

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Second Investigation)
Into the State of Competition in the) TO-2005-0035
Exchanges of Southwestern Bell Telephone,)
L.P., d/b/a SBC Missouri.)

CHALLENGES TO CONFIDENTIAL NATURE OF SBC'S PREFILED DIRECT TESTIMONY

COME NOW MCImetro Access Transmission Services, LLC, Intermedia Communications, Inc., MCI WorldCom Communications, Inc., NuVox Communications of Missouri, Inc., XO Missouri, Inc., Big River Telephone Company, LLC, Socket Telecom, LLC, and Allegiance Telecom, for their Challenges to Confidential Nature of SBC's Prefiled Direct Testimony, pursuant to the Protective Order issued in this case, and state to the Commission:

1. SBC untimely filed its Grounds for Classifying Testimony on November 16, 2004. CLECs timely file their challenges as required by the Protective Order (section N). CLECs file early as their challenges would not have been due until November 29, 2004.

2. SBC has classified Schedule 6 to the prefiled direct testimony of witness Unruh as HC under the Protective Order. CLECs challenge that designation. As Mr. Unruh states in his unclassified testimony, Schedule 6 "is a map identifying the minimum number of CLECs (within a range) actively serving customers in each of SBC Missouri's exchanges." (Unruh Direct, p. 24). It is implicit in his testimony that specific CLECs are not even identified. He also says the information comes from SBC's wholesale operations and the 911 database. (Unruh Direct, p. 24). SBC falsely asserts that this is "specific market share information". It is no such thing. SBC

asserts that this is "marketing analysis and market specific information relating to telephone services SBC Missouri offers in competition with others." However, SBC does not assert that the information belongs to it or how it is actually confidential. The information in fact concerns CLEC operations, not SBC. If SBC was restricted from disclosing the information by its wholesale agreements or its 911 duties, it would not have been able to use the information in testimony in the first place. But SBC does not even assert such a restriction in its Statement of Grounds. It is apparent from the face of the document that it does not contain confidential information.

3. SBC has classified Schedule 9 to the prefiled direct testimony of witness Unruh as HC under the Protective Order. CLECs challenge that designation. As Mr. Unruh states in his unclassified testimony, Schedule 9 "is a map identifying the exchanges in which CLECs have established collocation." (Unruh Direct, p. 27). It is implicit in his testimony that specific CLECs are not even identified. SBC asserts that this is "market specific information relating to competitive services." However, SBC does not assert that the information belongs to it or describe how it was obtained or how it is actually confidential. The information in fact concerns CLEC operations, not SBC. SBC expressly excluded information about its own affiliate. (Unruh Direct, p. 27). It would seem most likely that SBC acquired the information through its wholesale operations. If SBC was restricted from disclosing the information by its wholesale agreements, it would not have been able to use the information in testimony in the first place. But SBC does not even assert such a restriction in its Statement of Grounds. It is apparent from the face of the document that it does not contain confidential information.

4. SBC has classified Schedules 10-13 to the prefiled direct testimony of witness Unruh as HC under the Protective Order. CLECs challenge that designation. As Mr. Unruh

states in his unclassified testimony, these schedules provide information regarding CLEC lines. (Unruh Direct, p. 28). It is implicit in his testimony that specific CLECs are not even identified. SBC asserts that this is specific market share information, but the testimony reveals that it is not because various items are expressly excluded. (Unruh Direct, p. 28-29). SBC asserts that this is "marketing analysis and market specific information relating to telephone services SBC Missouri offers in competition with others." However, SBC does not assert that the information belongs to it or how it is actually confidential. The information in fact concerns CLEC operations, not SBC. The testimony discloses that SBC acquired the information through its wholesale operations and the 911 database. (Unruh Direct p. 29-30). If SBC was restricted from disclosing the information by its wholesale agreements or its 911 duties, it would not have been able to use the information in testimony in the first place. But SBC does not even assert such a restriction in its Statement of Grounds. It is apparent from the face of the document that CLEC line counts are not confidential information.

5. SBC has classified portions of Mr. Unruh's testimony on pages 30-34 of his prefiled direct regarding Schedules 10-13 as HC under the Protective Order. CLECs challenge that designation. In addition to the arguments developed in the preceding paragraph of this pleading, CLECs would also point out that this information merely summarizes the schedules and is even more removed from anything that could legitimately be classified as confidential.

6. SBC has classified Schedule 4 to the prefiled direct testimony of witness Stoia as P under the Protective Order. CLECs challenge that designation. As SBC states in its classification pleading, this schedule provides information regarding household access to cable modem service and DSL service. SBC already publicly discloses the total figure of 87% and the subcategories of modem (65%) and DSL (71%). (Stoia Direct p. 8 and Schedule 4NP), SBC

just refuses to disclose specific numbers. SBC asserts that this is confidential and private business information that it was obtained from internal sources and external copyrighted material that it purchased. However, SBC does not assert how it is actually confidential. The information in fact concerns the industry as a whole, not SBC. SBC admits it is copyrighted information available for purchase, so it cannot be considered confidential under the Protective Order. It is apparent from the face of the document that the information is not confidential.

7. SBC has classified Schedule 10 to the prefiled direct testimony of witness Stoia as HC under the Protective Order. CLECs challenge that designation. As Ms. Stoia states in her unclassified testimony, this schedule provides information regarding lines lost to competitors - meaning information about competitors rather than SBC. (Stoia Direct, p. 21). It is implicit in her testimony that specific competitors are not even identified. SBC asserts that this is "marketing analysis and market specific information relating to telephone services SBC Missouri offers in competition with others." However, SBC does not assert that the information belongs to it or how it is actually confidential. The information in fact concerns the operations of competitors, not SBC. If SBC was restricted from disclosing the information by its wholesale agreements or its 911 duties, it would not have been able to use the information in testimony in the first place. But SBC does not even assert such a restriction in its Statement of Grounds. It is apparent from the face of the document that the schedule is not confidential information.

8. SBC has delayed the process of resolving the proper classification of its testimony by not filing its grounds on time. Counsel for CLECs had to bring this omission to SBC's attention. SBC then declined to voluntarily resolve these issues, but took four days to do so. CLECs ask the Commission to shorten SBC's response time to November 30, 2004.

WHEREFORE, CLECs request the Commission to shorten SBC's response time and promptly declassify the portions of SBC's prefiled testimony as discussed herein.

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

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Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 24th day of November, 2004, either by e-mail or by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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