

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

In the Matter of Southwestern Bell Telephone,)	
L.P., d/b/a SBC Missouri's Request for)	Case No. TO-2006-0093
Competitive Classification Pursuant to Section)	Tariff File No. YI-2006-0144
392.245.6 RSMo (2005) - 30-Day Petition.)	

In the Matter of Southwestern Bell Telephone,)	
L.P., d/b/a SBC Missouri's Request for)	Case No. TO-2006-0102
Competitive Classification Pursuant to Section)	Tariff File No. YI-2006-0145
392.245.6 RSMo (2005) - 60-Day Petition.)	

**SBC MISSOURI'S COMMENTS
CONCERNING OPC REQUEST FOR PUBLIC HEARINGS
AND NOTICE OF FACILITIES**

SBC Missouri¹ respectfully suggests that it would be inappropriate for the Missouri Public Service Commission ("Commission") to grant the Office of the Public Counsel's ("OPC's") Request² to schedule public hearings in this proceeding.

SBC Missouri is filing this Response on an expedited basis³ pursuant to the Commission's Orders directing filing.⁴ SBC Missouri appreciates the opportunity being provided by the Commission to respond to OPC's Motion. SBC Missouri has not yet received a service copy of OPC's Motion and only learned of its filing through checking EFIS.

1. The 30-Day Proceeding. Section 392.245.5 RSMo (2005), under which SBC Missouri's Petition for Competitive Classification was filed, does not contemplate holding public hearings as part of the Commission's 30-day proceeding in which it is to make the required statutory determinations. Rather, the statute simply calls for the Commission to count the number of competitors providing service in an exchange:

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri" or "SBC."

² OPC filed identical Requests for Public Hearing in Case Nos. TO-2006-0093 (the 30-day proceeding) and TO-2006-0102 (the 60-day proceeding). SBC Missouri's Suggestions address the concerns raised in both of OPC's filings and are being filed in both cases.

³ Pursuant to Commission Rule 4 CSR 240-2.080(15), parties "shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission."

⁴ See, Order Shortening Time for Filing of Responses and Directing filing, issued September 8, 2005, in Case No. TO-2006-0093; and Order Shortening Time for Filing of Responses and Directing Filing, issued September 8, 2005, in Case No. TO-2006-0102.

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

In addition, it is clear from the limited period provided by the statute for the Commission to complete its review (30-days) that public hearings were not intended by the Legislature to be held.

2. The 60-Day Proceeding. Section 392.245.5 RSMo (2005), under which SBC Missouri's Petition for Competitive Classification was filed, also does not contemplate holding public hearings as part of the Commission's 60-day proceeding in which it is to make the required statutory determinations:

Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or the telecommunications facilities or other 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. The commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest.⁶

The only specific ground OPC articulates for holding public hearings is to solicit comments concerning SBC Missouri's quality of service:

. . . Public Counsel . . . asks the . . . PSC . . . to schedule one or more public hearings at locations within the SBC service area reasonably convenient for the public to attend to make comments on the request for competitive status, including but not limited to comments concerning SBC's service quality in these exchanges for which SBC seeks reclassification and any other matter that relevant to the Commission's

⁵ Section 392.245.5 RSMo (2005), (emphasis added).

⁶ Section 392.245.5(6) RSMo (2005).

inquiry to determine if the proposed competitive classification is contrary to the public interest.⁷

There is nothing in Section 392.345, however, that would even suggest that the quality of service being provided by an incumbent LEC is an appropriate area of inquiry in a proceeding conducted under the statute. In fact, the statute makes clear that quality of service standards are not to be relaxed as a result of a grant of competitive classification:

Nothing in this section shall be interpreted to alter the commission's jurisdiction over quality and conditions of service or to relieve telecommunications companies from the obligation to comply with commission rules relating to minimum basic local and interexchange telecommunications service.⁸

Thus, even if an incumbent LEC receives competitive classification for its services in an exchange, the incumbent would remain subject to the Commission's quality of service standard set out in 4 CSR 240-32.070 and the Commission's Rules establishing service objectives and surveillance levels set out at 4 CSR 240-32.080.

While SBC Missouri is not seeking to be relieved of any of these quality of service regulations, it submits that the availability of competitive alternatives in an exchange is an even greater incentive for an incumbent LEC to maintain service quality standards than Commission prescribed rules. End users are more likely to choose a competitive alternative if the incumbent's quality of service deteriorates.

3. The Commission Has Not Excluded the Public. SBC Missouri notes that the Commission's Orders establishing procedural schedules directed the Commission's Public Information Office to provide notice of SBC Missouri's application to the news media and did not exclude any member of the public from seeking to intervene in these cases. Rather, the

⁷ OPC's Request for Public Hearing, p. 1.

⁸ Section 392.245.6 RSMo (2005).

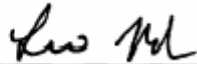
Commission's Orders stated that "any party" wishing to intervene must file an Application to Intervene by the intervention deadlines. Finally, SBC Missouri would also note that OPC is a party to this case and is actively participating. By statute, OPC is charged with representing and protecting the interest of the public in any proceeding before the Public Service Commission.⁹

4. Notice of Facilities. In its September 8, 2005 Order Shortening Time for Filing of Responses and Directing Filing, the Commission directed SBC Missouri to notify the Commission by 3:00 p.m. on September 9, 2005, whether it has any facilities suitable for video teleconferencing of local public hearings. SBC Missouri does not have any facilities that would be suitable for this purpose. The only video conferencing facilities SBC Missouri has are located at some of its central office or internal administrative buildings, none of which are open for access by the public. SBC Missouri has advised OPC that it does not have facilities suitable for video teleconferencing that can be made available for public hearings. But it is willing to work with OPC and Staff to help find suitable locations.

WHEREFORE, SBC Missouri respectfully requests the Commission to deny OPC's request for public hearings.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A SBC MISSOURI

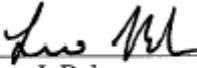
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⁹ Section 386.710(2) RSMo (2000).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on September 9, 2005.



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