

Exhibit No:
Issues: Policy
Witness: Craig A. Unruh
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone, L.P. d/b/a SBC
Missouri
Case No: TO-2005-0035
Date Prepared: January 21, 2005

SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC MISSOURI
CASE NO. TO-2005-0035

SURREBUTTAL TESTIMONY

OF

CRAIG A. UNRUH

St. Louis, Missouri
January 21, 2005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Second Investigation into the State of
Competition in the Exchanges of Southwestern Bell) Case No. TO-2005-0035
Telephone, L.P., d/b/a/ SBC Missouri.)

AFFIDAVIT OF CRAIG A. UNRUH

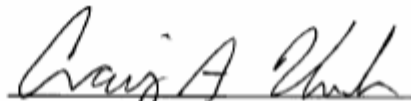
STATE OF MISSOURI

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CITY OF ST. LOUIS)

I, Craig A. Unruh, of lawful age, being duly sworn, depose and state:

1. My name is Craig A. Unruh. I am presently Executive Director – Regulatory for Southwestern Bell Telephone, L.P., d/b/a/ SBC Missouri.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


Craig A. Unruh

Subscribed and sworn to before this 21st day of January, 2005


Notary Public

My Commission Expires: 01/05/08

MARYANN PURCELL
Notary Public - Notary Seal
STATE OF MISSOURI
City of St. Louis
My Commission Expires: Jan. 5, 2008

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CASE NO. TO-2005-0035
SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A/ SBC MISSOURI
SURREBUTTAL TESTIMONY OF CRAIG A. UNRUH

INTRODUCTION

**Q. ARE YOU THE SAME CRAIG A. UNRUH THAT FILED DIRECT
TESTIMONY IN THIS CASE?**

A. Yes.

PURPOSE AND MAIN POINTS OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of my testimony is to respond to the rebuttal testimony of
Commission Staff (Staff) witnesses Bill Peters and Adam McKinnie; Office of
Public Counsel (OPC) witness Barbara A. Meisenheimer; Socket Telecom
witness R. Matthew Kohly; and NuVox witness Edward J. Cadieux.

**Q. WHAT ARE THE MAIN POINTS THE COMMISSION SHOULD
UNDERSTAND ABOUT YOUR TESTIMONY?**

A. The Commission should understand the following points about my surrebuttal
testimony:

- The FCC created the unbundled network element – platform (UNE-P) and the
Missouri Commission established the pricing for UNE-P which led to its wide-
spread use by CLECs. The Commission cannot now simply ignore UNE-P
competition, as Staff and others argue, based on the pure speculation that all the

- 1 UNE-P based competition will evaporate and the customers will return to SBC
2 Missouri.
- 3 • While the FCC may be eliminating the obligation to provide unbundled switching
4 under section 251 (c)(3) of the Federal Telecommunications Act of 1996, that
5 does not mean that CLECs will not be able to use SBC Missouri's switching
6 capacity.
 - 7 • The FCC has found that CLECs are not impaired without section 251-based
8 unbundled switching, which means they are capable of using their own, or other
9 providers' switching capacity.
 - 10 • The Commission should grant competitive classifications because consumers
11 benefit from a more fully competitive market and the Commission has the
12 "backstop" mechanism which minimizes any risk while the status quo is harmful
13 to consumers and there is no way to undo the harm in the future.
 - 14 • Consumers will benefit from the innovation, investment and competitive pricing
15 that results when regulatory restrictions no longer influence and distort the
16 market.
 - 17 • Out of all the CLECs, wireless carriers, cable companies and VoIP providers in
18 the marketplace, only two of these providers sponsored witnesses to oppose SBC
19 Missouri's request in this case.
 - 20 • The call for waiting to "see what happens" in the marketplace is unreasonable
21 because the communications marketplace is rapidly changing and there is not
22 likely to be a "stable" period for the foreseeable future.
- 23

1 **Q. AFTER REVIEWING THE REBUTTAL TESTIMONY, DO YOU HAVE**
2 **SOME GENERAL COMMENTS ABOUT THE PARTIES' POSITIONS?**

3 A. Perhaps I am reading into their testimony, but I would summarize the parties
4 positions as follows: the two CLECs say "no" because they want to maintain
5 their regulatorily-created pricing advantage; OPC says "no" because it mistakenly
6 believes all price increases must be avoided, even though such a position may in
7 fact be harmful to consumers and may reflect a bias toward worrying about the
8 few at the expense of the many; Staff says "no" because it wants the Commission
9 to continue to regulate prices (apparently thinking it can do better than the
10 market) and presents a series of "heads I win, tails you lose" arguments designed
11 to lead to a "no" answer rather than evaluating the issue in a manner consistent
12 with the legislature's direction.

13
14 **STAFF AND OTHER PARTIES IMPROPERLY IGNORE UNE-P BASED**
15 **COMPETITION**

16 **Q. STAFF AND THE CLEC WITNESSES ARGUE THAT UNE-P BASED**
17 **COMPETITION SHOULD BE IGNORED BECAUSE THE FCC HAS**
18 **ANNOUNCED THAT IT HAS REACHED THE DECISION THAT CLECS**
19 **ARE NOT IMPAIRED WITHOUT UNBUNDLED SWITCHING (SEE FOR**
20 **EXAMPLE, PETERS, PP. 13-15, KOHLY, PP. 8-11). DO YOU AGREE**
21 **WITH THIS ARGUMENT?**

22 A. Certainly not. While the text of the FCC's Order has not yet been released as of
23 the time this testimony is being prepared, the FCC has in a press release

1 announced its finding that CLECs are no longer impaired without access to
2 unbundled switching provided by companies like SBC Missouri. This means the
3 FCC has found that CLECs can effectively compete without unbundled pricing
4 obtained from the incumbent LEC at TELRIC based prices. The assertion that
5 competition will cease to exist is without merit and should be summarily
6 dismissed. The FCC has established a transition period under which UNE-P will
7 continue to be available to serve existing customers. In addition, both during the
8 transition and afterwards, CLECs can use their own switching, purchase
9 switching capacity from other providers, as well as continue to utilize SBC
10 Missouri's switching capacity. I would also add that, as Dr. Aron points out,
11 customers served via UNE-P have already established their willingness to
12 purchase their local service from an alternative provider so these customers are
13 well aware they have choices even if a particular customer's carrier decides to
14 leave the marketplace. I believe it is unfair to require SBC Missouri to provide
15 below-cost UNEs that the CLECs could provide themselves, but it is even more
16 unfair to hamper SBC Missouri's ability to compete under equal regulatory rules
17 on the basis that such competition should be ignored. This presents the worst of
18 all worlds. We are forced to provide UNEs at prices so low they incent carriers to
19 purchase UNEs rather than invest in their own networks in Missouri and then
20 SBC Missouri is prohibited from competing on equal terms based on the
21 argument that competitors are not using their own facilities. I would also note
22 that while Staff makes the unsupported claim that competition might cease
23 because TELRIC-based UNE-P is going away, it does not mention that the

1 Commission has a “backstop” mechanism to re-impose price caps in the event
2 that competition really did fail in an exchange. It is inconsistent with the statute
3 to argue that the Commission cannot grant a competitive classification today
4 because at some future time competition “might” fail.

5

6 **Q. WHAT TRANSITION PERIOD FOR UNE-P HAS THE FCC**
7 **ANNOUNCED?**

8 A. The FCC has announced a 12 month transition period in which time the CLECs
9 will be able to continue their use of UNE-P.

10

11 **Q. YOU MENTION THAT CLECS CAN USE THEIR OWN SWITCHING**
12 **CAPACITY. DID YOU PROVIDE EVIDENCE IN DIRECT TESTIMONY**
13 **SHOWING THAT CLECS HAVE THEIR OWN SWITCHES FOR**
14 **SERVING CUSTOMERS IN MISSOURI?**

15 A. Yes. I provided evidence indicating that there are 30 traditional switches and
16 another 38 alternative switches/switch-like equipment in Missouri. (See pp. 22-23
17 and Unruh - Schedule 5 of my Direct Testimony).

18

19 **Q. YOU ALSO MENTION THAT CLECS CAN USE SWITCHING**
20 **CAPACITY PROVIDED BY OTHER CARRIERS SUCH AS OTHER**
21 **CLECS. IS THERE EVIDENCE THAT THIS IS ALREADY OCCURRING**
22 **SINCE THE FCC HAS ANNOUNCED ITS NON-IMPAIRMENT**
23 **DECISION?**

1 A. Yes. There are at least two CLECs that are now actively offering their switching
2 and other facilities on a wholesale basis to other CLECs. And current UNE-P
3 arrangements that SBC Missouri has with various CLECs could migrate off of
4 SBC Missouri's network onto facilities of these or other wholesale switching
5 providers. For example, McLeod USA has announced agreements with AT&T
6 and MCI under which AT&T and MCI will move services from SBC Missouri's
7 UNE-P to a similar arrangement provided through McLeod's network. It appears
8 from press accounts that McLeod plans to purchase unbundled loops from the
9 incumbent, like SBC Missouri, and then provide switching functions for other
10 carriers like AT&T. Copies of press releases describing these migration plans are
11 attached as Unruh – Schedule 1. Likewise, XO Communications, which
12 purchased Allegiance Telecom, announced that it has launched a wholesale local
13 voice service as an alternative to LEC-provided UNE-P arrangements in 36
14 markets, including St. Louis. XO has agreements with at least nine other carriers
15 across the country in showing the viability of using XO's network. Copies of
16 press releases from XO Communications and material from its website describing
17 their offerings are attached as Unruh - Schedule 2. Covad Communications
18 Group, Inc. has launched a new telephone service that it says will allow its
19 partners – especially AT&T, MCI, EarthLink and America Online – to offer
20 telephone service over regular copper lines but with all the features of Internet
21 telephony technology (see Unruh – Schedule 3).

1 **Q. FINALLY, YOU MENTION THAT CLECS CAN STILL USE SBC**
2 **MISSOURI’S SWITCHING CAPACITY. PLEASE EXPLAIN.**

3 A. SBC Missouri has previously announced its willingness to provide switching
4 services to CLECs at a commercially reasonable price. Various SBC ILECs have
5 reached agreements with Sage to provide switching services along with UNEs.
6 UNE-P represents a bundle of facilities with government directed TELRIC prices.
7 The difference now will be that SBC Missouri is interested in selling network
8 capacity, including a bundle similar to UNE-P if the CLEC customer so chooses,
9 at a price that will be in competition with prices offered by XO Communications,
10 McLeod and likely others.

11
12 **Q. IF THE COMMISSION REFUSES TO CONSIDER COMPETITION**
13 **FROM CLECS USING SBC MISSOURI’S SWITCHING SERVICES,**
14 **WOULD THAT CREATE A DISINCENTIVE TO OFFER COMMERCIAL**
15 **AGREEMENTS FOR LOCAL SWITCHING?**

16 A. Yes. If the Commission were to refuse to consider competition from customers
17 using SBC Missouri’s switching service, it would create a disincentive to offering
18 commercial arrangements for switching. SBC Missouri would be better off to
19 decline these arrangements in order to increase its prospects of obtaining equal
20 regulatory treatment. Such an approach makes no sense. I believe this points to
21 the fallacy of Staff’s arguments. Their argument would imply that a Sears
22 Kenmore refrigerator does not compete against a Whirlpool refrigerator because
23 Whirlpool builds the Kenmore for Sears (i.e., Whirlpool provides a wholesale

1 service to Sears and then competes against the Kenmore in the retail
2 marketplace). This type of situation is common in other industries as well.

3

4 **Q. DO YOU BELIEVE THERE ARE OTHER REASONS WHY**
5 **COMPETITION WILL NOT “FAIL”?**

6 A. Yes. Not only will CLECs continue to compete, but wireless and VoIP providers
7 will do so as well. Furthermore, I believe we will see existing CLECs alter the
8 manner in which they provision service, in addition to the switching-based
9 alternatives described above. For example, Trinsic (formerly Z-Tel) has indicated
10 that it is moving its residential and business services to VoIP. A copy of Trinsic's
11 announcement is attached as Unruh – Schedule 4. I would anticipate similar
12 moves by other CLECs as well.

13

14 **Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT THE CLEC**
15 **PARTIES THAT CHOSE TO TESTIFY IN THIS CASE?**

16 A. Yes. I find it enlightening that, given the multitude of competitors that SBC
17 Missouri has identified, including traditional CLECs (over 65 actively ordering
18 services), wireless carriers (at least 9 providing service in SBC Missouri
19 territory), cable companies (e.g., Charter, Time Warner, Comcast, MediaCom)
20 and VoIP providers (e.g., AT&T, Vonage), only two CLECs have chosen to file
21 testimony in an attempt to argue that SBC Missouri does not face effective
22 competition.

23

1 While AT&T was a very vocal opponent in SBC Missouri's previous competitive
2 classification case (Case No. TO-2001-467), it has withdrawn from this
3 proceeding. Although MCI remains a party in this proceeding, it should be noted
4 that MCI is now generally advocating retail deregulation in similar proceedings
5 across the country.

6

7 **Q. PLEASE ELABORATE.**

8 A. Following the FCC's determination that VoIP offered by Vonage was an
9 interstate service not subject to the full scope of state regulation, MCI sent an
10 "open letter" to state commissions around the country calling for "real
11 deregulation." The letter explains that attempts to maintain traditional state
12 regulation on traditional providers like MCI and the ILECs, while other providers
13 are not similarly regulated, skew the marketplace. MCI urges states to reduce
14 regulation of retail telecommunications services and service providers. A copy of
15 MCI's letter is attached as Unruh – Schedule 5.

16

17 **Q. MR. MCKINNIE EXPRESSES CONFUSION OVER THE SERVICES FOR**
18 **WHICH SBC MISSOURI IS SEEKING A COMPETITIVE**
19 **CLASSIFICATION (MCKINNIE, PP. 3-5). WILL YOU PLEASE**
20 **CLARIFY WHAT SBC MISSOURI IS SEEKING?**

21 A. SBC Missouri is seeking a competitive classification for the services and groups
22 of services identified in my direct testimony in Unruh – Schedule 2. As Mr.
23 McKinnie notes, SBC Missouri offers literally thousands of services. To simplify

1 the process, however, we limited our request to the services or groups of services
2 identified in Unruh – Schedule 2.

3

4 **Q. MR. PETERS NOTES THAT RECOGNIZING EFFECTIVE**
5 **COMPETITION IS NOT A SIMPLE TASK THAT IS EASILY DEFINED**
6 **(PETERS, P. 5). DO YOU AGREE WITH THIS?**

7 A. The existing statutory definition of effective competition provides the framework.
8 In my view, the evidence SBC Missouri has provided is more than adequate. It's
9 not appropriate to ignore the competitive alternatives that exist and simply
10 attempt to find some reason to argue that the various alternatives are not
11 “effective.” SBC Missouri’s evidence demonstrates that there are a number of
12 alternatives in the marketplace providing functionally equivalent or substitutable
13 services to residential and business customers throughout SBC Missouri’s
14 exchanges.

15

16 **Q. MS. MEISENHEIMER CLAIMS THAT THE STATUTE ESTABLISHES A**
17 **“HIGH STANDARD” FOR THE EXISTENCE OF EFFECTIVE**
18 **COMPETITION (MEISENHEIMER, P. 13). DO YOU AGREE WITH**
19 **THIS?**

20 A. No. SBC Missouri has demonstrated that it meets the standards. The
21 Commission cannot add to the requirements by imposing additional hurdles not
22 provided for in the statute. The legislature wants a competitive marketplace and I
23 believe that legislators want the competitive marketplace to determine pricing

1 rather than a continuation of price cap regulation. That is why the statute contains
2 provisions for price cap regulated companies to have their services competitively
3 classified when the factors constituting effective competition have been shown.

4

5 **STAFF'S ANALYSIS IS FLAWED AND UNREASONABLE**

6 **Q. STAFF ESTABLISHES A SPECIFIC SET OF CRITERIA THAT MUST BE**
7 **MET BEFORE IT WILL SUPPORT A COMPETITIVE**
8 **CLASSIFICATION. USING THIS CRITERIA, STAFF RECOMMENDS**
9 **THAT NO RESIDENTIAL ACCESS LINE AND LINE-RELATED**
10 **SERVICES BE COMPETITIVELY CLASSIFIED AND RECOMMENDS**
11 **THAT ONLY A RELATIVELY SMALL NUMBER OF EXCHANGES BE**
12 **COMPETITIVELY CLASSIFIED FOR BUSINESS ACCESS LINE AND**
13 **LINE-RELATED SERVICES. DO YOU AGREE WITH STAFF'S**
14 **APPROACH?**

15 **A.** Certainly not. Dr. Aron explains why Staff's approach is unreasonable and leads
16 to the wrong conclusion. I will note that while Staff appears to consider evidence
17 of competition based on information concerning wireless, VoIP, UNE-P, etc., the
18 majority of their testimony makes clear that they essentially ignored all evidence
19 of competition except a determination of whether CLECs had obtained an
20 arbitrarily chosen market share in an exchange while using their own switch as
21 evidenced by the presence of 911 listings in the 911 database. This arbitrarily
22 selected criteria resulted in recommendations that 1) no competitive classification
23 be given for residential services in any exchanges even though SBC Missouri

1 presented significant evidence of competition for residential services, and 2) a
2 relatively small number of exchanges be given competitive classifications for
3 business services even though SBC Missouri, likewise, presented significant
4 evidence of competition for business services.

5

6 **Q. PLEASE PROVIDE SOME EXAMPLES OF HOW STAFF'S NARROW**
7 **SET OF SPECIFIC CRITERIA IGNORE REAL COMPETITION?**

8 A. Obviously, SBC Missouri believes it faces and has demonstrated effective
9 competition for residential and business services throughout its service territory in
10 Missouri. I believe we have provided sufficient evidence to demonstrate this
11 view and satisfy the statutory criteria for obtaining competitive classifications.
12 Staff's approach ignores substantial competition. For example, Big River is very
13 active throughout southeast Missouri and up into the St. Louis area. Press
14 accounts discuss how Big River obtained a "MetaSwitch" which provides a newer
15 form of switching technology and is sometimes referred to as a softswitch. While
16 they are not traditional circuit switches like SBC Missouri typically uses, these
17 switches provide the same "Class 5" functionality as traditional circuit switches.
18 These press reports indicate that Big River serves over 4000 lines and trunks with
19 its switch. A copy of some press accounts and a network diagram of Big River's
20 network, showing their facilities including the MetaSwitch are included in Unruh
21 – Schedule 6.

22

1 There are many CLECs operating in southeast Missouri in addition to Big River
2 and not surprisingly, there are a number of exchanges in southeast Missouri
3 where the CLECs serve a significant percentage of lines. My direct testimony
4 shows that CLECs have collocation arrangements and numbering resources, along
5 with evidence of several switches or switch-like equipment in southeast Missouri.
6 Moreover, CLECs are using EELs in southeast Missouri to extend their reach
7 from their collocation arrangements to other exchanges such as Bloomsdale,
8 Chaffee, Jackson, Portageville, Fenton, Festus and Farmington, Dexter, Poplar
9 Bluff, and Marston. With all this activity, though, Staff does not support a
10 competitive classification in any southeast Missouri exchange.

11
12 Second, Staff's recommendations would not even grant competitive
13 classifications in urban areas. For example, Staff's recommendations for business
14 services do not include several St. Louis MCA exchanges even though SBC
15 Missouri has demonstrated extensive competition in the St. Louis MCA. CLECs
16 have been quite successful at gaining residential customers in the optional MCA
17 areas, yet Staff ignores this fact because it speculates that UNE-P based
18 competition will cease to exist. For business services, Staff fails to recommend a
19 competitive classification for the Maxville exchange, for example, which is an
20 MCA 3 exchange in the St. Louis MCA while giving a positive recommendation
21 for the Imperial and Fenton exchanges which are adjacent to the Maxville
22 exchange. The competitive landscape in Maxville and Imperial show similar
23 characteristics. They both have a very large number of active CLECs providing

1 service, their estimated CLEC market share numbers (which are significant) are
2 similar, both central offices contain collocation, and CLECs have numbering
3 resources in both exchanges, yet Staff selects Imperial and not Maxville.
4

5 **Q. DO YOU HAVE ANY ADDITIONAL THOUGHTS ON WHY STAFF'S**
6 **ANALYSIS IS INNAPROPRIATE?**

7 A. Yes. It is interesting to note that under Staff's and the various parties' arguments
8 about not counting UNE-P based competition, it is conceivable that SBC Missouri
9 could not serve a single line in an exchange, however, SBC Missouri, according
10 to the other parties, would not face effective competition. It is also conceivable
11 that, with wireless service for example, SBC Missouri could have all the "lines,"
12 yet no one would ever use their landline phone. Customers could hold on to
13 stripped-down lines with no additional features. Under this scenario, SBC
14 Missouri would be relegated to serving only the unprofitable aspects of
15 customers' telecommunications needs, but yet, according to the other parties, not
16 face effective competition.
17

18 **CRITICISMS OF SBC MISSOURI'S APPROACH AND EVIDENCE ARE**
19 **UNFOUNDED**

20 **Q. PLEASE COMMENT ON STAFF'S OVERALL ANALYSIS OF SBC**
21 **MISSOURI'S EVIDENCE?**

22 A. As Dr. Aron points out, Staff seems to lose sight of the larger picture as it
23 attempts to poke holes in the evidence presented by SBC Missouri. Staff

1 supports competitive classifications for business services in only a relatively few
2 exchanges, but otherwise largely focuses its efforts on attempts to discredit SBC
3 Missouri's evidence. Staff attempted to discredit any information presented by
4 SBC Missouri that was not exchange specific even though this type of
5 information presented by SBC Missouri demonstrates the extent of competition
6 and shows that CLECs, for example, can and do compete throughout the state.
7 While criticizing information presented by SBC Missouri that was not exchange-
8 specific, Staff presented national statistics when it served Staff's purpose. Staff
9 also discounted evidence concerning placement of CLEC switches, CLEC
10 collocation, CLEC numbering resources, and wireless and VoIP competition on
11 the basis that it is "speculation" about the future. However, Staff was quick to
12 discount UNE-P based competition because Staff "speculates" that UNE-P based
13 customers would be expected to return to SBC Missouri. Staff also tries to
14 discredit other pieces of evidence such as state-wide CLEC line numbers and
15 state-wide numbers showing significant line loss for SBC Missouri even though
16 such information is helpful to show the overall state of competition in the
17 marketplace. While exchange-specific numbers may show variation in CLEC
18 market share, this is generally a function of where CLECs have focused their
19 efforts and does not indicate that CLECs are unable to serve in certain exchanges.
20 As Dr. Aron explains in more detail, market share estimates only speak to CLEC
21 "successes" and may not reflect the extent to which competition is effective.
22

1 **Q. MS. MEISENHEIMER ATTEMPTS TO SUGGEST THAT SBC**
2 **MISSOURI’S REQUEST FOR COMPETITIVE CLASSIFICATION FOR**
3 **RESIDENTIAL CUSTOMERS IS BASED ON EVIDENCE OF**
4 **COMPETITION FROM PREPAID SERVICE PROVIDERS**
5 **(MEISENHEIMER, PP. 16-17). DID SBC MISSOURI EXCLUDE**
6 **PREPAID SERVICE PROVIDERS FROM ITS INFORMATION**
7 **IDENTIFYING EXCHANGE SPECIFIC CLEC COMPETITION?**

8 **A.** Yes. As I indicated in my direct testimony, SBC Missouri excluded prepaid
9 service providers from the exchange-specific CLEC information. I also noted
10 that, contrary to Ms. Meisenheimer’s claim, prepaid service providers represent a
11 very small percentage of the residential lines served by CLECs.

12
13 **Q. MR. PETERS CLAIMS THAT SBC MISSOURI USED “GENERIC DATA”**
14 **AND TOOK A “GLOBAL APPROACH” TO PRESENTING EVIDENCE**
15 **AND DID NOT PROVIDE A “LOCAL ANALYSIS OF COMPETITION”**
16 **OR THE “GRANULAR ANALYSIS CONTEMPLATED BY THE**
17 **MISSOURI STATUTES” (PETERS, P. 7). MS. MEISENHEIMER**
18 **LIKEWISE SUGGESTS THAT SBC MISSOURI PRESENTED**
19 **“GENERALIZED” INFORMATION AND “NOT SPECIFIC EXCHANGE-**
20 **BASED” DATA (MEISENHEIMER, P. 16) DO YOU AGREE WITH**
21 **THESE CHARACTERIZATIONS?**

22 **A.** No. SBC Missouri presented information which demonstrates the high level of
23 competitive activity throughout the state as well as a significant amount of

1 granular, local and specific evidence at the exchange level. In fact, I believe the
2 data SBC Missouri presented goes well beyond what is required in the statute.
3 My direct testimony contains a number of exhibits that provide exchange-specific
4 information identifying all kinds of information on competition SBC Missouri
5 faces in each exchange including things like the number of CLECs actively
6 competing in the exchange, the number of wireless providers in the exchange, an
7 estimate of the number of lines that CLECs serve in the exchange broken down
8 between service provisioning methodologies, an estimate of landline market share
9 that CLECs serve in the exchange, whether or not broadband is available in the
10 exchange, whether or not cable modem service is available in the exchange,
11 whether or not competitors have numbering resources in the exchange, whether or
12 not competitors have collocation in the exchange, among other information. I fail
13 to see how this cannot be considered granular, local or specific.

14
15 **Q. DID YOU NONETHELESS PROVIDE SOME MORE GENERAL**
16 **INFORMATION IN ADDITION TO THE EXCHANGE-SPECIFIC**
17 **EVIDENCE OUTLINED ABOVE?**

18 A. Yes, SBC Missouri also provided evidence of the level of competition generally
19 throughout the state. In some cases, we presented some state-wide numbers, for
20 example, to provide a frame of reference. While these types of numbers may not
21 be exchange specific, they do provide relevant information about the marketplace
22 and demonstrate that there is effective competition on a broad-scale. For
23 example, statewide numbers showing CLEC lines help demonstrate a lack of

1 barriers to entry. The fact that a large number of CLECs have a large number of
2 lines throughout the state speaks to their capacity to enter and successfully
3 compete in the market. In other cases, the forms of competition we now face in
4 the marketplace can be more difficult, if not virtually impossible, to precisely
5 quantify. For example, there is no effective way of determining on an exchange
6 basis how many customers are using Vonage service. However, we did identify
7 where broadband service is available (which, as Ms. Stoia presented in direct
8 testimony covers about 87% of the households in SBC Missouri's service
9 territory) which indicates that VoIP services are available to customers in those
10 exchanges. The fact that VoIP service is available in broad areas throughout the
11 state is important information that demonstrates effective competition, even if it
12 cannot be used to meet Staff's arbitrarily selected market share criterion.

13
14 **Q. MR. PETERS DESCRIBES A PRICE INCREASE FOR LATE PAYMENT**
15 **CHARGES AS AN "UNFORTUNATE" PRICE CHANGE (PETERS, P. 16).**
16 **WHAT ARE YOUR THOUGHTS ON THIS?**

17 A. I find his use of the term "unfortunate" to be informative. Using such language
18 leads me to believe that Mr. Peters is opposed to any form of price increase and
19 he appears to be using this example as an attempt to convince the Commissioners
20 that they should not grant any competitive classifications for residential services
21 for fear that their "could be" some "unfortunate" price increases.

1 **Q. WHY DID SBC MISSOURI INCREASE THE LATE PAYMENT CHARGE**
2 **IN HARVESTER AND ST. CHARLES?**

3 A. Each month, a very significant percentage of SBC Missouri's customers do not
4 pay their telephone bills on time. Obviously, the previous late payment charge
5 did not sufficiently incent these customers to pay their bills on time. This
6 imposes a cost on SBC Missouri and that cost is being borne by all customers.
7 Raising the late payment charge should provide more of an incentive for people to
8 pay their bills on time and it better aligns the cost of dealing with late payers¹
9 with the cost causers.

10
11 **Q. MR. PETERS QUOTES LANGUAGE FROM A PREVIOUS**
12 **COMMISSION ORDER SUGGESTING THAT THE COMMISSION**
13 **MUST DECIDE WHETHER THERE IS EFFECTIVE COMPETITION**
14 **TODAY AND NOT WHETHER THERE WILL BE EFFECTIVE**
15 **COMPETITION SOMEDAY. HE THEN INDICATES THAT STAFF**
16 **WANTS TO IGNORE SPECULATION WHEN MAKING**
17 **RECOMMENDATIONS TO THE COMMISSION (PETERS, P. 18-19). IS**
18 **THIS CONCEPT CONSISTENT WITH STAFF'S ARGUMENT THAT**
19 **THE COMMISSION SHOULD IGNORE UNE-P BASED COMPETITION?**

20 A. No, Staff's argument is inconsistent. Staff wants to discount wireless and VoIP
21 competition as "speculative," however, Staff is more than content to "speculate"

¹ I note that we routinely work with individuals who are legitimately having trouble paying their telephone bill to set them up on payment plans.

1 that UNE-P based competition is “likely doomed to extinction” so therefore all
2 the competition from UNE-P based competitors should now be ignored. As I
3 described above, CLECs will continue to compete and customers will continue to
4 explore alternative providers. These customers have already demonstrated their
5 willingness to use alternative providers so even if a particular customer’s CLEC
6 chose to exit the market, the customer would recognize it has other competitive
7 choices. Customers will continue to have many choices in the marketplace and
8 competitors will continue to offer services to customers through various means,
9 including using their own circuit switches, using newer technology switches,
10 providing VoIP-based services, using other providers’ switches, using SBC
11 Missouri’s switches, or combinations of these options.

12
13 **STAFF IMPROPERLY IGNORED CLEC FACILITIES AND OTHER**
14 **EVIDENCE DEMONSTRATING ABILITY TO SERVE**

15 **Q. MR. PETERS DISCOUNTS SBC MISSOURI’S EVIDENCE SHOWING**
16 **CLEC SWITCHES AND CLEC COLLOCATION ARRANGEMENTS**
17 **(PETERS, P. 20). DO YOU AGREE WITH MR. PETERS THAT THIS**
18 **INFORMATION SHOULD BE ESSENTIALLY IGNORED?**

19 **A.** No. I believe the Commission should consider this information in its
20 deliberations because it shows that CLECs have invested in their own facilities to
21 serve Missouri customers. The information shows that CLECs have invested in
22 both urban markets and rural markets. The existence of CLEC switches and
23 collocation speaks to capacity and ability to serve and demonstrates that CLECs

1 can serve customers when and where they want to, even in rural markets. And it
2 shows that CLECs can easily expand their operations through use of these
3 facilities.

4
5
6 **Q. IN A RELATED ARGUMENT, MR. PETERS ALSO ATTEMPTS TO**
7 **DISCREDIT SBC MISSOURI'S EVIDENCE DEMONSTRATING THAT**
8 **CLECS HAVE NUMBERING RESOURCES IN BOTH URBAN AND**
9 **RURAL MARKETS (PETERS, P. 21). DO YOU BELIEVE THIS TYPE OF**
10 **INFORMATION IS RELEVANT?**

11 A. Yes, I do. Again, it demonstrates that CLECs have the capability of serving
12 customers. Having numbering resources is an element of providing services to
13 end user customers using your own switch. Pursuant to numbering guidelines,
14 carriers are only to obtain and keep numbering resources when they plan to serve
15 customers. In other words, they cannot simply obtain numbering resources and
16 then not use them. This represents another example of Staff losing sight of the
17 big picture. This type of evidence, along with other evidence Staff criticizes like
18 CLEC switches, collocation, VoIP, wireless, etc. are piece-parts of the puzzle that
19 add up to show the picture of competition.

20
21 **Q. MS. MEISENHEIMER TRIES TO DISCREDIT INFORMATION FROM**
22 **YOUR DIRECT TESTIMONY IN EXHIBIT UNRUH – SCHEDULE 5**
23 **WHICH SHOWS CLEC SWITCH LOCATIONS AND NUMBERING**

1 **RESOURCES (MEISENHEIMER, PP. 22-23). PLEASE ADDRESS HER**
2 **CLAIMS.**

3 A. First, Ms. Meisenheimer implies that because she found some carriers with
4 numbering resources in exchanges that are not included in the list of exchanges
5 where they serve according to the CLEC's own tariff, then this is a reason not to
6 believe the information presented in Unruh - Schedule 5. The data in Unruh –
7 Schedule 5 was extracted from the LERG which is an industry database that,
8 among other things, is used by the industry to route calls throughout the country.
9 It is in a carrier's best interest to ensure that accurate information is contained in
10 the LERG so calls get correctly routed to its customers. I will also point out that
11 if there are discrepancies, it certainly could be the case that the particular CLEC
12 in question may have errors in its tariff.

13
14 Next, Ms. Meisenheimer suggests that the Commission should ignore the
15 information in Unruh – Schedule 5 because she believes the map shows
16 numbering resources for wireless carriers. As an example, she states that the only
17 non-SBC code she found for Vienna was for Verizon Wireless. Her example is
18 irrelevant because the map in Unruh – Schedule 5 does not show any numbering
19 resources for Vienna. She is also incorrect with respect to her broader claim that
20 wireless codes are included in Unruh – Schedule 5. The wireless NXX codes
21 were screened out of the LERG information so Unruh – Schedule 5 does not
22 depict wireless NXXs.

23

1 **Q. MS. MEISENHEIMER ARGUES THAT CERTAIN CLECS IDENTIFIED**
2 **IN UNRUH – SCHEDULE 8, WHICH PROVIDES THE DIRECTORY**
3 **LISTINGS FOR CLECS IN SBC MISSOURI’S EXCHANGES, MAY NOT**
4 **OFFER SERVICE IN CERTAIN EXCHANGES FOR VARIOUS**
5 **REASONS (E.G., DECERTIFICATION, NOT SERVING THE**
6 **PARTICULAR EXCHANGE) (MEISENHEIMER, PP. 23-24). PLEASE**
7 **COMMENT.**

8 A. Ms. Meisenheimer largely ignores the extensive, exchange-specific information
9 presented in my direct testimony showing the number of active CLECs by
10 exchange, the number of residential and business lines served by CLECs in each
11 exchange, the provisioning type of each CLEC line in each exchange, etc. and,
12 instead, focuses on the directory listings. Since the directories are static
13 documents only produced once per year, it is possible that changes can occur
14 during the year in terms of which CLECs might be serving in which exchanges.
15 While I admit it is possible that certain CLECs listed in a particular directory may
16 not be serving customers in the particular exchange, it is also possible that CLECs
17 who are not listed in the directory are providing service in that particular
18 exchange. The directory listings are what they are – listings initiated by the
19 CLECs themselves that provide names and telephone numbers for customers to
20 contact them and they represent another informative piece of the puzzle .

21

STAFF AND OTHER PARTIES IMPROPERLY IGNORE VOIP AS AN

ALTERNATIVE

Q. MR. MCKINNIE ARGUES THAT SBC MISSOURI DID NOT PROVIDE INFORMATION ON THE METHODOLOGY USED TO DEVELOP THE MAPS THAT APPEAR IN YOUR DIRECT TESTIMONY IN UNRUH – SCHEDULE 16 AND UNRUH – SCHEDULE 17 (MCKINNIE, PP. 14-15). IS THIS CORRECT?

A. No. SBC Missouri did provide information prior to the time Staff's testimony was filed. It appears, however, that Staff did not review the information until after it had filed its rebuttal testimony.

Q. PLEASE ELABORATE ON HOW THE MAPS IN UNRUH – SCHEDULE 16 AND UNRUH – SCHEDULE 17 WERE DEVELOPED.

A. Unruh - Schedule 16 presents a map demonstrating some selected information on VoIP providers. It does not attempt to identify all VoIP providers. The map in Unruh – Schedule 16 specifically identifies the service areas of Vonage, AT&T, Time Warner, Charter and Comcast. Unruh – Schedule 17 presents a map identifying where cable modem service is available in SBC Missouri's exchanges. The information depicted in both of these maps has been obtained from a variety of sources including both public information and information purchased from third parties.

1 **Q. MR. MCKINNIE ARGUES THAT THE “SOURCE” DATA IS NOT**
2 **VERIFIABLE BECAUSE HE IS UNABLE TO “READ” IT (MCKINNIE,**
3 **PP. 14-15). PLEASE ELABORATE ON HOW THESE MAPS ARE**
4 **PRODUCED.**

5 A. The information is contained in a graphical format that is readable by a specific
6 software graphics package. It is essentially the same concept as the “source” data
7 for a Microsoft Excel spreadsheet. If one does not have Excel, or a similar
8 spreadsheet software package, then the source data will be “unreadable”. This
9 does not make the information any less credible than the type of information
10 presented in a spreadsheet.

11

12 **Q. BESIDES GENERALLY DISMISSING VOIP AS A COMPETITIVE**
13 **ALTERNATIVE, MR. MCKINNIE CLAIMS THAT THE COMMISSION**
14 **SHOULD SPECIFICALLY DISCOUNT THE IMPACT OF VOIP IN**
15 **AREAS WHERE CABLE BROADBAND SERVICE IS NOT AVAILABLE**
16 **BECAUSE HE BELIEVES THAT THE CUSTOMER WOULD HAVE TO**
17 **PURCHASE DSL FROM AN SBC AFFILIATE (MCKINNIE, P. 16). IS**
18 **THIS ACCURATE?**

19 A. No, it is not. As an aside, I would note that cable modem service is available to a
20 significant percentage of Missouri households (see Ms. Stoia’s direct testimony).
21 With respect to Mr. McKinnie’s point, he is incorrect to assume that the customer
22 would have to purchase “DSL” from an SBC affiliate before using a VoIP
23 service. Even in those situations where DSL is available and cable modem

1 service is not, the customer would not be required to purchase DSL service from
2 an SBC affiliate before using VoIP. When people use the term DSL service, they
3 generally mean “high-speed Internet access” using, in part, a technology called
4 DSL. An SBC Missouri affiliate called SBC Internet Services provides high-
5 speed Internet service, but so do other Internet Service Providers (ISPs) like AOL
6 and Earthlink. So, a customer could purchase AOL broadband service and use a
7 VoIP service without purchasing high-speed Internet service from SBC Internet
8 Services. While Mr. Kohly chooses his words more carefully, his testimony
9 could imply this same incorrect assumption.²

10

11 **Q. MR. MCKINNIE GOES ON TO ARGUE THAT SINCE SBC DOES NOT**
12 **OFFER A “NAKED” DSL LINE, VOIP SHOULD NOT BE CONSIDERED**
13 **A COMPETITIVE ALTERNATIVE (MCKINNIE, P. 19). DO YOU**
14 **AGREE WITH THIS ASSERTION?**

15 A. No, I do not. The fact that SBC does not at this time sell “naked” DSL has no
16 bearing on whether or not a customer can select a VoIP service. Mr. McKinnie
17 argues that because the customer must purchase SBC Missouri telephone service
18 in order to then get a VoIP service, it does not reflect “competition” since SBC
19 Missouri still maintains an access line in this scenario. This is an improper way
20 to look at competition. This is the same false argument that parties present to
21 refute competition from wireless services.

22

² While Mr. Kohly’s rebuttal testimony contains no page numbers, I believe this argument is on page 22.

1 **Q. WHAT IS WRONG WITH THIS ARGUMENT?**

2 A. It is typically argued in terms of “primary” lines and “additional” lines and the
3 argument suggests that it is not competition if SBC Missouri either loses or does
4 not gain the “additional” line because it retains the “primary” line. First,
5 consumers may not really think of these lines as “primary” and “additional”.
6 They may simply consider their various services as a way to meet a variety of
7 needs. However, the main point is that the customer wants to purchase an
8 “additional” service and makes a choice among several competing services (e.g.,
9 SBC Missouri, cable, CLECs, VoIP, wireless). The customer would view this as
10 a “choice” in the marketplace and SBC Missouri clearly experiences a
11 competitive loss if the customer does not choose a SBC product. An example of
12 this in another context may be helpful. Assume I have two Ford vehicles in my
13 garage (one of which is the family or “primary” vehicle and the other is the car I
14 drive to work or “additional” vehicle) and then I choose to replace the car I drive
15 to work with a GM vehicle. Ford and GM competed for the sale of the
16 replacement vehicle, with GM winning this particular competition.

17
18 Another fallacy about this argument relates to the revenue streams associated with
19 maintaining a “primary” line with SBC Missouri. It is quite possible that a
20 customer could decide to maintain a basic, stripped down line with SBC Missouri,
21 while primarily, if not entirely, using some other service (e.g., a wireless service).
22 In this scenario, SBC Missouri could be left with a service that does not generate

1 enough revenue to recover its cost because the customer opts not to subscribe to
2 any additional features associated with the service.

3

4 **Q. IS THERE AN ADDITIONAL REASON WHY MR. PETERS IS**
5 **INCORRECT IN ASSUMING THAT VOIP WOULD NOT BE**
6 **AVAILABLE WITHOUT AN SBC MISSOURI ACCESS LINE?**

7 A. Yes. He also makes the incorrect assumption that the customer would have to
8 purchase SBC Missouri telephone service in the first place. CLECs are free to
9 provision their own DSL service, whether utilizing their own facilities or by
10 obtaining network elements from SBC Missouri. In this scenario, the end user
11 customer would not purchase any services from SBC Missouri and would be free
12 to select a VoIP service in competition with SBC Missouri.

13

14 **Q. MR. MCKINNIE IMPLIES THAT VOIP SHOULD NOT BE**
15 **CONSIDERED A COMPETITIVE ALTERNATIVE WHERE VONAGE**
16 **DOES NOT HAVE LOCAL TELEPHONE NUMBERS (MCKINNIE, PP.**
17 **16-17). PLEASE COMMENT.**

18 A. Mr. McKinnie notes that Vonage has local telephone numbers in the St. Louis and
19 Kansas City areas so that covers a number of SBC Missouri exchanges with a
20 substantial number of SBC Missouri's customers. With respect to other
21 exchanges, Vonage's lack of local telephone numbers does not imply that other
22 providers do not have local telephone numbers. There are a large number of VoIP
23 providers in the market. In fact, according to the website VOIPaction.com, there

1 are over 400 service providers offering VoIP services in North America.

2 Moreover, the VoIP market is very dynamic with new announcements, including
3 new areas with local numbers, occurring frequently.

4

5 **Q. MR. MCKINNIE ARGUES THAT THE COMMISSION SHOULD NOT**
6 **CONSIDER VOIP BECAUSE THERE IS REGULATORY UNCERTAINTY**
7 **ASSOCIATED WITH IT (MCKINNIE, P. 18). DO YOU AGREE THAT**
8 **REGULATORY UNCERTAINTY SHOULD PREVENT THE**
9 **COMMISSION FROM CONSIDERING VOIP AS A COMPETITIVE**
10 **ALTERNATIVE?**

11 A. No. Regulatory uncertainty seems to be one of the more “certain” things in the
12 telecommunications marketplace these days. As I mentioned above, this is a
13 dynamic marketplace with technological innovation and I believe the marketplace
14 will be characterized by “uncertainty” for the foreseeable future. This does not
15 mean that the Commission should ignore something because it does not exist in a
16 certain world. Again, Staff wants to “speculate” that UNE-P competition is going
17 away and therefore the Commission should not count the extensive amount of
18 competition that exists, while at the same time throwing out evidence of wireless
19 and VoIP competition as “speculative”. While I agree that there is regulatory
20 uncertainty associated with VoIP, just like with other communications services,
21 regulatory uncertainty will not prevent the continued provision of VoIP services.
22 It will also not insulate incumbent LECs, like SBC Missouri, from losing
23 customers to VoIP providers.

1

2 **Q. MS. MEISENHEIMER CLAIMS THAT VOIP SUFFERS FROM POOR**
3 **SIGNAL QUALITY SO IT CANNOT BE CONSIDERED AS AN**
4 **ALTERNATIVE (MEISENHEIMER, P. 18). DO YOU AGREE WITH**
5 **THIS ASSERTION?**

6 A. No. Dr. Aron and Ms. Stoia provide additional information discounting this
7 argument and I will note a few issues as well. While I do not profess to be a
8 technical expert on VoIP, I do not believe the host of major companies (e.g.,
9 AT&T, MCI, Sprint, Verizon, BellSouth, SBC, Time Warner, Charter, Cox,
10 Comcast, etc.) would be investing in and deploying VoIP services if they did not
11 believe the voice quality was sufficient to provide good service to consumers.
12 SBC alone is investing approximately \$4B over the next two years to build out
13 additional fiber and deploy IP-based services including IP-based voice services. I
14 will also point out that there have been some major contracts announced where
15 large companies are purchasing VoIP services. Ford, for example, announced
16 that it is moving 50,000 employees at 110 company locations to VoIP.³ Allstate
17 selected MCI to handle its telephone service and it is wiring all new offices with
18 “web” phones and plans to eliminate all its old analog phones by 2007.⁴
19 Moreover, companies currently providing VoIP services such as Big River and
20 Charter advertise that their VoIP services are as good as or better in call quality

³ See <http://informationweek.com/story/showArticle.jhtml?articleID=47900959>

⁴ See http://www.businessweek.com/magazine/content/05_05/b3918120_mz063.htm

1 than traditional telephone service.⁵ Lastly, even if it were true that call quality of
2 VoIP service was “inferior,” it is important to recognize that call quality is but
3 one feature that consumers consider when purchasing a service.

4

5 **Q. ARE THERE VARIOUS TYPES OF VOIP SERVICES?**

6 A. Yes. Some people tend to think of VoIP as “one” thing when in reality there are
7 different types of services, technologies, and deployment strategies for IP-enabled
8 voice. While there are many differences in VoIP services, I want to point out a
9 few distinctions between the type of service provided by companies like Vonage
10 and the type of service offered by Charter in St. Louis and Time Warner in
11 Kansas City. Charter and Time Warner route VoIP calls to the customer’s home
12 through their own private network. Vonage routes VoIP calls to the customer’s
13 home over another provider’s network (e.g., over Charter’s network in St. Louis).
14 VoIP service from Vonage requires the customer to have a high-speed Internet
15 service (e.g., Time Warner’s high-speed Internet service). However, customers
16 can use VoIP service from Charter and Time Warner without having high-speed
17 Internet service.

18

19 **CLEC WITNESSES LARGELY RAISE IRRELEVANT ISSUES**

20 **Q. THE TWO CLEC WITNESSES RAISE SEVERAL ISSUES TO TRY TO**
21 **CONVINCE THE COMMISSION THAT IT SHOULD NOT GRANT SBC**

⁵ Charter’s website says, “... the call will be just as crystal clear as with traditional telephone service.” Big River’s website says, “[o]f course the quality of the VoIP network is better than the traditional telephone

1 **MISSOURI THE COMPETITIVE CLASSIFICATIONS THAT IT SEEKS.**
2 **DO YOU HAVE ANY GENERAL COMMENTS ABOUT THEIR**
3 **ARGUMENTS?**

4 A. Yes. First off, as I noted above, out of the more than 65 CLECs actively
5 competing against SBC Missouri, only two CLEC witnesses have filed testimony.
6 I believe most of their testimony is either irrelevant to this case or trots out
7 arguments that the Commission has correctly ignored in the past.

8
9 **Q. GENERALLY, WHAT ARE SOME OF THE ARGUMENTS MADE BY**
10 **THE CLECS THAT ARE IRRELEVANT IN THIS CASE?**

11 A. Mr. Kohly and Mr. Cadieux both try to make major issues out of the UNE
12 impairment proceeding before the FCC. As I have explained, UNEs are only to
13 be available if CLECs are impaired without them. When the FCC finds non-
14 impairment, it means the CLECs have other alternatives available to them. Mr.
15 Cadieux' testimony in particular argues at length about impairment issues. Mr.
16 Cadieux has the wrong case. This case is about regulation of SBC Missouri's
17 retail services in the competitive marketplace. Impairment issues are being
18 addressed by the FCC and have nothing to do with this case which is dealing with
19 retail competition.

20

network. All of the signal is digital which allows for the removal of noise and static."

1 **Q. YOU ALSO INDICATED THE CLEC WITNESSES RAISE ARGUMENTS**
2 **THAT THE COMMISSION HAS PREVIOUSLY IGNORED. PLEASE**
3 **PROVIDE SOME EXAMPLES.**

4 A. Mr. Kohly suggests that SBC Missouri is inappropriately using data in this case.
5 For example, Mr. Kohly alleges that the retail marketing witnesses in this case
6 have access to wholesale information. As each retail witness makes clear in their
7 surrebuttal testimony, they have not seen any of the highly confidential wholesale
8 data in this case. Mr. Kohly also alleges that SBC Missouri is somehow misusing
9 911 data. Mr. Kohly, when he worked for AT&T, raised this same argument in
10 SBC Missouri's previous competitive classification case (Case No. TO-2001-467)
11 and the Commission did not act on his allegations. Additionally, Mr. Kohly
12 alleges that SBC Missouri is misusing data when SBC Missouri presents evidence
13 showing CLEC lines in our exchanges. This is another "recycled" argument by
14 Mr. Kohly that lacks merit and one that has not been accepted by the
15 Commission. SBC Missouri uses aggregate data to show CLEC lines and it does
16 not show CLEC specific information. Moreover, I would point out that the
17 Commission Staff has not complained about the use of this data and, in fact, has
18 used the data as evidence for its own testimony. I also note that this Commission
19 and the FCC has reviewed this type of data to examine competition.

20
21 **Q. ARE THERE ANY OTHER SPECIFIC ISSUES RAISED BY THE CLECS**
22 **THAT YOU WANT TO ADDRESS?**

1 A. While much of their testimony deals with issues that the Commission should
2 ignore, I will address a few specific issues to clarify the record. Mr. Kohly raises
3 a particular operational issue dealing with Socket's efforts to interconnect with
4 SBC Missouri in Springfield. As happens with most operational issues, the
5 matter has been resolved. I will note, however, that Mr. Kohly is incorrect in
6 alleging that it is more difficult to use EELs to serve rural Missouri because
7 Socket must establish a point of interconnection (POI) in every local calling
8 scope. Pursuant to the M2A Interconnection Agreement between Socket and
9 SBC Missouri, Socket only has to establish one POI in the LATA in which Socket
10 wants to exchange traffic. EELs are used by CLECs to reach customers served
11 out of SBC Missouri's central offices where the CLEC may not have established
12 collocation facilities. EELs permit CLECs to avoid the expense of creating
13 additional collocation sites. In fact, many CLECs are using EELs to expand their
14 service presence including into rural markets. Earlier in my testimony, I
15 identified several areas in southeast Missouri where EELs are being used.
16 Additionally, EELs are being used to reach other rural exchanges such as Adrian,
17 Louisiana, Monett, Osage Beach and Ste. Genevieve . Mr. Kohly also raises
18 another "recycled" argument that SBC Missouri will "lock up" all the customers
19 with term agreements. The legislature has already determined that term
20 agreements should be equally available to all competitors, recognizing that term
21 discount offers are a staple in many competitive markets.

1 **Q. MR. CADIUEX ARGUES THAT THE COMMISSION SHOULD EITHER**
2 **DISMISS SBC MISSOURI’S REQUEST OR DELAY REACHING ANY**
3 **CONCLUSIONS IN THIS CASE OVER UNCERTAINTY IN THE**
4 **MARKETPLACE (CADIEUX, P. 23). DO YOU AGREE WITH THIS**
5 **ARGUMENT?**

6 A. Of course not. While the other parties generally want the Commission to find that
7 effective competition does not exist, Mr. Cadieux takes a different approach for
8 attempting to get to the same end point. Mr. Cadieux hopes for delay so the status
9 quo regulatory-imposed advantage NuVox has in the marketplace stays in place
10 for that much longer. Many of the points that Dr. Aron and I make in our
11 respective testimonies speak to why this approach would be unreasonable and bad
12 public policy. I will briefly reiterate some of them here. Technology is rapidly
13 evolving. The marketplace is dynamic. There is no foreseeable “stable” period
14 where the world will stand still and let us completely understand what is going on
15 in the competitive marketplace. The loss of UNE-P at TELRIC-based pricing
16 does not mean the end of competition. Speculation to that effect must be ignored.
17 And even if it somehow did result in that, the Commission can implement its
18 backstop mechanism and re-impose price caps. The Commission cannot delay
19 out of “fear” that something bad “could possibly” happen sometime in the future.
20 Delay only serves to deny the benefits to consumers that a more fully competitive
21 marketplace will bring. The Commission cannot undo that harm if it delays. Mr.
22 Cadieux would apparently prefer that the Commission pick winners and losers in
23 the marketplace by continuing to impose limitations on SBC Missouri. This is

1 bad for consumers and bad public policy. The market should be allowed to
2 function so customers can receive the full benefits of competition.

3

4 **OPC MISLEADS ON PRICING ISSUES**

5 **Q. MS. MEISENHEIMER SUGGESTS THAT PRICES FOR BASIC LOCAL**
6 **SERVICE ARE HIGHER UNDER PRICE CAPS THAN THEY WERE**
7 **PRIOR TO PRICE CAPS (MEISENHEIMER, P. 18). ARE SBC**
8 **MISSOURI'S PRICES FOR BASIC LOCAL SERVICE HIGHER THAN**
9 **THEY WERE BEFORE PRICE CAP REGULATION?**

10 A. No. In fact, because of the price cap formulas, prices for SBC Missouri's basic
11 local services are now lower than they were prior to price cap regulation and, in
12 fact, prices are lower than they were in 1984, over 20 years ago. For example, in
13 its most recent annual filing reflecting the change in CPI-TS which establishes the
14 maximum allowable prices for basic local services, SBC Missouri was required to
15 lower its prices for basic local services (and switched access) by almost 3%.
16 While some might attempt to argue that price reductions in this case are good for
17 consumers, the reality is that this price cap directed mechanism resulted in the
18 loss of millions of dollars of revenue for SBC Missouri which impacts other
19 issues like investment and jobs, and puts pricing pressures on other services. This
20 pricing change was not in response to competitive market pressures or customers'
21 unwillingness to pay the previous prices, but was required by government
22 mandate and was driven by declining prices in the long distance and wireless
23 market. Residential customers receive a bargain for basic local service,

1 particularly those in rural markets, where SBC Missouri's price is now as low as
2 \$7.29, which is far below the cost SBC Missouri incurs to provide the service.

3

4 **Q. MS. MEISENHEIMER GOES ON TO SUGGEST THAT PRICING IN**
5 **GENERAL IS HIGHER UNDER PRICE CAP REGULATION**
6 **(MEISENHEIMER, P. 18). DO YOU AGREE WITH THIS?**

7 A. No. While prices for some optional services have increased, the market has also
8 witnessed substantial price reductions for consumers. There are packages of
9 services available today that offer significantly reduced prices that did not exist a
10 few years ago. Moreover, SBC Missouri continues to offer a significant number
11 of promotions which give lower prices to consumers. For example, SBC
12 Missouri now offers MCA service to residential customers for as little as \$4.00
13 regardless of the MCA tier in which the customer lives. Contrast this with the
14 standard price for MCA service which varies between \$12.35 and \$32.50
15 depending on the MCA tier in which the customer lives. SBC Missouri also has
16 promotions in the marketplace that offer a \$10 monthly credit for six months on
17 additional lines and two months of basic telephone service and a feature package
18 for free. The communications marketplace is very dynamic and there is a wide
19 array of services and packages available to consumers. It is misleading to isolate
20 a few price increases and use that to claim that the overall pricing for
21 communications services is increasing and that competition is insufficient.
22 Moreover, even if prices were generally increasing, one cannot make the leap that
23 competition is therefore inadequate. As the Commission has correctly noted in

1 Sprint Missouri's competitive classification case (IO-2003-0281), rising prices do
2 not mean there is a lack of competition. The Commission noted in its Order that
3 "there is no economic, or logical reason why prices must always fall in a
4 competitive market. Sometime prices do rise in markets that are clearly
5 competitive." Most markets in the United States are considered competitive, but
6 prices have tended to rise over time as demonstrated by criteria like CPI which
7 has shown an increase of almost 90% since 1984, meaning prices on average
8 have almost doubled since then, while prices for SBC Missouri's basic local
9 service have declined since 1984. Despite price increases, we, as a society, do not
10 feel compelled to regulate pricing in those markets. Our economy is based on the
11 premise that competitive markets best determine pricing levels so we generally
12 tend to let competitive markets work.

13
14 **Q. MS. MEISENHEIMER SUGGESTS THAT LONG DISTANCE PRICES**
15 **MAY RISE BECAUSE AN INCUMBENT WITH A COMPETITIVE**
16 **CLASSIFICATION COULD INCREASE PRICES FOR SWITCHED**
17 **ACCESS SERVICE (MEISENHEIMER, P. 10). IS SBC MISSOURI**
18 **SEEKING A COMPETITIVE CLASSIFICATION FOR SWITCHED**
19 **ACCESS?**

20 **A.** No. SBC Missouri is not seeking a competitive classification for switched access
21 and without a competitive classification, switched access prices are constrained
22 by the CPI-TS price cap formula.

1 **Q. MS. MEISENHEIMER STATES THAT THERE IS A LINK BETWEEN AN**
2 **INCUMBENT’S RETAIL PRICES AND CLEC WHOLESALE RATES, SO**
3 **THE COMMISSION MUST ENSURE PROTECTION OF CONSUMERS**
4 **(MEISENHEIMER, P. 10). IS HER STATEMENT MISLEADING?**

5 **A.** I believe it can be. First, Ms. Meisenheimer explains that an ILEC’s resale prices
6 are tied to the ILEC’s retail prices. While that is correct, it is far from the whole
7 story as SBC Missouri wholesale rates for UNEs are not tied to its retail rates in
8 any way. SBC Missouri offers hundreds of UNEs and the prices for these UNEs
9 are established by the Commission (if not agreed to by the parties) at TELRIC-
10 based prices. UNE prices are simply not tied to SBC Missouri’s retail prices. I
11 would also note that, while resale prices are tied to retail prices, resale represents
12 a very small percentage of the CLEC lines in SBC Missouri’s exchanges.

13
14 **CONSUMERS ULTIMATELY BENEFIT FROM COMPETITIVE**
15 **CLASSIFICATIONS**

16 **Q. HOW WILL CONSUMERS BENEFIT FROM COMPETITIVE**
17 **CLASSIFICATIONS?**

18 **A.** Consumers win when all providers are free to compete in the marketplace and
19 unnecessary regulation that skews and interferes with competition is removed.
20 The dynamics of the competitive marketplace will lead to more competitive
21 pricing and market-driven levels of investment, innovation and jobs.

1 **Q. SOME WITNESSES HAVE EXPRESSED A CONCERN ABOUT HIGHER**
2 **PRICES FOR BASIC LOCAL SERVICE (PETERS, P. 10,**
3 **MEISENHEIMER, P. 10) DOES SBC MISSOURI HAVE PLANS TO**
4 **INCREASE THE PRICE OF BASIC LOCAL SERVICE FOR**
5 **RESIDENTIAL CUSTOMERS?**

6 A. No. Given the dynamic marketplace that exists for telecommunications, I do not
7 think anyone can accurately predict what might occur in the future. However, I
8 do not anticipate any significant price increases for residential basic local service
9 because I do not believe the competitive marketplace will permit that to happen.
10 SBC Missouri's pricing is constrained in all of its exchanges because CLECs and
11 other providers would be encouraged to market more heavily in any exchange
12 where SBC Missouri attempts to increase its prices above a competitive level. The
13 availability of wireless services, VoIP services, CLEC services, and the extensive
14 array of inexpensively priced packages, ensure that the market simply will not
15 allow any near term significant price increases for residential basic local service.
16 I believe the unsubstantiated claims by the parties are solely meant to instill
17 "fear" and should be disregarded.

18

19 **Q. ARE THERE SOME THINGS SBC MISSOURI MIGHT INVESTIGATE**
20 **DOING IF GRANTED ADDITIONAL PRICING FLEXIBILITY?**

21 A. While I am not certain what may happen in the future because of the dynamics of
22 this marketplace, I believe there are some things that SBC Missouri might be
23 interested in exploring once we have sufficient pricing flexibility to implement

1 within the confines of the competitive marketplace. Some of SBC Missouri's
2 over-arching goals include efforts to simplify our business and to drive costs out
3 of the business so we are better positioned to compete in the marketplace. Having
4 multiple prices for residential basic local service, as we do today, complicates our
5 business and I believe we might consider trying to equalize our residential basic
6 local prices over time consistent with customers' willingness to pay in the
7 competitive marketplace. Another example of something that complicates our
8 business and creates a source of aggravation for our customers is a charge called
9 the "outside the base rate area" (OBRA) charge that applies to certain customers
10 residing outside a defined area in some of our exchanges. The charge is an
11 additive to their basic local service and customers do not understand why they are
12 being assessed the charge. If SBC Missouri had greater pricing flexibility to
13 recover the OBRA revenue from other services, it might consider eliminating the
14 charge. While I do not know the exact dollars, it likely would take only a very
15 small increase in basic local prices, perhaps implemented in conjunction with
16 trying to move to a single price, to offset the revenue loss from eliminating the
17 OBRA charge. Again, while there are no plans to make these changes, these are
18 examples of the kinds of things that SBC Missouri might consider if we had the
19 pricing flexibility to accomplish the task within the confines of the competitive
20 marketplace. The sometimes spoken and often unspoken concern that SBC
21 Missouri would immediately and dramatically raise residential basic local service
22 prices, or perhaps only rural residential prices, to unreasonably high levels absent

1 price cap restraints is unfounded. If we tried to sustain unreasonably high pricing,
2 our competitors would be more than happy to take over those customers.

3

4 **Q. IN YOUR OPENING POINTS, YOU MADE THE COMMENT THAT IT IS**
5 **PREFERABLE FOR THE COMMISSION TO GRANT SBC MISSOURI**
6 **ITS REQUEST RATHER THAN MAINTAIN THE STATUS QUO.**
7 **PLEASE ELABORATE.**

8 A. The Commission can accomplish greater good with less risk by granting SBC
9 Missouri's request. As Dr. Aron explains, consumers benefit from competitive
10 markets where all providers are free to compete. If the worst case scenario plays
11 out and there turns out not to be effective competition over time, the Commission
12 can implement the "backstop" mechanism contemplated by the statute by re-
13 instating price cap regulation and rolling-back prices to what they would have
14 been, or could have been, under price caps. The alternative course of action,
15 which is to remain status quo, however, is and will be harmful to the competitive
16 market because, as Dr. Aron explains, unnecessary regulatory-imposed pricing
17 constraints influences and distorts the market. And the Commission has no way
18 of undoing the harm caused by this course of action. SBC Missouri maintains a
19 large network throughout the state that SBC Missouri and other carriers rely on to
20 serve customers. It is critical that SBC Missouri be given the full opportunity to
21 compete.

22

1 **Q. MS. MEISENHEIMER SUGGESTS THAT THE COMMISSION RE-**
2 **EXAMINE THE STATUS OF COMPETITION IN THE EXCHANGES**
3 **WHERE COMPETITIVE CLASSIFICATIONS WERE GRANTED IN SBC**
4 **MISSOURI’S PREVIOUS CASE (CASE NO. TO-2001-467)**
5 **(MEISENHEIMER, PP. 6-7). DO YOU AGREE THIS IS AN**
6 **APPROPRIATE ISSUE IN THIS CASE?**

7 A. No, I do not. This would be inconsistent with the statute which contemplates that
8 a proceeding would be established for that particular purpose. This proceeding
9 was established based on SBC Missouri’s request for additional competitive
10 classifications and not for the purpose of re-examining competitive classifications
11 in existing exchanges.

12

13 **SUMMARY**

14 **Q. PLEASE SUMMARIZE YOUR SURREBUTTAL TESTIMONY.**

15 A. My testimony explains why UNE-P based competition cannot be ignored. I point
16 out that Staff, rather than conducting the analysis contemplated by the statute,
17 adopts an arbitrary market share test that finds no support in the statute. As Dr.
18 Aron points out, Staff loses sight of the big picture by ignoring the preponderance
19 of the evidence demonstrating competition. SBC Missouri has produced a
20 significant amount of evidence demonstrating effective competition throughout
21 SBC Missouri’s exchanges. The Commission should grant SBC Missouri’s
22 request to have its services competitively classified so consumers can more fully
23 benefit from the competitive marketplace and the innovation, investment, and

1 competitive pricing that will result when providers compete in a market no longer
2 influenced or distorted by regulatory restrictions.

3

4 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

5 A. Yes, it does.