incumbent local

⁹³ Emphasis added.

exchange company are providing basic local telecommunications service to [business and/or] residential customers within the exchange.”⁹⁴ One wireless provider shall be counted,⁹⁵ as shall [a]ny entity providing local voice service in whole or in part over . . . facilities in which it or one of its affiliates have an ownership interest.”⁹⁶

The “60-day track” requires that the Commission designate the business and/or residential services in an exchange as competitive within 60 days of the request if the Commission finds the two entities providing the appropriate type of services to customers within the exchange, unless the Commission “finds that such competitive classification is contrary to the public interest.”⁹⁷ For the 60-day track, the competitor may be “using its own . . . facilities . . . or the . . . facilities of a third party, including those of the incumbent local exchange company as well as providers that rely on an unaffiliated third-party Internet service.”⁹⁸

In determining what is in, or contrary to, the public interest, the Commission must consider all relevant factors, just as it considers all relevant factors in setting rates.⁹⁹

Subsection 392.245.5(6) specifically authorizes price increases for competitive services. The statute states in relevant part:

If the services of an incumbent local exchange telecommunications company are classified as competitive under this subsection, the local exchange telecommunications company may thereafter adjust its

⁹⁴ 392.245.5.

⁹⁵ 392.245.5(1).

⁹⁶ 392.245.5(2).

⁹⁷ 392.245.5(6).

⁹⁸ 392.245.5(6).

⁹⁹ *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. Public Service Commission*, 535 S.W.2d 561 (Mo. App. 1976).

rates for such competitive services upward or downward as it determines appropriate in its competitive environment . . .

The party asserting the positive of a proposition has the burden of proving that proposition.¹⁰⁰ Subsection 392.245.5 directs the Commission to review the exchanges “to determine if the conditions of this subsection for competitive classification continue to exist in the exchange . . .” AT&T Missouri and Staff have asserted that those conditions do continue to exist. Thus, those parties bear the burden on that point. AT&T Missouri and Staff have met that burden.

Public Counsel asserts the proposition that continuing competitive classification is “contrary to the public interest” and thus, Public Counsel bears the burden of proving this assertion. Public Counsel has not met its burden.

Decision

The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. After applying the facts as it has found them to its conclusions of law, the Commission has reached the following decision.

The conditions of Subsection 392.245.5, RSMo, have not changed since the grant of competitive classification in each of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri’s exchanges in which competitive classification was previously granted in Commission Case Nos. TO-2006-0093 and TO-2006-0102. The Commission examined

¹⁰⁰ *Dycus v. Cross*, 869 S.W.2d 745, 749 (Mo. banc 1994).

the evidence presented by the parties and for convenience has set out portions of that evidence in chart format attached hereto as Attachment A. As that chart shows, before AT&T's evidence is considered, there are 26 exchanges which were designated as competitive under the 30-day track which now have multiple unaffiliated facilities-based providers providing business service to customers in those exchanges. There are also eight exchanges which were designated as competitive under the 30-day track which now have multiple unaffiliated facilities-based providers providing residential service to customers in those exchanges.

The chart also shows that of the 60-day track business exchanges, seven would currently meet the 30-day criteria in that there are multiple facilities-based providers providing business services to customers in the exchanges. The chart further shows that of the 60-day track business exchanges, three would currently meet the 30-day criteria in that there are multiple facilities-based providers providing residential services to customers in the exchanges.

In addition, AT&T Missouri presented evidence that at least one facilities-based carrier and at least one wireless carrier are still providing business and residential service in each of the 30-day exchanges as they were in the original cases which granted competitive classification. And, AT&T provided evidence that at least four CLECs and two wireless carriers are providing service in each of the 60-day exchanges. In addition, AT&T provided evidence of at least two VoIP providers in all but two 60-day exchanges (Portage Des Sioux and Montgomery City) and one VoIP provider in one of those exchanges (Montgomery City).

Considering AT&T Missouri's evidence of facilities-based CLECs in each exchange, a total of 27 of the 51 60-day residential exchanges meet the 30-day criteria, and a total of 27 of 30 60-day business exchanges meet the 30-day criteria.

It is clear from this evidence that in the exchanges where business and residential services would currently meet the 30-day criteria, the competitive classification should remain. Conditions which precipitated the grant of competitive classification have not changed. And even if such conditions had changed it cannot be in the public interest to place those exchanges back under price cap regulation, only to have AT&T Missouri again request competitive classification which the Commission would be required to grant under the 30-day track.

With regard to the remaining 30-day business exchanges, all but two, Marble Hill and Fulton, have a facilities-based carrier and multiple "other resale" carriers. Looking at the additional evidence presented by AT&T Missouri, it is clear that the Marble Hill and the Fulton exchanges still qualify under the 30-day criteria. AT&T Missouri gathered number porting information which showed that there was in fact a facilities-based provider serving business customers in that exchange. The same was true for the Washington and Farmington residential exchanges. Those exchanges were the only gaps in the evidence provided from the 2005 annual reports, and AT&T Missouri satisfactorily established that there was a facilities-based carrier present in those exchanges.

The only other exception was business services in the Clever exchange. In that exchange there did not appear to be multiple customers being served. However, there was sufficient evidence from the 2005 annual reports and AT&T Missouri to establish that

multiple customers were being served by multiple carriers which would meet the 60-day criteria.

In each of the 60-day exchanges that do not meet the 30-day criteria, there were no less than three, and as many as 16, CLECs meeting the definition of an entity providing local service under Subsection 392.245.5. Thus, the Commission can easily determine that strictly based on the numbers of carriers in existence, competitive conditions have not changed. The Commission must next evaluate the public interest in the 60-day exchanges.

Public Counsel argues that the rate increases for basic and non-basic services soon after competitive classification was granted are evidence that continuing competitive classification is “contrary to the public interest.” In addition, Public Counsel suggests that AT&T (then Southwestern Bell) misled the Commission by stating that no rate increases were planned at the time competitive status was granted. Public Counsel also argues that the acquisition of AT&T by Southwestern Bell and the acquisition of MCI by Verizon decreased competition.

Public Counsel believes that Staff’s investigation shows that there is little to no local facilities-based competition and the number of competitors has dwindled. In total, the number of lines served by CLECs has decreased. The number of lines served by CLECs, however, has increased in some exchanges, and in many exchanges, the number of lines held by AT&T has also decreased.

When examined on an exchange-by-exchange basis, the Commission finds that the competitive designation is not contrary to the public interest. It is true that the rise in AT&T Missouri’s basic local rates so soon on the heels of competitive status was disappointing. This fact alone, however, does not prove that a competitive classification

should not continue. Obviously, the legislature intended AT&T Missouri to be allowed to raise rates or it would not have authorized it in the statute.

The Commission has examined each exchange individually. Companies, however, do not do business exclusively in one exchange and, therefore, examination of the market as a whole is also relevant to determining if conditions in an exchange have changed or if the continuing designation is “contrary to the public interest.” The increase in rates and the loss in some exchanges of CLEC lines or a decrease in the number of CLECs are not so egregious that the Commission must find a continuing competitive designation is not in the public interest.

In each exchange, the make-up of carriers and the numbers of lines held is fluctuating. Not all of this fluctuation, however, is to the detriment of the CLECs. This fluctuation is also not unexpected when competition exists. In some areas, AT&T Missouri lost lines and the CLECs gained lines. In some exchanges, the number of resale providers dropped but the exchange gained facilities-based providers. There was evidence of wireless providers in all exchanges and at least two VoIP providers in all of the 60-day exchanges.¹⁰¹

This total market picture shows that there is some competition in the exchanges. The legislature has made it clear that competition is a desired outcome of deregulation. Therefore, it is not contrary to the public interest to allow the market to continue to evolve.

The Commission determines that all of the previous 30-day exchanges continue to have the requisite numbers of facilities-based, “other resale,” and wireless carriers to

¹⁰¹ The exceptions to the VoIP providers are the Portage Des Sioux exchange, which had none, and the Montgomery City exchange, which had only one.

meet the 30-day criteria. In addition, the Commission determines that 27¹⁰² of the 30 60-day business exchanges and 27¹⁰³ of the 51 60-day residential exchanges meet the 30-day requirements. Furthermore, the remaining three 60-day business and 24 60-day residential exchanges meet the 60-day criteria with regard to the requisite numbers of facilities-based and/or “other resale” providers. It is not contrary to the public interest to continue with the competitive designation in any of the exchanges. The previously designated exchanges of AT&T Missouri shall remain so designated.

IT IS ORDERED THAT:

1. Exhibits 9HC, 9NP, 10HC, 10NP, 11HC, 11NP, 12HC, and 12NP are admitted into evidence.
2. Revised Exhibit 14 is admitted into evidence and substituted for the original Exhibit 14.
3. Exhibit 17 as submitted by Staff is admitted into evidence.
4. The Supplement to Exhibit 17 filed by the Office of the Public Counsel is admitted into evidence.
5. The *Staff Report* filed in this case on August 8, 2006, is admitted into evidence.

¹⁰² Those exchanges are: Ash Grove, Billings, Boonville, Carthage, Cedar Hill, Chaffee, DeSoto, Dexter, Excelsior Springs, Farley, Gray Summit, Hannibal, Hillsboro, Kennett, Kirksville, Linn, Marionville, Marshall, Mexico, Moberly, Montgomery City, Neosho, Portage Des Sioux, Richmond, St. Clair, Union, and Ware.

¹⁰³ Those exchanges are: Antonia, Ash Grove, Billings, Bonne Terre, Boonville, Cape Girardeau, DeSoto, Dexter, Excelsior Springs, Festus-Crystal City, Flat River, Gray Summit, Hannibal, Herculaneum-Pevely, High Ridge, Hillsboro, Imperial, Jackson, Joplin, Kennett, Maxville, Poplar Bluff, Richmond, San Antonio, Sikeston, St. Clair, and Walnut Grove.

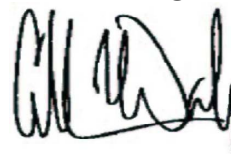
6. Each of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri's exchanges in which competitive classification was granted in Commission Case Nos. TO-2006-0093 and TO-2006-0102 shall continue to be designated as competitive.

7. The Staff of the Missouri Public Service Commission shall continue to review the competitive classification of each exchange as least as often as required by the statute and may do so on an annual basis.

8. Any objections not ruled upon are overruled and any motions not ruled upon are denied.

9. This Report and Order shall become effective on July 22, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling,
CC., concur;
Gaw and Clayton, CC., dissent;
and certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 12th day of July, 2007.