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

Missouri Public
Service Commission

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
SOUTHWESTERN BELL TELEPHONE COMPANY**

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COMES NOW Southwestern Bell Telephone Company (SWBT) and for its Initial Brief in this case, states to the Missouri Public Service Commission (Commission) as follows:

I. INTRODUCTION

A. Background of This Case

This case was established by the Commission on March 13, 2001, in response to the Commission Staff's March 1, 2001, Motion to Open Case. In its Motion to Open Case, the Commission Staff requested that the Commission open a new case to investigate the state of competition in SWBT's exchanges, pursuant to Section 392.245.5 RSMo 2000. In its Order Establishing Case, Directing Notice, Joining Parties, and Granting Protective Order, the Commission found that a new case "should be established for the purpose of investigating the state of competition in SWBT exchanges in accordance with Section 392.245, RSMo 2000." P. 2. The Commission also made Southwestern Bell and 70 alternative local exchange telecommunications companies parties to this case.

This case involves the "next step" in the evolution of full and fair competition in the local telecommunications market in Missouri contemplated by Senate Bill 507. In response to the evolving competitive forces shaping the telecommunications industry, the Missouri legislature passed a law in 1996 that authorized competitive local exchange carriers (CLECs) to begin providing basic local telecommunications service in competition with incumbent local exchange

carriers (ILECs).¹ In recognizing the advancement of service offerings by new competitors, Senate Bill 507 also included provisions to ensure a level playing field for all providers, by allowing ILECs the opportunity to gain freedom from traditional rate of return regulation.² Senate Bill 507 provided for a phased-in approach. The Commission was directed to regulate ILECs via price cap regulation upon the initiation of local competition in the ILEC's service area.³

Under Section 392.245.2 RSMo 2000, a large ILEC becomes subject to price cap regulation when an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service, and is providing such service, in any part of a large ILEC's service area.⁴ On March 21, 1997, SWBT asked the Commission to determine that SWBT was subject to price cap regulation pursuant to Section 392.245.2 RSMo 2000.⁵ In Case No. TO-97-397, the Commission approved SWBT as a price cap regulated company, effective September 26, 1997.⁶

Under price cap regulation, as provided for in Section 392.245.4 RSMo, after January 1, 2000, the maximum allowable prices to be charged for exchange access (switched access) and basic local telecommunications services are changed annually by either the change in the telephone service component of the consumer price index (CPI-TS) for the preceding twelve months, or upon request by the company and approval of the Commission, by the change in the gross domestic product price index (GDP-PI) for the preceding twelve months, minus the

¹ Ex. 16, Hughes Direct, pp. 13-14.

² Id.

³ Ex. 16, Hughes Direct, p. 14.

⁴ Id.

⁵ Id.

⁶ Id.

productivity offset established for telecommunications service by the FCC and adjusted for exogenous factors.⁷ In addition, a price cap regulated company can raise rates on non-basic services by a maximum of 8 percent for each of the following twelve month periods.⁸

Senate Bill 507 also contemplated that 5 years after the initiation of competition in an ILEC's exchange, price cap regulation would be eliminated.⁹ The legislature recognized that the fullest consumer benefits will be derived from a market where all telecommunications providers are regulated in the same manner.¹⁰ This proceeding was established to examine the parameters of Section 392.245.5 RSMo 2000, which is the portion of Senate Bill 507 designed to effectuate the legislature's intent that after 5 years of price cap regulation, a price cap regulated company shall have the authority to adjust its rates upward or downward as it determines appropriate in a competitive environment, unless the Commission determines that effective competition does not exist for a particular service in a particular exchange.

Section 392.245.5 RSMo 2000, provides as follows:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one 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 unless the commission determines, after notice and hearing, that effective competition does not exist in the exchange for such service. 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, no later than five years following the first certification of an alternative local exchange telecommunications company in such exchange, whether effective

⁷ Ex. 16, Hughes Direct, p. 15.

⁸ Id.

⁹ Ex. 16, Hughes Direct, p. 14.

¹⁰ Id.

competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.

The Legislature also provided an explicit roadmap for the Commission to determine if “effective competition” exists for a particular service. “Effective competition” is defined in Section 386.020(13) RSMo 2000, and requires the Commission to consider the following objective factors:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) The extent to which the purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in section 392.185, RSMo, are being advanced;
- (d) Existing economic or regulatory barriers to entry; and
- (e) Any other factors deemed relevant by the commission and necessary to implement the purposes and policies of chapter 392, RSMo.

Under Section 392.245.5 RSMo 2000, SWBT is entitled to a finding of effective competition unless the Commission determines that effective competition does not exist in an exchange. The statute establishes that SWBT should receive a competitive classification, and the burden is on other parties to demonstrate that SWBT is not entitled to equal regulatory treatment, and to prove that effective competition does not exist.¹¹ Although the burden of proof is not on SWBT in this case, SWBT has provided substantial information to the Commission to demonstrate that effective competition does, in fact, exist for all SWBT services in all of its exchanges.

Section 392.245.5 RSMo 2000, provides that the Commission must examine the state of competition, with the intent of eliminating price cap regulation, no later than 5 years after a CLEC has been certified to provide service in an exchange.¹² Communications Cable-Laying

¹¹ Ex. 16, Hughes Direct, p. 16.

¹² Ex. 16, Hughes Direct, p. 17.

Company d/b/a Dial US became the first CLEC certificated in Missouri when its tariffs were approved by the Commission in January, 1997.¹³ Dial US began providing service in Springfield immediately thereafter. Accordingly, a decision on whether effective competition exists in Springfield must be made not later than January, 2002.

Competition in most other major exchanges began in the months after January, 1997 and now extends to all SWBT exchanges. Under Section 392.245.5 RSMo 2000, the Commission may examine the states of competition in the exchanges now, utilizing the evidence presented in this case. While that appears to be the most efficient use of resources, the Commission may choose to conduct hearings for each of SWBT's 160 exchanges over the next several months if it so desires.

B. History of Competitive Classification in Missouri

Legislative action designed to recognize impending competition in Missouri telecommunications markets did not begin with Senate Bill 507. Legislation was passed in Missouri in 1987 directing the Commission to reduce regulatory requirements as competition entered the various telecommunications markets.¹⁴ With the passage of House Bill 360, the Missouri legislature provided the Commission with authority to begin recognizing services and service providers as competitive.¹⁵ The legislature enacted procedures to allow a company to seek classification of its services or itself (as a company) as either transitionally competitive or as competitive.¹⁶ Companies began seeking transitionally competitive classification for services

¹³ Id.

¹⁴ Ex. 16, Hughes Direct, p. 6.

¹⁵ Id.

¹⁶ Id.

in 1987.¹⁷ Under this classification, prices for services could be placed into rate bands that define a minimum and maximum price range.¹⁸ The price for services utilizing rate bands could be adjusted within the approved bands on one day's notice to the Commission.¹⁹ Specialized cost studies were required for all new and existing services for which a transitionally competitive classification was sought.²⁰ Filings requiring cost support were subject to the standard thirty day Commission approval process.²¹

Under House Bill 360, full competitive classification for services allowed use of the same rate band flexibility granted with transitionally competitive classification.²² Price increases beyond the maximum rate band are subject to a tariff filing and a ten day advance notice to all affected customers.²³ Price decreases below the minimum rate band limit are subject to a seven day Commission notice.²⁴ In addition, tariff filings may be made without cost support.²⁵

Under Section 392.361 RSMo, a telecommunications company seeking either transitionally competitive or competitive classification is required to show, based upon all relevant factors, that the service is subject to sufficient competition to justify a lesser degree of regulation. Once a service is found to be competitive or transitionally competitive, the Commission must classify the same telecommunications services of a transitionally competitive

¹⁷ Ex. 16, Hughes Direct, p. 7.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

or noncompetitive company as transitionally competitive.²⁶ Under Section 392.370.1, the petitioning telecommunications company is required to show 1) an order had been issued under 392.361 RSMo that finds the service has been classified as competitive or transitionally competitive; 2) that the service of the petitioning company is the same as, substitutable for, or equivalent to the service previously classified as either transitionally competitive or competitive; and 3) the competitive or transitionally competitive service is authorized to be provided in the petitioning company's service area.²⁷ House Bill 360 also provided that, unless suspended by the Commission, any service classified as transitionally competitive automatically becomes classified as competitive after a 3-year period.²⁸ However, the Commission is authorized to extend the transitionally competitive designation for designated periods.²⁹

In 1987, numerous interexchange carriers (IXCs) filed petitions with the Commission pursuant to Section 392.361 RSMo, seeking both service and company classification as either competitive or transitionally competitive.³⁰ On September 15, 1989, the Commission found all services of the IXCs, other than AT&T's, to be competitive and therefore declared these IXCs to be competitive carriers.³¹ The Commission also found AT&T's Wide-Area Telecommunications Service (WATS), private line and custom network services to be competitive.³² Further, the

²⁶ Ex. 16, Hughes Direct, p. 8.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Ex. 16, Hughes Direct, p. 9.

³¹ Id.

³² Id.

Commission found AT&T's Message Telecommunications Service (MTS) and ancillary/complementary services to be transitionally competitive.³³

In 1992, SWBT filed a petition seeking classification of MTS, Operator Services, WATS Service and Digital Private Line Services as transitionally competitive.³⁴ In its petition, SWBT stated that these services met the requirements of Section 392.370.1 RSMo in that they were the same as, substitutable for, or equivalent to competitive services provided by other telecommunications carriers within its service territory.³⁵

In its December 21, 1992 Order in Case No. TO-93-116, the Commission found that SWBT's MTS Service was substitutable for IXCs' MTS Services.³⁶ The Commission found that SWBT's 800 and Maximizer® 800 service were substitutable for IXCs' 800 services.³⁷ The Commission found that SWBT's WATS Service was substitutable for IXCs' WATS Services.³⁸ The Commission found that SWBT's Digital Private Line and Special Access Services were "equivalent" services to IXC provided services – functionally equivalent and completely interchangeable in use.³⁹ Finally, the Commission found that SWBT's Operator Services were substitutable for comparable services provided by IXCs.⁴⁰ The Commission determined that SWBT's MTS, WATS, Maximizer 800, Digital Private Line, special access and Operator Services should be deemed transitionally competitive services.⁴¹

³³ Id.

³⁴ Ex. 16, Hughes Direct, p. 10.

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

In Case No. TO-93-115, SWBT requested competitive classification for Speed Calling 8 and Speed Calling 30.⁴² In that case, the Commission adopted a unanimous stipulation that provided for a competitive classification for Speed Calling 8 and Speed Calling 30.⁴³ The evidence in that case indicated that there was a wide array of providers of customer premises equipment (CPE) offering similar services in competition with SWBT's services, at a variety of prices.⁴⁴

As described above, Senate Bill 507 was the final step introducing local competition in Missouri. Since that time, the Commission has routinely classified CLECs as competitive carriers when approving each CLEC's basic local certification.⁴⁵ IXC's are also classified as competitive carriers in Missouri.⁴⁶ With a competitive carrier classification, CLECs and IXC's are able to change their prices (up or down) on short notice to the Commission without the need of providing cost support for the change.⁴⁷ This flexibility allows them to freely modify their offerings to meet customer needs, or respond to the offerings that exist from their competitors (whether SWBT, CLECs, IXC's, or other carriers) in the local market. In this case, SWBT seeks the exact same freedom in pricing flexibility that all of its competitors currently enjoy.⁴⁸

C. Application of the "Effective Competition" Factors to the Current Competitive Landscape in Missouri

⁴² Id.

⁴³ Ex. 16, Hughes Direct, p. 11.

⁴⁴ Id.

⁴⁵ Ex. 16, Hughes Direct, p. 12.

⁴⁶ Ex. 16, Hughes Direct, p. 13.

⁴⁷ Id.

⁴⁸ Id.

As described above, pursuant to Section 386.020(13) RSMo 2000, the first two factors which the Commission must consider in determining whether “effective competition” exists for SWBT’s services is the “extent to which services are available from alternative providers in the relevant market,” and the “extent to which these services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.” As will be described in detail below, SWBT has provided substantial evidence which establishes that, for each of SWBT’s regulated service offerings in Missouri, there are alternative providers who are providing functionally equivalent or substitutable services throughout SWBT’s Missouri exchanges, at comparable rates, terms and conditions, and have been for many years.⁴⁹

With the advent of local competition under Senate Bill 507, moreover, functionally equivalent or substitutable services being provided by alternative providers have increased substantially. As this Commission found in Case No. TO-99-227, CLECs are currently providing service to customers in all of SWBT’s exchanges, and SWBT has fully opened all of its markets to competitors.⁵⁰ In addition, IXC provide services that are also functionally equivalent to or substitutable for some of SWBT’s services, including interexchange services (e.g., interLATA Toll, 800 Services), operator and directory services, and dedicated services (e.g., private line and special access).⁵¹ Furthermore, there are a number of alternate providers of functionally equivalent or substitutable services that are not under the jurisdiction of this Commission. Some of these alternate providers include, but are not limited to, wireless carriers,

⁴⁹ Ex. 16, Hughes Direct, pp. 18-19.

⁵⁰ Ex. 16, Hughes Direct, p. 19.

⁵¹ Id.

cable TV providers, Internet service providers, fixed satellite providers and customer premises equipment (CPE) manufacturers.⁵²

Neither Section 392.245.5 RSMo nor 386.020(13) require any quantitative market share loss litmus test to determine whether “effective competition” exists for SWBT’s services in Missouri. While specific market share thresholds should not be utilized to determine whether or not SWBT faces effective competition from CLECs, competition in local telecommunications markets is clearly flourishing in Missouri. As of April, 2001, SWBT conservatively estimates that the local market share gained by CLECs in Missouri is over fifteen percent.⁵³ In its March 15, 2001 Order recommending approval of SWBT’s Section 271 application in Missouri, the Commission found that “CLECs serve approximately 12 percent of access lines in SWBT territory.” Order, p. 20. The Commission’s findings were based upon data collected by the Commission Staff from CLECs in August, 2000, which is now over one year old and SWBT’s more current estimate of a minimum 15% market share is entirely consistent with the Commission’s prior finding.⁵⁴ There are CLECs operating in all of SWBT’s exchanges in Missouri.⁵⁵ These CLECs are providing local services and related services to business and residential customers, via resale of SWBT’s services, the use of unbundled network elements purchased from SWBT on a wholesale basis, and the use of CLECs’ own facilities.⁵⁶

Competition is greatest in more urban areas. For example, in the St. Louis Principal and MCA-1 and MCA-2 zones, at least 59 CLECs are providing service.⁵⁷

⁵² Id.

⁵³ Ex. 16, Hughes Direct, p. 26.

⁵⁴ Ex. 16, Hughes Direct, p. 20.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Ex. 16, Hughes Direct, Sched. 3-1.

Fifty-one CLECs are providing service in the Kansas City Principal, MCA-1 and MCA-2 zones.⁵⁸ Thirty-seven CLECs are providing service in SWBT's St. Charles exchange, and thirty-six CLECs are providing service in SWBT's Springfield Principal and MCA-1 zone.⁵⁹

Competition is not only flourishing in the urban areas, however. At least ten CLECs are serving customers in 48 percent of SWBT's exchanges in Missouri, and at least three CLECs are serving CLECs in 90 percent of SWBT's exchanges throughout the state.⁶⁰ There are facilities-based CLECs serving more than 80% of SWBT's exchanges in Missouri.⁶¹

As SWBT witnesses Thomas Hughes and Dr. Debra Aron explain in their respective testimonies, examining trends and competitive activity is important because looking at such activity at a date certain can understate the degree of competition in markets such as telecommunications undergoing deregulation.⁶² The explosive growth in CLEC activity throughout SWBT's Missouri exchanges provides additional evidence that SWBT faces effective competition throughout its Missouri exchanges.⁶³ Based on year over year data, interconnection trunks have grown 53 percent, E-911 listings have grown 103 percent, unbundled switch ports (generally meaning UNE-P) have grown over 200 percent, and collocation arrangements have grown 140 percent.⁶⁴ These trends demonstrate that not only does facilities-based competition exist in Missouri, but also that such facilities-based competition is growing rapidly.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Ex. 16, Hughes Direct, p. 27.

⁶¹ Id.

⁶² Ex. 16, Hughes Direct, p. 27; Ex. 1, Aron Direct, p. 27.

⁶³ Ex. 16, Hughes Direct, p. 27.

⁶⁴ Id.

For the period from the first quarter of 1998 through the second quarter of 2001, interconnection trunks have increased 1,441 percent, E-911 listings have increased 8,546 percent, the growth in UNE-P has been 5,826,200 percent, the growth in the number of resold lines has been 592 percent, and the growth in "ported" numbers has been 26,392 percent.⁶⁵ As the charts attached to Mr. Hughes's Surrebuttal Testimony as Schedules 3-1 through 3-5 graphically reveal, the growth in these competition metrics has been astounding over the past few years.

Also attached to Mr. Hughes' Surrebuttal Testimony as Schedules 1-1, 1-2 and 1-3 were maps identifying the number of active CLECs competing in each SWBT exchange throughout Missouri. Copies of these maps are attached to this brief as Appendix 1. These maps graphically depict the extensive level of CLEC competition faced by SWBT throughout its Missouri exchanges. In his Surrebuttal Testimony, Mr. Hughes also identified, by exchange, the total lines served by SWBT, and the minimum number of lines served by CLECs.⁶⁶ The lines identified as CLEC lines represent only a conservative minimum number, and therefore, CLEC market share is likely much greater than reported in Mr. Hughes' Schedules.⁶⁷ The reason for this is simple. SWBT knows when a CLEC resells SWBT's service and when a CLEC purchases unbundled network elements from SWBT, but can only estimate the number of lines served by a CLEC using its own facilities. SWBT can identify the number of E-911 listings that CLECs place in 911 databases, but as Mr. Hughes and Dr. Aron explain in their testimony, the number of CLEC E-911 listings likely significantly understates the number of access lines served

⁶⁵ Ex. 17, Hughes Surrebuttal, p. 7.

⁶⁶ Ex. 17 HC, Hughes Surrebuttal, Schedule 4-1, 4-2, 4-3 and 4-4 HC.

⁶⁷ Ex. 17 HC, Hughes Surrebuttal, pp. 5-6.

by facilities-based CLECs.⁶⁸ For example, only outbound lines have 911 listings associated with them.⁶⁹ Complex voice services may be only partially represented in the E-911 database.⁷⁰ DSL and cable modem lines may not be reported in the E-911 database.⁷¹ SWBT simply does not know the number of lines served by CLECs utilizing only CLEC facilities.⁷² Finally, access lines served by numbers ported from SWBT are not included in the CLEC data included in E-911 databases on Mr. Hughes' schedules.⁷³

With respect to specific market share for CLECs serving business and residential access lines in Missouri, Mr. Hughes' Surrebuttal Testimony provides updated statistics reflecting the minimum CLEC business market share and residential market share throughout SWBT's Missouri exchanges.⁷⁴ As reflected on Hughes' Surrebuttal Schedule 5 HC, the minimum market share for business services gained by CLECs statewide is over ** ___%**. ⁷⁵ There are ** ___** SWBT exchanges where the minimum CLEC market share of business access lines is ** ___%** or greater.⁷⁶ In addition, there are ** ___** exchanges where the minimum CLEC market share of business access lines is ** ___%** or greater.⁷⁷ In urban areas, the minimum level of business lines served by CLECs is even higher. Id. In Kansas City, the minimum level of business lines served by CLECs is ** ___%**, in St. Louis, the minimum level of business lines

⁶⁸ Ex. 17 HC, Hughes Surrebuttal, pp. 5-6; Ex. 2, Aron Surrebuttal, p. 16.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Ex. 2, Aron Surrebuttal, p. 16.

⁷² Ex. 17HC, Hughes Surrebuttal, p. 6.

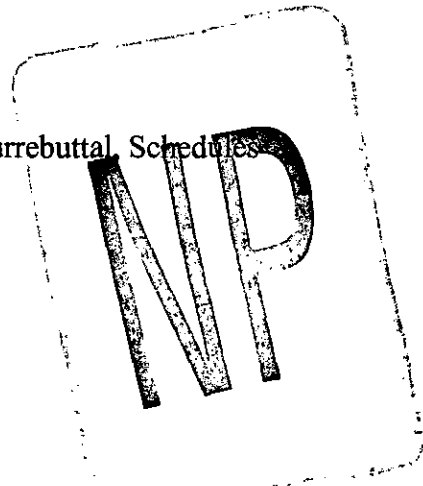
⁷³ Id.

⁷⁴ See Ex. 17HC, Hughes Surrebuttal, Schedules 5-1 HC through 5-4 HC, Surrebuttal, Schedules 5-1 and 6-1 HC through 6-4 HC.

⁷⁵ Ex. 17 HC, Hughes Surrebuttal, p. 8.

⁷⁶ Id.

⁷⁷ Ex. 17 HC, Hughes Surrebuttal, p. 9.



served by CLECs is ** %**, and in Springfield, the minimum level of business lines served by CLECs is ** %**. ⁷⁸

With respect to CLEC activity in the residential local services market, the minimum market share gained by CLECs statewide is over ** %**. ⁷⁹ In two exchanges where CLECs have chosen to aggressively compete with SWBT, the minimum CLEC residential market share is ** %** in the Harvester exchange, and ** %** in the St. Charles exchange. ⁸⁰ While CLECs' overall market share for residential access lines is not as great as their market share for business lines, these numbers reflect that CLECs are free to choose to compete with SWBT in residential markets, and are effective where they choose to do so. As Dr. Aron explains, from an economic perspective, it is not surprising that CLECs are focusing on higher-margin business customers. ⁸¹ This focus, however, does not make the competition for the residential access line any less "effective." ⁸²

The most recent available data shows that there are 62 CLECs that are providing service to business customers, residential customers, or both. ⁸³ These CLECs are estimated to serve 467, 798 lines. ⁸⁴ Of these 62 CLECs, 10 are serving at least 10,000 lines in Missouri. ⁸⁵ These 10 CLECs alone serve 367,514 lines. ⁸⁶

⁷⁸ Id.

⁷⁹ Ex. 17HC, Hughes Surrebuttal, p. 11.

⁸⁰ Id.

⁸¹ Ex. 1, Aron Direct, p. 20.

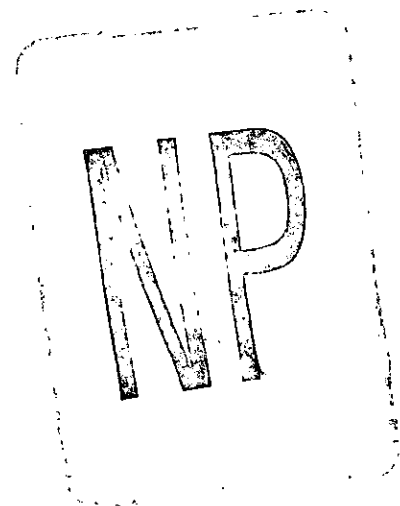
⁸² Id.

⁸³ Ex. 17, Hughes Surrebuttal, p. 13.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.



Over the past 18 months, SWBT has experienced a declining trend for retail access lines.⁸⁷ Over the past 3 quarters, SWBT has experienced a decrease in the total number of retail lines in service.⁸⁸ During this same time period, the number of CLEC lines has continued to grow.⁸⁹ In addition, there are currently 23 CLEC switches deployed throughout the state of Missouri, with a total capacity to handle more lines than SWBT serves throughout all of its Missouri exchanges.⁹⁰ The switches deployed by CLECs in Missouri have the capacity to serve 100 percent of Southwestern Bell's Missouri customers.⁹¹ Where CLECs have their own switch, they are able to provide not only basic dial tone to customers, but they are also able to provide vertical services from their switch.⁹² With the fact that 23 switches are operational in the state, CLECs are effectively able to compete with SWBT for the provision of both access lines and switch-based vertical services, toll services and access services to customers throughout the state of Missouri.⁹³ CLECs are also actively collocating in SWBT central offices in Missouri. CLECs have now collocated their equipment in SWBT exchanges which represent ** %** of the total lines in the state.⁹⁴

Some parties to this case, including the Office of Public Counsel, Staff and AT&T, argue that the Commission should not consider resold services when it evaluates whether "effective competition" exists under Section 386.020(13) RSMo 2000. As Dr. Aron cogently explains,

⁸⁷ Ex. 17, Hughes Surrebuttal, p. 14.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Ex. 17, Hughes Surrebuttal, p. 15.

⁹¹ Id.

⁹² Ex. 17, Hughes Surrebuttal, p. 16.

⁹³ Ex. 17, Hughes Surrebuttal, p. 16.

⁹⁴ Ex. 17 HC, Hughes Surrebuttal, p. 16.

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however, resold services should definitely be considered as the Commission evaluates whether SWBT's services are subject to effective competition.⁹⁵

As Dr. Aron noted, resale promotes competition in the provision of retailing functions.⁹⁶ Resale can provide significant competitive pressure.⁹⁷ If SWBT increases its retail price, a CLEC reselling the service will enjoy an increased profit margin.⁹⁸ Most resellers utilize resale as a component of a "hybrid" approach, utilizing resale when it makes financial sense to do so.⁹⁹ Where prices for UNE loops exceed SWBT's retail rates for residential service, resale may be a very viable competitive entry mechanism.¹⁰⁰ The use of resold services also allows CLECs to easily "bundle" their services to offer "one-stop shopping," without risking any capital for network infrastructure buildout.¹⁰¹ Furthermore, resale can be used as an early market entry mechanism while a carrier's network is being deployed. As reflected in Schedule 8 to Mr. Hughes Surrebuttal Testimony, historically resale was a more prominent form of competition. However, as this Schedule reflects, facilities-based competition is now the predominant form of competition.

As described above, competition from CLECs alone is sufficient for the Commission to find that SWBT faces effective competition for all of its services throughout its Missouri exchanges. Section 386.020(13) RSMo, however, certainly contemplates that competition from non-regulated alternative providers may also be considered. Although the legislature could have

⁹⁵ Ex. 2, Aron Surrebuttal, pp. 2-10.

⁹⁶ Ex. 2, Aron Surrebuttal, p. 3.

⁹⁷ Id.

⁹⁸ Ex. 2, Aron Surrebuttal, p. 4.

⁹⁹ Id.

¹⁰⁰ Ex. 2, Aron Surrebuttal, p. 7.

¹⁰¹ Id.

limited the “services” which the Commission is to consider to determine if effective competition exists to “telecommunications services,” it did not do so. Instead, the legislature uses the term “service,” which is defined in Section 386.020(47)RSMo to include a much wider range of regulated and nonregulated services. Moreover, the legislature could have defined “alternative providers” to include only regulated “alternative local exchange telecommunications company” as defined in Section 386.020(1) RSMo, but again, the legislature did not do so, and it would not be appropriate for the Commission to limit its analysis to regulated telecommunications services (a term also defined in Section 386.020(53) RSMo.) provided by regulated telecommunications companies.

In the existing competitive marketplace, customers have their choice of receiving functionally equivalent or substitutable services.¹⁰² These providers may include PBX providers, competitive access providers, interexchange carriers, and CLECs. In addition, non-traditional providers, including wireless providers, have been providing substitutable service to customers for years.¹⁰³ Wireless services are not limited to “car phones.” Wireless providers today are marketing their service to customers in much the same manner as local telephone companies. Wireless phones offer the same features (e.g., Caller ID, Call Waiting, Voicemail) that customers have grown accustomed to receiving in connection with an access line provided by their local telephone company.¹⁰⁴ Customers are now making their wireless phone their only phone. The Commission should certainly consider the availability of wireless services on an ubiquitous basis throughout the state of Missouri.

¹⁰² Ex. 16, Hughes Direct, p. 28.

¹⁰³ Id.

¹⁰⁴ Id.

In addition, the explosion of the Internet allows consumers to surf the World Wide Web and to make and receive voice calls to family and friends over the Internet. There is a host of Internet-enabled capabilities that provide alternative means of communication which replace SWBT's traditional telephone services. These include Internet telephony, and services like e-mail and instant messaging which have become acceptable means of communication.¹⁰⁵ Cable TV providers have also been making upgrades necessary to make their cable plant capable of providing two-way service, which paves the way for telephony over cable.¹⁰⁶ Clearly, as will be described in detail in the appropriate sections of this brief below, non-traditional forms of competition are available throughout SWBT's Missouri exchanges, and their availability should be considered by the Commission as it evaluates whether SWBT's services are subject to "effective competition." Dr. Aron agrees with this approach.¹⁰⁷

The third factor which the Commission is required to consider in connection with its evaluation of whether effective competition exists is the extent to which the purposes and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in Section 392.185 RSMo, are being advanced.¹⁰⁸ The purposes and policies of Chapter 392 RSMo are clear. Section 392.185 RSMo outlines that the provision of telecommunications services should be maintained and advanced. In a competitive marketplace, such as the one that exists throughout SWBT's territory, it is the marketplace that will maintain and advance the services offered to customers. When all competitors which serve the same market are allowed to compete equally, customers will benefit from the competitors' ability to quickly adapt to a changing

¹⁰⁵ Ex. 16, Hughes Direct, p. 29.

¹⁰⁶ Id.

¹⁰⁷ Ex. 1, Aron Direct, p. 13.

¹⁰⁸ Ex. 16, Hughes Direct, pp. 20-21

marketplace.¹⁰⁹ An important purpose specified in the statute is to allow for full and fair competition to function as a substitute for regulation.¹¹⁰ The statute the Commission is implementing in this proceeding is the mechanism that legislators gave to the Commission to permit this express purpose to be achieved.

The fourth factor which the Commission is required to consider in its evaluation of whether effective competition exists in SWBT's exchanges is existing economic or regulatory barriers to entry.¹¹¹ Given the multitude of providers providing functionally equivalent or substitutable services that are described in the testimony of SWBT's witnesses in this case, and summarized below, it is clear that there are no barriers to entry that are preventing competitors from offering alternatives in the marketplace.¹¹² The Commission's findings in Case No. TO-99-227 concerning SWBT's compliance with Section 271 of the federal Telecommunications Act of 1996 (Act) are instructive in this proceeding. In that case, the Commission determined that SWBT had complied with the Act, and that SWBT's local markets were open to competition. In its March 15, 2001, Order in Case No. TO-99-227, the Commission stated that "SWBT is providing competing carriers with all of the requisite checklist items in a nondiscriminatory fashion." Order, p. 91.

There are over 600 interexchange carriers providing interexchange service in Missouri.¹¹³ There are over 60 CLECs providing a wide range of services, including local services in Missouri.¹¹⁴ In this case, SWBT has presented substantial evidence, both from a wholesale and

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Ex. 16, Hughes Direct, pp. 21-22.

¹¹² Id.

¹¹³ Ex. 16, Hughes Direct, p. 22.

¹¹⁴ Id.

retail perspective, that alternative providers are offering services which are functionally equivalent or substitutable at comparable rates, terms and conditions. The availability of resale and unbundled network elements (UNEs), including combinations of UNEs, provide effective ways for CLECs to enter the market with little capital investment. In Case No. TO-99-227, the Commission has already determined that CLECs are providing facilities-based services to both business and residential customers. Clearly, CLECs are able to compete in Missouri when it meets the CLEC's business plans.

SWBT would note that the Commission will retain certain regulatory authority even after a finding of effective competition throughout SWBT's Missouri exchanges. Specifically, the Commission's continued authority to establish rates for unbundled network elements utilized by CLECs will have a constraining effect on SWBT's prices. With competitors having non-discriminatory access to SWBT's wholesale services at rates determined by the Commission, competitors will be able to offer the same retail services at competitive prices that will constrain any attempt by SWBT to price at above market rates.

Moreover, the Commission retains authority under Section 392.245.5 RSMo 2000, to review the status of competition and to reimpose price caps for particular services in particular exchanges if it finds that effective competition no longer exists. If SWBT attempted to raise pricing levels above market-based levels, customers would not pay for the service. Customers will ultimately benefit from an environment where all providers are free to compete on equal terms.¹¹⁵ It is in this unfettered environment where service innovation flourishes, customer demands dictate outcomes and maximum benefits are derived. The legislature understood this when it passed Senate Bill 507 with the clear intent that price caps be an interim measure and the

¹¹⁵ Ex. 16, Hughes Direct, p. 32.

real goal was to have providers competing for customer service on equal terms. Upon a Commission determination that effective competition exists throughout SWBT's exchanges in Missouri, SWBT will be able to better serve its customers in Missouri. SWBT will be able to fully respond to competition once it is under the same terms and conditions as the rest of the competitive marketplace.

SWBT's ability to compete on equal footing will allow consumers to have more choice for the services they receive, since all providers will have the same ability to serve the customers. This will also increase SWBT's ability to restructure services and offer value-added packaging that better meets customers' changing needs. The Commission should confirm that SWBT faces effective competition for all of its services in all of its exchanges throughout Missouri. The statutory intent is clear – the presumption is for the replacement of price caps which is an interim measure. SWBT's services meet the definition of effective competition. It is time for artificial regulatory advantages to be removed and for all competitors to compete on equal footing throughout Missouri.

Issue 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 392.245.2 RSMo 2000?

The Commission should classify SWBT's core business switched services as competitive pursuant to Section 392.245.5 RSMo 2000, in all of SWBT's Missouri exchanges. As described below, SWBT's core business switched services face effective competition throughout SWBT's exchanges in Missouri, and therefore, should be classified as competitive, pursuant to Section 392.245.5 RSMo 2000.

Description of Core Business Switched Services. As described in Ms. Fernandez' Direct Testimony, Core Business Switched Services include the various basic business access services,

including exchange access lines, analog trunks, basic rate ISDN (DigiLINE Service) that SWBT's business customers use to make and receive calls over the public switched telephone network.¹¹⁶ SWBT's basic business line is a line that provides business customers the ability to make and receive telephone calls. These lines can be used to make voice telephone calls or to transmit data to or from the public switched telephone network. Access lines are served individually or can be set up with multiple access lines that "hunt". The hunting feature enables a call to roll over to the next available line when the call line is busy. Customers may opt to purchase flat rate business access lines where all the local usage is included in the monthly charge, or they may purchase measured business access line service where local usage may be charged for outgoing calls based on call duration, time of day and distance. Additionally, message rate service is available in some areas. Customers who purchase message rate service are charged on a per call basis. Reserve line is a measured business access line that provides flat rate business customers with a lower cost additional access line. Reserve line is a way for small businesses with 1-4 telephone lines to add a business line without having to pay the full cost of a regular line. Payphone exchange access service is a two-way, or optionally, one-way originating only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customers premises and the network interface. Analog trunks allow for a connection from the central office to a private branch exchange (PBX) or key system, located on the customer's premise. A PBX is a customer owned and managed equipment that acts as a switch, providing the connectivity for inbound and

¹¹⁶ Exhibit 11, Fernandez Direct, p. 4.

outbound calls to the public switched telephone network. The key system is similar to a PBX, but it is designed for smaller customers.¹¹⁷

SWBT's core business switched services face effective competition throughout Missouri.

There can be no question that SWBT's core business switched services face effective competition in every exchange in Missouri. There are alternative providers providing substitutable or functionally equivalent services to Southwestern Bell's core business switched services throughout Missouri.¹¹⁸ SWBT's core business switched services face competition from CLECs' services, interexchange carriers' services, as well as nontraditional forms of competition such as wireless providers, Internet-based telephony, e-mail, and customer premises equipment (CPE).¹¹⁹

As described in the direct and surrebuttal testimony of SWBT witness Thomas Hughes, SWBT's core business switched services face effective competition from CLECs throughout SWBT's Missouri exchanges. For example, in SWBT's Fenton exchange, there are ** __ ** CLECs serving business customers.¹²⁰ In the Fenton exchange, CLECs serve a *minimum* of ** __ ** business lines, which constitute a minimum CLEC marketshare of the business access line market in the Fenton exchange of ** %**. ¹²¹ Likewise, in SWBT's Imperial exchange, there are ** __ ** CLECs serving business customers, and these CLECs serve a minimum of ** __ ** business access lines.¹²² CLECs in SWBT's Imperial exchange have garnered approximately ** %** minimum business market share of the business access lines in the

¹¹⁷ See Ex. 11, Fernandez Direct, Sch. 1.

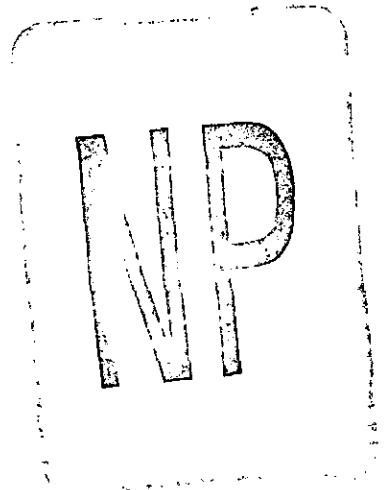
¹¹⁸ Ex. 11, Fernandez Direct, p. 5.

¹¹⁹ Ex. 11, Fernandez Direct, p. 5.

¹²⁰ Ex. 17, Hughes Surrebuttal, Sch. 5-1(HC).

¹²¹ Hughes Surrebuttal, Ex. 17(HC), Sch. 5-1(HC).

¹²² Ex. 17(HC), Hughes Surrebuttal, Sch. 5-1(HC).



Imperial exchange.¹²³ CLEC's business access line gains have not been limited to smaller exchanges. For example, in the Kansas City exchange, CLECs have a minimum of **** ___**** business access lines, which constitute a minimum marketshare for CLECs of approximately **** %**** of the business access lines in that exchange.¹²⁴ In the Manchester and Chesterfield exchanges of suburban St. Louis, CLECs have obtained a minimum marketshare of over **** %**** of the total business access lines in those exchanges.¹²⁵ Finally, in the large St. Louis exchange, CLECs have obtained a minimum of **** ___**** business access lines, which constitutes approximately **** %**** minimum market share of business access lines in the St. Louis exchange. While SWBT does not believe that the Commission should adopt a minimum market share or access line count metric to determine effective competition throughout its Missouri exchanges, these telling, competitive statistics reflect that where CLECs choose to compete vigorously with SWBT for business access lines, CLECs effectively compete with SWBT and have obtained a significant competitive market share in those exchanges. CLECs have the exact same opportunities to compete in other exchanges with lower marketshare results, including pure facilities-based competition, unbundled network elements, and resale.

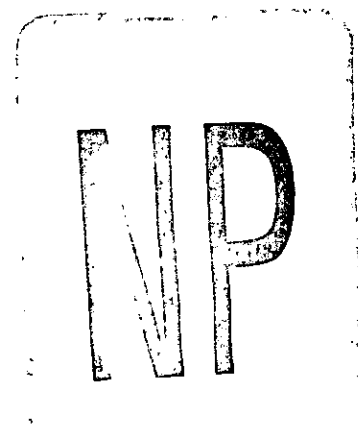
In addition to the effective competition SWBT faces from CLECs for business access line services throughout its Missouri exchanges, SWBT also faces substantial and effective competition from "non-traditional" services, such as wireless service, cable modems, and Internet-based telephone and/or Email.¹²⁶ Wireless service is widely available throughout

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Exhibit 11, Fernandez Direct, p. 13.



SWBT's exchanges in Missouri.¹²⁷ The Commission should not check its common sense at the door when it evaluates the competitive threat that wireless service poses to SWBT's business access line services throughout Missouri. Increasingly, business customers are choosing to reduce the number of business access lines and replace them with wireless services¹²⁸ Besides the obvious applications for mobile users such as sales people and real estate agents, many diverse, small businesses have adopted wireless service as their only means to stay in contact with their customers. Wireless service is particularly attractive to business customers because the service often includes long distance calling at no additional charge.¹²⁹

Another form of non-traditional competition to SWBT's core business switched access line services is cable modems, offered by cable TV companies, and DSL services offered by telecommunications companies. These services eliminate the need for additional access lines.¹³⁰ Through line sharing, alternative carriers are able to provide high speed data services over the same line used to provide the customer with voice services, thereby eliminating the need for additional lines.¹³¹

The Internet is now pervasive and accessible to all business customers in all of SWBT's Missouri exchanges.¹³² The various Internet-related capabilities such as e-commerce, e-mail, Web Pages, and Internet-based or IP Telephony provide even more competitive alternatives to SWBT's core business switched access line services.¹³³ The explosive growth of the Internet

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id.

¹³² Ex. 11, Fernandez Direct, p. 14.

¹³³ Id.

and e-commerce applications have also provided interesting choices to business seeking alternative voice service options.¹³⁴ For example, there are an increasing number of e-tailers that allow visitors to simply click on an icon on their website to use the internet network to complete a voice call, thereby reducing the demand for traditional access services.

Clearly, there are a multitude of services provided by various types of alternative providers that are functionally equivalent to or substitutable for SWBT's core business switched services throughout SWBT's exchanges in Missouri. These services provided by CLECs, as well as other types of providers such as wireless Internet service providers and cable television companies, allow customers to contact, communicate, and complete commercial transactions with business customers, and as such are the functionally equivalent to or substitutable for SWBT's services. In addition, these services are offered at comparable rates, terms and conditions.

The extent of the CLECs' entry into SWBT's exchanges in Missouri is concrete evidence that there are no existing economic or regulatory barriers to CLEC entry into this competitive marketplace. There are no less than 40 CLECs with tariffs approved by the Commission to provide business exchange services in every Missouri exchange.¹³⁵ These alternative providers of basic business exchange services advertise extensively, including in the Call Guide pages of SWBT's Business White Pages directories in Missouri.¹³⁶ In each directory, there are facilities-based providers advertising their availability throughout SWBT's Missouri exchanges.¹³⁷

¹³⁴ Id.

¹³⁵ Ex. 11, Fernandez Direct, Sch. 2.

¹³⁶ Ex. 11, Fernandez Direct, Sch. 3.

¹³⁷ Id.

Resale is an Effective Method of Competition. Some parties to this case, including Staff,¹³⁸ assert that resellers do not provide effective competition to SWBT's core business switched access line services. However, resellers are a viable alternative and effective competition for SWBT's business customers.¹³⁹ When resellers provide service to a business customer, the reseller establishes a new business relationship with the customer.¹⁴⁰ The customer may not even know that the reseller is reselling SWBT's service, and the customer likely does not care as long as functionally equivalent services are being provided.¹⁴¹ Moreover, the reseller has the ability to sell additional services to its new business customer, such as voicemail, customer premises equipment, Internet access, systems management, and a variety of other business related services.¹⁴² In addition, the new business relationship established by reseller also permits that telecommunications company to transition the new business customer to a facilities-based service, either by purchasing unbundled network elements from SWBT or by using their own facilities.

Staff witness William Voight complains about SWBT's "over-reliance" on non-regulated alternatives such as wireless providers to show the extent of the effective competition that SWBT faces for its core business switched services throughout its Missouri exchanges.¹⁴³ SWBT has demonstrated that effective competition for core business switched services exists even without considering wireless and other non-regulated services. But such alternatives should certainly be considered. As described above, the statute which defines the factors the Commission is

¹³⁸ Ex. 18, Voight Rebuttal, p. 5.

¹³⁹ Ex. 12, Fernandez Surrebuttal, p. 5.

¹⁴⁰ Id.

¹⁴¹ Ex. 12, Fernandez Surrebuttal, pp. 5-6.

¹⁴² Ex. 12, Fernandez Surrebuttal, p. 6.

¹⁴³ Ex. 18, Voight Rebuttal, p. 48.

required to consider to determine if effective competition exists throughout SWBT's Missouri exchanges includes the "extent to which services are available from alternative providers in the relevant market."¹⁴⁴ The statute does not limit competitive alternatives to regulated telecommunications providers such as CLECs. Had the legislature wished to limit the Commission's consideration of alternative providers to regulated telecommunications companies, it clearly could have done so very easily by limiting the first factor the Commission is required to consider to regulated telecommunications companies. However, it did not do so, and this Commission can clearly rely upon services which are available statewide from alternative providers including wireless providers. There is no question that although SWBT may not be able to precisely qualify the impact of wireless providers on business access line losses, cellular use is displacing basic business access lines.¹⁴⁵ Increasingly, studies are showing that more and more wireless customers consider their wireless phone as their only phone.¹⁴⁶

Finally, Staff witness William Voight criticizes SWBT's evidence of effective competition by complaining that SWBT's supporting evidence is short on demonstrable competition and long on newspaper articles, promotional advertisements, etc.¹⁴⁷ As described above, and in the testimony of Mr. Hughes, SWBT has produced a great deal of empirical and objective evidence to demonstrate the numerous alternatives available to Missouri business access line customers, and the success that competitors are having in competing with SWBT throughout Missouri for business customers. However, it would be wrong for the Commission to not also consider the total picture of what is going on in the marketplace. SWBT considers

¹⁴⁴ Section 386.020(13)RSMo 2000.

¹⁴⁵ Ex. 12, Fernandez Surrebuttal, p. 6.

¹⁴⁶ Id.

¹⁴⁷ Ex. 18, Voight Rebuttal, p. 8.

newspaper articles, promotional advertisements, and sales brochures from competitors in developing its competitive retail strategy and it is clearly appropriate for the Commission to consider these types of competitive materials in this proceeding. News articles, advertisements and sales brochures are direct evidence of the intense competitive activity taking place throughout SWBT's Missouri exchanges for business access line customers.¹⁴⁸ This marketplace data provides direct evidence that "services are available from alternative providers" (386.020(13)(a)), that such services are "functionally equivalent or substitutable at comparable rates, terms and conditions" (386.020(13)(b)) and that "economic or regulatory barriers to entry" do not exist (380.020(13)(d)).

All of the competitive alternatives described above are succeeding in taking business access lines from SWBT. As Ms. Fernandez explained in her surrebuttal testimony, SWBT is now experiencing a net loss of basic access lines, and the rate at which SWBT is losing basic access lines is growing.¹⁴⁹ SWBT has not only lost the growth in business lines, it is experiencing a net decrease. As of September, 2001, SWBT had lost ** __ ** retail business access lines, already more than the total lost in 1999.¹⁵⁰ If the current monthly average line loss continues, SWBT anticipates it could lose another ** __ ** retail business access lines throughout 2001, for a total loss of approximately ** __ ** business access lines in 2001.¹⁵¹ This line loss information would not identify those lines gained by CLECs or other non-traditional providers that were not previously served by SWBT (e.g., additional lines a business customer purchases

¹⁴⁸ Ex. 12, Fernandez Surrebuttal, p. 8.

¹⁴⁹ Ex. 12, Fernandez Surrebuttal, p. 9.

¹⁵⁰ Ex. 12HC, Fernandez Surrebuttal, p. 10.

¹⁵¹ Id.

from a CLEC).¹⁵² The bottom line is that effective competition has reduced substantially the total number of new service orders as well as increased the number of disconnected lines over which SWBT is providing service in Missouri.¹⁵³ In addition, as Schedule 4(HC) to Ms. Fernandez's Surrebuttal testimony shows, competitive losses are not limited to St. Louis and Kansas City, but also include many other exchanges in the MCA and the outlying areas such as Cape Girardeau, Poplar Bluff, Mexico and others.¹⁵⁴ Schedule 4(HC) to Ms. Fernandez's surrebuttal testimony reveals that competitive disconnects constitute ** __ ** of all of SWBT's disconnects.¹⁵⁵

The total number of business access lines lost to competition supports the inescapable conclusion that effective competition exists for SWBT's business exchange, core business switched services throughout SWBT exchanges in Missouri.

Issue 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?

SWBT's business line related services, like SWBT's core business switched services described above, face effective competition throughout SWBT's exchanges in Missouri, and therefore, should be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

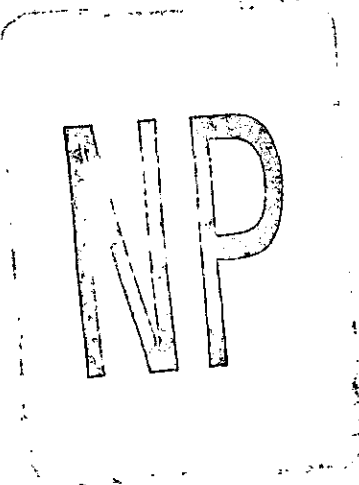
Description of Business Line Related Services. Line Related or "vertical services", are services a business customer may add to its business access lines and which provide additional

¹⁵² Id.

¹⁵³ Ex. 12, Fernandez Surrebuttal, pp. 10-11.

¹⁵⁴ Ex. 12, Fernandez Surrebuttal, pp. 11-12.

¹⁵⁵ Ex. 12, Fernandez Surrebuttal, p. 12:Sch. 4(HC)



functionality.¹⁵⁶ Examples of line related services include services such as call waiting, return call, three-way calling, call forwarding, caller I.D. and speed calling.

CLECs are the most evident type of competitor for business access line customers, providing business access line services that are substitutable for or functionally equivalent to SWBT's services.¹⁵⁷ As described above, SWBT's core business switched services face effective competition from CLECs throughout Missouri exchanges. In addition, although not necessary to establish effective competition, SWBT's core business switched services face competition from non-traditional forms of competition, such as wireless carriers and Internet-enabled technologies, such as Internet telephony, e-mail, e-commerce, and instant messaging. Line related or vertical services are related to core business switched access line services. Where SWBT's core business switched services face effective competition from CLECs, which as described above is throughout all of SWBT's Missouri exchanges, SWBT's line related services also face effective competition.

CLECs offer their customers the same line related services as those offered by SWBT.¹⁵⁸ In addition, customer premises equipment (CPE) provides a substitute for business line related services.¹⁵⁹ CPE will perform the same functions as many of SWBT's line related services.¹⁶⁰ For instance, call forwarding is available on CPE and automatic redial is programmed on most telephone handsets currently available at the retail level.¹⁶¹ This feature is comparable to

¹⁵⁶ Ex. 11, Fernandez Direct, p. 11.

¹⁵⁷ Id.

¹⁵⁸ Ex. 11, Fernandez Direct, p. 14.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ Ex. 11, Fernandez Direct, p. 15.

SWBT's autoredial service that allows the last outgoing number to be redialed.¹⁶² Some business telephones have a conferencing feature that allows the user to conduct a conference call without operator assistance.¹⁶³ This feature is comparable to SWBT's 3-way calling feature.¹⁶⁴

There is no functional difference between SWBT's business access line related services and access line related services provided by a reseller of SWBT's line related services.¹⁶⁵ Examples of tariffs under which CLECs offer resold access line related services are attached to the Direct Testimony of SWBT witness Tom Anvin.¹⁶⁶ When SWBT loses an access line to a competitor, it also loses the line related services that were associated with that line.¹⁶⁷ CLECs that do not resell SWBT's business access line related services provide line related services using their own facilities, or they can utilize SWBT's unbundled network elements, over which line related services can be provisioned.¹⁶⁸ SWBT's business line related services face the same types of effective competition from CLECs throughout SWBT's Missouri exchanges as described in the preceding section of this brief addressing SWBT's core business switched services. The business line related features are offered by CLECs at comparable rates to the rates charged for such features by SWBT.¹⁶⁹

In summary, SWBT's business line related services face the same effective competition that SWBT's core business switched services face throughout SWBT's exchanges in Missouri. The Commission should classify SWBT's business line related services as competitive, pursuant

¹⁶² Id.

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ See Ex. 15.

¹⁶⁷ Ex. 11, Fernandez Direct, p. 15.

¹⁶⁸ Ex. 11, Fernandez Direct, p. 16.

to Section 392.245.5 RSMo 2000. Staff recognizes that SWBT's business line related services should be classified as competitive if the underlying basic local services are classified as competitive.¹⁷⁰ Because Staff takes the position that SWBT's core business switched services should only be classified as competitive in the Kansas City and St. Louis exchanges, Staff takes the position that SWBT's business line related services should, likewise, only be classified as competitive in the Kansas City and St. Louis exchanges. However, as described above, SWBT's core business switched access line services face effective competition throughout all of SWBT's Missouri exchanges. SWBT has presented substantial evidence that its business line related services should be classified as competitive throughout SWBT's Missouri exchanges.

Issue 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?

SWBT's high capacity exchange access line services face effective competition throughout SWBT's Missouri exchanges. The Commission should classify SWBT's high capacity exchange access line services as competitive pursuant to Section 392.245.5 RSMo 2000.

Description of SWBT's High Capacity Exchange Access Line Services. SWBT's high capacity exchange access line services provide customers with up to 24 56/64 Kbs channels of switched access to the local switched telephone network on a single DS-1 (1.544 megabytes per second) transport facility.¹⁷¹ There are generally 3 types of high capacity exchange access line services offered by SWBT throughout Missouri.¹⁷² The first type utilizes ISDN Primary Rate

¹⁶⁹ Ex. 11, Fernandez Direct, p. 17.

¹⁷⁰ Ex. 18, Voight Rebuttal, p. 5.

¹⁷¹ Ex. 11, Fernandez Direct, p. 20.

¹⁷² Ex. 11, Fernandez Direct, p. 20.

Interface (PRI) as the underlying technology.¹⁷³ ISDN PRI-based services include SmartTrunk and Select Video Plus.¹⁷⁴ The second type of high capacity exchange access line services offered by SWBT throughout Missouri utilizes simple time division multiplexing (TDM) for digital trunking over a DS-1.¹⁷⁵ UD/DS-1 Digital Trunking Services include SuperTrunk and Digital Loop Service.¹⁷⁶ The third type of high capacity exchange access line services offered by SWBT throughout Missouri exchanges is known as Integrated Access (IA).¹⁷⁷ Integrated Access service also utilizes simple time division multiplexing and DS-1 technologies. The Integrated Access capacity service offered by SWBT in Missouri is known as Access Advantage Plus (which is limited to access to local regulated services).¹⁷⁸

SWBT's High Capacity Exchange Access Line Services Face Effective Competition Throughout Missouri. Like SWBT's core business switched services and business line related services described in the preceding two sections of this brief, SWBT's high capacity exchange access line services face effective competition throughout SWBT's Missouri exchanges and should be classified by the Commission as competitive throughout Missouri. There are alternative providers providing substitutable or functionally equivalent services to SWBT's high capacity exchange access line services throughout Missouri.¹⁷⁹ Missouri business customers have many alternatives to SWBT's high capacity exchange access services, including services

¹⁷³ Id.

¹⁷⁴ Ex. 11, Fernandez Direct, p. 21.

¹⁷⁵ Ex. 11, Fernandez Direct, p. 20.

¹⁷⁶ Ex. 11, Fernandez Direct, p. 21.

¹⁷⁷ Ex. 11, Fernandez Direct, p. 20.

¹⁷⁸ Ex. 11, Fernandez Direct, p. 21.

¹⁷⁹ Ex. 11, Fernandez Direct, pp. 21-22.

provided by CLECs such as AT&T, Birch, MCIWorldCom, Sprint, and Allegiance.¹⁸⁰ PRI and Digital Trunking services are purchased predominantly by large business and Internet service provider (ISP) customers.¹⁸¹ PRI and Digital Trunking services are standard services for CLECS selling to the large business PBX market or the ISP inbound dial access networking market.¹⁸² CLECs are SWBT's main competitors in these markets.¹⁸³ CLECs have been reselling SWBT's retail high capacity exchange access line services like SuperTrunk and SmartTrunk at discounted rates to customers since the Act was passed.¹⁸⁴ As described above, high capacity exchange access line services are designed for large business customers, with high volumes of telecommunications traffic.¹⁸⁵ Large PBX business customers are lucrative targets for CLECs.¹⁸⁶ In addition to reselling SWBT's high capacity exchange access lines services, most if not all CLECs who compete for large business and ISP sales offer equivalent services to SmartTrunk, SWBT's ISDN PRI service.¹⁸⁷ CLECs also offer equivalent services to SuperTrunk and Digital Loop Service, which are digital services.¹⁸⁸ Examples of comparable high capacity exchange access services offered by CLECs on a facilities basis can be found in Section 7 of AT&T's tariff, that was attached to the Direct Testimony of SWBT witness Tom Anvin.

PRI is a mature telecommunications technology and in addition to substitutable services offered by CLECs, nonregulated substitutions are emerging and competing for customer share in

¹⁸⁰ Id.

¹⁸¹ Ex. 11, Fernandez Direct, p. 22.

¹⁸² Id.

¹⁸³ Id.

¹⁸⁴ Id.

¹⁸⁵ Id.

¹⁸⁶ Ex. 11, Fernandez Direct, p. 23.

¹⁸⁷ Id.

¹⁸⁸ Id.

the high capacity exchange access line market.¹⁸⁹ As Ms. Fernandez discusses in her direct testimony, increases in sales of voice over IP, voice over ATM, and DSL are beginning to replace demand for PRI in the PBX market.¹⁹⁰ An example of these alternatives are attached to Ms. Fernandez's Direct Testimony as Schedule 7.

There is no functional difference between SWBT's high capacity exchange access lines services and the high capacity exchange access services offered by CLECs.¹⁹¹ Digital Trunking services from CLECs and SWBT's DS-1 based Digital Trunking services are functionally the same.¹⁹² There is no functional difference between SmartTrunk (ISDN PRI) and a CLEC's PRI offering. The number and type of switch features (i.e., PRI, 2 B-Channel Transfer) may vary from CLEC to CLEC and between CLEC and SWBT, but the basic products provide the same functionality to the customers.¹⁹³ CLECs offer their high capacity exchange access line services at rates that are comparable to SWBT's rates.¹⁹⁴

As described above, and in the preceding two sections of this brief, there is effective competition for SWBT's core business switched access lines, line related services and high capacity exchange access services throughout SWBT's exchanges in Missouri. Staff agrees that SWBT's high capacity exchange access services face effective competition in the St. Louis and Kansas City exchanges, and may be classified as competitive in those exchanges.¹⁹⁵ As described in the preceding sections, however, Staff's analysis is too narrow, and SWBT should

¹⁸⁹ Ex. 11, Fernandez Direct, p. 23.

¹⁹⁰ Ex. 11, Fernandez Direct, p. 23.

¹⁹¹ Ex. 11, Fernandez Direct, p. 24.

¹⁹² Id.

¹⁹³ Id.

¹⁹⁴ Ex. 11, Fernandez Direct, p. 25; See Sched. 9 for an example price comparison of ISDN PRI Services.

¹⁹⁵ Ex. 18, Voight Rebuttal, p. 50.

also be granted competitive classification for high capacity exchange access services throughout all of SWBT's exchanges in Missouri.

Issue 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?

SWBT's Plexar® services face effective competition throughout all of SWBT's Missouri exchanges, and should therefore be classified as competitive in each SWBT Missouri exchange, pursuant to Section 392.245.5 RSMo 2000.

Description of Plexar Services. Plexar is a central office based communications system that allows business customers to use SWBT's central office technology instead of purchasing their own switching equipment.¹⁹⁶ The Plexar family of services includes Plexar I, Plexar Express, Plexar II, and Plexar-Custom.¹⁹⁷ A business customer has no capital outlay since Plexar switching equipment is provided, housed, and maintained in SWBT's central offices.¹⁹⁸ The telecommunications industry often refers to services such as SWBT's Plexar services as "Centrex".¹⁹⁹

The Plexar system and station features are changeable by SWBT, and optionally, with some Plexar offers, by the customer.²⁰⁰ Plexar service provides basic call processing capabilities, such as call hold, call transfer, and three-way calling.²⁰¹ Additionally, some Plexar

¹⁹⁶ Ex. 11, *Fernandez Direct*, p. 26.

¹⁹⁷ Id.

¹⁹⁸ Id.

¹⁹⁹ Id.

²⁰⁰ Id.

²⁰¹ Id.

services also offer advanced voice and data call handling such as basic rate interface (BRI) and integrated service digital network (ISDN) capabilities.²⁰²

SWBT's Plexar/Centrex Services Face Effective Competition Throughout Missouri. For decades, business customers have had competitive alternatives to SWBT's Plexar services.²⁰³ One of the earliest examples of competitive alternatives to SWBT's business services were key telephone systems and PBXs.²⁰⁴ Key telephone systems and PBXs were developed and offered to business customers to replace some of the central office based offerings for larger business customers.²⁰⁵ PBXs and key telephone systems continue to be an attractive competitive alternative for business customers that choose to own their own voice system.²⁰⁶ Moreover, new "IP" technology is quickly energizing the PBX market.²⁰⁷ Some of the major equipment-based competitors SWBT faces are Lucent (for key and PBX systems), Northern Telecom (for key and PBX systems), Toshiba (for key systems), and Rolm/Siemens (for PBX systems).²⁰⁸

In addition to the equipment based competition faced by SWBT's Plexar services, several CLECs in Missouri also have tariffed central office based centrex offerings in Missouri that are similar to Plexar.²⁰⁹ These CLECs include KMC Telecom II, Inc. and Birch Telecom. KMC's Missouri Tariff specifies that it provides its centrex service throughout the state.²¹⁰ CLEC's

²⁰² Id.

²⁰³ Ex. 11, Fernandez Direct, p. 26.

²⁰⁴ Ex. 11, Fernandez Direct, pp. 26-27.

²⁰⁵ Ex. 11, Fernandez Direct, p. 27.

²⁰⁶ Id.

²⁰⁷ Id.

²⁰⁸ Id.

²⁰⁹ Ex. 11, Fernandez Direct, p. 28.

²¹⁰ Id.

centrex services generally provide the same features and services as SWBT's Plexar service.²¹¹ For example, Birch Telecom's "Centrex Express" service provides the same features as SWBT's "Plexar Express" (including call forwarding-busy line-all calls, call forwarding-don't answer-all calls, call forwarding-variable, call hold, call pick-up, call transfer-all calls, Direct Inward Dialing (DID), Direct Outward Dialing (DOD), Hunting-Basic, Station-To-Station (Intercom Dialing), Three Way Calling and Touch Tone Dialing.²¹² CLECs provide their Centrex services, which are functionally equivalent to and substitutable for SWBT's Plexar service, at comparable rates, terms and conditions.²¹³ Likewise, PBX or key telephone systems, which are also substitutable for, or functionally equivalent to, SWBT's Plexar Service, at comparable prices.²¹⁴

SWBT's Plexar services are clearly subject to effective competition, and should be declared competitive in all SWBT exchanges in Missouri pursuant to Section 392.245.5 RSMo 2000. The Commission Staff supports SWBT's request for a competitive classification of SWBT's Plexar services in all SWBT exchanges in Missouri.²¹⁵

Issue 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?

The Commission should confirm that SWBT's intraLATA private line/dedicated services have been classified as competitive in all of its Missouri exchanges. Staff agrees that the Commission should confirm a competitive classification for these services.²¹⁶ No party presented any evidence to support a different conclusion.

²¹¹ Ex. 11, Fernandez Direct, p. 30.

²¹² Ex. 11, Fernandez Direct, pp. 30-31.

²¹³ Ex. 11, Fernandez Direct, p. 31.

²¹⁴ Id.

²¹⁵ Ex. 18, Voight Rebuttal, p. 4.

²¹⁶ Ex. 18, Voight Rebuttal, p. 54.

Description of Private Line Services. Private line services are nonswitched, dedicated circuits, for which SWBT furnishes the requisite facilities, including channels and network terminating equipment, to enable customers and authorized users to communicate between specified locations within a LATA on a continuous basis. They are most frequently utilized for data transmissions, but are also utilized for transporting voice or integrated data/voice communications in private networks.²¹⁷ Private line services include Analog Service;²¹⁸ DS0 Service;²¹⁹ DS1 Service;²²⁰ DS3 Service;²²¹ Network Reconfiguration Service (“NRS”);²²² and GigaMAN Service.²²³

The Legislature and the Commission have found the Private Line Market competitive. In 1996, the Missouri Legislature recognized the private line market to be sufficiently competitive to permit all carriers, including SWBT, to freely price private line services:

Customer-specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange (“PBX”) services, provided such customer-specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.²²⁴

²¹⁷ Ex. 3, DeHahn Direct, pp. 3-5.

²¹⁸ Analog Service is a voice grade channel typically used for low level data transmission or telemetry, *i.e.*, meter reading. Ex. 3, DeHahn Direct, p. 3.

²¹⁹ DS0 Service is a data service with transmission speeds of up to 64 Kbps, typically used for low volume data transmission such as file transfer and transaction processing, *i.e.*, point of sale terminals. *Id.*, pp. 3-4.

²²⁰ DS1 Service is a high capacity digital service with transmission speed of 1.544 Mbps, typically used in private network applications such as tie lines between PBXs or local area network connectivity. *Id.*, p. 4.

²²¹ DS3 Service is a high capacity data service with a transmission speed of 44.736 Mbps, typically used in private networking applications. *Id.*

²²² NRS is a service that provides customers with the ability to reconfigure their dedicated network services from their own premises. *Id.*

²²³ GigaMAN Service is a high capacity data service providing a transmission speed of 1 Gbps, typically used to provide LAN-to-LAN interconnection service. *Id.*, p. 5.

²²⁴ Section 392.200(8) RSMo (2000).

The Commission recognized the existence of competition in the intraLATA private line market even earlier. In a December 1992 Order, the Commission found that services provided by interexchange carriers (“IXCs”) were “equivalent” and completely interchangeable with SWBT’s private line services. Accordingly, the Commission granted SWBT’s request for reclassification of private line services to a “transitionally competitive” classification.²²⁵

Under Section 392.370.1 and .2 RSMo (2000), a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after private line services were declared transitionally competitive (January 10, 1996), the Commission, with SWBT’s agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, private line service became classified as competitive on January 10, 1999 by operation of law.²²⁶

Competition in the Private Line Market has existed for years. Significant competition has existed in the retail intraLATA private line market in Missouri for nearly 15 years, dating back to the emergence of competitive access providers (“CAPs”) in the mid-1980s. CAPs, such as TCG, MFS and Brooks Fiber initially focused on providing alternative access to long distance companies. They also targeted commercial business customers as they completed their fiber ring build outs and gained access to multi-tenant buildings with their own facilities. In the late 1980s, the major interexchange carriers such as AT&T, Sprint and MCI also began to compete for retail

²²⁵ Report and Order, Case No. TO-93-116, issued December 21, 1992; Ex. 3, DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

²²⁶ Ex. 3, DeHahn Direct, pp. 2, 6 and 13; Ex. 16, Hughes Direct, pp. 9-10.

intraLATA private line services as they bid on data networks covering intrastate services as well as interstate long haul services.²²⁷

Undisputed evidence shows that many alternative providers, which existed before CLECs entered the local market, offer non-switched, dedicated private line type services, and the services and functionality they provide are substitutable for or functionally equivalent to SWBT's private line services. These alternatives, against which SWBT competes, are either not regulated by the Commission or at least not price regulated in the same manner as SWBT.²²⁸

In addition to direct competition for traditional private line services, there are many service providers in the marketplace offering a variety of networking solutions, with different technologies, that can meet the same transport needs as SWBT's wireline private line services. For example, traditional private line networks, such as those offered by SWBT and numerous other providers, are rapidly being replaced by fast-packet, frame relay and cell relay services. Internet based access for branch offices or small businesses are being used to substitute for analog and DS0 private line circuits as customers are increasingly sending files via the Internet, rather than incurring the monthly expense of maintaining a private line circuit. And the availability of fixed wireless CPE solutions, such as Cisco's aironet product line has been displacing wire line DS1s in campus settings, such as school districts, in the education market.²²⁹

Given the extensive nature of competition for private line services and the prior determinations of competitive status, the Commission should confirm competitive classification for SWBT's private line services in all of its Missouri exchanges.

²²⁷ Ex. 3, DeHahn Direct, p. 5.

²²⁸ Ex. 3, DeHahn Direct, pp. 2, 5-11 and Schedules 1 and 2.

²²⁹ Ex. 3, DeHahn Direct, pp. 8-9.

Issue 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?

Southwestern Bell Telephone Company's residential access line services face effective competition throughout SWBT's Missouri exchanges. The Commission should classify Southwestern Bell Telephone Company's residential access line services as competitive, pursuant to Section 392.245.5 RSMo 2000.

Description of Residential Access Line Services. Residential access line services are those services that provide basic voice access for residences to the telecommunications network.²³⁰ For residential service, the most typical form of residential access line service is "flat rate" telephone service.²³¹ Flat rate service is an exchange service furnished for a specified sum without regard to the amount of use. These lines may be used to make voice telephone calls or to transmit data to or from the public switched network.²³² Measured service is another form of residential access line service.²³³ Measured service is a class of service for which a charge is made in part on the basis of network access and, in part, on the basis of four local usage pricing elements, comprised of the number of local messages, the duration of the message, the distance of the message within the local area, and the time of day the message was placed.²³⁴ Again, measured service lines can be used to make voice telephone calls or to transmit data to or from the public switched network.²³⁵ In addition, message rate service is another form of residential

²³⁰ Ex. 13, Fite Direct, p. 8.

²³¹ Id.

²³² Ex. 13, Fite Direct, Sch. 1.

²³³ Ex. 12, Fite Direct, p. 8.

²³⁴ Ex. 13, Fite Direct, Sch. 1.

²³⁵ Id.

access line service offered by SWBT. Message rate service is a class of exchange service, for which a charge is made wholly or in part on the basis of amount of use.²³⁶

Effective Competition Exists for SWBT's Residential Access Line Services. Effective competition exists for SWBT's residential access line services throughout its Missouri exchanges, and these services should be classified as competitive pursuant to Section 392.245.5 RSMo 2000. As SWBT witness Thomas Hughes described in his surrebuttal testimony, SWBT's residential access line services are subject to effective competition in SWBT's exchanges throughout the state because there are alternative providers offering substitutable or functionally equivalent services throughout the state.²³⁷ As the data contained in Schedule 6(HC) to Mr. Hughes' surrebuttal testimony reflects, where CLECs choose to exercise their existing right to compete with SWBT's basic residential voice services, CLECs are an extremely effective competitor to SWBT. For example, in SWBT's Harvester and St. Charles exchanges, there are ** _** and ** _** CLECs serving residential customers, respectively. CLECs in the Harvester exchange have garnered a minimum residential market share of approximately ** _** of the existing residential access lines in the exchange. CLECs in the St. Charles exchange have garnered a minimum market share of approximately ** %** of the market share for residential access lines in that exchange.²³⁸ Overall, the minimum market share gained by CLECs statewide in the residential access line market throughout SWBT's exchanges is over ** %**. Clearly, based on market share data alone, CLECs are effectively competing with SWBT's residential access line services in the Harvester and St. Charles exchanges in Missouri. However, the large market share percentages gained by CLECs in these exchanges do not foreclose the Commission

²³⁶ Id.

²³⁷ Ex. 17(HC), Hughes Surrebuttal(HC), p. 10.

²³⁸ Ex. 17(HC), Hughes Surrebuttal(HC), Sch. 6-1(HC).

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finding that SWBT's residential access line services face effective competition in other exchanges where CLECs have not gained as significant a market share of the residential access line market. In other exchanges, effective competition for residential access line services offered by SWBT exist throughout all of SWBT's exchanges, based on alternate providers providing functionally equivalent or substitutable services at comparable rates, terms and conditions.²³⁹ CLECs are free to determine what markets they wish to serve and what markets they do not wish to serve.²⁴⁰ This allows CLECs to "cherry pick" the best residential customers in a particular market.²⁴¹ In considering whether SWBT faces effective competition throughout all of its Missouri exchanges for residential access lines services, the Commission should consider that where CLECs have chosen to commit resources to compete effectively, CLECs have done so and have garnered significant market share.²⁴²

There are various forms of existing and effective competition for residential access lines services. As described above, the most well-known type of competition for residential access line services is from certificated CLECs providing tariff services that are currently available and directly substitutable for SWBT's residential access line services.²⁴³ There are three different types of platforms that allow CLECs to provide residential access line service. These platforms are resale, unbundled network elements, or facilities-based providers.²⁴⁴ Many CLECs provide service through resale and UNE-P (the unbundled network element platform) allowing these

²³⁹ Ex. 17, Hughes Surrebuttal, p. 11.

²⁴⁰ Id.

²⁴¹ Id.

²⁴² Id.

²⁴³ Ex. 13, Fite Direct, p. 8.

²⁴⁴ Ex. 13, Fite Direct, p. 9.

CLECs to offer service in all SWBT exchanges with little or no capital investment.²⁴⁵ Resellers can simply purchase residential services from SWBT at a discount and in turn sell the service to their customers often at a discount from SWBT's retail price. Other CLECs utilize the UNE platform, which allows them to purchase unbundled network elements from SWBT and to completely duplicate the services offered by SWBT. Other CLECs may choose to provide service by combining unbundled network elements purchased from SWBT with their own facilities.²⁴⁶ By purchasing a UNE loop, the CLEC can reach the end-user without having to invest in the last mile of infrastructure.²⁴⁷ All of these alternatives are available throughout SWBT's Missouri exchanges.

CLECs offer residential access line services in Missouri pursuant to tariff. The Missouri local exchange services tariffs for AT&T and LDD were attached to SWBT witness Thomas Anvin's testimony. The descriptions provided in those tariffs of the residential access line services offered by those companies are completely consistent with the description of residential access line services contained in SWBT's local exchange. These tariffs reflect that the residential access line services provided by at least these CLECs are substitutable for or functionally equivalent to SWBT's residential access line service. In addition, as described in Schedule 5 to Ms. Fite's direct testimony, the rates at which CLECs are offering residential access services in Missouri are directly comparable to the rates SWBT charges for those services.

²⁴⁵ Id.

²⁴⁶ Ex. 13, Fite Direct, p. 9.

²⁴⁷ Id.

CLECs are marketing their residential access line services throughout the state of Missouri.²⁴⁸ Examples of some of these advertisements that appeared in SWBT exchanges throughout Missouri and which targeted residential customers, were attached to SWBT witness Amy Fite's direct testimony as Schedule 6. These advertisements leave no question that CLECs are advertising these services as substitutes for, or functional equivalents to, SWBT's services.

SWBT's residential access line services also face competition from non-traditional sources such as wireless services. Again, advertisements from wireless companies make it clear that these companies are encouraging customers to substitute wireless service for their existing residential wireline service. Examples of these advertisements were attached to Ms. Fite's direct testimony as Schedule 7. Wireless providers are offering plans with no roaming charges and no domestic long distance charges, and include free Caller I.D. and free Call Waiting. Digital wireless service offers the same ability to make and receive calls that SWBT offers pursuant to its residential access line services.²⁴⁹ There are three types of customers who use wireless service as a substitute for SWBT's residential services: (1) those customers that completely *replace landline residential phones with wireless service and use their wireless service as their primary access line*, (2) those customers that purchase wireless phones instead of additional landline residential access lines, and (3) those customers who migrate some of their landline residential access line minutes of use to their wireless phones.²⁵⁰ Some wireless services include unlimited off-peak calling, or a certain number of toll minutes.²⁵¹ These wireless providers,

²⁴⁸ Ex. 13, Fite Direct, p. 12.

²⁴⁹ Ex. 13, Fite Direct, p. 13.

²⁵⁰ Ex. 13, Fite Direct, p. 13.

²⁵¹ Id.

whose services are a direct substitute for SWBT's residential access line services, enjoy complete pricing flexibility.²⁵²

Other non-traditional sources of competition for SWBT's residential access line services exist throughout the state of Missouri. Cable telephony, which uses the cable wiring traditionally used to provide cable television, is a direct substitute for the SWBT residential access line.²⁵³ This form of telephony provides the same service and basic features of the traditional phone service. Cable modems use the same connection as the cable phone.²⁵⁴ The connection of the cable modem to the Internet via the cable service is a direct substitute for a second line that can be used to access the Internet.²⁵⁵ Cable phones, cable modems, and in-home cable television can be used concurrently.²⁵⁶ Both traditional (CLEC) alternative providers and non-traditional alternative providers provide substitutable services for SWBT's residential access line services throughout SWBT's exchanges in Missouri.²⁵⁷ With respect to CLEC competitors, many CLEC tariffs indicate that they provide residential access line services in all of SWBT's exchanges in Missouri.²⁵⁸ Also attached to Ms. Fite's direct testimony as Schedule 11 was a map which demonstrates the number of CLECs which have filed tariffs in SWBT's exchanges. Non-traditional competitive alternatives, such as wireless service and Internet-based offerings are also

²⁵² Ex. 13, Fite Direct, p. 15.

²⁵³ Id.

²⁵⁴ Id.

²⁵⁵ Ex. 13, Fite Direct, pp. 15-16.

²⁵⁶ Id.

²⁵⁷ Ex. 13, Fite Direct, p. 16.

²⁵⁸ Id.; Sched. 3.

available to customers throughout the state. These services are not exchanged based, and therefore, are available generally throughout the state irrespective of exchange boundaries.²⁵⁹

As described above, SWBT's residential access line service faces effective competition throughout all of SWBT's exchanges in Missouri. Substitutable or functionally equivalent services to the residential access line services provided by SWBT are available throughout the state of Missouri. These services are available at comparable rates, terms and conditions. The Commission should find that SWBT's residential access line services throughout Missouri are subject to effective competition, and classify SWBT's residential access line services as competitive pursuant to 392.245.5 RSMo 2000.

Issue 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?

SWBT's residential access line related services face effective competition throughout SWBT's Missouri exchanges. The Commission should classify SWBT's residential access line related services as competitive pursuant to Section 392.245.5 RSMo 2000.

Description of Residential Access Line Services. SWBT's residential line related vertical services offer features that can be added to residential access lines to make the line more functional.²⁶⁰ The typical residential line related services are the numerous vertical services that SWBT provides, but they may also include things like "hunting", which allows calls to hunt from a busy line to another line that is not busy.²⁶¹ The residential line related vertical services offered by SWBT are called EasyOptions® services and include vertical and custom calling

²⁵⁹ Ex. 13, Fite Direct, p. 17.

²⁶⁰ Ex. 13, Fite Direct, p. 17.

²⁶¹ Id.

features.²⁶² These services include, but are not limited to, services such as Call Waiting, Auto Redial, 3-Way Call, Call Blocker, Caller I.D. with Name Delivery, Caller I.D. with Number Delivery, Speed Dial 8, and Call Waiting I.D. A complete list of the residential line related services offered by SWBT in Missouri and a description of each of these services is included in Schedule 1 to SWBT witness Aimee Fite's Direct Testimony.

SWBT's Line Related Services Face Effective Competition in Missouri. As described in the preceding section of this brief, SWBT's residential access line services face effective competition throughout SWBT's exchanges in Missouri, and should be classified as competitive pursuant to Section 392.245.5 RSMo 2000. The level of competition for SWBT's residential access line services described above also directly impacts SWBT's line related services.²⁶³ For example, when a competitor wins a residential access line customer, SWBT not only loses the recurring access line revenue, but it also loses the revenue from any residential line related services to which the customer subscribed, as well as the opportunity to market line related services to that customer.²⁶⁴

Various forms of competition exist for SWBT's residential line related services. The most apparent type of effective type of competition for SWBT's residential line related services is from CLECs that either resell SWBT's residential access line services and line related vertical services, or offer comparable services via their own facilities or unbundled network elements purchased from SWBT.²⁶⁵ The residential line related vertical services offered by CLECs in

²⁶² Id.

²⁶³ Ex. 13, Fite Direct, p. 18.

²⁶⁴ Id.

²⁶⁵ Id.

Missouri are offered pursuant to tariff.²⁶⁶ These tariffs demonstrate that CLECs are providing these same types of vertical services that SWBT provides.²⁶⁷ For example, McLeodUSA resells SWBT's residential services throughout Missouri.²⁶⁸ McLeod offers residential services in all of SWBT's Missouri exchanges.²⁶⁹ McLeod's general exchange tariff reveals that McLeod offers the same vertical services (EasyOptions) as the line related vertical services listed in SWBT's general exchange tariff.²⁷⁰ Other examples of CLECs effectively competing with SWBT for residential access line related services exist.

The prices at which CLECs offer competing residential line related services are comparable to SWBT's prices.²⁷¹ In Schedule 5 to her Direct Testimony, SWBT witness Aimee Fite provides several examples demonstrating that the prices charged by CLECs for residential line related vertical services generally compare to the prices charged by SWBT.²⁷² For example, McLeod's tariff contains a monthly rate for Call Forwarding of \$2.85. The monthly rate that SWBT charges for this service is \$3.24. In addition, McLeod offers Call Blocker service for \$2.85 per month, while SWBT offers this service for \$3.00 per month. LDD offers Call Blocker and Call Forwarding for the same price as McLeod.²⁷³ Clearly, CLECs are providing effective competition for residential line related services offered by SWBT throughout SWBT's exchanges in Missouri, whether CLECs are providing competing services via resale of SWBT's services or through their own facilities.

²⁶⁶ Ex. 13, Fite Direct, p. 19.

²⁶⁷ Id.

²⁶⁸ Id.

²⁶⁹ Id.

²⁷⁰ Ex. 13, Fite Direct, pp. 19-20.

²⁷¹ Ex. 13, Fite Direct, p. 20.

²⁷² Id.

In addition, other less traditional forms of competition exist for SWBT's residential line related vertical services. For example, as described in the preceding section of this brief, residential consumers may substitute wireless service for their traditional residential access line service. When they do so, these customers can obtain a full range of vertical services from their wireless provider.²⁷⁴ Most, if not all, of the residential line related vertical services offered by SWBT are also offered by wireless service providers.²⁷⁵ In addition, residential access line customers can easily and inexpensively obtain customer premises equipment (CPE) that will perform the exact same functions as some residential line related services offered by SWBT.²⁷⁶ For example, a Redial feature is programmed on most telephone handsets currently available in retail stores. This feature is directly comparable to SWBT's auto redial line related service, that allows the last outgoing number to be redialed. In addition, some residential telephone sets have a conferencing feature that allows the user to conduct a conference call without operator assistance if the subscriber has two lines.²⁷⁷ This CPE-based feature is directly comparable to SWBT's 3-Way Calling line related service. The customer pays a one-time charge for the purchase of this CPE, which eliminates the need to pay additional monthly fees for line related services added to the telephone line.²⁷⁸ Many telephone sets marketed to residential consumers also allow the user to program frequently dialed numbers, which is directly comparable to SWBT's line related speed dialing services.²⁷⁹ In addition, for customers that want to stay in

²⁷³ Id.

²⁷⁴ Ex. 13, Fite Direct, p. 18.

²⁷⁵ Id.

²⁷⁶ Id.

²⁷⁷ Ex. 13, Fite Direct, p. 19.

²⁷⁸ Id.

²⁷⁹ Id.

touch while on the Internet, ISPs now offer Call Waiting, Caller I.D. and Voicemail via their own network.²⁸⁰ This eliminates the need for customers to subscribe to SWBT's line related vertical services²⁸¹

There are numerous examples of these less traditional competitive alternatives to SWBT's line related vertical services being marketed directly to residential customers. For example, as described above, residential customers are increasingly using wireless service as a substitute for SWBT's residential access line service.²⁸² These wireless providers also offer substitutable line related vertical services.²⁸³ Attached to Ms. Fite's Direct Testimony as Schedule 12 are marketing descriptions of wireless services, which clearly indicate that line related vertical services are being offered in connection with wireless service. For example, MCIWorldCom wireless service offers a consumer package which includes Voicemail, Call Waiting, 3-Way Calling, a free phone with missed call indicator, and last number redial. AT&T Wireless offers their PCS Service with Voicemail, free Call Waiting, Caller I.D., and a free executive headset. Schedule 12 contains additional examples of advertisements that demonstrate that wireless providers offer vertical services that are functionally equivalent to SWBT's line related vertical services.²⁸⁴

Ms. Fite also attached as Schedule 13 to her Direct Testimony, marketing materials featuring CPE that offers the redial feature built in to the equipment, eliminating the need for a customer to purchase the comparable vertical service from SWBT.²⁸⁵ For consumers that have

²⁸⁰ Id.

²⁸¹ Id.

²⁸² Ex. 13, Fite Direct, p. 20.

²⁸³ Id.

²⁸⁴ Id.

²⁸⁵ Ex. 13, Fite Direct, pp. 21-22; Sched. 13.

two or more lines, these materials reflect that customers may purchase a two line phone that will give them the ability to conduct a conference call without purchasing SWBT's line related service of 3-Way Calling, or without Operator Assistance. These CPE products are widely available through national and local retailers, mail order, and through Internet Websites.²⁸⁶

Considering both function and price, many competitors throughout Missouri are offering residential line related services that directly and effectively compete with SWBT's line related vertical service offerings. The Commission should find that effective competition exists for SWBT's residential line related vertical services and declare these services competitive pursuant to Section 392.245.5 RSMo 2000. Staff agrees that SWBT's residential line related vertical services should be classified as competitive but only in the Harvester and St. Charles exchanges. While SWBT agrees that its residential line related vertical services should be classified as competitive in these two exchanges, SWBT does not agree that the evidence in this case limits a competitive classification for residential line related services to these two exchanges. As described above, Staff's focus on market share loss in these two exchanges places too much emphasis on one form of competition, and ignores all other forms of competition which under the statute the Commission is free to consider. For the reasons described herein, the Commission should determine that SWBT's line related vertical services face effective competition in all SWBT exchanges in Missouri, and make the appropriate competitive classification.

Issue 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?

²⁸⁶ Ex. 13, Fite Direct, p. 22.

The Commission should confirm that SWBT's intraLATA toll services have been classified as competitive in all SWBT exchanges. Staff agrees that the Commission should approve a statewide competitive classification for SWBT's intraLATA toll services.²⁸⁷

Description of IntraLATA Toll Services. IntraLATA toll service furnishes telecommunications between points in different local service areas within the same LATA. It provides a customer with the ability to make a telephone call to someone outside that customer's local calling scope, but within the LATA.²⁸⁸

The Commission has previously found intraLATA toll services to be competitive. The Commission recognized the existence of competition in the intraLATA toll market in the early 1990's. In a December 1992 Order, the Commission found that services provided by interexchange carriers ("IXCs") were "substitutable" for SWBT's intraLATA toll services. Accordingly, the Commission granted SWBT's request for classification of its toll services as "transitionally competitive".²⁸⁹

Under Section 392.370.1 and 2 RSMo (2000), a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after intraLATA toll services were declared transitionally competitive (January 10, 1996), the Commission, with SWBT's agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission,

²⁸⁷ Ex. 18, Voight Rebuttal, pp. 3-4, 65

²⁸⁸ Ex. 9, Jablonski Direct, p. 5.

²⁸⁹ Report and Order, Case No. TO-93-116, issued December 21, 1992; Ex. 3, DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

however, did not further extend it. Thus, intraLATA toll service became classified as competitive on January 10, 1999 by operation of law.²⁹⁰

Competition in the IntraLATA Toll Market has Existed for Years. Competition has existed in the intraLATA toll market since July 24, 1986 when the Commission authorized intraLATA toll competition in Missouri.²⁹¹ There, the Commission found that intraLATA toll competition was in the public interest and would result in new and improved services, lower prices and faster responses to customers' needs.²⁹²

Currently, there are over 600 interexchange carriers certified to provide intrastate interexchange service in Missouri.²⁹³ These include AT&T, MCI, Sprint and many others that offer both intraLATA and interLATA toll service, enabling them to offer one-stop shopping to customers. The intraLATA toll services provided by AT&T, MCI, Sprint, WorldCom and other IXC's are equivalent to or substitutable for SWBT's intraLATA toll service, in that all these services provide customers with the ability to place intraLATA toll calls.²⁹⁴ This large number of certified IXC's indicates that customer choices are widely available and reflects the relative ease of entry for firms wishing to enter the intraLATA toll market.²⁹⁵

With the implementation of intraLATA presubscription in July 1999, IXC's now offer their customers the ability to make intraLATA toll calls without dialing extra digits. (Even prior to presubscription, customers had the ability to program their PBX's and key systems to automatically route intraLATA toll calls to the IXC of their choice or to dial around the

²⁹⁰ Ex. 3, DeHahn Direct, pp. 2, 6 and 13; Ex. 16, Hughes Direct, pp. 9-10.

²⁹¹ Case No. TO-94-222, et al., Report and Order, issued July 24, 1986.

²⁹² Id.; Ex. 16, Hughes Direct, p. 5.

²⁹³ Ex. 9, Jablonski Direct, p. 6 and Schedule 2, which is a list of IXC's certified in Missouri.

²⁹⁴ Ex. 9, Jablonski Direct, p. 9.

²⁹⁵ Ex. 9, Jablonski Direct, pp. 6-7.

incumbents' interLATA toll services by using 10XXX dialing. Now, customers can dial around using 101XXXX, e.g., 10-10-AT&T permitting customers to use the IXC of their choice, even if they retain SWBT as their 1+ intraLATA toll provider.)²⁹⁶ In every SWBT exchange, there are a minimum of 73 IXCs available to be selected by the customer as a 1+ intraLATA toll provider. Some exchanges have up to 140 IXCs. Based on a number of available IXCs in each SWBT exchange, it is very apparent that robust competition exists for SWBT's intraLATA toll services.²⁹⁷

In addition to the traditional forms of competition from IXCs and CLECs, SWBT customers have several nontraditional choices for intraLATA toll. These include wireless service, prepaid telephone cards, and the Internet. For example, many wireless providers offer free long distance packages, or unlimited long distance for a flat-rate bundled fee. Internet-enabled capabilities include Internet telephony, e-mail and instant messaging. And the use of Internet telephony is growing. The ability to make free, or at least very inexpensive, calls to other people outside a person's local calling scope, but within the LATA, makes Internet telephony an attractive substitute for SWBT's intraLATA toll service.²⁹⁸

Given the extensive nature of competition for intraLATA toll services and the prior determinations of competitive status, the Commission should confirm competitive classification for SWBT's intraLATA toll services in all of its Missouri exchanges.

Issue 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?

²⁹⁶ Ex. 9, Jablonski Direct, p. 7.

²⁹⁷ Ex. 9, Jablonski Direct, p. 9 and Schedule 3, which is a list of the number of IXCs that are available in each SWBT exchange.

²⁹⁸ Ex. 9, Jablonski Direct, pp. 8-9.

SWBT's Local Plus® service should be classified as competitive in all of SWBT's exchanges.

Description of Local Plus Service. Local Plus is an optional one-way outbound expanded calling plan that for an additional monthly charge provides subscribers flat-rate unlimited calling to all customers within the LATA. Local Plus is available to both business and residence customers.²⁹⁹

Local Plus faces competition on many fronts. Local Plus faces the same extensive competition from services offered by IXC's as described above in Issue 8 (intraLATA toll services). IXC's intraLATA toll calling plans are substitutable for Local Plus as they provide customers the ability to call outside their local calling scope, but within the LATA. IXC's have many different toll calling plans that customers can and do purchase instead of Local Plus.³⁰⁰ In addition, IXC's can resell SWBT's Local Plus service.³⁰¹

CLECs also offer competitive alternatives to SWBT's Local Plus service. CLECs have the option of reselling SWBT's Local Plus service, and many CLECs are reselling Local Plus today. CLECs can also provide a service like Local Plus using their own switch or unbundled network elements ("UNEs"). These facility-based CLECs can create their own expanded local calling plans, equal to or even larger than the Local Plus calling scope.³⁰²

All the calling plans offered by these various competing service providers allow a subscriber to complete a call to other customers located outside the subscribers traditional basic local calling scope. Although the plans may vary in their structure (e.g., flat-rate, block-of-time,

²⁹⁹ Ex. 9, Jablonski Direct, p. 12.

³⁰⁰ Ex. 9, Jablonski Direct, p. 13.

³⁰¹ Ex. 6, Hughes Surrebuttal, pp. 31-32.

³⁰² Ex. 9, Jablonski Direct, pp. 13-14, Ex. 6, Hughes Surrebuttal, pp. 31-32.

etc.), they all offer the same basic service and function to the customer of allowing telephone calls to be placed to other customers within the LATA.³⁰³

In addition to competition from numerous CLECs and IXCs, Local Plus faces competition from other competitors such as wireless providers and Internet service providers. Wireless plans now provide a very effective alternative to SWBT's services like Local Plus. For example, Sprint PCS has wireless packages that have nationwide local calling. If a Sprint PCS customer calls his or her next door neighbor or a friend in another LATA, or even across the nation, that call costs the same to the Sprint PCS subscriber. Sprint's package simply treats each call minute as minute used on the customer's plan. Customers with a large block of minutes included as part of their basic wireless service can make intraLATA toll calls at no additional charge beyond the cost of their subscription package. Thus, customers who would normally place an intraLATA toll call using SWBT's service may bypass SWBT's intraLATA toll service using their wireless telephone.³⁰⁴

Further, Internet enabled communications, such as Internet telephony, e-mail and instant messaging, provide additional alternatives that are effective substitutes for SWBT's Local Plus service. Internet telephony is an attractive alternative to Local Plus because it provides the customers with the ability to make free, or at least very inexpensive calls to people outside their local calling scope. In addition, customers are rapidly expanding the use of e-mail and instant messaging, which also provides customers with the ability to communicate with other people outside their calling scope without having to pay extra charges for intraLATA toll calling.³⁰⁵

³⁰³ Ex. 9, Jablonski Direct, p. 15.

³⁰⁴ Ex. 9, Jablonski Direct, pp. 8, and 14.

³⁰⁵ Ex. 9, Jablonski Direct, pp. 8-9, 14.

Given the extensive nature of competition for Local Plus services, the Commission should confirm competitive classification for SWBT's Local Plus services in all of its Missouri exchanges.

Issue 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?

SWBT's Optional MCA services should be classified as competitive in all SWBT exchanges where the service is offered (the St. Louis MCA, the Kansas City MCA and the Springfield MCA).

Description of Optional MCA. MCA is an optional interexchange plan available in three distinct areas in Missouri: the St. Louis MCA, the Kansas City MCA and the Springfield MCA. This optional plan provides subscribers with a calling area that includes their respective metropolitan exchange and certain customers in other exchanges where MCA service is also available. MCA service was created by the Commission in Case No. TO-92-306 to address customer requests for expanded calling scopes in the areas surrounding the three major metropolitan areas of St. Louis, Kansas City and Springfield. The existing calling scopes were modified to address the changing demographics of the metropolitan areas by creating an optional service that expands the local calling scopes for a flat-rated monthly charge.³⁰⁶

Many other carriers offer their own optional MCA and other services in competition with SWBT. CLECs, both facility-based and resellers, provide Optional MCA service to customers in competition with SWBT and the Commission has approved their participation in the MCA

³⁰⁶ Ex. 9, Jablonski Direct, pp. 10-11, and Schedules 5, 6 and 7, which show the exchanges included in the optional MCA service, the rates charged for this service, and the calling scopes.

plan.³⁰⁷ For example, CLECs are offering customers local calling throughout the geography of the MCA, regardless of whether the called party is an MCA subscriber. While these plans may vary slightly in their pricing and calling scopes, they offer the same basic service function to the customer: expanded local calling.³⁰⁸ Allegiance Telecom, for example, offers optional MCA for a flat-rate charge, regardless of the MCA tier in which the customer resides and has complete pricing flexibility for the service. Currently, Allegiance charges \$24.80.³⁰⁹

In addition to facilities-based and resale competition from CLECs, optional MCA service faces competition from the whole range of interexchange services offered by IXC's described above in Issue 8 (IntraLATA Toll Service).³¹⁰ While the IXC's' service might be billed on a per minute basis, it is still providing the same ability to call customers located in other exchanges. IXC's, as well as CLECs, are certainly free to establish their own flat-rated calling plans if they so choose.³¹¹

Optional MCA service also faces competition from non-traditional competitors such as wireless providers and Internet-based communications as described above. For example, wireless providers often provide local calling scopes that are much larger than SWBT's basic local calling scopes (e.g., the entire major trading area ("MTA")), which extends well beyond the MCA boundaries. Many wireless packages also include free long distance and unlimited calling

³⁰⁷ Ex. 10, Jablonski Surrebuttal, p. 3.

³⁰⁸ Ex. 9, Jablonski Direct, p. 12.

³⁰⁹ See, Section 3.2 of Allegiance Telecom of Missouri, Inc.'s tariff; Ex. 9, Jablonski Direct, p. 11.

³¹⁰ Ex. 9, Jablonski Direct, p. 11.

³¹¹ Ex. 10, Jablonski Surrebuttal, p. 3.

during off-peak times. These and other services, such as e-mail, instant messaging, and voice over IP provide effective alternatives to optional MCA service.³¹²

Given the extensive nature of competition for optional MCA service, the Commission should confirm competitive classification for SWBT's optional MCA service in all of its Missouri exchanges.

Issue 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?

The Commission should confirm that SWBT's WATS and 800 services have been classified as competitive in all SWBT exchanges. Staff agrees that the Commission should approve a statewide competitive classification for SWBT's WATS service.³¹³ No party presented any evidence that would support a different conclusion.

Description of WATS and 800 services. Wide Area Telecommunications Services ("WATS") includes both 800 service and outward WATS ("OUTWATS"). 800 service provides the subscribers with the ability to receive incoming intraLATA interexchange calls that are toll-free to the calling party. OUTWATS service provides subscribers with the ability to place outgoing intraLATA, interexchange calls that are billed on a usage sensitive basis.³¹⁴

The Commission has previously found WATS and 800 service to be competitive. The Commission recognized the existence of substantial competition in the WATS and 800 service markets in the early 1990s. In a December 1992 Order, the Commission found that WATS and 800 service provided by IXCs was "substitutable" for SWBT's WATS and 800 services.

³¹² Ex. 9, Jablonski Direct, pp. 11-12.

³¹³ Ex. 18, Voight Rebuttal, pp. 4, 74.

³¹⁴ Ex. 9, Jablonski Direct, p. 15.

Accordingly, the Commission granted SWBT's request for classification of its WATS and 800 services as "transitionally competitive".³¹⁵

Under Section 392.370.1 and 2 RSMo (2000), a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after WATS and 800 services were declared transitionally competitive (January 10, 1996), the Commission, with SWBT's agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, SWBT's WATS and 800 services became classified as competitive on January 10, 1999 by operation of law.³¹⁶

Competition has long existed in the WATS and 800 service markets. IXC's are the dominant WATS and 800 service competitors. There are over 600 certified IXC's authorized to provide interexchange services in Missouri. As part of their interexchange services, IXC's typically provide WATS and 800 services to customers. CLECs can also offer WATS and 800 service. For example, Excel Telecommunications offers 800 services.³¹⁷ These providers have the advantage of offering both intraLATA and interLATA calling capabilities, which provides a significant advantage over SWBT's services. These services provided by IXC's and CLECs are functionally equivalent to and substitutable for SWBT's WATS and 800 service. This large number of certified companies indicates that customer choices are available and reflects the relative ease of entry for firms wishing to enter the WATS and 800 markets.³¹⁸

³¹⁵ Case No. TO-93-116, Report and Order, issued December 21, 1992; Ex. 9, Jablonski Direct, pp. 15-16; Ex. 16, Hughes Direct, pp. 9-10.

³¹⁶ Ex. 9, Jablonski Direct, p. 16; Ex. 16, Hughes Direct, pp. 9-10.

³¹⁷ See, Section 4.7 of Excel Telecommunication, Inc. tariff, PSC Mo.-No. 2.

³¹⁸ Ex. 9, Jablonski Direct, p. 16.

In addition to IXCs and CLECs, WATS and 800 service faces competition from nontraditional competitors. Many companies are utilizing various e-commerce methods to communicate with their customers. For instance, consumers can purchase airplane tickets, rent cars, or check the balance on their credit card via the Internet, making calls to a company's 800 number unnecessary.³¹⁹

Given the extensive nature of competition for WATS and 800 service and the prior determinations of competitive status, the Commission should confirm competitive classification for SWBT's WATS and 800 service in all of its Missouri exchanges.

Issue 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?

The Commission should confirm that SWBT's special access services have been classified as competitive in all SWBT exchanges. Staff supports confirmation of this status pursuant to Section 329.200.8 RSMo (2000).³²⁰ No party presented any evidence that would support a different conclusion.

Description of Special Access Services. Special access services are dedicated, nonswitched services used to connect one or more end-user customer premises with an IXC's location, commonly referred to as a point of presence ("POP"). Special access services connecting one customer location to an IXC are referred to a point-to-point configurations. When they connect multiple end-user locations with an IXC via a hub, they are referred to as a multipoint configurations. Special access services are used to carry voice and data applications and, at higher speeds, video. SWBT offers eight categories of special access services:

³¹⁹ Ex. 9, Jablonski Direct, pp. 16-17.

³²⁰ See, Staff's Statement of Position, filed September 18, 2001 at p. 3; Exhibit 18, Voight Rebuttal, p. 4.

Metallic,³²¹ Telegraph Grade,³²² Voice Grade,³²³ Wideband Analog,³²⁴ Wideband Data,³²⁵

MegaLink Data (DS1),³²⁶ High Capacity (DS3),³²⁷ and DovLink service (data over a voice grade facility).³²⁸

The Legislature and the Commission have found the Special Access Market competitive.

In 1996, the Missouri Legislature recognized the special access market to be sufficiently competitive to permit all carriers, including SWBT, to freely price special access services:

³²¹ Metallic service provides an analog channel capable of transmitting data at rates up to 30 baud. These services are typically used for alarm, metering, supervisory control and signaling communications. Ex. 7, Douglas Direct, Schedule 2, p. 4; PSC Mo.-No. 36, Section 7.2.1.

³²² Telegraph service provides an analog connection capable of transmitting binary signals at rates up to 150 baud. This service is used by customers for teletypewriters, data, metering, supervisory control and signaling purposes. Ex. 7, Douglas Direct Schedule 2, p. 5; PSC Mo.-No. 36, Section 7.2.2.

³²³ Voice Grade service provides an analog two-wire or four-wire circuit with a 300 to 3,000 Hertz band with channel. This service is used by customers wanting a few private voice lines between locations or who want to exchange large amounts of data between locations up to 19.2 kilobits per second. Ex. 7, Douglas Direct Schedule 2, pp. 5-6; PSC Mo.-No. 36, Section 7.2.3.

³²⁴ Wideband Analog service provides an analog channel with a bandwidth measured in kilohertz for the transmission of a wideband signal, with the actual band width being a function of the channel interface order by the customer. Ex. 7, Douglas Direct Schedule 2, p. 6; PSC Mo.-No. 36, Section 7.2.5.

³²⁵ Wideband Data service provides an analog channel for transmission of synchronous or asynchronous serial data at speeds up to 230.4 kilobits per second. Ex. 7, Douglas Direct Schedule 2, p. 5; PSC Mo.-No. 36, Section 7.2.6.

³²⁶ MegaLink Data service provides for the duplex four-wire transmission of synchronous serial data up to 64 kilobits per second. DS1 service is a 24-channel digital connection that can transmit at speeds up to 1.544 MBPS. It can also be multiplexed down to 24 individual voice grade channels. DS1 is used by customers to transmit voice, data and video. Ex. 7, Douglas Direct Schedule 2, pp. 6-7; PSC Mo.-No. 36, Section 7.2.7.

³²⁷ High Capacity service provides for the transmission of data at speeds up to 44.736 MBPS. A high capacity facility can also be multiplexed down to 28 individual DS1 channels or 672 voice grade circuits. High capacity service is used to transmit data, voice and video. It also enables a provision of more advanced services such as network reconfiguration service and transport resource management service, which provides customers with the ability to manage their network configurations from their own premises. Ex. 7, Douglas Direct Schedule 2, pp. 7-8; PSC Mo.-No. 36, Section 7.2.8.

³²⁸ DovLink service provides customers with data channels to handle synchronous or asynchronous data at speeds of 2.4, 4.8 or 9.6 kilobits per second. Ex. 7, Douglas Direct Schedule 2, p. 8; PSC Mo.-No. 36, Section 7.2.9.

Customer-specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange ("PBX") services, provided such customer-specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.³²⁹

The Commission recognized the existence of competition in the intraLATA special access market even earlier. In a December 1992 Order, the Commission found that services provided by interexchange carriers ("IXCs") were "equivalent" to and completely interchangeable with SWBT's special access services. Accordingly, the Commission granted SWBT's request for reclassification of special access services to a "transitionally competitive" classification.³³⁰

Under Section 392.370.1 and 2 RSMo (2000), a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after special access services were declared transitionally competitive (January 10, 1996), the Commission, with SWBT's agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, special access service became classified as competitive on January 10, 1999 by operation of law.³³¹

Competition for Special Access Services is well established. Competition for special access service is well established. As described under Issue 5 above (Private Line Services), competition for non-switched dedicated services began in the 1980s with the emergence of CAPs, like TCG, MFS and Brooks Fiber, which provided special access services to IXCs. In the

³²⁹ Section 392.200(8) RSMo (2000).

³³⁰ Report and Order, Case No. TO-93-116, issued December 21, 1992; Ex. 7, Douglas Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

late 1980's, large IXCs, such as AT&T, Sprint and MCI began to offer dedicated, non-switched services that compete with SWBT's special access services. Undisputed evidence shows that there are numerous providers offering services throughout SWBT's service area that are substitutable for or functionally equivalent to SWBT's special access services.³³²

Issue 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?

Like all CLECs' switched access services, SWBT's switched access services should be classified as competitive in all SWBT exchanges. This classification, however, would be subject to the same conditions applicable to CLEC provisions of switched access service, *i.e.*, switched access service should remain subject to price caps, but SWBT would have the same authority as CLECs do today to restructure rates under that cap.

Description of Switched Access Service. Switched access service refers to the line of services sold to IXCs who wish to access the local public switched network in order to provide long distance service to end-users. It enables IXCs to originate or terminate their customers' long distance calls from an end-user's premise. Switched access has four categories of service, which are designated by feature groups. Feature groups are differentiated by their technical characteristics and how an end-user accesses each of these services. The four categories of feature groups are: Feature Group A, which is a line side connection; Feature Group B, which is a trunk side connection accessed via the 950 access code; Feature Group C and Feature Group D, which are both trunk side connections allowing 1+ dialing of long distance calls. Switched

³³¹ Ex. 3, DeHahn Direct, pp. 2, 6 and 13; Ex. 16, Hughes Direct, pp. 9-12.

³³² Ex. 7, Douglas Direct, pp. 6-9; Ex. 3, DeHahn Direct, pp. 5-11.

access has three major components: the common line element, the end office element and the transport element.³³³

Competition for Switched Access Services. Competition does exist for switched access services. There are approximately 31 facility-based CLECs which have service areas within SWBT's Missouri service area. These facility-based CLECs can bypass part or all of SWBT's switched access service to originate and terminate long distance calls using facilities they own or lease from another carrier. CLECs may also purchase unbundled switching and other facilities which enable a CLEC to provide local service to end-user customers (using the incumbent LEC's switch) and gives the CLEC the right to receive access on interexchange calls to or from the CLEC's customers.³³⁴

According to the National Exchange Carrier Association ("NECA") tariff FCC No. 4, effective May 1, 2001, several competitors within Missouri have been assigned common language location identifier ("CLLI") codes which indicate that they are capable of providing FGA, FGB and FGD (1+ dialing) to customers.³³⁵ For example, 2nd Century Communications, Inc., Birch Telecom of Missouri, Inc., NuVox, KMC Telecommunications, Inc. and McLeod are all listed as facility-based providers that offer such service throughout Missouri.³³⁶

Collocation also allows facility-based CLECs to provide alternatives to SWBT's switched access services. Collocation allows other carriers to place equipment in SWBT's end office that enable the origination and termination of their customers' long distance calls.³³⁷ Collocation hotels, which are alternative collocation providers, also represent competitive

³³³ Ex. 7, Douglas Direct, p. 3, Schedule 3, p. 1.

³³⁴ Ex. 7, Douglas Direct, p. 9.

³³⁵ Ex. 7, Douglas Direct, pp. 10-17 and Schedules 5 and 6.

³³⁶ Id., p. 11.

alternatives to SWBT's switched access service. Collocation hotels facilitate bypass of SWBT's switched access transport by providing a single location for IXCs, CLECs, wireless providers, ISPs and large users to interconnect. The evidence shows that collocation hotels are being actively operated in both the St. Louis and Kansas City area.³³⁸

Wireless service offerings also compete with switched access transport and usage. As wireless carriers have begun to offer free and flat-rated regional and nationwide long distance calling plans, end-users are incited to use their wireless service instead of their landline long distance service. When cellular services are used to complete calls that would otherwise be interexchange calls on a landline telephone, SWBT's switched access services are for the most part bypassed and its switched access minutes of use and revenues are reduced.³³⁹

Voice over Internet protocol ("IP") offerings also compete with switched access transport end usage. As technology has improved, ISPs have been increasingly able to transmit voice calls over the Internet, free from switched access charges. For example, on June 6, 2001, Net2Phone announced the launch of its broadband voice technology and service designed to bring IP telephony access over cable, DSL and DS1 while bypassing the end-users' personal computer. Dialpad, which is listed as an ISP in Missouri, has indicated that it has terminated over 1.6 billion minutes of use of interexchange calling since its launch in 1999. Cysco launched several new IP telephony products in April 2001, and Intel released an IP telephony product that allows IP telephones to be connected to a PBX.³⁴⁰

³³⁷ Id., pp. 11-12.

³³⁸ Id., p. 15, Schedules 8 and 9.

³³⁹ Id., p. 17.

³⁴⁰ Id., p. 18.

In addition, ISPs' end-users are able to use e-mail to communicate rather than making long distance calls. And e-commerce allows an end-user to conduct transactions over the Internet rather than calling the business' order center.

Special Treatment of CLEC Switched Access Rates. Pursuant to the Commission's decision in Case No. TO-99-596, CLECs' switched access rates are capped at the rate of the incumbent local exchange company in whose territory the CLEC competes. The CLEC, however, is not required to match the ILEC's rate structure so long as the overall average is within the cap. With respect to CLEC switched access rate structure, the Commission indicated that CLECs have a certain degree of flexibility:

ILECs in Missouri have not restructured local transport and do not use rate elements such as interconnection charges and entrance facilities. However, the Commission has approved tariffs of competitive local exchange carriers who do utilize local transport restructuring. In such instances, the Staff will make calculations to ensure that the competitors restructured rates are no greater in the aggregate than the incumbents rates utilizing the equal charge method of providing switched access. In such instances the Staff will question any competitive rate element which appears to be residually priced.³⁴¹

In this case, SWBT is seeking competitive classification in all SWBT exchanges, subject to the same conditions applicable to CLEC provision of switched access service, specifically, SWBT's switched access service should remain subject to price caps, but SWBT should have the same authority as CLECs to restructure its rates under that cap.

Issue 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?

³⁴¹ Section 3.4 of the PSC's Guidelines for Completing Applications for Certificate of Service Authority for CLECs' Service, posted on the Commission's website; Ex. 7, Douglas Direct, pp. 19-20; Ex. 20, Douglas Surrebuttal, pp. 3-4.

SWBT's SS7 service should be classified as competitive in all SWBT exchanges. Staff supports competitive classification for SWBT's SS7 service.³⁴² No party presented any evidence supporting any other conclusion.

Description of SS7 Service: SS7 provides a dedicated two-way signaling path between a customer and SWBT's Signal Transfer Point ("STP") and provides access to SWBT's SS7 network. Where available, SS7 signaling is used with switched access service to carry the signals associated with a call on a transmission path that is separate from the voice path. In addition, SS7 is utilized to access SWBT's line information database ("LIDB") and switched access 800 number portability access service.³⁴³

SS7 Service faces significant competition. SWBT's SS7 service faces significant competition from SS7 service providers that offer signaling connectivity and transport on a nationwide basis. For example, Illuminate, TSI Telecommunications Services, Inc., and IDN offer SS7 services in Missouri and on a nationwide basis.³⁴⁴

Given the extensive nature of competition for SS7 service, the Commission should confirm competitive classification for SWBT's SS7 service in all of its Missouri exchanges.

Issue 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?

SWBT's LIDB service should be classified as competitive in all SWBT exchanges. Staff supports competitive classification for SWBT's LIDB service.³⁴⁵ No party presented any evidence supporting any other conclusion.

³⁴² Ex. 18, Voight Rebuttal, p. 43.

³⁴³ Ex. 7, Douglas Direct, p. 5.

³⁴⁴ Ex. 7, Douglas Direct, p. 18, Schedule 13.

³⁴⁵ Ex. 18, Voight Rebuttal, p. 43.

Description of LIDB Service. LIDB provides the customer the ability to query billing validation data in SWBT's database in support of alternate billing services, such as Calling Card, collect and third number billing. Alternate billing services allow telecommunications companies to bill calls to an account that might not be associated with the originating line.

LIDB Services faces significant competition. SWBT's LIDB service faces significant competition from LIDB service providers that offer signaling connectivity and transport on a nationwide basis. For example, TSI Telecommunications Services, Inc., and IDN offer LIDB services in Missouri and on a nationwide basis.³⁴⁶

Given the extensive nature of competition LIDB services, the Commission should confirm competitive classification for SWBT's LIDB services in all of its Missouri exchanges.

Issue 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?

As described below, SWBT's directory assistance services face effective competition throughout the state of Missouri, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

Description of Directory Assistance Services. Directory Assistance Services provide callers with assistance in obtaining telephone listing information.³⁴⁷ The directory assistance services currently offered by SWBT locally include local directory assistance, directory assistance call completion (including autoConnect) and national directory assistance.³⁴⁸ Local directory assistance provides callers with listed telephone numbers of subscribers who are

³⁴⁶ Ex. 7, Douglas Direct, p. 18, Schedule 13.

³⁴⁷ Ex. 5, Moore Direct, p. 4.

³⁴⁸ Id.

located in the same local calling area and in the calling customer's home numbering plan area.³⁴⁹ Directory assistance call completion provides the customer the option of having local or intraLATA long distance calls automatically completed by pressing "1" after the listed telephone number is received from directory assistance.³⁵⁰ AutoConnect is another form of call completion service available to callers to directory assistance. However, it differs in that there is no charge to the caller for the service. Rather, call completion charge is billed to the called AutoConnect subscriber.³⁵¹ If the directory assistance caller requests the telephone number of a caller subscribing to AutoConnect, the caller will be advised that the call can be completed at no additional call completion charge to the caller.³⁵² Finally, national directory assistance is a service whereby customers may obtain telephone listing information for areas outside their local calling area.³⁵³

There is a large number of alternative providers of directory assistance services operating throughout the state of Missouri today.³⁵⁴ The services provided by these alternative providers of directory assistance services are functionally equivalent to or substitutable for the directory assistance services provided by SWBT in Missouri, and are provided at comparable rates, terms and conditions. For example, alternatives to SWBT's directory assistance services are provided statewide by various local and toll telecommunications providers, including AT&T and MCI WorldCom, as well as several wireless service providers, Internet content providers, directory

³⁴⁹ Id.

³⁵⁰ Id.

³⁵¹ Ex. 5, Moore Direct, pp. 4-5.

³⁵² Ex. 5, Moore Direct, p. 5.

³⁵³ Id.

³⁵⁴ Ex. 5, Moore Direct, p. 5: Sched. 1.

publishers, independent directory services providers, software companies and others.³⁵⁵ The directory assistance services marketplace is characterized by the lack of market entry barriers.³⁵⁶ Directory listings are available to local exchange and toll carriers on reasonable and nondiscriminatory terms under Section 251(B)(3) of the federal Telecommunications Act of 1996.³⁵⁷ All directory assistance service providers obtain listings from a variety of sources, including incumbent LECs such as SWBT, in order to maintain accurate databases.³⁵⁸ The sources include the providers' own listings, listings of other local exchange companies, and commercially available listing information. Providers of directory assistance services and other functionally equivalent services are able to freely copy white pages directories without copyright restrictions.³⁵⁹ In short, SWBT's residential and business customers throughout SWBT's Missouri exchanges have multiple alternatives, substitutable in both function and price, to using SWBT's directory assistance services. As a result, SWBT's directory assistance services are subject to "effective competition" as defined in Section 386.020(13), RSMo 2000 and these services should be declared to be competitive pursuant to Section 392.245.5 RSMo 2000.

Competitive Alternatives Available in SWBT's Missouri Exchanges. There are a variety of additional competitive alternatives available to SWBT's directory assistance services in Missouri. For example, "00" Information service provides end users with local and national directory assistance, call completion, category searches and search by telephone number. To access this service, the caller simply dials "00" and the call is routed to the customer's pre-

³⁵⁵ Id.

³⁵⁶ Ex. 5, Moore Direct, p. 5.

³⁵⁷ Provision of Directory Listing Information under the Telecommunications Act of 1934, as amended, First Report and Order, FCC 01-27, par. 10, January 23, 2001.

³⁵⁸ Ex. 5, Moore Direct, p. 6.

³⁵⁹ Feist Publications, Inc., v. Rural Service Co., 499 U.S. 340 (1991).

subscribed interexchange carrier and their directory assistance service.³⁶⁰ AT&T's "00" Service was first introduced in SWBT's Missouri region in February, 1999. The service is available statewide to AT&T's residence and business end users where AT&T is the presubscribed interexchange carrier.³⁶¹ AT&T promotes its service via mass marketing. MCI WorldCom also offers statewide "00" information service.³⁶²

Another alternative directory assistance service available statewide in Missouri is 10-10-ATT-00 Service.³⁶³ This service is available to all end users within the state of Missouri regardless of whether AT&T is the subscriber's prescribed interexchange carrier. Subscribers simply dial 10-10-ATT-00 to reach AT&T's directory services, including local and national directory assistance, call completion, category searches and search by telephone number. This alternative service is available statewide in Missouri, and is an alternative to SWBT's local directory assistance service.

Another alternative directory assistance service is MCIWorldCom's 1010-9000 Service. This service provides end users throughout the state of Missouri with local and national directory assistance services and call completion.³⁶⁴ Like AT&T's 1010-ATT-00 Service, MCIWorldCom has also promoted its service through mass advertising and direct mail.³⁶⁵

Yet another alternative directory assistance service available throughout Missouri is "Area Code-555-1212" Service.³⁶⁶ When an end user dials an area code plus 555-1212 and the

³⁶⁰ Ex. 5, Moore Direct, p. 6.

³⁶¹ Ex. 5, Moore Direct, p. 7.

³⁶² Id.

³⁶³ Id.

³⁶⁴ Id.

³⁶⁵ Ex. 5, Moore Direct, pp. 7-8.

³⁶⁶ Ex. 5, Moore Direct, p. 8.

area code is outside the caller's local calling area, the directory assistance call is routed to the end user's presubscribed interexchange carriers directory assistance service.³⁶⁷ For example, if a customer residing in the 314 area code dials 816-555-1212 for directory assistance information, the call is routed to the calling customer's presubscribed interLATA interexchange carrier.³⁶⁸ This service is provided by toll providers throughout Missouri, including AT&T, MCIWorldCom and Sprint.³⁶⁹ Currently, there are over 600 interexchange service providers certificated to provide service in the state of Missouri.³⁷⁰

Directory assistance services, including local and national directory assistance, call completion, category searches, search by telephone number, and various information services, are also available from wireless carriers throughout Missouri.³⁷¹ Typically, wireless customers access their wireless carriers' directory assistance by dialing 411 or 1-555-1212.³⁷² Wireless providers have the option of providing this service by using their own facilities or by using a third party wholesale provider.³⁷³

The Internet also provides comparable alternatives to traditional directory assistance services, and continues to experience rapid growth as a result of increased Internet usage.³⁷⁴ Services provided over the Internet include local and national directory assistance, category search, and search by telephone number, and these services are available throughout the state of

³⁶⁷ Id.

³⁶⁸ Id.

³⁶⁹ Id.

³⁷⁰ Id.: See Sched. 4.

³⁷¹ Id.

³⁷² Id.

³⁷³ Id.

³⁷⁴ Ex. 5, Moore Direct, p. 9.

Missouri.³⁷⁵ Some Internet sites also offer call completion and various information services.³⁷⁶ There are hundreds of companies providing directory assistance listing information on the Internet.³⁷⁷ Internet-based directory assistance services are offered by all major Internet search engines and portals, telecommunications providers, directory publishers, and a host of new Internet companies.³⁷⁸ Companies offering Internet-based directory assistance services include AT&T, Switchboard, AOL, Verizon/GTE, BellSouth, and Quest, along with several other companies.³⁷⁹ In addition to the Internet, residential and business end-users can also purchase directory software with a comprehensive database of local and national listed telephone numbers.³⁸⁰ In Missouri, the price of directory software ranges from \$20 to \$100.³⁸¹ Examples of directory software offerings were included as Schedule 6 to Ms. Moore's direct testimony. Finally, white and yellow page directories offered and distributed throughout Missouri are also comparable alternatives to SWBT's local directory assistance services for Missouri consumers, and are generally made available to consumers for no charge.³⁸²

Each of the alternatives described above to SWBT's directory assistance services are independent of the local customer's choice of a local telecommunications carrier. In addition to these alternatives, CLECs also provide directory services to their local customers, either through their own facilities, through a combination of their own facilities and SWBT's unbundled network elements, or by reselling SWBT's services. If a Missouri customer chooses a CLEC to

³⁷⁵ Id.

³⁷⁶ Id.

³⁷⁷ Id.

³⁷⁸ Id.

³⁷⁹ Id.

³⁸⁰ Ex. 5, Moore Direct, p. 11.

³⁸¹ Id.

provide local services, the end user has directory service options available from its CLEC.³⁸³ Similarly, wireless carriers provide directory assistance services through their own facilities or by routing directory assistance calls to their directory assistance provider of choice.³⁸⁴ SWBT also provides CLECs' end users access to SWBT's directory assistance services as SWBT's retail end users customers, as part of SWBT's resold local telecommunications services.³⁸⁵ However, a CLEC which resells SWBT services may also provide its own directory assistance services, or use a third party directory assistance service provider, and custom route its end user directory assistance calls to itself or to the third party provider it designates.³⁸⁶ It is important to note that even if SWBT provides local service to the end user, the end user can choose to use any of the alternative providers of directory assistance services identified above.³⁸⁷

The comparable alternatives discussed above and described in Ms. Moore's direct testimony in detail offer the same, and sometimes expanded functionality, as the directory assistance services provided by SWBT.³⁸⁸ For example, many wireless providers offer information services, such as directions, stock quotes, weather and traffic reports, all via their directory assistance service.³⁸⁹ Likewise, AT&T's "00" Information Service and Internet sites provide business category searches as well.³⁹⁰ Furthermore, the rates available from comparable, alternative service providers are competitive with SWBT's rates for directory assistance

³⁸² Ex. 5, Moore Direct, pp. 11-12.

³⁸³ Ex. 5, Moore Direct, p. 12.

³⁸⁴ Ex. 5, Moore Direct, pp. 12-13.

³⁸⁵ Ex. 5, Moore Direct, p. 13.

³⁸⁶ Id.

³⁸⁷ Id.

³⁸⁸ Ex. 5, Moore Direct, p. 14.

³⁸⁹ Id.

³⁹⁰ Id.

services.³⁹¹ Many of the alternatives described above and in more detail in Ms. Moore's direct testimony are not regulated by the Commission. However, all of the alternatives described above and in more detail in Ms. Moore's direct testimony are available in every SWBT exchange throughout the state of Missouri.³⁹²

The Commission should also take into consideration that the FCC has repeatedly found the directory assistance services marketplace to be competitive.³⁹³ In its UNE Remand Order,³⁹⁴ the FCC removed directory assistance services from the list of unbundled network elements which incumbent LECs must provide to competitors.³⁹⁵ On several other occasions, the FCC has noted the competitive nature of the directory assistance marketplace.³⁹⁶ Finally, directory assistance services have been price deregulated in at least 15 states, including Illinois, Kansas, and Texas.³⁹⁷

SWBT's directory assistance services have been directly impacted by the increasingly competitive directory assistance marketplace.³⁹⁸ SWBT's directory assistance call volumes have significantly declined since 1996, although the overall directory assistance marketplace has grown.³⁹⁹ During this time, SWBT's directory assistance call volume has decreased ** %**,

³⁹¹ Id.: See Sched. 8.

³⁹² Ex. 5, Moore Direct. P. 15.

³⁹³ Id.

³⁹⁴ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 3rd Report and Order, FCC 99-238, pars. 438-464, rel. Nov. 5, 1999.

³⁹⁵ Ex. 5, Moore Direct, p. 15.

³⁹⁶ See, Ex. 5, Moore Direct, pp. 15-16.

³⁹⁷ Ex. 5, Moore Direct, p. 17.

³⁹⁸ Ex. 6, Moore Surrebuttal, p. 4.

³⁹⁹ Ex. 6, Moore Surrebuttal, pp. 4-5.

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which is direct evidence of increasing directory assistance service competition.⁴⁰⁰ During this time, the directory assistance marketplace has continued to grow at a moderate pace.⁴⁰¹ Competitors, including AT&T and WorldCom have launched and heavily promoted new directory assistance service offerings.⁴⁰² Published reports indicate that AT&T had spent approximately \$52 million dollars in 1999 to support its "00 Info" service.⁴⁰³ AT&T spent an additional \$7 million dollars to promote its "10-10-ATT-00" service.⁴⁰⁴ In 2000, AT&T spent an estimated \$33 million dollars promoting its "00 Info" service.⁴⁰⁵ Similarly, WorldCom spent an estimated \$23 million promoting its "10-10-9000" service in 1999.⁴⁰⁶ Examples of these companies' advertisements were included as Schedule 2 and Schedule 3 of Ms. Moore's direct testimony.

There can be no question that there is a healthy and effective, competitive marketplace for directory assistance services throughout Missouri. The Commission should find that effective competition exists for SWBT's directory assistance services in Missouri, and declare SWBT's directory assistance service offerings in Missouri to be competitive pursuant to Section 392.245.5 RSMo 2000.

Issue 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?

⁴⁰⁰ Ex. 6HC, Moore Surrebuttal, p. 5.

⁴⁰¹ Id.

⁴⁰² Id.

⁴⁰³ Id.

⁴⁰⁴ Id.

⁴⁰⁵ Id.

⁴⁰⁶ Id.

SWBT's Operator Services (OS) face effective competition in every SWBT exchange in Missouri. The Commission should confirm that station-to-station, person-to-person and calling card operator services have already been classified as competitive, and that all of SWBT's operator services should be classified as competitive pursuant to Section 392.245.5 RSMo 2000 in all SWBT exchanges in Missouri.

Description of Operator Services. Operator Services refer to a variety of call completion services that SWBT offers its customers in Missouri.⁴⁰⁷ These services facility the completion of a call, often using live operators or through an automated Interactive Voice System.⁴⁰⁸ SWBT's operator services in Missouri include calling cards, collect calls, calls billed to a third number, sent paid calls, person-to-person, line status verification, and busy line interrupt service.⁴⁰⁹ Callers are billed a service charge (often referred to as a surcharge in the industry) in addition to a usage charge where applicable for these types of services.⁴¹⁰ Users of operator services are often people in motion – anyone away from their own home or business telephone and in need of any alternate method of making and billing telephone calls.⁴¹¹ The majority of callers requesting alternative billing originating calls from public telephones at locations such as airports, hotels, and shopping malls.⁴¹² A significant number of operator services calls are also generated from college and university dormitories, hotel guestrooms, and hospital patient rooms.⁴¹³ A customer

⁴⁰⁷ Ex. 5, Moore Direct, p. 20.

⁴⁰⁸ Id.

⁴⁰⁹ Id.

⁴¹⁰ Ex. 5, Moore Direct. p. 21.

⁴¹¹ Id.

⁴¹² Id.

⁴¹³ Id.

may use operator services by dialing "0" or "0 + number" from any telephone, but generally customers utilize operator services when placing a call when away from their home or office.⁴¹⁴

Competitive Alternatives to SWBT's Operator Services. There are numerous competitive alternatives to SWBT's operator services which are available throughout SWBT's exchanges in Missouri.⁴¹⁵ These alternatives are provided by numerous local and toll telecommunication providers, including AT&T, Sprint and MCIWorldCom, as well as wireless service providers, specialized operator service providers, pay telephone providers, pre-paid and post-paid calling card providers and others.⁴¹⁶ Considering both function and price, end users throughout Missouri have substitutable and functionally equivalent alternatives for operator services, offered by numerous providers, including cellular telephone service, pre-paid calling cards, and personal 800 numbers. These services compete directly with SWBT's operator services in the state of Missouri.⁴¹⁷

For example, "00" service was established as a dialing pattern in order to route calls to the operator of a customer's presubscribed interexchange carrier.⁴¹⁸ "00" service may be used to provide end users throughout the state of Missouri with the complete range of calling card, third number billing, collect and person-to-person calling options, as well as other types of operator assistance, such as busy line, verify and interrupt services, and call completion services. There are over 600 interexchange service providers certificated to provide service in Missouri.⁴¹⁹

Another competitive alternative is AT&T's 1-800-Call ATT Service. This service is available to

⁴¹⁴ Id.

⁴¹⁵ Id.

⁴¹⁶ Id.

⁴¹⁷ Ex. 5, Moore Direct, p. 22.

⁴¹⁸ Id.

⁴¹⁹ Id.

all end users throughout Missouri.⁴²⁰ Dialing 1-800-Call ATT enables customers, irrespective of their choice of local or toll provider to obtain alternative billing services, such as calling cards, collect, bill to a third number, person-to-person service, line status verification, busy interrupt, and AT&T customer service.⁴²¹ AT&T extensively promotes its operator services, as reflected on Schedule 9 to SWBT witness Sandy Moore's direct testimony.

Similar competitive alternatives are offered by MCIWorldCom and Sprint.

MCIWorldCom's 1-800-Collect Service is also available to all end users throughout Missouri, irrespective of their choice of local or toll carrier.⁴²² This service provides end users the ability to make collect calls from anywhere in the United States. Callers also have access to a complete range of other services including calling cards, bill to a third number, person-to-person service, line status verification, and busy interrupt. Sprint's 1-800-2Sprint is similar to both the AT&T and MCIWorldCom competitive alternatives.⁴²³ Both MCI and Sprint extensively promote their operator services, which compete directly with SWBT's operator services.⁴²⁴

Operator services, including collect, bill to a third number, person-to-person service, line status verification, and busy interrupt are also available from wireless carriers throughout Missouri. Typically, wireless customers access their wireless carrier's operator services by dialing "0" from their wireless phone.⁴²⁵ Moreover, wireless service, itself, has become a significant, competitive alternative to operator services, particularly for operator services

⁴²⁰ Id.

⁴²¹ Id.

⁴²² Id.

⁴²³ Ex. 5, Moore Direct, pp. 22-23.

⁴²⁴ Ex. 5, Moore Direct, p. 23: See Scheds. 10-11.

⁴²⁵ Ex. 5, Moore Direct, p. 23.

originating from pay telephones.⁴²⁶ Before wireless services became ubiquitous, customers who are away from their home or business telephone frequently used the alternative billing arrangements through operator services to place calls.⁴²⁷

Another competitive alternative for operator services is “0+” and “0-” services from pay telephones.⁴²⁸ Pay telephone providers have the option of selecting the operator service provider of their choice for specific pay telephone locations.⁴²⁹ Customers can, in effect, choose an operator service provider through their choice of a payphone provider.⁴³⁰ Prepaid calling cards have also become an increasingly popular choice for alternative billing arrangements historically provided by operator service providers.⁴³¹ Prepaid calling cards are sold at a variety of outlets.⁴³² Live or automated operator assistant is typically available as required to assist in call completion relating to prepaid calling cards.⁴³³ Prepaid cards are frequently branded in the name of well known retail establishments, and are offered by all major telecommunication carriers, including AT&T, MCIWorldCom, and Sprint, as well as hundreds of other lesser known companies.⁴³⁴ Examples of prepaid card providers were provided in Schedule 12 to Ms. Moore’s direct testimony.

Finally, irrespective of the presubscribed carrier on a particular telephone line, end users can always reach the operator service provide of their choice by dialing “10-10-XXX-00”. The

⁴²⁶ Id.

⁴²⁷ Id.

⁴²⁸ Ex. 5, Moore Direct, p. 24.

⁴²⁹ Id.

⁴³⁰ Id.

⁴³¹ Id.

⁴³² Id.

⁴³³ Ex. 5, Moore Direct, p. 25.

⁴³⁴ Id.

XXX selected by the end user routes the call to the appropriate interexchange.⁴³⁵ Many telecommunication carriers, including MCIWorldCom, AT&T and Sprint also offer personal 800 numbers. These numbers function as a competitive alternative to one type of operator services, i.e. collect calls.⁴³⁶

It is important to remember that most if not all of the competitive alternatives described above are available to an end user customer, irrespective of whether that customer is a SWBT local customer or is a local customer of a CLEC. However, if the customer is a CLEC local customer, the customer will likely also have a competitive alternative of operator services provided by that CLEC.⁴³⁷ Moreover, operator services are provided by facilities-based interexchange carriers, resale and switched-base CLECs and specialized operator service providers that utilize their own facilities to provide operator services directly to end users or other providers, pay telephone providers, and places of public accommodation. All of these operator services directly compete with SWBT's operator services throughout Missouri, and offer substitutable or functionally equivalent operator services to the operator services provided by SWBT in Missouri.

The FCC has found the operator services marketplace to be competitive.⁴³⁸ In its UNE Remand Order, the FCC eliminated operator services from the list of unbundled network elements based on the competitive nature of the operator services marketplace.⁴³⁹ In the UNE Remand Order, the FCC stated that incumbent LECs "need not provide access to its operator

⁴³⁵ Id.

⁴³⁶ Ex. 5, Moore Direct, p. 26.

⁴³⁷ Id.

⁴³⁸ Ex. 5, Moore Direct, p. 28.

⁴³⁹ Id.

services and directory assistance as an unbundled network element.”⁴⁴⁰ Operator services are currently price deregulated in Arkansas, Texas and Kansas, among other states.⁴⁴¹

As described in the introductory section of this Brief, SWBT’s station-to-station, person-to-person, and calling card operator services were found to be transitionally competitive in 1992 in Case No. TO-93-116. Subsequent to that finding, and following a three year extension of the transitionally competitive classification, these services have become classified as competitive as of January 10, 1999.⁴⁴² The highly competitive nature of the operator services marketplace has directly impacted SWBT’s operator services call volumes. Since 1996, SWBT’s operator services call volumes have declined ** __ ** percent.⁴⁴³ This decline in SWBT’s operator service call volume can be directly attributed to competitive alternatives that exist in the marketplace, described above.⁴⁴⁴

For the reasons described above, the Commission should confirm that SWBT’s “station-to-station”, person-to-person and “calling card” operator services automatically became classified as competitive on January 10, 1999, throughout SWBT’s exchanges in Missouri. For the remainder of SWBT’s operator services, the Commission should find that SWBT’s operator services are subject to effective competition throughout SWBT’s exchanges in Missouri and should be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

Issue 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

⁴⁴⁰ UNE Remand Order, par. 441.

⁴⁴¹ Ex. 5, Moore Direct, p. 28.

⁴⁴² Ex. 5, Moore Direct, pp. 28-29.

⁴⁴³ Ex. 6(HC), Moore Surrebuttal(HC), Sched. 1(HC).

⁴⁴⁴ Ex. 6, Moore Surrebuttal, p. 6.

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time that a certified alternative local exchange company has provided basic local telecommunications service in that exchange)?

Dial US was certificated to provide basic local exchange telecommunications service and began providing such service in the Springfield exchange in January, 1997. Accordingly, the Commission must determine whether SWBT's services in the Springfield exchange are subject to effective competition by January, 2002.

Competition in other SWBT exchanges began shortly thereafter, with an initial focus in the major metropolitan areas of St. Louis and Kansas City. Under the statute, the Commission may consider the existence of effective competition for SWBT's services in all other exchanges in this proceeding, or it can choose to consider effective competition in a series of exchange specific proceedings over the next several months, taking care to reach its decision within the five year window for each exchange. Subject to a proper consideration of the evidence under the law established by the Legislature, SWBT believes that the Commission's resources are best served by making the determination in this proceeding.

Respectfully submitted,

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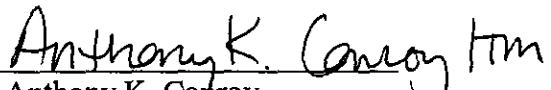
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by first-class, postage prepaid, U.S. Mail on November 9, 2001.


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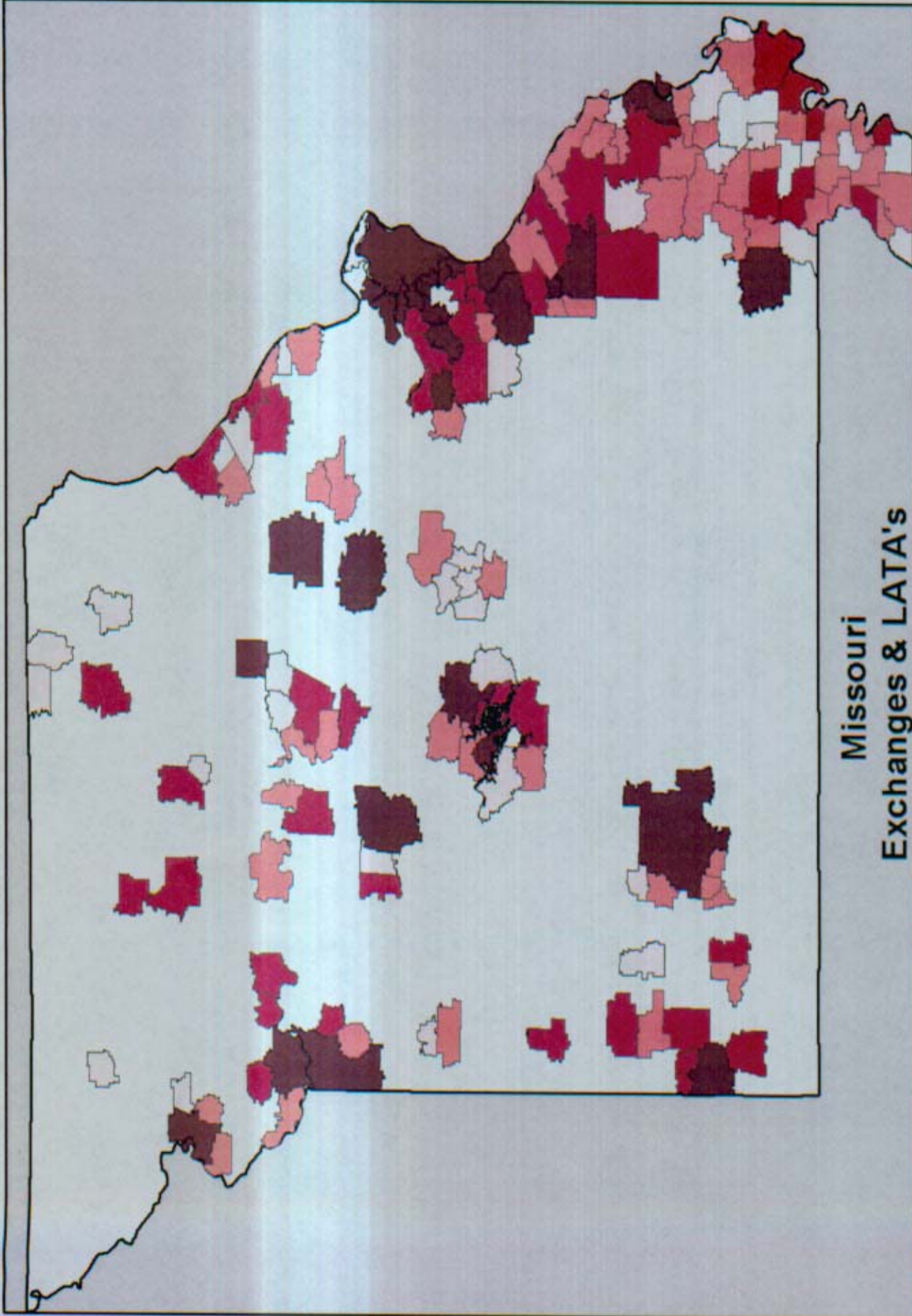
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APPENDIX 1



Missouri Exchanges & LATA's

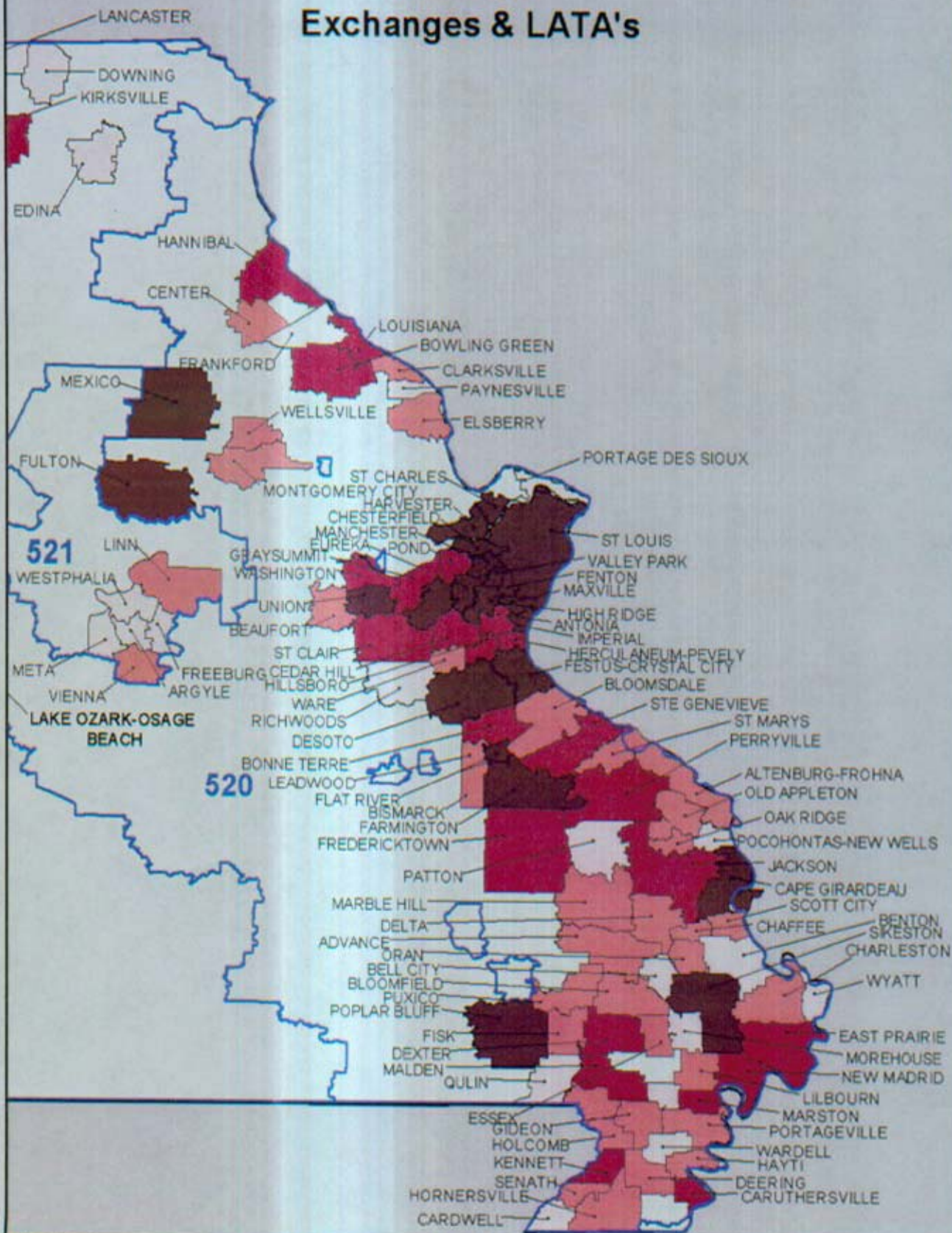
Number of active CLECs per exchange



SBC Services, Inc.
Marketing Geographic
Information Systems (MGIS)
Map prepared with
third party ODT data



Missouri Exchanges & LATA's



SBC Services, Inc.
Marketing Geographic
Information Systems(OIG)
Map prepared with
mid-early QCT data

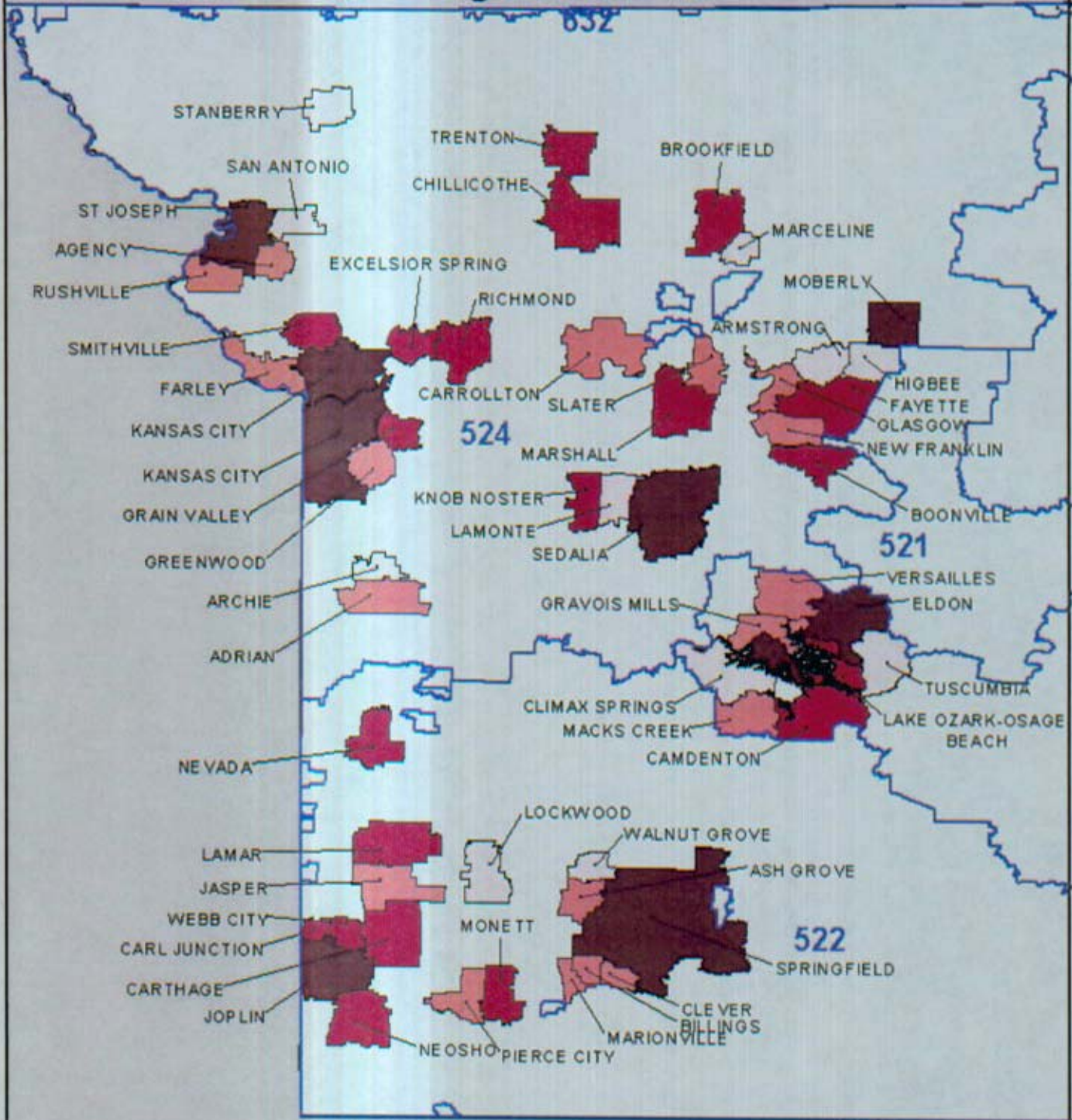


LATA's

Missouri
Number of active CLECs per exchange



Missouri Exchanges & LATA's



SBC Services, Inc.
Marketing Geographic
Information Systems (GIS)
Map prepared with
ArcView/MapInfo



LATA's

Missouri

Number of active CLECs per exchange

