

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

In the Matter of Southwestern Bell Telephone
Company's Proposed Revisions to PSC MO
No. 26, Long Distance Message
Telecommunications Service Tariff

Case No. TT-2002-227
Tariff No. 200200300

In the Matter of MCImetro Access Transmission)
Services, LLC's Local NationwideOne Promotion)

Case No. TT-2002-235
Tariff No. 200200338

In the Matter of NuVox Communications of)
Missouri, Inc.'s "Free Month" Promotion for)
New Customers)

Case No. TT-2002-274
Tariff No.200200453

In the Matter of American Communication Services)
Of Kansas City, Inc.'s Tariff Filing to Introduce)
New Product Packages for Basic Local Service)
Business Customers)

Case No. TT-2002-294
Tariff No. 200200364

In the Matter of MCImetro Access Transmission
Services, LLC's Proposed Revisions to Its Local
Exchange Service Tariff, MO P.S.C. Tariff No. 1

Case No. TT-2002-304
Tariff No. 200200395

In the Matter of MCI WorldCom Communications,)
Inc.'s Proposed Revisions to Its MO P.S.C.)
Tariff No. 4)

Case No. TT-2002-305
Tariff No. 200200394

In the Matter of Brooks Fiber Communications of
Missouri, Inc.'s Proposed Revisions to Its
P.S.C. Tariff No. 2, General Exchange Services

Case No. TT-2002-306
Tariff No. 200200396

In the Matter of TCG St. Louis' Proposed)
Revisions to Its P.S.C. Tariff No. 2, Local)
Exchange Services)

Case No. TT-2002-308
Tariff No. 200200515

In the Matter of TCG Kansas City's Proposed)
Revisions to Its P.S.C. Tariff No. 1, Local)
Exchange Services)

Case No. TT-2002-309
Tariff No. 200200516

SOUTHWESTERN BELL TELEPHONE, L.P.'S
INITIAL BRIEF

PAUL G. LANE	#27011
LEO J. BUB	#34326
ANTHONY K. CONROY	#35199
MIMI B. MACDONALD	#37606

Attorneys for Southwestern Bell Telephone Company
One SBC Center, Room 3510
St. Louis, Missouri 63 101

May 23, 2002

TABLE OF CONTENTS

	PAGE
EXECUTIVE SUMMARY	2
ARGUMENT	8
<u>Issue 1</u> : Should the Missouri Public Service Commission approve SWBT's CompleteLink Basic Promotion which offers business customers, who sign an Access Term Pricing Plan, postalized intraLATA toll for \$0.12 per minute?	8
A. SWBT's CompleteLink Basic Promotion	8
1. Background	8
2. SWBT's CompleteLink Basic Promotion Is A Voluntary And Optional Promotion For Business Customers	10
3. SWBT's CompleteLink Basic Promotion Is A Response To Customer Demand.....	10
4. SWBT's CompleteLink Basic Promotion Is A Competitive Response to Competitors' Initiatives	10
B. The Commission Should Approve SWBT's CompleteLink Basic Promotion Because It Is Pro-consumer, Pro- competition, Consistent With SWBT's Rights As A Price Cap Company, and Promotes Social Welfare	11
1. SWBT's CompleteLink Basic Promotion Is Pro- consumer.....	11
2. SWBT's CompleteLink Basic Promotion Is Pro-competition.....	12
a. No Party Has Presented Credible Evidence That SWBT's CompleteLink Basic Promotion is Anticompetitive From An Antitrust Or Economic Perspective	12

b.	Term Contracts Are Prevalent in Both the Business and Consumer Markets, Including The Telecommunications Market, And Term Contracts Have Not Impeded Competition	13
c.	Term Contracts Have Not Impeded Competition And Do Not Preclude Competitive Entry Into The Local Telecommunications Market	15
3.	SWBT's CompleteLink Basic Promotion Is Consistent With Its Rights As A Price Cap Company.....	27
4.	SWBT's CompleteLink Basic Promotion Promotes Social Welfare	28
C.	Claims That CLEC Tariffs Should Be Approved While SWBT's Tariff Should Be Denied And/Or That SWBT Should Be Limited To Term Contracts Of One Year Or Less While CLECs Should Face No Limitations Must Be Rejected As Unsound and Unlawful	30
<u>Issue 2:</u>	Should the Missouri Public Service Commission approve MCImetro's Local NationwideOne Promotion, which would apply to customers who make or have made term commitments that can exceed one year?	37
<u>Issue 3:</u>	Should the Missouri Public Service Commission approve NuVox's "Free Month" promotion tariff revision, which contains discounts for term commitments that can exceed one year?	40
<u>Issue 4:</u>	Should the Missouri Public Service Commission approve MCImetro's proposed revisions to its Local Exchange Service tariff, MO PSC Tariff No. 1, which contains promotional discounts for term commitments that can exceed one year?.....	40
<u>Issue 5:</u>	Should the Missouri Public Service Commission approve MCI WorldCom's Local NationwideOne Promotion, which would apply to customers who make or have made term commitments that can exceed one year?	40
<u>Issue 6:</u>	Should the Missouri Public Service Commission approve Brooks' Local NationwideOne Promotion, which would apply to customers who make or have made term commitments that can exceed one year?	40

<u>Issue 7:</u>	Should the Missouri Public Service Commission approve TCG St. Louis' proposed revisions to its Local Exchange Services Tariff, MO PSC Tariff No. 2, which contain discounts both for term commitments of one year and for other term commitments for more than one year?	40
<u>Issue 8:</u>	Should the Missouri Public Service Commission approve TCG Kansas City's proposed revisions to its Local Exchange Services Tariff, MO PSC Tariff No. 1, which contain discounts both for term commitments of one year and for other term commitments for more than one year?	41
<u>Issue 9:</u>	Should the Missouri Public Service Commission approve American Communications Services of Kansas City, Inc. d/b/a e.spire's Voice Internet Pack ("VIP") proposed tariff revision which would offer local, long distance, toll free services, custom calling and integrated 256 kb internet multi-year commitments with discounts?	41
CONCLUSION.....		41

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

In the Matter of Southwestern Bell Telephone Company's Proposed Revisions to PSC MO No. 26, Long Distance Message Telecommunications Service Tariff	Case No. TT-2002-227 Tariff No. 200200300
In the Matter of MCImetro Access Transmission Services, LLC's Local NationwideOne Promotion	Case No. TT-2002-235 Tariff No. 200200338
In the Matter of NuVox Communications of Missouri, Inc.'s "Free Month" Promotion for New Customers	Case No. TT-2002-274 Tariff No. 200200453
In the Matter of American Communication Services) Of Kansas City, Inc.'s Tariff Filing to introduce) New Product Packages for Basic Local Service) Business Customers)	Case No. TT-2002-294 Tariff No. 200200364
In the Matter of MCImetro Access Transmission Services, LLC's Proposed Revisions to Its Local Exchange Service Tariff, MO P.S.C. Tariff No. I	Case No. TT-2002-304 Tariff No. 200200395
In the Matter of MCI WorldCom Communications,) Inc.'s Proposed Revisions to Its MO P.S.C.) Tariff No. 4	Case No. TT-2002-305 Tariff No. 200200394
In the Matter of Brooks Fiber Communications of Missouri, Inc.'s Proposed Revisions to Its P.S.C. Tariff No. 2, General Exchange Services	Case No. TT-2002-306 Tariff No. 200200396
In the Matter of TCG St. Louis' Proposed Revisions to Its P.S.C. Tariff No. 2, Local Exchange Services	Case No. TT-2002-308 Tariff No. 200200515
In the Matter of TCG Kansas City's Proposed Revisions to Its P.S.C. Tariff No. 1, Local Exchange Services	Case No. TT-2002-309 Tariff No. 200200516

NP

**SOUTHWESTERN BELL TELEPHONE L.P.'S,
D/B/A SOUTHWESTERN BELL TELEPHONE COMPANY'S
INITIAL BRIEF**

Executive Summary

The narrow issue that is presented in this case is whether the Missouri Public Service Commission ("Commission") should approve nine (9) tariffs, which it previously suspended, that either contain term commitments or promote an already-approved tariff that contains term commitments.¹ For the reasons stated below, the answer to this question is yes. The broader issues that are presented are: (1) whether the Commission can or should prohibit Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") from offering tariffs that either contain term commitments or promote an already-approved tariff that contains term commitments while allowing competitive local exchange carriers ("CLECs") to offer such tariffs; and (2) whether there should be any restrictions on the length of term commitments that are contained in local exchange carriers' ("LECs") tariffs. For the reasons stated below, the answer to each of these later questions is no.

SWBT's tariff that is at issue in this proceeding is SWBT's CompleteLink[®] Basic promotion. The Commission previously approved SWBT's CompleteLink Basic promotion and it was effective from October 11, 2000, through October 10, 2001. Pursuant to this promotion, business customers who signed an optional SWBT Access Line Term Pricing Plan agreement would receive a \$0.12 per minute postalized intraLATA toll rate. The Commission should approve SWBT's CompleteLink Basic promotion because it: (1) is pro-consumer; (2) is pro-competition; (3) is consistent with SWBT's rights as a price cap company; (4) is consistent with the statutes; and (5) it promotes social welfare.

¹ SWBT's CompleteLink Basic promotion falls into the latter category; it promotes an already-approved tariff that contains a term commitment, SWBT's Access Line Term Pricing Plan.

First, the Commission should approve SWBT's CompleteLink Basic promotion because it is pro-consumer. Specifically, SWBT' CompleteLink Basic promotion offers business customers increased choice of services and the option of lower prices. It is the customer that benefits from SWBT's proposed offering.

Second, the Commission should approve SWBT's CompleteLink Basic promotion because it is pro-competition. At the outset, SWBT notes that no party presented any credible evidence that SWBT's CompleteLink Basic promotion is anticompetitive from an antitrust or economic perspective. Specifically, from an antitrust perspective, it is clear that no party presented any evidence that SWBT's CompleteLink Basic promotion and its Access Line Term Pricing Plan are priced below cost and/or are predatory. This case is not about SWBT's CompleteLink Basic promotion and its Access Term Pricing Plan being "anticompetitive"; rather it is an attempt by the CLECs to have SWBT restricted--not to benefit customers through increased competition, but to benefit themselves. The CLECs' arguments in this case are nothing more than an attempt to gain a regulatory-imposed advantage in the marketplace. The Commission should not heed the CLECs' pleas because neither the antitrust nor the regulatory laws are designed to benefit or protect competitors. Rather, both are designed to benefit and protect consumers. Consumers benefit from lower prices and term agreements like the one SWBT wants to offer here.

Further, there is no credible evidence that SWBT's CompleteLink Basic promotion and its Access Term Pricing Plan are anticompetitive in any recognized economic sense. Rather, the economic evidence is that term agreements are a staple of competitive markets and are a recognized way in which both suppliers and customers seek to reduce risk and meet their needs. Term contracts are prevalent in both the business and consumer markets, including the

telecommunications market, and term contracts have not impeded competition. Contrary to claims by CLECs, tariffs calling for optional term commitments have not resulted in the ILEC "locking-up" the market. SWBT presented market penetration rates related to term contracts in SBC Ameritech-Michigan, SBC Ameritech, and SBC SWBT-Missouri regions. Although SBC Ameritech-Michigan has been offering term contracts that are similar to CompleteLink Basic for more than six years, only **_%** of SBC Ameritech Michigan's business customers have chosen to subscribe to term plans that are similar to CompleteLink Basic. In SBC-Ameritech, only **_%** of SBC Ameritech's business customers subscribe to a term plan. Finally, in SBC SWBT-Missouri, only ** %** of business customers subscribe to a term plan. Further, in Missouri, of customers that have signed a term agreement, the majority of customers have signed a short-term agreement. Thus, based on market penetration rates related to term contracts in Missouri, there appears to be little prospect of SWBT, or any other carrier, locking up the market via long-term contracts. At the same time, however, there are a substantial number of customers who seek telecommunications services on a term basis in order to receive the benefit of lower and guaranteed prices, and SWBT must be permitted to compete for this portion of the customer base in Missouri.

Moreover, belying any claim that the existence of term agreements impedes competition, competitors continue to make substantial inroads into the local telecommunications market. SWBT's annual net competitive loss rate reflects a ** %** increase over annual 2000 net competitive losses. Further, the measures available to estimate the level of competition, including use of unbundled network elements, ported numbers, and 911 listings, all indicate a continued increase in estimated CLEC market share. SWBT estimates that CLECs gained at least 74,993 business access lines in 2001, a growth of 41% in just one year. During that same

one year period, the number of business access lines served by SWBT declined by 50,322, a 6% decrease. Overall, business access lines in Missouri only grew 2% during 2001. This demonstrates that while the overall business access line market remained relatively flat in 2001, the CLECs continued to increase the number of lines they serve and gained an additional 7% market share during a year when the economy was either in or near a recession. SWBT estimates that the CLECs' collective market share is at least 25% and, more likely, closer to 32%, estimates which are consistent with those presented by Staff. Thus, since CLECs have continued to enter the market and have actually increased their market share in the face of term discount plans offered by SWBT, it is simply undeniable that term discount plans offered by SWBT have not prevented CLECs from competing. Furthermore, SWBT presented evidence which reflects that not only is there no indication that SWBT is likely to lock up the local telecommunications market in the future, there is not even the theoretical possibility of term contracts being anticompetitive in the local telecommunications market because the prerequisites for term contracts to pose a threat to competition (exclusivity and the expectation of supra competitive profits by the entrant) do not exist.

SWBT's CompleteLink Basic promotion is also pro-competition. CLECs can and do offer their own competing plans. Additionally, CLECs can offer SWBT's term discount plans to their own customers on a resale basis and at a resale discount. Finally, SWBT's CompleteLink Basic promotion is pro-competitive because under the 13-state generic resale agreement and the Missouri 271 agreement, CLECs may assume existing contracts at the term discount price without the end-user incurring early termination fees. The offer and response of competing plans is the market dynamic that ultimately benefits consumers. Absent SWBT's ability to fully compete, the CLECs will less vigorously compete which will ultimately harm consumers.

Third, the Commission should approve SWBT's CompleteLink Basic promotion because it is consistent with SWBT's rights as a price cap company. Under Section 392.245.4(5), SWBT is permitted to price its services at any level below the maximum allowable price, so long as it is consistent with the provisions of Section 392.200. A postalized intraLATA toll rate does not violate Section 392.200 and, therefore, must be approved. Term agreements in general do not violate Section 392.200, as such tariffs have been routinely approved by the Commission for both SWBT and CLECs in the past and term tariffs remain in effect today for both SWBT and CLECs. Since there is nothing in the statutes that has changed since the Commission acted lawfully in approving SWBT's CompleteLink Basic promotion, the Commission should approve SWBT's CompleteLink Basic promotion that is currently under submission.

Fourth, in previously approving SWBT's CompleteLink Basic promotion, the Commission previously determined that SWBT's tariff complies with the statutes. In previously approving SWBT's CompleteLink Basic promotion, the Commission made a determination, pursuant to Chapter 392, that SWBT's tariff was in the public interest. As discussed in number two above, the CLECs share of the business market has continued to grow. Therefore, there can be no valid claim that SWBT's proposed CompleteLink Basic tariff is not in the public interest -- customers have benefited from SWBT's offering at the same time as increased market penetration by the CLECs.

Finally, the Commission should approve SWBT's CompleteLink Basic promotion because it promotes social welfare. Specifically, term agreements promote social welfare because they: (a) reduce the scope of opportunistic behavior and thereby encourage and protect efficient investment; (b) define the respective rights and duties of the parties; (c) create the ability to shift or reduce certain kinds of risk; (d) provide a way to spread fixed costs and thereby

offer lower prices; (e) encourage sufficient long-term investment; (f) meet the competition; and (g) provide investors with assurances that they need to provide capital to firms that is needed to modernize and advance their infrastructure. These social welfare benefits help to ensure that SWBT has the incentive to maintain and modernize its network.

Claims that the CLEC tariffs at issue in this proceeding should be approved while SWBT's tariff should be denied and/or that SWBT should be limited to term contracts of one year or less while CLECs should face no limitations must be rejected as unsound and unlawful. These recommendations are unsound because they deny customers the full benefits of a competitive environment (choice regarding service provider, services provided, and price). Additionally, such disparate treatment is unlawful since the Missouri legislature did not grant the Commission the authority to limit SWBT's ability to lower its prices through term discount plans nor discriminate against SWBT relative to the CLECs with regard to the ability to offer term discount plans. Further, both competitive and non-competitive companies are subject to the same tariffing requirements, and there is no statutory provision which would allow only competitively classified companies to offer term discount plans. Finally, if the Commission were to determine that either SWBT or all LECs were prohibited from offering tariffs that contain term provisions or promotions that promote tariffs that contain term provisions, the result would be that the Commission would be prohibiting SWBT and/or CLECs from matching term agreements that are available today. In other words, the Commission would effectively be denying providers the ability to compete in the marketplace.

With regard to the CLEC tariffs that are at issue in this docket, as long as SWBT is permitted to offer term discount plans, SWBT does not oppose the ability of CLECs to also offer term discount plans. However, if SWBT is denied the ability to offer term discount plans, or is

in any way limited in the types of discount plans that it can offer, then its competitors must share the same restrictions because: (1) Section 392.200 applies to all telecommunications companies and there is no provision for different treatment of CLECs; and (2) public policy considerations mandate this result. Restricting one provider's (e.g. SWBT's) ability to compete in the marketplace by restricting its ability to offer lower prices to customers is not good public policy because it would deprive customers of the full benefit of a competitive market (choice and price) and would cause the CLECs to become more dependent on SWBT.

Argument

1. Should the Missouri Public Service Commission approve Southwestern Bell Telephone, L.P.'s, d/b/a Southwestern Bell Telephone Company's, CompleteLink Basic Promotion which offers business customers, who sign an Access Term Pricing Plan, postalized intraLATA toll for \$0.12 per minute?

A. **SWBT's CompleteLink Basic Promotion**

1. **Background**

SWBT's CompleteLink" Basic promotion is an optional intraLATA toll plan for business customers. (Ex. 4, Getz Direct, p. 3). The Commission previously approved SWBT's CompleteLink Basic Promotion and it was effective from October 11, 2000, through October 10, 2001. (Ex. 4, Getz Direct, p. 3; Ex. 7, Unruh Direct, p. 3). Pursuant to this promotion, business customers who signed an optional SWBT Access Term Pricing Plan agreement would receive a \$0.12 per minute postalized² intraLATA toll rate. (P.S.C. Mo.-No. 26, Long Distance Message Telecommunications Service Tariff, Original Sheet 22.04; Ex. 4, Getz Direct, p. 3). SWBT's Access Term Pricing Plan is an optional pricing plan that was previously approved by the

² In this instance, a "postalized rate" means the rate is neither dependent upon the time of day that a call is placed nor the distance of the call. (Ex. 4, Getz Direct, p. 3).

Commission and is currently in effect. This plan offers discounts to business customers who execute term agreements. (Ex. 7, Unruh Direct, p. 4). Specifically, customers who execute a twelve (12) month term agreement are eligible for a three percent (3%) discount; customers who execute a twenty-four (24) month term agreement are eligible for a four percent (4%) discount; customers who execute a thirty-six (36) month term agreement are eligible for a six percent (6%) discount; customers who execute a forty-eight (48) month term agreement are eligible for an eight percent (8%) discount; and customers who execute a sixty (60) month term agreement are eligible for a ten percent (10%) discount. (P.S.C. Mo.--No. 24, Local Exchange Tariff, Ist Revised Sheet 2.03, Section 1.2.2.A.1).

On October 18, 2001, SWBT attempted to renew the very same CompleteLink Basic promotion previously approved by the Commission by filing Tariff File No. 200200030, one of the tariffs that is at issue in this consolidated docket.³ (Ex. 4, Getz Direct, p. 4; Ex. 7, Unruh Direct, pp. 3-4). On November 13, 2001, Staff filed its Motion to Suspend on the basis that the issues in Tariff File No. 200200300 were similar to the issues being considered in Case No. TT-2002-108. (Ex. 7, Unruh Direct, p. 4). The Staff recommended that the Commission suspend SWBT's CompleteLink Basic promotion until the Commission reached a decision in Case No. TT-2002-108. Id.

On November 15, 2001, the Commission suspended SWBT's CompleteLink Basic promotion until December 19, 2001, which coincided with the suspension date of the tariff in Case No. TT-2002-108. (Ex. 7, Unruh Direct, p. 4). On December 18, 2001, the Commission

³ SWBT notes that CompleteLink Basic is available from SBC Pacific Bell in California. (Ex. 4, Getz Direct, p. 7). Additionally, SWBT offered CompleteLink Basic in Arkansas, Kansas, Oklahoma, and Texas in 2000 and 2001, but those promotions have been replaced by an optional CompleteLink offering that has been approved by the other SWBT state commissions. Id. CompleteLink is also available from SBC Ameritech in Illinois, Indiana, Michigan, Ohio, and Wisconsin. Id. As the Commission is aware, CompleteLink is similar to CompleteLink Basic; however, it contains additional customer benefits such as total volume discounts on access, local usage, intral-ATA toll and toll-free usage, as well as vertical features. Id.

entered its Order Further Suspending Tariff, Directing Notice, and Scheduling a Prehearing Conference, suspending SWBT's CompleteLink Basic promotion until March 20, 2002, in order to allow the Commission an opportunity to determine whether SWBT's proposed promotion would have an "adverse impact" on competition. Id. On February 5, 2002, the Commission issued an Order further suspending the tariff until July 3, 2002. Id.

2. SWBT's CompleteLink Basic Promotion Is A Voluntary And Optional Promotion For Business Customers.

SWBT's CompleteLink Basic promotion is a completely voluntary and optional service for business customers. (Ex. 4, Getz Direct, p. 16). SWBT business customers can choose SWBT's CompleteLink Basic promotion or they can obtain intraLATA toll at the standard month-to-month retail price with no term commitment. Id.

3. SWBT's CompleteLink Basic Promotion Is A Response To Customer Demand

SWBT's proposed tariff in this proceeding is a tariff filed in response to customer demand. (Ex. 9, Unruh Surrebuttal, p. 3). Customers, especially those business customers with high intraLATA toll usage, demand products like SWBT's CompleteLink Basic Promotion, which offers preferred pricing in the form of discounts. (Ex. 4, Getz Direct, pp. 2 and 4). In a competitive marketplace, such as the one that exists in the local market in Missouri, all carriers need the ability to respond to customer demands. (Ex. 9, Unruh Surrebuttal, p. 4). Optional term discount plans and offers related to existing term discount plans are designed to meet customer expectations and reflect the type of competitive environment that the legislature sought to foster when it approved local exchange competition in Missouri. (Ex. 7, Unruh Direct, p. 6).

4. SWBT's CompleteLink Basic Promotion Is A Competitive Response To Competitors' Initiatives

SWBT's CompleteLink Basic Promotion is a direct response to competitors' initiatives in Missouri and is indicative of increased competition. (Ex. 4, Getz Direct, pp. 11-12). SWBT presented evidence of fifteen (15) competing products from nine (9) of SWBT's competitors that feature volume and/or term [discounts](#). Id. at pp. 12-13. Allegiance, Birch, Brooks Fiber, MCI Metro Access Transmission Services, MCI WorldCom, McLeod USA, NuVox, and others offer discounted contracts with term and/or volume discounts. (Schedule SWG-2, attached to Ex. 4, Getz Direct). SWBT merely seeks to meet the competition.

B. The Commission Should Approve SWBT's CompleteLink Basic Promotion Because It Is Pro-consumer, Pro-competition, Consistent With SWBT's Rights As A Price Cap Company, And Promotes Social Welfare.

1. SWBT's CompleteLink Basic Promotion Is Pro-consumer

SWBT's CompleteLink Basic promotion is pro-consumer in that it offers business customers increased choice and the option of lower prices. Business customers have the option to save in two ways. First, business customers save on their business access lines under SWBT's Access Line Term Pricing Plan. (Ex. 4, Getz Direct, p. 5). Specifically, business customers receive monthly discounts, described in Section A.1. above, on their access lines in exchange for making a term commitment. Id. Second, business customers save on their intraLATA toll calling with a postalized \$0.12 per minute rate through SWBT's CompleteLink Basic promotion. Id.

Additionally, SWBT's CompleteLink Basic promotion offers SWBT business customers a greater range of choice regarding their intraLATA toll needs. CompleteLink Basic simply provides customers with an additional choice. (Ex. 1, Aron Direct, p. 17; Ex. 2, Aron Rebuttal, p. 5; Ex. 4, Getz Direct, p. 16). SWBT notes that any time a customer makes a choice to buy from one firm rather than another, the "pool" of customers is reduced and a rival is excluded

from making the sale. (Ex. 3, Aron Surrebuttal, p. 7.). However, that does not necessarily reduce competition. Id. The concept of choice means that some firms are excluded as a consequence of a transaction. Id. Competition generally is not inhibited by the consequences of choice, it is enhanced. Id. A firm realizes that when it loses a sale, it loses revenues and profits. Id. This encourages firms to improve their products and reduce their prices. Id. Rather than being "anticompetitive", choice, and the consequent "exclusion" is inherent to the competitive process. Id. Additional choice is one of the primary benefits of a competitive marketplace. (Ex. 4, Getz Direct, p. 16). All carriers in Missouri, including SWBT, should be permitted to offer term contracts because these contracts provide customers with an option that improves their range of choice, and for some, reduces their prices. (Ex. 2, Aron Rebuttal, p. 5).

2. SWBT's CompleteLink Basic Promotion Is Pro-competition

a. No Party Has Presented Credible Evidence That SWBT's CompleteLink Basic Promotion Is Anticompetitive From An Antitrust Or Economic Perspective

The term "anticompetitive" has been used rather loosely during the course of this proceeding. SWBT notes that no party describes in any concrete antitrust terms what is "anticompetitive" about SWBT's CompleteLink Basic or its Access Line Term Pricing Plan. What is clear, however, is that no party presented any evidence that SWBT's CompleteLink Basic promotion or its Access Line Term Pricing Plan are priced below their cost and/or are predatory. (T. 145, Unruh; T. 357-358, Cecil). In fact, the opposite is true. Staff witness Walt Cecil testified that Staff believes that SWBT's CompleteLink Basic promotion and its Access Term Pricing Plan cover SWBT's costs. (T. 357-358, Cecil). SWBT's CompleteLink Basic promotion or its Access Line Term Pricing Plan are not "anticompetitive"; CLECs seek to have SWBT restricted -- not to benefit customers through increased competition, but to benefit

themselves. The CLECs' arguments are thinly veiled attempts to gain a regulatory-imposed advantage in the competitive marketplace. The Commission should not heed the CLECs' demands because neither the antitrust nor the regulatory laws are designed to benefit or protect competitors. Rather, both are designed to benefit and protect consumers. Consumers benefit from lower prices and term agreements like the one that SWBT wants to offer here.

Additionally, there is no credible evidence that SWBT's CompleteLink Basic promotion and its Access Term Pricing Plan are anticompetitive in any recognized economic sense. Rather, as will be discussed in Section B.2.b. below, the economic evidence is that term agreements are a staple of competitive markets and are a recognized way in which both suppliers and customers seek to reduce risk and meet their needs. Further, term agreements have been utilized in Missouri for years with no claim, much less proof, of adverse economic impact.

b. Term Contracts Are Prevalent In Both The Business and Consumer Markets, Including The Telecommunications Market And Term Contracts Have Not Impeded Competition.

Term contracts are a socially valuable and common feature of a private exchange economy. (Ex. 1, Aron Direct, p. 4). Such contracts provide customers the opportunity to receive discounted prices for some period of time in exchange for a commitment to remain with the supplier for the specified period. Id. Such contracts are a category of a broader set of competitive strategies that are commonly employed in markets to meet the needs of both seller and buyer by establishing commitments for some period of time. Id. Contractual commitments are critical to the functioning of a market-based economic system. (Ex. 1, Aron Direct, p. 17). The standard economic view is that contracts, including those with term (and volume) commitments, are deterrents to inefficient behavior and promote social welfare, as is discussed in Section B.4. below. (Ex. 1, Aron Direct, p. 17; Ex. 2, Aron Rebuttal, p. 21).

Contracts with term commitments are prevalent both in the business and consumer marketplace. (Ex. 1, Aron Direct, p. 18; T. 278, Kohly). For example, apartment owners often require annual commitments from tenants, while commercial real estate owners may demand longer term leases. (Ex. 1, Aron Direct, p. 18). Automobile leases, satellite, and fixed wireless Internet, and wireless phone services are available with annual or multi-year commitments. Id.

Term contracts have been a feature of the telecommunications environment even before the initiation of basic local exchange competition brought about by the federal and state Telecommunications Acts. For example, PBXs are often sold to customers under term agreements. (T. 279, Kohly). PBXs compete with central office-based offerings from local exchange companies, like SWBT's Plexar® offerings. Id. Term agreements for Plexar have been available for quite some time. Id. Further, despite the availability of term agreements for Plexar services, the providers of PBXs that compete with Plexar have the majority of the market. (T. 280, Kohly).

Additionally, term contracts are prevalent in the long distance market and have similarly been available for quite some time. Even when AT&T, which controlled in excess of 85% of the long distance market, was required to open up its market to competitors, it was able to offer term agreements to its customers. Id.

Similarly, when the wireless market was established, the Federal Communications Commission allocated frequency to two (2) competitors in each market (an A and B band). (T. 281, Kohly). The B band was generally given to an incumbent wireline company and the A band was given to a non-wireline competitor. Id. When these two companies began competing for wireless customers, neither the incumbent nor its competitor was banned from offering term [agreements](#). [Id. at](#) 282. Further, later on, when the FCC allocated additional frequency to

additional competitors, the two existing companies that at that point had 100% of the market, were not banned from offering term agreements to their customers. Id. Despite this, in those markets, the new competitors have generally been successful and acquired substantial market share in the wireless market. Id. Thus, term contracts are prevalent in both the business and consumer markets, including the telecommunications market and, as will be discussed in Section B.2.c. directly below, there is no evidence that such contracts have impeded competition.

c. Term Contracts Have Not Impeded Competition And Do Not Preclude Competitive Entry Into The Local Telecommunications Market.

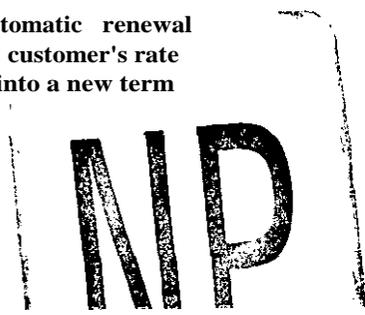
Optional term agreements and other commitment-inducing strategies are neither anticompetitive as a general matter, nor do they preclude efficient competitive entry even when used by a large incumbent. (Ex. 1, Aron Direct, p. 4). This conclusion is supported not only by economic evidence but also by the evidence related to the local telecommunications market. Turning to the market evidence that SWBT presented in this case, SWBT provided market penetration rates related to term contracts in SBC Ameritech-Michigan, SBC Ameritech, and SWBT-Missouri regions. SWBT noted that SBC-Ameritech Michigan has offered term contracts since 1995. (Ex. 4, Getz Direct, p. 8). As of year end 2001, ** ** business customers' Billed Telephone Numbers ("BTNs") out of SBC Ameritech Michigan's ** ** business customers' BTNs committed to a term and volume agreement for ValueLink, ValueLink Plus, ValueLink Extra, ValueLink Extra Select, ValueLink Local, CompleteLink, and SimpleLink. Id. Thus, although it has been more than six (6) years since SBC Ameritech Michigan began offering term agreements in products that are the same as or similar to CompleteLink Basic in Michigan, only ** %** of SBC Ameritech Michigan's business customers have chosen to subscribe to these optional plans. Id. SWBT notes at the actual

percentage of total business customers would be much smaller than this since CLECs also serve many of the business customers in [Michigan](#). *Id.* at pp. 8-9.

SWBT also presented evidence regarding market penetration levels related to term contracts in SBC Ameritech. Specifically, SBC Ameritech's total is similar, with ****_%**** of SBC Ameritech's business customers BTNs subscribing to one of these optional plans. (Ex. 4, Getz Direct, p. 9). Again, SWBT notes that the actual percentage of total business customers would be much smaller since CLECs also serve many of the business customers in the SBC Ameritech region. *Id.* SWBT further notes that each year, roughly 25-33% of these business customers' agreements expire. *Id.* The vast majority of the market then remains uncommitted and open to competitive offers despite the availability of their agreement. At the same time, however, SBC Ameritech was not precluded from competing for the significant group of customers to whom term agreements are an important requirement.

Turning to SBC SWBT Missouri, as of January, 2002, ****** ****** business lines out of a total of ****** ****** SWBT Missouri business lines, or ****_%**** were committed to term and volume agreements for CompleteLink Basic, SWBT's Access Term Pricing Plan, SmartTrunk, Plexar I, Plexar II, and SuperTrunk. (Ex. 4, Getz Direct, p. 9). As was the case in the SBC Ameritech region, the actual percentage of total business customers would be much smaller than this since CLECs also serve many of the business customers in Missouri. *Id.* at pp. 9-10. In other words, more than 14 years after the introduction of term agreements by SWBT in Missouri, the overwhelming majority of business customers have not subscribed to a term agreement. (Ex. 1, Aron Direct, p. 7; Ex. 4, Getz Direct, p. 10). Further, of these customers that have signed a

¹ Mr. Getz clarified at the hearing of this matter that none of products that he referred to have automatic renewal options contained in them. (T. 87, Getz). Rather, at the expiration of the term agreement, a customer's rate automatically reverts to monthly tariff rates unless the customer affirmatively elects to enter into a new term agreement. *Id.*



term agreement, the majority of these customers have signed a short-term agreement. Specifically, **_%** of SWBT's customers committed to a one-year term, **_%** of SWBT's customers committed to a two-year term, ** ** of SWBT's customers committed to a three-year term, ** ** of SWBT's customers committed to a four-year term, and ** %** of SWBT's customers committed to a five year-term. (T. 97, Getz). Thus, based on market penetration rates related to term contracts in Missouri, there appears to be little prospect of SWBT or any carrier locking up the market via long-term contracts. (Ex. 1, Aron Direct, p. 12). This experience should assuage any concern the Commission might have that SWBT's long-term contracts would have a tendency to substantially "lock-up" the markets (Ex. 1, Aron Direct, p. 7).

In contrast, the CLECs have an overwhelming majority of their customers in SWBT's Missouri service territory committed to term agreements. (T. 169, 174, Cadieux; T. 237, Morris; T. 312-314, Kohly; T. 410, Cecil). With respect to the AT&T family of companies, AT&T represents that TCG has approximately ** ** voice grade equivalent lines for retail business customers in SWBT's Missouri service territory. (T. 312, Kohly). Of that number, approximately ** ** or over **_%** of TCG's access lines are committed to a term agreement. Id. **_%** of TCG's access lines are committed to a one-year term,

⁵ Dr. Aron testified at the hearing of this matter that even if the number of contracts subject to a term agreement was quite high, it does not follow that a regulatory or antitrust authority should necessarily be concerned. (T. 45, Aron). Dr. Aron explained that the reason for this is that whether there is a potential harm depends on more than just the number or percentage of customers that are locked up, so to speak. Id. Even if 100% of the customers were committed to long-term contracts, whether that presents a problem depends on whether, for example, there are 10 customers and they are locked in for 10 years or there are 1,000 customers and they are locked in for even 10 years, because a tenth of them are going to turn over every year and that may be quite sufficient for competitors to make a successful business. Id. Dr. Aron further explained that one has to look at the competitive nature of the market and, in particular, at the turnover of the contracts and the nature of the [contracts.Id.at 46](#). If the number r of customers that are coming out of term contracts is sufficient along with the customer pool that is not under contract at all to support viable competitors or to viably support competition, then the term of the contract is not [problematic.Id.at 58](#).



** %** are committed to a two-year term, and ** %** are committed to a three-year term. Id at 313.

With respect to NuVox, ** of its customer lines (** **) in SWBT's Missouri service territory are committed to a term agreement. (T. 193, Cadieux). Of NuVox's customer lines, ** %** are committed to a one-year term, **_%** are committed to a two-year term, and **_%** are committed to a three-year term. (T. 174, 194, Cadieux).

Finally, with respect to WCOM family of companies, WCOM represents that it has ** ** business access lines and Brooks Fiber has ** ** business access lines in SWBT's Missouri service territory. (T. 237-239, Morris). The WCOM family of companies was unable to specify how many of their access lines were subject to a term pricing plan. (T. 239, Morris). However, WCOM determined that a **_____** of its lines are subject to a term pricing plan of greater than one [year. Id. at](#) 240. Thus, although SWBT adamantly contends that based on market penetration rates related to term contracts in SWBT's Missouri service territory, there appears to be little prospect of any carrier locking up the market via long-term contracts and that the Commission should allow competitive forces to prevail, if the Commission believes that any unlawful lock up of the market is occurring, it is on behalf of the CLECs who are effectively preventing each other, as well as SWBT, from competing for their customers' by locking them up in long-term contracts. Thus, although SWBT adamantly believes that there should be no constraints on any LEC from offering long term contracts, if the Commission believes that any unlawful lock up of the market is occurring, it should place a prohibition against long-term contracts on the CLECs, not SWBT. SWBT has a lower percentage of IRS' customer lines under a term contract in Missouri than the CLECs.

The letters 'NP' are rendered in a large, bold, black, distressed font with a grainy, textured appearance. The letters are positioned in the bottom right corner of the page.

Belying any claim that the existence of term agreements impedes competition, competitors continue to make substantial inroads. (Ex. 4, Getz Direct, p. 10; Ex. 7, Unruh Direct, p. 2). SWBT Missouri's 2001 annual net competitive line loss rate reflects a **% increase over annual 2000 net competitive losses. (Ex. 4, Getz Direct, p. 12). Further, the measures available to estimate the level of competition, including use of unbundled network elements ("UNEs"), ported numbers, and 911 listings, all indicate a continued increase in estimated CLEC market share. (Ex. 7, Unruh Direct, p. 7).

Specifically, as of December, 2001, there were over 60 CLECs actively passing orders to SWBT each month. (Ex. 7, Unruh Direct, p. 7). There are at least three (3) CLECs serving customers in ninety percent (90%) (144) of SWBT's 160 exchanges. From the end of 2000 to the end of 2001, the number of CLEC UNE switch ports increased by 84%, the number of CLEC 911 listings increased by 70%, the number of ported numbers increased by 91%, the number of CLEC unbundled loops increased by 100%, and the number of CLEC interconnection trunks increased by 20%. [Id.](#) at 8.

SWBT estimates that CLECs gained at least 74,993 business access lines in 2001, which represents a growth of 41% in just one year. (Ex. 7, Unruh Direct, p. 8). During that same one-year period (2001), the number of business access lines served by SWBT declined by 50,322, which represents a 6% decrease. *Id.* Overall, business access lines in Missouri only grew 2% (24,671) during 2001. *Id.* This demonstrates that while the overall business access line market remained relatively flat in 2001, the CLECs continued to increase the number of lines they serve and gained an additional 7% market share during a year where the economy was either in or near

^e The data upon which this statement is based is data as of April, 2001, and, given the competitive growth experienced in the marketplace, the numbers reflected have likely increased since that time. (Ex. 7, Unruh Direct, p. 7).

a recession. Id.

SWBT estimates that the CLECs' collective market share is at least twenty-five (25) and, more likely, closer to thirty-two (32) percent. Specifically, using a minimum market share estimation methodology, SWBT estimates that CLECs have obtained at least 25% of the business access lines in SWBT's exchanges in Missouri. (Ex. 7, Unruh Direct, pp. 9 and 19). This estimation is based on UNE ports, 911 listings, and resold lines as of December, 2001. Id. Using an alternative market share estimation methodology⁸, which considers the number of interconnection trunks utilized by CLECs, the estimated market share obtained by CLECs for business access lines is thirty two percent (32%). Id.

SWBT notes that these percentages are consistent with those presented by Staff. (T. 382-383, Cecil). Using data that is, in some cases, more than a year old, Staff estimated that CLECs serve twenty-six (26) percent of the business access lines in SWBT's Missouri service area. (Ex. 23, page 1). Not all CLECs responded to Staff's data requests and the information on many of the CLECs is dated, resulting in an underestimation of actual market share. Because of these matters, Staff admits that the number of business access lines served by CLECs today would be higher. (T. 329, Cecil). Staff further admits that SWBT's estimation of CLEC market share is

By counting the number of UNE switch ports purchased by CLECs, the number of 911 listings for CLEC customers, and the number of resold lines CLECs purchase from SWBT, SWBT can count the minimum number of lines that CLECs serve in SWBT's exchanges. (Ex. 7, Unruh Direct, p. 10). However, this only represents a minimum number of CLEC lines and the actual number of CLEC lines served is higher. Id. For example, SWBT does not know the total number of access lines that are served by CLECs using their own actual facilities. Id. Furthermore, SWBT does not know how many lines are served by CLECs where the telephone number has been ported from SWBT to the CLEC. Id. As of December, 2001, cumulatively, SWBT had ported 320,791 telephone numbers to CLECs in Missouri so some percentage of this number represents access lines served by CLECs that are not identified in SWBT's minimum market share estimation. Id. Additionally, not all access lines are represented by a listing in the 911 database. Id. For example, some businesses designate a portion of their access lines for inbound calling only and those lines do not have 911 listings. Id. As a result of these factors, SWBT's market share estimates represent only the minimum number of lines served by CLECs. Id.

⁸ CLEC access line market share can be estimated by utilizing the number of interconnection trunks that the CLECs have provisioned for exchanging traffic with SWBT. (Ex. 7, Unruh Direct, p. 11). By using a factor of 2.75 lines per trunk plus the number of UNE switch ports and resold lines, an estimate of the number of CLEC lines can be derived. Id.

fair. (T. 382-3, Cecil). Nevertheless, at the end of the day, only the CLECs know how many lines they actually serve. (Ex. 7, Unruh Direct, p. 10). If the Commission wants a more accurate picture of market share, it would need to obtain the relevant information from the CLECs themselves. (Ex. 7, Unruh Direct, p. 10; T. 119-120 and 166, Unruh). However, the evidence is clear that SWBT neither enjoys a "near monopoly" or "de facto monopoly", as claimed by SWBT's competitors. (Ex. 8, Unruh Rebuttal, p. 6).

Moreover, it is undeniable that term discount plans offered by SWBT have not prevented CLECs from competing. As indicated above, the Commission has already approved several term discount plans proposed by SWBT including the optional Access Line Term Pricing Plan which is a term discount plan for access line service including basic telephone service. (Ex. 7, Unruh Direct, pp. 11-12). Since SWBT's optional Access Term Pricing Plan became effective over 17 months ago, CLECs have continued to increase their market [presence](#). [Id.](#) at p. 12. Correspondingly, the estimated number of lines served by CLECs grew over this same time period, while the actual number of retail lines served by SWBT declined. (Ex. 7, Unruh Direct, pp. 12 and 19; Ex. 8, Unruh Rebuttal, p. 7; Ex. 9, Unruh Surrebuttal, p. 15; T. 126-127, Unruh). This evidence demonstrates that optional term discount plans offered by SWBT are consistent with a competitive environment. (Ex. 7, Unruh Direct, p. 13). Competitors have continued to enter the market and have actually increased market share despite the existence of these optional term discount plans. *Id.* Thus, as recognized by Commissioner Murray during the hearing of this matter, the Commission should have even less concern about purported "anti-competitive" effects of term agreements now than when it previously approved SWBT's CompleteLink Basic promotion, SWBT's Access Line Term Pricing Plan, and other tariffs which require term commitments.

So would it be logical to assume that if there were no legitimate concerns about anti-competitive pricing at the time this Commission approved those term discount plans, that there should be even less concern today about this same type of plan?

- A. I absolutely agree. In fact, the CLECs don't really seem to even argue any sort of -- as Mr. Lane pointed out in his opening statements, the term anti-competitive has been used pretty loosely in this case. And really nobody's presented any evidence of any sort of antitrust type anti-competitive behavior.

And -- and contrast that with the evidence that we've presented that shows that the CLEC market share continues to grow even after the Commission has approved those term discount tariffs for Southwestern Bell, would certainly suggest to me that the Commission should be even less concerned today than they were when they approved those tariffs before.

(T. 127-128, Unruh).

Moreover, there is no indication that SWBT is likely to "lock-up" the local telecommunications market in the future. At the outset, SWBT notes that, from an economic perspective, long term contracts are not typically thought to pose a threat to competition, and pose a theoretical threat only if two conditions are met, neither of which is present here. (T. 54-55, Aron). The first is "exclusivity" which means that the contract must commit both parties not to deal with the [entrant](#). [Id.](#) at 55. SWBT's underlying Access Term Pricing Plan, is not exclusive for a number of reasons. [Id.](#) One is that CLECs can, under the terms of the SBC 13-state generic resale agreement or the M2A, assume an existing retail contract with term and/or volume commitments without triggering an early termination fee on the part of the end-user or the CLEC. [Id.](#) Another reason that it is not exclusive is that exclusivity would mean that customers would be required under the contract to give all of their business to SAW, which is not the case. [Id.](#) Customers are free to give some of their lines to SWBT and some to other CLECs. [Id.](#) The second condition is that the buyer must expect the [entrant](#), to have some measure of monopoly market power and the ability to charge prices in excess of [costs](#). [Id.](#) at 56.

At the hearing, Commissioner Lumpe expressed interest in knowing the basis for this conclusion, and asked Commissioner Gaw to inquire about this from Dr. Aron in Commissioner Lumpe's absence.

Q. And I believe she was interested in knowing a little bit more about how you reached that conclusion that neither of those are true in Missouri.

A. Regarding the first one, exclusive contracting, what I explain in my testimony is that the term commitment contracts that are at issue are not exclusive for a number of reasons.

One reason is that at least with respect to Southwestern Bell's contracts, they are assumable without triggering the early termination fee by CLECs. And that alone is sufficient to determine that they're not exclusive from an economic perspective.

The other reason that they're not exclusive is that there's no requirement that the business customer do all of its business with Southwestern Bell. It can -- and the evidence I provided in my testimony shows that business customers typically do contract with more than one provider.

They can give some of their lines to Southwestern Bell, give their growth lines or other lines to another carrier and they may choose to do so for a number of reasons, including a desire to have their providers competing against each other for their business. I -- I provided some evidence in my testimony showing that business customers on average have, I think, two and a half voice providers.

With regard to the second item that you asked about, that there would not be anticipated supracompetitive profits by the entrant, I base my conclusion that entrants would not be expected to make profits over and above a normal return to investment in their market on two factors.

One is their own claims, and they are claiming that far from making supracompetitive profits in this market, they're not making money at all in this market. And that seems to be the universal theme that they're promoting. And the other is just based on my judgment of the market. I think, in fact, in the current market that's probably reasonable to assume.

Q. Do you have a definition that's accepted as the definition of exclusive contracting?

A. The way that I'm interpreting exclusive contracting here is in the context of how it has been applied and discussed in the antitrust cases where the issue has arisen.

And where the issue of exclusivity of long-term contracts has arisen, the context is that the court has been concerned in cases where contracts are offered that tie the customer entirely to the provider and if the customer were to give any of its business to an alternative provider or a competitor, it would nullify the discounts that are being provided under the contract.

Courts have more concern about that sort of exclusivity. And, in particular, the converse have said, if I don't see exclusivity of that nature, I'm not so worried about these term contracts.

(T. 55-57, Aron). Judge Woodruff followed up on this line of questions specifically with regard to the anticipated supracompetitive profits by the entrant.

Q. . . . The first one is exclusive contracting and I understand that. The second is the anticipated supracompetitive profits by the entrant. And I think I understand what you're talking about, but it sounds like that would be an entrant coming in that would be very powerful and could price their products above market cost. Would that be true?

A. Exactly.

Q. Why would that be a factor?

A. It's certainly a counter-intuitive factor. The reason that it's a factor is driven by the theoretical economic literature that I described in my direct testimony.

The economic literature has looked at this question of whether term contracts can preclude efficient entry. And there have been a number of papers and theoretical models on this issue. The ones that I think are -- you might say the state of the art, are the ones that I described in my testimony.

And what they find is that if -- if the entrants are expected to be making profits when they enter, that creates an opportunity for the -- for the incumbent and the customer to write a contract that could effectively extract some of those profits through the early termination fee that's imposed and the -- thereby, the offer that the entrant would have to make when it comes in order to attract the customer back away from the incumbent.

I can't say that it's a highly intuitive argument, but I would say that it is, I think, recognized in the literature that absent that condition, economists have not succeeded in developing a second theoretical model under which long-term contracts with early termination fees would preclude efficient entry. Not that they wouldn't preclude entry, but they wouldn't preclude efficient entry.

So it might preclude companies from coming in that wouldn't be efficient anyway?

A. Correct.

(T. 66-67, Aron). Thus, not only do the penetration levels regarding term contracts reflect that term contracts have not had an adverse impact on competition, there is not even the theoretical possibility of term contracts being anticompetitive in the local telecommunications market in Missouri because the prerequisites for term contracts to pose a threat to competition (exclusivity and the expectation of supra competitive profits by the entrant) do not exist.

SWBT's CompleteLink Basic promotion is also pro-competitive. In Missouri, CLECs can and do offer their own competing plans, which either contain term provisions or promote a tariff that contains a term provision. (Ex. 7, Unruh Direct, p. 13). Long term contracts are not anticompetitive from an economic perspective. (Ex. 1, Aron Direct, p. 22). Rather, it is generally understood that if a provider is offering a long-term contract to customers, rivals can counter with better long-term contracts, lower spot prices, or contracts with shorter terms or lesser early termination fees. *Id.* Customers who sign long-term contracts do so because they consider the price and other terms of the contract to outweigh the potential future flexibility of remaining uncommitted and provide a superior alternative to competing *offers*. *Id.*

Additionally, CLECs can offer SWBT's term discount plans to their own customers on a resale **basis** and at a resale discount. (Ex. 4, Getz Direct, p. 16; Ex. 7, Unruh Direct, p. 13). This is another example of why concerns that SWBT's optional CompleteLink Basic promotion, and

other term plans offered by SWBT, could impede the development of competition are groundless. (Ex. 7, Unruh Direct, p. 13). To the contrary, SWBT's optional CompleteLink Basic promotion promotes the further development of a competitive environment by virtue of the fact that it is available for resale at a resale discount. Id.

Finally, SWBT's CompleteLink Basic promotion is pro-competitive because under the 13-state generic resale agreement and the Missouri 271 agreement, CLECs may assume existing contracts at the term discount price without the end-user or the CLEC incurring early termination fees.⁹ (Ex. 1, Aron Direct, p. 8; ex. 9, Aron Surrebuttal, p. 4; Ex. 7, Unruh Direct, p.14; Ex. 9, Unruh Surrebuttal, p. 16). In this case, the end user customer would pay no penalty to SWBT for leaving SWBT and taking service from a CLEC. (Ex. 9, Unruh Surrebuttal. p. 16). These concepts were explored by Commissioner Murray at the hearing of this matter.

- Q. . . .The tariff that Southwestern Bell is offering does allow resale by CLECs. Is that your understanding?
- A. My understanding is that CLECs can resell the offering and also that CLECs can assume a contract that's already in place without triggering the early termination fee and resell that.
- Q. So that if there were a certain number of months remaining on the contract, a CLEC could assume that and tack on another however many months to provide whatever kind of discount they wanted to arrange. Is that your understanding?
- A. That's right. And not only that, during those remaining months on the existing contract, they can tack on other services that they self-provision

If a CLEC assumes a SWBT term contract and the CLEC's end user decides to prematurely terminate the service, the CLEC would be obligated to pay SWBT the early termination fee just as the end user customer would have been obligated to pay the termination fee if the end user customer had terminated service from SWBT. (Ex. 9, Unruh Surrebuttal, p. 16). However, the CLECs can and presumably would, include in its contract with the end user the right to collect the early termination fee from the end user so the CLEC will not itself finance the fee. Id. Moreover, since the CLEC takes over the business relationship with the end user, the CLEC is free to establish whatever conditions the CLEC and the customer agree to. Id. at p. 17. For example, the CLEC and the customer may reach an agreement for a longer term and for more services than the contract being assumed from SWBT and this agreement between the CLEC and its end user may contain early termination fees that match or potentially exceed the early termination fees in the customer's contract prior to assumption. Id.

or provision through whatever means they would like, such as their long distance service, their data service, wireless and so forth.

(T. 50, Aron). This is a further reason why concerns of potential adverse competitive impacts from CompleteLink Basic, or other term discount plans or promotions that promote term discount plans that are offered by SWBT, are unfounded.^o (Ex. 7, Unruh Direct, p. 14).

In summary, given the relatively small number of term agreements in Missouri, the availability of term agreements in Missouri for over 14 years, the rapid turnover or expiration of existing agreements, and the availability of the agreements for resale and assumption, the competitive marketplace has not been adversely affected by the existence of term agreements offered by SWBT. (Ex. 4, Getz Direct, p. 10).

3. SWBT's CompleteLink Basic Promotion Is Consistent With Its Rights As A Price Cap Company

Under Section 392.245.4(5), SWBT is permitted to price its services at any level below the maximum allowable price, so long as it is consistent with the provisions of Section 392.200. A postalized intraLATA toll rate does not violate Section 392.200 and, therefore, must be approved. Term agreements in general do not violate Section 392.200 as such tariffs have been routinely approved by the Commission for both SWBT and CLECs in the past and term tariffs remain in effect today for both SWBT and CLECs. Commissioner Murray touched on this during the hearing of this matter.

Q. And I assume that when the Commission approved those tariffs, that the Commission found that they were lawful and that they were in the public interest?

^o SWBT notes that the assumability of contracts only works one way. (Ex. 3, Aron Surrebuttal, p. 4; T. 51, Aron). SWBT's contracts are assumable by CLECs such as AT&T and WCOM and the early termination fee is not triggered. (Ex. 3, Aron Surrebuttal, p. 4). But, CLECs' term contracts are not assumable by SWBT or the other CLECs. (Ex. 3, Aron Surrebuttal, p. 4; T. 72, Aron; T. 178, Cadieux; T. 303-304, Kohly). Thus, when a CLEC signs a customer to a term contract, other CLECs are more truly "locked out" than is the case when SWBT signs a similar customer to a term contract. (Ex. 3, Aron Surrebuttal, p. 4).

A. Yes.

Q. And nothing has changed since the time that those tariffs were approved that would create a concern for the Commission that was not there at the time, is there anything you can think of that would give this Commission reason to reject those same tariffs today?

A. Definitely not.

(T. 127-128, Unruh). Even the CLECs admit that the Commission had to find that SWBT's CompleteLink Basic tariff was lawful, just and reasonable in order to have previously approved it. (T. 300, Kohly; see also T. 332, Cecil). Since there is nothing in the statutes that has changed since the Commission acted lawfully in approving SWBT's CompleteLink Basic promotion, the Commission should approve SWBT's CompleteLink Basic promotion that is currently under submission. (T. 165, Unruh).

4. SWBT's CompleteLink Basic Promotion Promotes Social Welfare.

When transactions occur over an extended period of time, rather than instantaneously, or involve relationship-specific investment, there is the possibility that one party could try to change the contract or back out entirely when the other party is at a relative disadvantage. (Ex. 1, Aron Direct, p. 18; T. 64, Aron). This is of particular concern when one (or both) parties have made investments in the relationship that cannot be recovered if the relationship ends, or if provisioning the service in general requires sunk investment. *Id.* Once the investment is made and sunk, the other party has the incentive to attempt to renegotiate to a lower price or better terms. *Id.* If the parties are not protected against such behavior, they will be reluctant to make any investment in the relationship, even when the investment and the relationship would benefit both parties. *Id.*

Term contracts, such as those a business customer subscribes to when it purchases SWBT's CompleteLink Basic promotion or its Access Line Term Pricing Plan, can reduce the

scope of such opportunistic behavior, and thereby encourage and protect efficient investment. (Ex. 1, Aron Direct, pp. 18-19; Ex. 2, Aron Rebuttal, p. 21; Ex. 3, Aron Surrebuttal, p. 6; T. 64, Aron). By protecting parties before the fact, long-term contracts enable buyers and sellers to enter into a longer-term transaction, and make appropriate investments in the transaction, secure in the knowledge that the rug will not be pulled out from under them simply as a result of the sequential nature of the transaction. (Ex. 1, Aron Direct, p. 18; T. 64, Aron). Additionally, term contracts, especially those with specific provisions for termination (such as an early termination fee) provide additional certainty of the respective rights and duties of the parties in the event that both agree to terminate the contract early. (Ex. 2, Aron Rebuttal, p. 21).

Long term contracts serve other socially valuable functions, including: (1) creating the ability to shift or reduce certain kinds of risk; (2) providing a way to spread fixed costs and thereby offer lower prices; (3) encouraging efficient long-term investment; and (4) meeting the competition. (Ex. 1, Aron Direct, p. 19; Ex. 3, Aron Surrebuttal, p. 16; T. 65, Aron). Additionally, term contracts provide investors with assurances that they need to provide capital to firms, including incumbents, that is needed to modernize and advance the infrastructure. (Ex. 3, Aron Surrebuttal, p. 29). Absent term contracts, investors would be biased against plant and equipment that is sunk and dedicated to particular customers, or that is associated with transactions that occur over a long period of time. (Ex. 3, Aron Surrebuttal, p. 6). SWBT enters terms agreements with the expectation that a customer's revenue will be assured, albeit at a discounted level, and that the facilities and goods necessary to fulfill the agreement will be required for the duration of the agreement. (Ex. 4, Getz Direct, p. 6). This allows SWBT to plan its network infrastructure and force requirements with greater certainty. (Ex. 1, Aron Direct, pp. 22; Ex. 4, Getz Direct, pp. 6-7). CompleteLink Basic reduces the likelihood of opportunistic

changes by **buyers after SWBT has** invested effort and infrastructure to serve the customers. (Ex. 1, Aron Direct, pp. 21-22). This helps to ensure that SWBT has the incentive to maintain and modernize its network.

C. Claims That CLEC Tariffs Should Be Approved While SWBT's Tariff Should Be Denied And/Or That SWBT Should Be Limited To Term Contracts Of One Year Or Less While CLECs Should Face No Limitations Must Be Rejected As Unsound and Unlawful.

Staff and the CLECs recommend that: (1) the CLEC tariffs should be approved while SWBT's tariff should be denied; and (2) SWBT should be limited to term contracts of one year or less while CLECs should face no such limitation.¹¹ (Ex. 18, Cecil Rebuttal, pp. 11-13). These recommendations should be rejected as unsound and unlawful.

Recommendations for disparate treatment are unsound because they deny customers the full benefits of a competitive environment (choice regarding service provider, services provided, and price). Staff argues that since the number of customers subscribing to term contract services is insignificant, then it does not see harm in granting an advantage to CLECs by limiting SWBT's ability to contract. (Ex. 18, Cecil Rebuttal, p. 8). Staff's argument lacks merit. Although only ** or **_%** of business customers have committed to SWBT's discount plans, SWBT values each and every one of these customers and is not prepared to dismiss their individual importance based on the fact that their cumulative number is low. (Ex. 5, Getz Rebuttal, p. 6). Furthermore, limiting SWBT's ability to offer optional multi-year agreements to customers would have the practical effect of limiting SWBT's ability to offer lower prices to

¹¹ Staff states that it supports SWBT/end-user contract lengths involving basic local service of one year because such a contract will allow end-users opportunities to enjoy lower rates and other enticements but will not reduce the numbers of potential customers in the pool of available customers to such an extent that competitors will be forced to exit the market. (Ex. 18, Cecil Rebuttal, p. 9). Staff's assertions are not supported by the facts. The facts are that SWBT's contract penetration level is attained after 14 years of marketing optional contracts of 1, 2, 3, 4, and 5 year lengths. (Ex. 6, Getz Surrebuttal, p. 10). Staff considers this penetration level as "insignificant" and then proposes that contracts be limited to one year in order to supposedly not overly reduce the availability of the customer pool. Id. This is a non sequitur. Id.



customers. (Ex. 6, Getz Surrebuttal, p. 9). Offering lower prices to customers is in the public interest and Staff's suggestion that CLECs should have an advantage over SWBT is not consistent with the public interest [principle. Id. at](#) pp. 9-10. By limiting SWBT's ability to offer term agreements, the customers would be deprived of another carrier competing for their [business. Id. at](#) p. 10. While the number of customers who may be interested in term discount agreements may be small, this does not mean that SWBT should be restricted from competing for this, or any other, group of customers. Id.

Moreover, if SWBT term agreements were limited to one year as proposed by Staff, SWBT would not be a viable choice for customers seeking longer term agreements. (Ex. 6, Getz Surrebuttal, p. 11). There is a substantial group of customers that are interested in term agreements. For these customers, one of their primary determinants of who they choose as a provider of telephone service is the availability of a term contract that is in excess of one year. (T. 355, Cecil). An arbitrary limitation on SWBT would serve to deny business customers of a bidder for their business.¹² Id. Customers would be denied the full benefits of competition, for no reason other than an arbitrary recommendation with no factual basis. Id. Both SWBT and customers would be harmed as SWBT would be prohibited from extending competitive offers and customers would be denied the benefit of increased competition for their business. Id. The Commission would be essentially allocating the market to the CLECs because SWBT would be prohibited from serving customers that want term contracts in excess of one year. (T. 356, Cecil).

¹² As an example, the State of Missouri purchases telecommunications services and typically seeks to enter into contracts for local exchange service with terms in excess of one year. (T. 143, Unruh; T. 360, Cecil). If the Commission were to determine that SWBT could not offer term agreements in excess of one year while the CLECs could do so, the Commission would effectively be limiting the State's choice of service providers. (T. 362, Cecil).

Additionally, the disparate treatment being advocated by Staff and the CLECs is unlawful since the Missouri legislature, as reflected in the Missouri statutes, did not grant the Commission authority to limit SWBT's ability to lower its prices through term discount plans nor discriminate against SWBT relative to the CLECs with regard to the ability to offer term discount plans. (Ex. 9, Unruh Surrebuttal, pp. 10-11). Staffs only contention in this regard is that Section 392.470.1, RSMo. 2000, grants the Commission authority for disparate treatment regarding SWBT's ability to offer lower prices through term discount plans. (Ex. 18, Cecil Rebuttal, pp. 3-4) This contention is erroneous. Section 392.470.1, RSMo. 2000 provides in pertinent part:

The commission may impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications services if such conditions are in the public interest and consistent with the provisions and purposes of this chapter, including, but not limited to determining that any such company should provide just and reasonable compensation to one or more other certificated telecommunications companies operating in areas in which the compensating company is providing intrastate telecommunications service without commission authorization.

Section 392.470.1.

The primary purpose of Section 392.470.1, is to ensure that companies pay reasonable compensation to other companies for terminating intrastate calls made without authorization. (Ex. 9, Unruh Surrebuttal, p. 7; T. 338, Staff). This statute was passed in 1987 at a time when interexchange carriers were providing intrastate toll calls without paying intrastate access charges and without having obtained certification from the Commission. (Ex. 9, Unruh Surrebuttal, p. 7). This statute is not a general grant of authority to discriminate in favor of CLECs against ILECs, as CLECs were not even authorized to provide service until 1996. Id. Even if it were a general grant to discriminate, the statute still requires any conditions to be in the public interest and consistent with the provisions and purposes of the Chapter. Id. Restricting only SWBT's ability to offer term discount plans would fail on both points. Id.

First, it would not be in the public interest because granting a regulatory imposed advantage to CLECs by limiting SWBT's ability to offer lower prices to customers through term discount plans would harm SWBT, disadvantage consumers, and would not promote a fully competitive marketplace. (Ex. 1, Aron Direct, p. 33; Ex. 9, Unruh Surrebuttal, p. 8). Moreover, such action would be inconsistent with other clearly applicable provisions of the statutes. (Ex. 9, Unruh Surrebuttal, p. 8). Section 392.200, RSMo. provides the framework under which carriers have been permitted to offer term discount plans. (Ex. 7, Unruh Direct, p. 15; Ex. 9, Unruh Surrebuttal, p. 8). Section 392.390(5) clearly requires that the applicable provisions of Section 392.200, including subsections 2 and 3, apply to all telecommunications companies. (Ex. 7, Unruh Direct, p. 15; Ex. 9, Unruh Surrebuttal, p. 8; T. 135, Unruh). Pursuant to Section 392.361.5, the Commission may not waive the provisions of Section 392.390, even for competitive telecommunications companies. (Ex. 7, Unruh Direct, p. 15; Ex. 9, Unruh Surrebuttal, p. 8).

These statutes reflect that the Commission may not treat carriers in a disparate manner with respect to term discount plans. (Ex. 7, Unruh Direct, p. 16; Ex. 9, Unruh Surrebuttal, p. 8). If the Missouri legislature wanted the Commission to have the authority to treat carriers in a disparate manner with respect to term discount plans, it would have enacted a statute that so provided. (Ex. 9, Unruh Surrebuttal, p. 8). While the legislature authorized certain situations where ILECs would be treated differently than CLECs, it clearly took the opposite view with regard to the applicability of 392.200. *Id.* For example, Section 392.245 caps the amount an ILEC may increase its prices for nonbasic telecommunications services on an annual basis. (Ex. 7, Unruh Direct, p. 16; Ex. 9, Unruh Surrebuttal, p. 8). However, section 392.245 expressly permits SWBT, as a price cap company, to reduce its prices through term discount plans or

promotions such as CompleteLink Basic. (Ex. 7, Unruh Direct, pp. 16-17; Ex. 9, Unruh Surrebuttal, p. 8). Specifically, SWBT's CompleteLink Basic promotion proposes to offer customers a flat intraLATA toll price that may provide customers with lower toll prices. (Ex. 7, Unruh Direct, p. 17). These price reductions are expressly permitted by the price cap provisions of SB 507 and should be approved. *Id.* Section 392.245.4(5) makes clear that SWBT is permitted to price its services at any level below the maximum allowable rate, so long as it is consistent with the provisions of Section 392.200. (Ex. 9, Unruh Surrebuttal, pp. 8-9; T. 294, Kohly).

If the Commission permits CLECs to offer term plans under Section 392.200.2 through 392.200.5, it cannot prohibit SWBT from offering lower prices through term plans under the price cap statute. (Ex. 9, Unruh Surrebuttal, p. 9). Since Section 392.200.2 through 392.200.5 apply equally to all telecommunications companies, and cannot be waived even for competitive companies, SWBT cannot be treated in a disparate manner from [CLECs](#). *Id.* at pp. 9-10. The Missouri legislature, quite simply, did not give the Commission the authority to treat ILECs and CLECs differently with regard to term discount plans. (Ex. 9, Unruh Surrebuttal, p. 9).

SWBT notes that although Staff does not support SWBT's ability to generally offer term discount plans, Staff suggests that SWBT should have the authority to offer term discount plans of greater than one year in exchanges where the Commission has determined that effective competition exists and SWBT has been granted a competitive classification for its services. (Ex. 18, Cecil Rebuttal, p. 18; Ex. 9, Unruh Surrebuttal, p. 11). The Commission should not limit SWBT's ability to cooperate in this manner, as it would restrict customer choice and prevent customers from receiving the benefits of competition--reduced prices and increased choices of potential vendors. (Ex. 6, Getz Surrebuttal, p. 12). Commissioner Forbis questioned Dr. Aron

about allowing terms in excess of one year in areas that the Commission has determined effective competition exists for basic local telecommunications service and not allowing terms in excess of one year in those areas that the Commission has determined that effective competition does not exist. Dr. Aron explained that such a limitation on term contracts should not be ordered because it would be detrimental to customer choice. Specifically, Dr. Aron testified as follows:

. . . The Commission has found that there is business competition in St. Louis and Kansas City. And a lot of your testimony talks about competitive markets and options that rational customers have.

And do you see any distinction in offering term discounts in areas where we determine -- have determined there's true competition and areas where we haven't found that to be the case? And should the Commission maybe treat those areas differently to ensure that the market is open?

- A. In my opinion, the answer is no, they shouldn't be treated differentially with respect to this issue. And I would say that this Commission has determined that those markets are open to competition in the context of the 271 proceeding.

And, in my opinion, that's sufficient for customers to have a reasonable expectation of further competition, a reasonable availability of potential offers to them.

And, moreover, I think what we've seen is that there has been a substantial loss of lines to Southwestern Bell in the last year, that the loss of lines far exceeds the number of lines that have been signed up to term contracts in the last year.

And to me, those facts weigh in favor of permitting consumers -- excuse me -- permitting business customers to benefit from the availability of these offers.

If you don't permit Southwestern Bell to offer these contracts in those areas that you have not declared comp -- effectively competitive, you deprive the business customers there of the opportunity to benefit from the discounts in those contracts. And you, in my opinion, dampen and slow down the aggressiveness of the CLEC competition in those areas.

So I think both from the perspective of the availability to those business customers of options and opportunities that they would like to have from the incumbent as well as the aggressiveness of competition from the

CLECs, you dampen both by precluding the incumbent from offering these contracts in those areas.

(T. 62-64, Aron).

Further, there is no statutory provision which would allow only competitively classified companies to offer term discount plans. (Ex. 9, Unruh Surrebuttal, p. 11). In fact, SWBT, which is not classified as a competitive company, has several term discount plans that have already been approved by the Commission. Id. While SWBT does not believe that it should be limited in its ability to offer lower prices to customers through term discount plans independent of the competitive classification of services, it is clearly the case that there should be no such restrictions in exchanges where SWBT's services have become competitively classified (St. Louis and Kansas City). Id.

Finally, SWBT notes that if the Commission were to determine that either SWBT or all LECs were prohibited from offering tariffs that contain term provisions or promotions that promote tariffs that contain term provisions, the result would be that the Commission would be prohibiting SWBT and/or CLECs from matching term agreements that are available today. Commissioner Lumpe recognized this at the hearing of this matter. Specifically, Commissioner Lumpe asked Staff witness Walt Cecil the following questions and he provided the following answers.

Q. Okay. And finally, how is the Commission to deal with existing term contract tariffs that are out there?

A. I think that were the Commission to determine that those were no longer valid would cause harm to the various subscribers and to the CLECs and that Southwestern Bell have signed up to those now.

I think it would also cause harm to those subscribers' customers and personal business interests as well. I think that would do some damage. I think those contracts that exist should be left alone.

Q. Okay. I can see some problems coming from that too. What do we do with new entrants who come in? Are they excluded when other companies who got their tariffs in before the deadline are still offering the terms?

A. Well, I'm referring to contracts that exist as of today.

Q. Yes. And I'm saying a new entrant, a new CLEC that want to come in to do business, wants to propose a term contracts in their tariffs, would we have to prevent them from doing so?

A. I -- I don't know. I would think that if the Commission's going to say no contract, then, yes, you would have on a going-forward basis -- at some point a line in the sand would have to be drawn.

(T. 400-401, Cecil). The result would be to deny competitors the ability to effectively compete in the marketplace.

In summary, restricting SWBT by prohibiting it from offering term agreements in excess of one year while allowing CLECs to offer term agreements in excess of one year may benefit competitors, but it would not benefit competition or customers. Staffs proposal was to "give some help to the CLEC marketplace", ¹³ not to benefit consumers. Moreover, it would be unlawful and poor public policy. For these reasons, recommendations that the Commission should treat SWBT in a disparate manner in this docket must be rejected.

2. Should the Missouri Public Service Commission approve MCImetro's Local NationwideOne Promotion, which would apply to customers who make or have made term commitments that can exceed one year?

SWBT believes that term discount plans are an appropriate and beneficial mechanism to serve certain customers' needs and demonstrate that competition is working. (Ex. 7, Unruh Direct, p. 14). As long as SWBT is permitted to *offer* term discount plans, SWBT does not oppose the ability of CLECs to also offer term discount plans. *Id.* However, if SWBT is denied

¹³T. 392, Cecil.

the ability to offer term discount plans, or is in any way limited in the types of discount plans that it can offer, then its competitors must share the same [restrictions](#). *Id.* at p. 15.

SWBT's position is supported by the Missouri statutes. (Ex. 7, Unruh Direct, pp. 19-20). Specifically, as discussed in Section C above, Section 392.200, RSMo. 2000 provides the framework under which carriers have been permitted to offer term discount [plans](#). *Id.* at p. 15. Section 392.200 on its face applies to all telecommunications companies, and no provision for different treatment of CLECs is made. *Id.* Moreover, Section 392.390(5) unequivocally provides that the applicable provisions of Section 392.200, including subsections 2 and 3, apply to all telecommunications companies. *Id.* Pursuant to Section 392.361.5, the Commission may not waive the provisions of Section 392.390 even for competitive telecommunications companies. (Ex. 7, Unruh Direct, p. 15; T. 337, Staff). Thus, the provisions of these statutes do not permit disparate treatment between carriers with respect to SWBT's and other carriers' general ability to offer term discount plans. (Ex. 7, Unruh Direct, pp. 15-16).

SWBT's position is also supported by public policy consideration. Restricting one provider's (e.g. SWBT's) ability to compete in the marketplace by restricting its ability to offer lower prices to customers is not good public policy because it would deprive customers of the full benefits of a competitive market. (Ex. 7, Unruh Direct, p. 18). It is not appropriate to treat SWBT asymmetrically because it would make CLECs more dependent on SWBT. (Ex. 1, Aron Direct, p. 31). Protectionism distorts the incentives to enter the market, encourages firms to be dependent on the incumbent in a way that can leave them permanently weakened, and can encourage firms to enter the market even if they cannot efficiently contribute to the development of a more robust and capable infrastructure. *Id.*

In addition to distorting the incentives to enter the market, such industry protectionism hardly ever goes away because some firms grow dependent on it and voice their parochial concerns loudly to policymakers. (Ex. 1, Aron Direct, p. 31; Ex. 2, Aron Rebuttal, pp. 4-5). Such relief ultimately comes at the expense of customers who will pay higher prices or be offered term agreements that are not as aggressive as they otherwise would be, which itself is antithetical to public policy goal of allowing full and fair competition. (Ex. 3, Aron Surrebuttal, p. 15). Moreover, prohibiting SWBT from offering products, such as contracts with discounts and term commitments that customers want while permitting other carriers to offer them, simply reduces customer choice. (Ex. 1, Aron Direct, p. 32). Business customers especially are rational enough to understand the choices before them; they are not aided by misguided policies that reduce their choices. (Ex. 1, Aron Direct, p. 32; Ex. 3, Aron Surrebuttal, p. 21; T. 51-53, Aron).

Finally, and importantly, asymmetric regulation under which new entrants could offer term contracts but incumbents could not would harm customers by denying them the opportunity to lock in discounts from SWBT, as they would be able to from CLECs, thereby depriving customers of the benefits that the competitive market would otherwise bring about. (Ex. 1, Aron Direct, p. 32). Additionally, CLECs would face an incumbent with an artificially limited pricing strategy, which would typically dampen the vigor of CLECs' own pricing initiatives. *Id.* Such asymmetry smacks of an attempt to allocate market share to new entrants, which is certainly inappropriate in fostering development of a competitive [market](#). *Id.* at pp. 32-33.

In summary, SWBT does not oppose the approval of the above-referenced tariff so long as SWBT's CompleteLink Promotion is approved and the Commission treats SWBT and the CLECs the same with regard to the offering of term contracts.

3. Should the Missouri Public Service Commission approve NuVox's "Free Month" promotion tariff revision, which contains discounts for term commitments that can exceed one year?

SWBT's position, which is set forth in response to Issue Number 2, is equally applicable to this issue and is, therefore, incorporated herein by reference.

4. Should the Missouri Public Service Commission approve MCImetro's proposed revisions to its Local Exchange Service tariff, MO PSC Tariff No. 1, which contains promotional discounts for term commitments that can exceed one year?

SWBT's position, which is set forth in response to Issue Number 2, is equally applicable to this issue and is, therefore, incorporated herein by reference.

5. Should the Missouri Public Service Commission approve MCI WorldCom's Local NationwideOne Promotion, which would apply to customers who make or have made term commitments that can exceed one year?

SWBT's position, which is set forth in response to Issue Number 2, is equally applicable to this issue and is, therefore, incorporated herein by reference.

6. Should the Missouri Public Service Commission approve Brooks' Local NationwideOne Promotion, which would apply to customers who make or have made term commitments that can exceed one year?

SWBT's position, which is set forth in response to Issue Number 2, is equally applicable to this issue and is, therefore, incorporated herein by reference.

7. Should the Missouri Public Service Commission approve TCG St. Louis' proposed revisions to its Local Exchange Services Tariff, MO PSC Tariff No. 2, which contain

discounts both for term commitments of one year and for other term commitments for more than one year?

SWBT's position, which is set forth in response to Issue Number 2, is equally applicable to this issue and is, therefore, incorporated herein by reference.

8. Should the Missouri Public Service Commission approve TCG Kansas City's proposed revisions to its Local Exchange Services Tariff, MO PSC Tariff No. 1, which contain discounts both for term commitments of one year and for other term commitments for more than one year?

SWBT's position, which is set forth in response to Issue Number 2, is equally applicable to this issue and is, therefore, incorporated herein by reference.

9. Should the Missouri Public Service Commission approve American Communications Services of Kansas City, Inc. d/b/a e.spire's Voice Internet Pack ("VIP") proposed tariff revision which would offer local, long distance, toll free services, custom calling and integrated 256 kb internet multi-year commitments with discounts?

SWBT's position, which is set forth in response to Issue Number 2, is equally applicable to this issue and is, therefore, incorporated herein by reference.

Conclusion

It is obvious from the number of filings that are currently suspended, not to mention the untold number of plans that have not been filed because the Commission began suspending term filings, that optional term discount plans and offers related to existing term discount plans, are designed to meet customer expectations and reflect the type of competitive environment that the legislature sought to foster when it approved local exchange competition in Missouri. Given the clear consumer benefits offered through term discount plans, primarily lower prices, and the lack

of evidence that SWBT's offering of term discount plans will somehow harm the competitive marketplace, the Commission should determine that SWBT's proposed optional CompleteLink Basic promotion specifically, and term discount plans or promotions that promote term discount plans generally, are appropriate.

The Commission should approve SWBT's optional CompleteLink Basic promotion and should provide clear direction that term discount plans offered by all carriers in the competitive marketplace will be presumed lawful. Additionally, the Commission should determine that there should be no restrictions on the length of term commitments that are contained in local exchange carriers' tariffs. In other words, the Commission should refrain from denying customers the benefits of term agreements, should refrain from disrupting the competitive market, and should allow all LECs to compete on equal terms. That is what the legislatures contemplated when they approved both the federal and state Telecommunications Acts.

Respectfully submitted,

BY Mimi B. MacDonald /tm

PAUL G. LANE, #27011

LEO J. BUB, #34326

ANTHONY K. CONROY, #35199

MIMI B. MACDONALD, #37606

Attorneys for Southwestern Bell Telephone, L.P.,

d/b/a Southwestern Bell Telephone Company

One SBC Center, Room 3510

St. Louis, Missouri 63 101

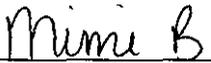
(314) 235-4094 (Telephone)

(314) 247-0014 (Facsimile)

mimi.macdonald@sbc.com

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail or via hand-delivery on this 23rd day of May, 2002.


Mimi B. MacDonald

DANA K. JOYCE
BRUCE BATES
MISSOURI PUBLIC SERVICE COMMISSION
P.O. BOX 360
JEFFERSON CITY, MO. 65102-0360

CARL J. LUMLEY
LELAND B. CURTIS
CURTIS, OETTING, HEINZ, GARRETT &
SOULE, P.C.
130 S. BEMISTON, SUITE 200
CLAYTON, MO. 63105

MICHAEL F. DANDINO
OFFICE OF THE PUBLIC COUNSEL
P.O. BOX 7800
JEFFERSON CITY, MO. 65102

J. STEVE WEBER
AT&T COMMUNICATIONS
OF THE SOUTHWEST
101 WEST MCCARTY, SUITE 216
JEFFERSON CITY, MO 65101

MARK COMLEY
CATHLEEN A. MARTIN
NEWMAN, COMLEY & RUTH P.C.
601 MONROE, SUITE 301
P.O. BOX 537
JEFFERSON CITY, MO 65102-0537

REBECCA B. DECOOK
AT&T COMMUNICATIONS
OF THE SOUTHWEST
1875 LAWRENCE STREET, STE. 1575
DENVER, CO 80202

RICHARD S. BROWNLEE, III
HENDREN AND ANDRAE, LLC
221 BOLIVAR STREET
P. O. BOX 1069
JEFFERSON CITY, MO 65102