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November 9, 2001

Mr. Dale Hardy Roberts  
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P. O. Box 360  
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**FILED<sup>3</sup>**  
NOV 09 2001

Missouri Public  
Service Commission

**Re: Case No. TO-2001-467**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Initial Brief of the Office of the Public Counsel** and the original and 8 copies of **Office of the Public Counsel's Proposed Findings of Fact and Conclusions of Law**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to parties of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

Michael F. Dandino  
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

**FILED<sup>3</sup>**  
NOV 09 2001

Missouri Public  
Service Commission

In the Matter of the Investigation of the )  
State of Competition in the Exchanges of )  
Southwestern Bell Telephone Company )

Case No. TO-2001-467

**INITIAL BRIEF OF  
THE OFFICE OF THE PUBLIC COUNSEL**

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

In the Matter of the Investigation of the        )  
State of Competition in the Exchanges of        )                    Case No. TO-2001-467  
Southwestern Bell Telephone Company        )

**INITIAL BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL**

**I.     OVERVIEW**

The Office of the Public Counsel respectfully suggests to the Missouri Public Service Commission that Southwestern Bell Telephone Company has not adduced competent and substantial evidence to support a determination that each of the Southwestern Bell Telephone Company's telecommunications services tariffed, offered, and provided in each of Southwestern Bell's local exchanges have effective competition so that those services can be reclassified as competitive services pursuant to Section 392.245.5, RSMo. 2000.

SWBT places undue reliance on the PSC's April, 2001 finding in TO-99-227 that the local market is open to competition and that SWBT complied with the Section 271 competitive checklist. That reliance is misplaced. That finding and recommendation only recognized that after five years under the Federal Telecommunications Act of 1996, SWBT has finally met the elementary requirements of the Act to provide nondiscriminatory and meaningful access to its network so that CLECs can have an opportunity to compete. It is unreasonable to believe that less than six months after that PSC recommendation (and before a final FCC determination is made) "effective competition" exists for all SWBT services in all SWBT exchanges.

As Public Counsel discussed in the opening statement, a count of the number of competitors certified and tariffed in SWBT territory does not prove effective competition. The numbers do not always tell the truth and certainly the number of CLECs and IXCs certified or

tariffed in Missouri do not tell the whole story of local competition in Missouri. Public Counsel's expert witness Barbara Meisenheimer looked behind the numbers and investigated the status of competition. In contrast to SWBT's broad generalities on competing technologies and repeated recitation of the number of IXCs and CLECs certified and tariffed, her analysis used multiple sources of data, including the most recent information on access line by provider, CLEC tariffs, CLEC annual reports, and central office code assignments. (Tr. 619-620). She provided a detailed examination of who is providing telecommunications services and to what consumers, and how active and viable are these competitors based on annual reports. (Tr. 619; Ex. 19, p. 16-22; Sch. BAM 6; Sch BAM 8HC). She also conducted a statistical analysis of the market share on an exchange by exchange basis using the HHI factor, a well-recognized tool for measuring market share. (Ex. 19, p. 16-19 and Schedules BAM 2HC and 3HC and 4HC). Ms. Meisenheimer concluded that the local loop remained a "bottleneck" facility with a high degree of concentrated control by SWBT and was not subject to effective competition. (Ex. 19, p. 19-20). No other witness presented such an in-depth or documented analysis of the local exchange market. While existing market share alone is not the only criteria to gauge the degree of effective competition, it is one of the most significant factors and should be given substantial weight. (Ex. 19, p. 12; Tr. 618-619)

The key to effective competition in telecommunications services is the degree of competition in the local exchange. Control of the local loop "bottleneck" means control of the services that require local service from the same local service provider as the prerequisite for services (custom and vertical services, MCA service, flat rate, unlimited toll calling plans). Other services, such as operator services and directory assistance, are so closely linked to local service that consumers do not view them as separate and distinct services that can be independently

purchased from alternative providers. (Ex. 21, p. 11-13; Voight Rebuttal, Ex. 18, p. 74) Residential and small business subscribers have not received meaningful benefits from the 1996 Federal Telecommunications Act or Senate Bill 507. CLECs serving in SWBT territory have only about 15% of the market share. (Ex. 19, p 2; Tr. 542-543). At the dawn of local competition in 1996, SWBT had almost 100% of the market. If the Act works as intended, SWBT should naturally lose some of its monopoly market share; that should not be any surprise and should not be a significant measure of effective competition. (It should be noted that a major portion of the loss in access lines on a retail level is offset by a switch of those lines to SWBT's new wholesale operation through resale to CLECs.) No matter how the market share is interpreted, the only reasonable conclusion is that SWBT dominates the local telecom market with control of more than of 80% of the market, a clear indication of monopoly status.

Public Counsel's study of competition based on CLEC subscriber lines exchange by exchange, changes in the assigned carrier numbering resources, current and past tariff offerings, and CLEC annual report information clearly shows that CLEC competition fails to rise to the level of "effective competition" even where CLEC activity is most prevalent. (Ex. 19, p. 13-14) SWBT continues to monopolize the local exchange market. Because CLECs and SWBT share the same carrier mindset that basic local residential service prices are too low and should be increased, Public Counsel has little confidence that SWBT's local service prices will be sufficiently contained by competitors if SWBT is released from price cap limitations. Price cap regulation's legislative purpose of advancing competition consistent with protection of the ratepayer is not promoted.

With local service as the set stone for Public Counsel's analysis of effective competition, the PSC should reject a blanket competitive classification of these services. The evidence in the



record supports competitive classification for only the following services throughout all of the SWBT exchanges: intraLATA toll service (minute by minute and block of time offerings only), and 800 WATS service. Public Counsel submits that the evidence does not support competitive classification for any other service. For some services, the evidence is inconclusive; in those circumstances, the PSC should reject competitive status until there is clear evidence that effective competition exists and the public interest will be served with such a finding. However, with many services, the evidence clearly shows that effective competition has not yet arrived.

The PSC should discount the credibility of SWBT's witnesses and give little evidentiary weight to their testimony concerning the status of effective competition in SWBT exchanges. These witnesses repeatedly demonstrated (with the exception of Thomas Hughes) that they had little familiarity with the details of the Missouri telecommunications landscape. Often witnesses had little or no firsthand knowledge of the Missouri market or of the events in recent history of Missouri competition. (Tr. 319-320). Toll Product Manager Jablonski did not know about the PTC Plan or COS as it relates to competition. (Tr. 281-282). Witness Fernandez lacked knowledge of Missouri market. (Tr. 294-296). Intelligence Manager Anvin presented lists of CLECs and IXC's purportedly operating in Missouri, but he only submitted copies from a website and made no independent verification of the present operational status of the carriers he claims are competitive. (Tr. 337-342). He also lacked information about Ameritech's competitive operations in Missouri. (Tr. 337-338).

SWBT witnesses relied heavily on national publications and national trends for their opinion on Missouri telecommunications competition. (Tr. 314-317). They also relied on the "competition" offered by communications services rather than telecommunications services defined under Missouri regulatory law.

Although Mr. Hughes provided more details about competitive activity in Missouri than SWBT's other witnesses, he also relied on the lists of IXCs and CLECs sponsored by Mr. Anvin as evidence of effective competition.

SWBT unreasonably contends that a single competitor with one customer in an exchange is effective competition. (Tr. 310-313). Witness Jablonski even said that the mere existence of a competitor without customers can be the basis of effective competition. (Tr. 294-295; Tr. 667-668).

The release of SWBT from the protection that price cap regulation provides the consumer is premature. Under price cap regulation, SWBT's prices for many of its consumer services have increased, often to the full 8% per year limit. (See, Ex. 29, SWBT Price Changes). Reductions in basic service were mandated by the consumer price index under the price cap law, not by market constraints. Pricing practices under the statute have not demonstrated competition that will constrain prices. Now is not the time to give SWBT freedom to increase prices without effective competition to counter-balance its dominance in Missouri's telecommunications market.

## **II. PRELIMINARY LEGAL ISSUES**

### **1. Does "effective competition" include a direct comparison of Southwestern Bell telecommunications services with all communications services or should that analysis be limited to telecommunications services as defined by statute?**

The PSC should only use competition posed by telecommunications services as the point of comparison to determine if "effective competition" exists under Section 392.245.5, RSMo. That statutory section addresses competition in telecommunications services and does not include all forms of communication. There can be no other reasonable interpretation of that statute. Section 386.020 (13) sets out the criteria the PSC must use to evaluate "effective

competition." "Services" as used in these statutes dealing with SWBT's price cap status refers to telecommunications services regulated by the PSC. Section 386.020(53) defines telecommunications services and specifies in subsection (a) through (i) what communications services are not telecommunications services in Chapter 386 and 392, RSMo. SWBT's direct comparison any conceivable communications means (Internet, cable telephony, pagers, wireless telephones, customer-owned telephones and answering machines) is overbroad and not supported by the statutes. That analysis is not consistent with the purpose of Section 392.245, RSMo. to gauge competition in telecommunications services of an incumbent telecommunications provider. (Tr. 52-54).

The PSC should not directly compare communications services with SWBT's telecommunications services. The criteria for evaluating effective competition suggests direct competition from services that are:

- (1) available from alternative telecommunication providers in the relevant market (13)(a);
- (2) functionally equivalent or substitutable (13)(6);
- (3) provided at comparable rates, terms and conditions (13)(6);
- (4) advance the policies of Chapter 392 (defined by Section 392.185) relating to regulated telecommunications services, especially regarding reasonable rates (13)(c); and
- (5) existing economic or regulatory barriers to entry into the Missouri telecommunications market (13)(d).

Public Counsel provides evidence that the communications services SWBT claims as competitive services for purposes of "effective competition" do not meet the statutory criteria.

(Ex. 19, p. 13-16). The PSC should limit its inquiry into communications services to an incidental role under Section 386.020 (13) (e): "Any other factors deemed relevant by the commission and necessary to implement the purposes and policies of chapter 392, RSMo." Objective standards that can be used as a guideline for each service and each exchange are difficult to craft. Many factors, including technology, market, providers and other variables must be weighed. (Tr. 900-902).

**2. What standards should the Public Service Commission follow to determine the existence or absence of "effective competition?"**

The PSC should use the factors outlined in Section 386.020 (13) to determine whether effective competition is present. In addition, the PSC should look to the purposes as set forth in Section 392.185, RSMo. as further guidance to determine whether approving the SWBT's competitive status is consistent with the advancement of those purposes and the public interest.

**3. What party has the burden of proof in this proceeding under Section 392.245, RSMo. 2000?**

The focus should be on whether the PSC has sufficient competent and substantial evidence to make a finding that effective competition exists. However, Public Counsel submits that SWBT has the burden to come forward with competent and substantial and persuasive evidence to effect a change in its regulatory status for its services.

The second sentence of Section 392.245.5, RSMo. provides that the PSC ". . . shall determine no later than five years following the first certification of an alternate local exchange telecommunications company in such exchange whether effective competition exists in the exchange for the various services of the incumbent local exchange company." It is clear that the

General Assembly intended (1) a PSC evaluation of competition not less than five years after the first certification of a CLEC in an exchange, and (2) that the PSC make a factual finding of the existence of effective competition before relieving SWBT of price cap regulation designed to protect the consumer. Because SWBT wants to change the status quo, it must come forward with evidence to support the change in regulation. If insufficient evidence is presented, SWBT's status for the services remain unchanged. The statute does not contemplate the automatic reclassification.

**4. Under the Section 392.245, RSMo., what must the Public Service Commission find in order for Southwestern Bell's services to be reclassified to competitive services and must that finding apply to specific exchanges?**

Section 392.245.5, RSMo. requires the PSC to make the following findings prior to reclassifying SWBT's services as competitive:

(1) at least one alternative local exchange telecommunications company has been certified under Section 392.455 (relating to competitive local exchange companies) in the specific exchange which is under review.

(2) that alternative local exchange telecommunications company has provided basic local telecommunications service in that exchange for at least five years.

(3) that effective competition exists in that exchange for the various telecommunication services of the incumbent for which competitive classification is sought.

Prior to reclassifying a service in a specific exchange as competitive, the PSC must make a finding of effective competition for that service in that exchange.

As part of the required findings, the PSC must determine that a CLEC has been providing service in an exchange for five years. This means that the PSC must look at the date when a

CLEC first commenced actual operations in an exchange in order to determine whether that exchange meets the five year initial threshold to qualify for reclassification under Section 392.245.5. (See, Ex. 19, Meisenheimer Rebuttal, p. 8-9)

**5. Is Southwestern Bell allowed to rebalance its rates by reducing switched access rates and increasing its other rates? If yes, under what statutory authority?**

Section 392.245.8, RSMo. does not allow SWBT to "rebalance" its rate structure by lowering switched access rates and increase other rates, such as local basic service. While SWBT may reduce its access rates, it cannot recoup the revenues by increasing rates for other services as provided in Section 392.245.9. SWBT falls under the exclusion for price cap companies that have interstate access rates less than 150% of intrastate access rates. Public Counsel suggests that the issue of whether or not SWBT can or cannot rebalance rates is not relevant to the determination of the existence of effective competition in this case. Although there was considerable discussion in this proceeding on whether or not local basic residential rates are priced at, below or above its cost, this is not a issue for the PSC to decide in this case.

**6. What effect did Southwestern Bell's classification as a price cap company under Section 392.245, RSMo. on December 10, 1997 have on the services previously classified as transitionally competitive or competitive before the price cap status?**

Section 392.245, RSMo. 2000 governs the regulatory plan for SWBT's intrastate regulated services, including the ability to change prices. It also provides for the process for designating services offered by SWBT as competitive. After the PSC granted SWBT's petition for price cap regulation, Section 392.245.5 became the controlling statutory authority for SWBT to change any of its services to a competitive service classification.

Section 392.245.1 provides the method under which price cap companies may make adjustments in their consumer prices:

Section 392.245. 1. The commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation. As used in this chapter, "price cap regulation" shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, **which maximum allowable prices shall not be subject to increase except as otherwise provided in this section.** (Emphasis added).

Section 392.245.11, RSMo. establishes a maximum price for non-basic telecommunications services, including dedicated, non-switched, private line and special access services and centrex type services; these "caps" apply until the service achieves a competitive classification under the price cap regulatory structure.

Section 392.245.11. The maximum allowable prices for nonbasic telecommunications services of a small, incumbent local exchange telecommunications company regulated under this section shall not be changed until twelve months after the date the company is subject to regulation under this section or, on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. **The maximum allowable prices for nonbasic telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed until January 1, 1999, or on an exchange- by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier.** Thereafter, the maximum allowable prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to eight percent for each of the following twelve-month periods upon providing notice to the commission and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices. This subsection shall not preclude an incumbent local exchange telecommunications company from proposing new telecommunications services and establishing prices for such new services. An incumbent local exchange telecommunications company may change the rates for its services, consistent with the provisions of section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within thirty days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section. *(Emphasis supplied).*

After the PSC approved SWBT's request for price cap regulatory treatment, the previous method for classifying regulated services under Section 392.370 no longer applied. In the same manner, Section 392.200.8, RSMo. does not free SWBT from the price ceilings for dedicated, non-switched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services. It simply allows pricing on an individual case basis for these services, but still under the price cap system.

### **III. STATUS OF EFFECTIVE COMPETITION BY SERVICE AND BY EXCHANGE**

#### **1. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's core business switched services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for business local service in any of the SWBT exchanges. (Ex.19, Meisenheimer Rebuttal, p. 6-20; Ex. 21, Meisenheimer Surrebuttal, p. 11-13)

Public Counsel disagrees with the Staff's recommendation that competition exists for business local services in the St. Louis and Kansas City exchanges. The number of CLECs and the proximity of fiber loops does not provide sufficient evidence of competition. As demonstrated in Sch. BAM-7HC (the chart listing the CLECs and remarks on the investigation into the status of the companies, the type of available services and net worth), the number of certified or tariffed CLECs is not a true measure of the competitive ability of the companies. Some CLECs are prepaid residential service providers only; others have had financial problems and limited entry into Missouri exchanges. Staff's strong reliance on the proximity study as the basis for its recommendation is misplaced. The proximity study is more forward looking to future competitive ability rather than actual competition today. (Tr. 666-667) The business



access line market is still highly concentrated, raising doubts that the competitive forces at work in Missouri are sufficient to contain SWBT's prices for business local services and related business services..

**2. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's business line related services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for related business line services in any of the SWBT exchanges. (Ex. 19, Meisenheimer Rebuttal, p. 16-20; Ex. 21, Meisenheimer Surrebuttal, p. 11-13) Because these business line related services (custom and vertical features) must have the same local service carrier that provides these services, the rationale against this reclassification is the same as for business local service. In addition, the PSC should note that even under price cap regulation that gives SWBT flexibility to meet competition by lowering prices, prices for many of these services have increased. (SWBT Price Change Summary, Ex. 29, p. 6)

**3. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's high capacity exchange access line services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not support reclassification. Just because individual case basis pricing was authorized for this services does not automatically mean that the requirements of effective competition have been met. The record lacks clear evidence of this effective competition and, therefore, reclassification should be rejected.

**4. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Plexar services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for this SWBT service in any of the SWBT exchanges. (Ex. 19, Meisenheimer Rebuttal, p. 16-20). Public Counsel is not convinced that competition has sufficiently developed to rise to the level of effective competition that can contain SWBT's pricing. Section 392.200.8 provides SWBT with the opportunity to meet downward competitive prices on a customer specific basis, subject only to the price cap established by Section 392.245. That section does not excuse SWBT from demonstrating effective competition. It is not automatically a competitive service. This service does not have sufficient competition to now warrant removing price cap regulation for this service.

**5. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's intraLATA private line/dedicated services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe sufficient evidence has been adduced to show effective competition. Individual case basis pricing under Section 392.200.8 does not automatically mean competitive status.

**6. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's residential access line services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for residential local service in any of the SWBT exchanges. (Ex. 19, Meisenheimer Rebuttal, p. 11-20; Ex. 21, Meisenheimer Surrebuttal, p. 2-4) As discussed in the Overview section and as shown in Ms. Meisenheimer's analysis of the market share in the residential market, effective competition for residential customers is barely at the infant stage. In the entire SWBT territory, there are only two exchanges (located in St. Charles county) where a CLEC (AT&T) has any degree of a visible presence in the local residential market. At best, this limited

effort at competition is a trial program and has not matured to the level of effective competition. (Tr. 665-666). In these two exchanges that have the most residential local competition, the market is highly concentrated with virtually all service provided by AT&T and SWBT. The prospect for price constraint for residential local service and related services is dim under this scene given both carrier's view toward increasing local residential rates.

**7. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's residential access line related services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for residential related services in any of the SWBT exchanges. (Ex. 21, Meisenheimer Surrebuttal, p. 2-3; Ex 19, Rebuttal, p. 11-20). Because the ability to subscribe to optional residential related services is limited to the same provider of local service, the same rationale to oppose competitive classification for local service applies equally here.

**8. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's IntraLATA toll services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel suggests that there is evidence that would allow the PSC to make a finding of effective competition for some of SWBT's long distance service offerings. SWBT's per-minute priced toll service and block-of-time toll package offerings may be subject to sufficient competition to contain the prices charged to customers and, therefore, may be classified as competitive. It appears that there is a sufficient level of intraexchange competition in all of the SWBT exchanges to allow reclassification for all SWBT exchanges.

Public Counsel does not believe that the evidence demonstrates that there is effective competition for SWBT flat rate, unlimited toll services in any of the SWBT exchanges. (Ex. 21, Meisenheimer Surrebuttal, p. 7-9) There is no evidence that IXC's are making competitive

offerings that rival SWBT's unlimited, flat rate toll offerings available throughout its territory. This absence of a competitive product is certainly not due to a lack of consumer preference or demand for such service. Competitive status absent effective competition for these services opens the door for SWBT to increase the price to the detriment of current and potential subscribers.

The long-run competitiveness of the toll market would not be adversely affected by a competitive classification for toll service offered on a per-minute basis or flat-rated, block of time service offerings. It should be possible for competitors and regulators to gauge SWBT's prices compared to its competitors' cost to provide a similar service. In theory, this should make it less likely that SWBT would attempt to engage in predatory pricing or that competitors would lodge unjustified complaints regarding SWBT's toll pricing.

Comparing SWBT's prices with its competitors' cost of providing flat-rated, unlimited use plans is much more problematic than making per-minute comparisons. For unlimited use offerings, obtaining and evaluating information about the volume of minutes used under those plans is virtually impossible. The different treatment of per-minute type and flat-rated, unlimited use service offerings is a reasonable distinction to judge predatory pricing claims. If flat-rated unlimited use service offerings are treated as a distinct subset of Message Telecommunications Service, then anti-competitive predatory pricing can be evaluated and disclosed based on a comparison of aggregate prices and costs.

**9. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Local Plus services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for Local Plus in any of the SWBT exchanges. Public Counsel does not agree that flat-rated, unlimited use toll offerings should receive a competitive classification. As discussed

above, this product gives SWBT a significant market advantage and does not allow effective policing of anti-competitive behavior. The lack of unlimited, flat rate LATA-wide calling plans by IXC competitors indicates that this is not a competitive service but one that stems from market dominance by SWBT. Allowing a competitive status absent effective competition for these services opens the door for SWBT to increase the price to the detriment of current and potential subscribers. (Ex. 21, Meisenheimer Surrebuttal, p. 7-9, p. 15-16; Ex. 19, p. 20)

**10. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Optional Metropolitan Calling Area (MCA) services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for MCA service in any of the SWBT exchanges. Public Counsel does not agree that this flat-rated, unlimited use toll offering should receive a competitive classification. (Ex. 21, Meisenheimer Surrebuttal, p. 7-9, p. 16-17) This is especially true given SWBT's interference with the ability of CLECs to offer MCA for almost 18 months while SWBT challenged the ability of CLECs to have their MCA customers treated the same as SWBT MCA customers. (TO-99-483). SWBT's actions denying parity of treatment until directly ordered by the PSC significantly delayed competition in the metropolitan areas and set back competitive efforts for many CLECs. Through its regulatory stance and screening of CLEC MCA calls, SWBT thwarted competition in the local market and in MCA.

**11. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Wide Area Telecommunications Services (WATS) and 800 services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not oppose this service receiving a competitive classification in any of the SWBT exchanges. (Ex. 21, Meisenheimer Surrebuttal, p. 9)

**12. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's special access services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that there is sufficient evidence to make a clear determination of the existence of effective competition for this service in any specific SWBT exchange. Therefore, the PSC should deny reclassification until such time as SWBT can offer such competent and substantial evidence in specific exchanges.

**13. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's switched access services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for switched access service in any of the SWBT exchanges. (Ex. 21, Meisenheimer Surrebuttal, p. 14). SWBT control of switching allows it to stand at the gateway to all local customers. Competitors do not have an effective means to avoid SWBT's service in order to provide service to customers. (Ex. 21, p. 14).

**14. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Common Channel Signaling/Signaling System 7 (SS7) services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that there is sufficient evidence to make a clear determination of the existence of effective competition for this service in any specific SWBT exchange. Therefore, the PSC should deny reclassification until such time as SWBT can offer such competent and substantial evidence in specific exchanges.

**15. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Line Information Database (LIDB) services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that there is sufficient evidence to make a clear determination of the existence of effective competition for this service in any specific SWBT exchange. Therefore, the PSC should deny reclassification until such time as SWBT can offer such competent and substantial evidence in specific exchanges.

**16. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's directory assistance (DA) services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for directory assistance in any of the SWBT exchanges. (Ex.19, Meisenheimer Rebuttal, p. 22; Ex.21, Meisenheimer Surrebuttal, p. 15). SWBT's directory assistance service is closely tied to its monopoly local service. When SWBT customers dial the familiar "411", they are connected to SWBT's D.A. SWBT's local service dominance carries over to D.A.

**17. In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's operator services (OS) be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?**

Public Counsel does not believe that the evidence demonstrates that there is effective competition for operator services in any of the SWBT exchanges. (Ex.19, Meisenheimer Rebuttal, p. 22; Ex. 21 , Meisenheimer Surrebuttal, p. 15 ). The same interrelationship between local service and directory assistance applies to operator services. Dialing "O" for a SWBT customer connects to SWBT operator services. Its advantage in the local service market gives it a high degree of competitive advantage for operator services. Also note that prices for operator services (and directory assistance) continue to escalate even under price cap limitations. (Ex. 29).

**18. In each exchange served by SWBT, which if any alternative local exchange telecommunications company has been certified under Section 392.455 and has provided basic local telecommunications service in that exchange for at least five years (or if none, what is the longest period of time that a certified alternative local exchange company has provided basic local telecommunications service in that exchange)?**

Public Counsel states that SWBT has not presented affirmative evidence that at the time of the hearing any local exchange company has both been certified under Section 392.455 and has provided basic local telecommunications service in any SWBT exchange for 5 years or any defined period. Both of these requisites must be present. Section 392.245.5, RSMo. The filing and approval of a tariff alone is not substantial and competent evidence that the CLEC is actually providing service. The date of the approval of a tariff is not substantial and competent evidence of the date that the CLEC started providing service and does not indicate whether such service is still being provided by that CLEC in a particular exchange. (Ex.19, Meisenheimer Rebuttal, p. 8-9)

#### **IV. CONCLUSION**

Based upon consideration of all the competent and substantial evidence in the record, Southwestern Bell should not be granted competitive status for the following services in any SWBT exchange:

1. business switched services
2. business line related services
3. Plexar services
4. residential access line services
5. residential access line related services
6. Local Plus services
7. MCA services
8. switched access services
9. Directory Assistance service
10. operator services



Public Counsel believes that the evidence on the following services in the following exchanges is inconclusive to demonstrate effective competition and the Public Service Commission should decline to make a finding of the existence of effective competition.


1. high capacity access line service
2. private line/dedicated services
3. special access service
4. SS7
5. LIDB

Public Counsel suggests there is evidence of effective competition for WATS and 800 services and per minute and block of time provision of interLATA toll for residential and business customers in Southwestern Bell's exchanges. However, if the Public Service Commission believes that per minute and block of time provisioning of intraLATA toll services includes MCA service and unbundled flat rated calling plans such as Local Plus and Designated Number, then effective competition does not exist in these exchanges.

Public Counsel asks the Commission to adopt its recommendations in this case.

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 9th day of November 2001.

  
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