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 Telephone, L.P., d/b/a SBC Missouri.

Case No. TO-2005-0035

SBC MISSOURI'S POSITION REGARDING BURDEN OF PROOF

SBC Missouri¹ pursuant to the Missouri Public Service Commission's ("Commission's")

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March 16, 2005 <u>Order Directing Filing</u>, respectfully submits this pleading outlining its position on the burden of proof in this case.

1. Section 392.245.5 RSMo (2000), which governs the proceedings in this case,

places no burden or requirement on any particular party. Rather, the statute structures the

process as a neutral investigation by the Commission into the state of competition in an

exchange:

... The commission shall, from time-to-time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange telecommunications company has been certified to provide local exchange telecommunications service and shall determine ... whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.

2. If, based on its investigation, the Commission determines that effective

competition exists in an exchange, the Commission is bound to grant competitive classification to the requesting LEC in that exchange. But if the Commission determines that effective competition does not exist in the exchange, competitive classification is not to be awarded and the provisions of the price cap statute continue to apply.²

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

² Section 392.245.5 RSMo (2000).

3. In SBC Missouri's prior competitive classification case, the Commission stated that it could only make such an affirmative finding of effective competition based on competent and substantial evidence,³ and that "regardless of which party bear the burden of proof, absent competent and substantial evidence of effective competition the Commission cannot find that it exists."⁴

4. While it does not have the burden of proof under the statute, SBC Missouri acknowledges that from a practical perspective it has the greatest incentive to provide the Commission with evidence upon which it can make a finding of competitive classification in SBC Missouri's exchanges. Consistent with the identification of issues jointly filed by the parties in this case,⁵ SBC Missouri presented substantial and competent evidence sufficient for the Commission to make a finding of competitive classification in SBC Missouri's exchanges for the services at issues in this proceeding.

Respectfully submitted,

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

BY

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³ In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467, Report and Order, issued December 27, 2001, p. 8, <u>("SBC Missouri First Competitive Classification Order,"</u>) (citing State, ex rel. Rice v. PSC, 220 S.W.2d 61, 64 (Mo. 1949).

⁴ <u>SBC Missouri First Competitive Classification Order</u>, pp. 8-9.

⁵ <u>See</u>, List of Issues, filed by Staff of the Missouri Public Service Commission on behalf of itself and the other parties to the case on January 7, 2005.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on March 17, 2005.

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