

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

In the Matter of the Second Investigation)	
into the State of Competition in the Exchanges of)	Case No. TO-2005-0035
Southwestern Bell Telephone, L.P., d/b/a)	
SBC Missouri.)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Order presents the Commission’s determination of which SBC Missouri services and what exchanges should be designated competitive. The Commission finds that where effective competition exists, SBC Missouri services should be designated as competitive.

The Commission has determined that it is time for Missouri regulatory policy to reflect the actual level of competitive activity in the state. No longer does the telecommunications market for local service consist merely of Incumbent Local Exchange Companies (“ILECs”) and CLECs, providing wireline circuit switched telephone service pursuant to authority granted by the Commission. Today, the market for local telecommunications service is much broader. In addition to traditional ILEC and CLEC wireline carriers, local exchange service is now also being provided by wireless carriers and VoIP providers, neither of which are regulated by the Commission. These services are available widely throughout SBC Missouri’s exchanges and are substitutable alternatives for customers at comparable rates, terms and conditions.

Accordingly, the Commission finds that effective competition exists:

- (1) In all SBC Missouri exchanges core business switched services (including high capacity service) and line related services;

- (2) In all SBC Missouri exchanges for SBC Missouri's Plexar service;
- (3) In all SBC Missouri exchanges for residential access line and line-related services; and
- (4) In all SBC Missouri exchanges for Directory Assistance ("DA").

Background

(a) **Procedural History.**

The Commission established this case on August 12, 2004, in response to a Motion SBC Missouri filed on July 30, 2004 to investigate the state of competition in SBC Missouri exchanges.¹

In its Motion, SBC Missouri explained that it had been over two and a half years since the Commission concluded its first investigation into the state of competition in SBC Missouri exchanges and much as happened since then. Competition has continued to accelerate. And the telecommunications marketplace itself has evolved, now offering a multitude of services and providers that span across different forms of technology, ranging from traditional landline providers to wireless providers, cable providers and VoIP providers.² SBC Missouri asked the Commission to initiate an investigation of the state of competition in its exchanges and to classify as competitive SBC Missouri's business and residence access lines, line-related services, and directory assistance ("DA") services that have not already received a competitive designation.³

¹ Order Establishing Case, Directing Notice and Setting Scheduling Conference, Case No. TO-2005-0035, issued August 12, 2004.

² Motion to Investigate the State of Competition in SBC Missouri Exchanges, Case No. TO-2005-0035, filed July 30, 2004, p. 1.

³ SBC Missouri is not seeking a competitive classification for switched access service or for a number of more obscure services, but rather will focus on the major services offered to the general public including access line services, line-related and vertical services, and directory services.

In its Order Establishing Case, Directing Notice and Setting Scheduling Conference, the Commission set an intervention deadline of August 31, 2004. Timely applications to intervene were filed by NuVox Communications of Missouri, Inc.; Big River Telephone Company, L.L.C.; Socket Telecom, L.L.C.; MCImetro Access Transmission Services, L.L.C.; and WorldCom Communications, Inc.; Allegiance Telecom of Missouri, Inc.; Fidelity Communications Services III, Inc.; AT&T Communications of the Southwest, Inc. (“AT&T”); TCG Kansas City, Inc.; and TCG St. Louis, Inc. No party objected to these requests for intervention and the Commission granted them intervention on September 10, 2004.⁴ In addition, pursuant to the Commission’s August 12, 2004 Order Establishing Case, Directing Notice and Setting Scheduling Conference, XO Missouri, Inc. and Intermedia Communications, Inc. filed Notices indicating that they wished to be made parties to this case. The Commission acknowledged their status as parties on September 10, 2004.⁵ AT&T subsequently withdrew from the case on November 10, 2004.⁶

Pursuant to the Commission’s Order Adopting Procedural Schedule, SBC Missouri filed direct testimony on October 29, 2004. Staff, OPC, NuVox and Socket Telecom filed rebuttal testimony on December 17, 2004. SBC Missouri and Staff filed surrebuttal testimony on January 21, 2005. On behalf of the parties, Staff filed a joint list of issues on January 7, 2005. The parties filed their individual position statements on January 24, 2005. The Commission conducted an evidentiary hearing January 31 through

⁴ Order Granting Intervention, Case No. TO-2005-0035, issued September 10, 2004.

⁵ Notice Regarding Intervention, Case No. TO-2005-0035, issued September 10, 2004.

⁶ At the hearing, some questioned the absence of AT&T from this proceeding and whether it was related to SBC’s proposed acquisition of AT&T, which was recently announced. AT&T’s withdrawal from this case on November 10, 2004, occurred long before negotiations began again in January, 2005 according to media reports.

February and on February 7, 2005. Expedited transcripts were made available on February 9, 2005. Pursuant to the Senior Regulatory Law Judge's Order from the bench, the parties' Briefs and Proposed Findings of Fact and Conclusions of Law are due February 18, 2005.⁷

(b) **The Commission's First Investigation Into The State Of Competition.**

In its first investigation into the state of competition in SBC Missouri's exchanges, which the Commission commenced in March 2001,⁸ the Commission ruled on December 27, 2001 that the following SBC Missouri services should be designated as competitive:

- In the Kansas City and St. Louis exchanges for core business switched services, business line-related services, directory assistance services for business customers, and the operator services of Busy Line Verification and Busy Line Interrupt for business customers;
- In the Harvester and St. Charles exchanges for residential access lines services, residential access line-related, Optional Metropolitan Calling Area service, directory assistance services for residential customers and Busy Line Verification and Busy Line Interrupt for residential customers;
- In all of SBC Missouri's exchanges for Common Channel Signaling/Signaling System 7 ("SS7") and Line Information Database ("LIDB") services.⁹

⁷ Tr. 1355.

⁸ Following a March 1, 2001 Motion by Staff to open a case, the Commission on March 13, 2001, issued its Order Establishing Case, Directing Notice, Joining Parties, and Granting Protective Order.

⁹ Ex. 49, In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467, Report and Order issued December 27, 2001. Aff'd in part and rev'd and remanded in part, State ex rel., Acting Public Counsel John Coffman v. Public Service Commission of the State of Missouri, et al., Case No. 02CV323762 (Cole Co. Cir. Court June 17, 2003); aff'd, State of Missouri, Acting Public Counsel John Coffman, et al. v. Public Service Commission of the State of Missouri, et al., Case Nos. WD63075, WD63092 and WD 63096, (Mo. App. WD September 9, 2004); Request for transfer to Sup. Ct. pending ("SBC Missouri First Competitive Classification Order")

The Commission also confirmed that certain services that had been declared transitionally competitive in Case No. TO-93-116 were now competitive services in accordance with Section 392.370 RSMo (2000) in all SBC Missouri's exchanges:¹⁰

- IntraLATA Private Line/Dedicated Services
- IntraLATA Toll Services
- Wide Area Telecommunications Services (“WATS”) and 800 Services
- Special Access Services
- Station-to-Station, Person-to-Person and Calling Card Services

In addition, the Commission recognized that Section 392.200.8 authorized SBC Missouri to price high-capacity exchange access lines services and Plexar® services on an individual customer basis. The Commission, however, declined to grant competitive classification for all other services offered by SBC Missouri in its remaining exchanges.

(c) **History Of Price Cap Regulation.**

In response to the evolving competitive forces shaping the telecommunications industry, the Missouri legislature passed a law in 1996 that authorized CLECs to begin providing basic local telecommunications service in competition with ILECs. In recognizing the advancement of service offerings by new competitors, Senate Bill 507 also included provisions to ensure a level playing field for all providers, by allowing ILECs the opportunity to gain freedom from traditional rate of return regulation. Senate Bill 507 provided for a phased-in approach. The Commission was directed to regulate

¹⁰ This portion of the Commission's December 27, 2001 Report and Order was reversed and remanded by the Courts, Id.

ILECs via price cap regulation upon the initiation of local competition in the ILEC's service area.¹¹

Under Section 392.245.2 RSMo 2000, a large ILEC becomes subject to price cap regulation when an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service, and is providing such service, in any part of a large ILEC's service area. On March 21, 1997, SBC Missouri asked the Commission to determine that SBC Missouri was subject to price cap regulation pursuant to Section 392.245.2 RSMo 2000.¹² The Commission approved SBC Missouri as a price cap regulated company, effective September 26, 1997.¹³

Under price cap regulation, as provided for in Section 392.245.4 RSMo, after January 1, 2000, the maximum allowable prices to be charged for exchange access (switched access) and basic local telecommunications services are changed annually by either the change in the telephone service component of the consumer price index (CPI-TS) for the preceding twelve months, or upon request by the company and approval of the Commission, by the change in the gross domestic product price index (GDP-PI) for the preceding twelve months, minus the productivity offset established for telecommunications service by the FCC and adjusted for exogenous factors. In addition, a price cap regulated company can raise rates on non-basic services by a maximum of 8 percent for each of the following twelve month periods.¹⁴

¹¹ Ex. 15, Unruh Direct, pp. 9-10.

¹² Ex. 15, Unruh Direct, p. 11.

¹³ In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245 RSMo (1996), Case No. TO-97-397, issued September 16, 1997.

¹⁴ Ex. 15 Unruh Direct, p. 11.

Senate Bill 507 also contemplated that 5 years after the initiation of competition in an ILEC's exchange, price cap regulation would be eliminated. The legislature recognized that the fullest consumer benefits will be derived from a market where all telecommunications providers are regulated in the same manner.¹⁵ With respect to SBC Missouri, the Commission established Case No. TO-2001-467 on March 13, 2001, to examine the parameters of Section 392.245.5 RSMo 2000, which is the portion of Senate Bill 507 designed to effectuate the legislature's intent that after 5 years of price cap regulation, a price cap regulated company shall have the authority to adjust its rates upward or downward as it determines appropriate in a competitive environment, unless the Commission determines that effective competition does not exist for a particular service in a particular exchange.

Following this initial investigation, the statute also requires the Commission periodically to investigate the state of competition in each exchange where a CLEC has been certified to provide local exchange telecommunications service and determine whether effective competition exists in the exchange for the various services of the incumbent:

The commission shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange telecommunications company has been certified to provide local exchange telecommunications service and shall determine, no later than five years following the first certification of an alternative local exchange telecommunications company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.¹⁶

Findings of Fact and Conclusions of Law

¹⁵ Ex. 15, Unruh Direct, p. 10.

¹⁶ Section 392.245.5 RSMo 2000.

The Commission has considered all the competent and substantial evidence upon the whole record and makes the following findings of fact and conclusions of law. The Commission in making this decision has considered the positions and arguments of all the parties. They specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, that indicates rather that the omitted material was not dispositive of this decision.

The Commission has jurisdiction in this case pursuant to its general authority over SBC Missouri as a telecommunication company under Section 386.250, and pursuant to its specific responsibilities under the price cap statute, Section 392.245.

Conclusions of Law

Under Section 392.245.5 RSMo (2000), the Commission is to “investigate the state of competition in each exchange . . . and shall determine . . . whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.” If the Commission determines that effective competition for a service exists in an exchange, it is to confirm competitive classification for that service.

Effective competition is defined in Section 386.020.13 and requires consideration of:

- (a) the extent to which services are available from alternative providers in the relevant market;
- (b) the extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) the extent to which the purposes and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in Section 392.185, RSMo., are being advanced;
- (d) existing economic or regulatory barriers to entry; and

- (e) any other factors deemed relevant by the commission and necessary to implement the purposes and policies of Chapter 392, RSMo.

In prior cases, the Commission has interpreted the statute as not requiring a market share test and has noted that market share loss is not determinative in evaluating the state of competition. In Case No. TO-2001-467, the Commission stated: “Neither section 392.245.5 nor section 386.020.13 require any quantitative market share loss test to determine whether effective competition exists for SWB services in Missouri.”¹⁷ Instead, the Commission properly treated market share loss simply as one factor showing the extent to which services are available from alternative providers.¹⁸ In the Sprint Competitive Classification Case, the Commission found competitive classification for numerous services, including toll and private line service, without any market share analysis. The Commission took the same approach to LIDB/SS7 in Case No. TO-2001-467, finding its services competitive statewide without any evidence of market share.

Issue 1: The Commission, pursuant to Section 392.245.5 RSMo. 2000, previously classified SBC Missouri’s core business switched and business line-related services in the Kansas City and St. Louis exchanges as competitive in Case No. TO-2001-467. In which additional SBC Missouri exchanges, if any, does effective competition for those services exist, such that SBC Missouri's core business switched and line-related services should be classified as competitive?

1. Effective competition exists for SBC Missouri’s core business switched services and its line-related services throughout SBC Missouri’s territory and these services should be classified as competitive in all remaining SBC Missouri exchanges.
2. SBC Missouri’s core business services consist of “non complex” or basic

¹⁷ Ex. 49, SBC Missouri First Competitive Classification Order, p. 11.

¹⁸ Id.

business access services, including exchange access line services, and Basic Rate ISDN (DigiLinesm Service); and “complex” services such as Analog Trunks (PBX trunks), “High Capacity Exchange Access Line Services,” including Digital Loop Service, SuperTrunk and Primary Rate ISDN (SmartTrunksm) Service (digital PBX trunks), SelectData®, Reserve Lines and Payphone lines.¹⁹

3. Line-related services, consisting primarily of vertical services, include such services as call waiting, call waiting ID, call forwarding, three-way calling, speed calling, call return, auto redial, priority call, caller ID services, and a number of other services offered by both SWBT and CLECs in all of SWBT's Missouri exchanges.²⁰

(a) **Core Business And Line-Related Services Are Widely Available From Alternative Providers Throughout SBC Missouri's Territory.**

4. Uncontested evidence unequivocally demonstrates that there are many alternative providers in every SBC Missouri exchange offering substitutable or functionally equivalent services, at comparable rates, terms and conditions, to the core business switched services and line-related services offered by SBC Missouri. These alternative providers range from certificated CLECs (some of whom are also interexchange carriers or “IXCs”)²¹ to non-regulated competitors offering wireless services,²² internet-based telephony (i.e., VoIP),²³ e-mail,²⁴ and customer premise equipment (“CPE”) providers.²⁵

¹⁹ Ex. 4, Fernandez Direct, pp. 2, 4, 7-9 and Schedule 2.

²⁰ Ex. 4, Fernandez Direct, pp. 5-6, and Schedule 2.

²¹ Ex. 4, Fernandez Direct, pp. 16-19

²² Ex 4, Fernandez Direct, p. 21; Ex. 15, Unruh Direct, pp. 35-37, and Schedules 14, 15; Ex. 13, Shooshan Direct, pp. 3-6, Schedule 2.

²³ Ex. 4, Fernandez Direct, pp. 22-23; Ex. 6, Fernandez Surrebuttal, pp. 3-5, Schedules 3-7; Unruh Direct, pp. 37-42, Schedules 16-17.

5. CLECs provide an array of telecommunication services using (1) their own facilities; (2) unbundled network elements (UNEs) purchased from SBC Missouri or other CLECs; and (3) resale of SBC Missouri's retail telecommunications services.²⁶

These competitors utilize aggressive marketing strategies (such as bundling and aggressive and monthly rates) and direct, focused selling tactics (such as direct mail outbound telemarketing, and door-to-door sales). Many also advertise through the mass media (such as print ads, radio or TV), outdoor advertising (such as Birch's billboards) and extensively make use of the Internet to effectively communicate the competitive choices they offer Missouri businesses.²⁷

6. According to the Commission's own website, there are at least 29 CLECs in each SBC Missouri exchange holding themselves out to provide core business switched and line-related services.²⁸ This figure does not include prepaid providers.

7. According to SBC Missouri's internal wholesale business records,²⁹ CLECs are actually providing service in every SBC Missouri exchange, both urban and rural.³⁰

²⁴ Ex. 4, Fernandez Direct, pp. 16-17.

²⁵ Ex. 4, Fernandez Direct, p. 17.

²⁶ Ex. 15, Unruh Direct, p. 19; Fernandez Direct, p. 9-11.

²⁷ Ex. 4, Fernandez Direct, pp. 18-21, and Schedule 6 (showing competitor ad spends), Schedule 7 (showing competitor website product material and ads), Schedule 11 (showing direct mail solicitations), Schedule 12 (newspaper ad); see also, Ex. 6, Fernandez Surrebuttal, pp. 3-5, and Schedules 1 and 2 (showing newspaper ads), and Schedule 3 (direct mailers).

²⁸ Ex. 15, Unruh Direct, p. 26, Schedule 7.

²⁹ SBC Missouri identified the CLEC as actively serving customers by their purchase of resold lines, purchase of UNE-P, or the presence of an E-911 listing in the 911 database. Ex. 15, Unruh Direct, p. 14.

³⁰ Ex. 16, Unruh HC Direct, pp. 30-31, Schedule 6HC, Schedule 9HC, Schedule 13HC (these schedules do not reflect the number of other providers such as wireless or VoIP providers).

8. And competition within the MCAs is particularly acute. According to SBC Missouri's wholesale business record, there are numerous CLECs that are currently serving customers within the MCA exchanges.³¹ For example, CLECs like NuVox have targeted business customers in the MCAs. Its annual reports demonstrate steady and substantial success in expanding its services across the St. Louis, Kansas City and Springfield MCA's; and year-over-year increases in services.³²

9. In Case No. TO-2001-467, this Commission previously considered the use of market share data in evaluating the existence of effective competition. In that case, the Commission correctly noted that neither Section 392.245.5 nor Section 386.020(13) require any quantitative market share loss as to determine whether effective competition exists. Instead, the Commission noted that it was one factor to be considered in determining "the extent to which services are available from alternative providers in the relevant market."³³

10. To the extent market share data is relevant, it has been presented by SBC Missouri on both an aggregate and an exchange-specific basis. In the aggregate, CLECs have obtained a 21% market share on a statewide basis, including a 36% market share for business services. These market share data do not include wireless or VoIP providers, as these unregulated companies are not required to file annual reports with the Commission or otherwise share highly confidential data. SBC Missouri also presented substantial market share information on an exchange-specific basis, as reflected on Exhibits 10HC-

³¹ Ex. 16HC, Unruh HC Direct, p. 33; see also, Schedules 10HC, 11HC and 12HC.

³² T. 1101, 1018-1023, Cadieux. See, e.g., Ex. 45HC, 46HC, 47HC, 48HC (NuVox HC Annual Reports for 2001-2003 and HC 2004 line counts).

³³ Ex. 49, SBC Missouri First Competitive Classification Order, pp. 11-12.

12HC in Mr. Unruh's direct testimony.³⁴ A review of these schedules demonstrates the wide availability of alternative services within all of SBC Missouri's exchanges for both business and residential services. The Commission will note that the number of CLECs serving customers and the minimum market share in SBC Missouri's exchanges are particularly high in the Metropolitan Calling Areas ("MCAs") surrounding the St. Louis, Kansas City and Springfield areas. There is little question that the availability of alternative providers is clearly established in these MCA areas as well as in the other parts of the state served by SBC Missouri.

11. Undisputed evidence shows that CLECs have collocation arrangements in numerous SBC Missouri exchanges throughout the State, including in a significant number of more rural exchanges.³⁵ Approximately 88% of the traditional landlines in SBC Missouri's territory are in exchanges where CLECs have established collocation arrangements.³⁶

12. CLECs' widespread use of collocation is important here because it identifies areas where CLECs have deployed equipment to serve customers. For example, a CLEC may have built a collocation cage inside an SBC Missouri central office to house equipment to interconnect with SBC Missouri's facilities. In this example, the CLEC could be purchasing unbundled loops from SBC Missouri,

³⁴ Several parties noted the proposed AT&T-SBC merger and its impact. AT&T is only one of many competitors providing service in the market. Given the many other alternatives in the market (other CLECs, wireless carriers and VoIP providers), the AT&T-SBC merger should not affect the outcome of this proceeding. T. 93-94

³⁵ Unruh Schedule 9HC is a map identifying the specific exchanges in which CLECs have established collocation, and the range in number of CLECs collocating in more rural exchanges (SBC Missouri's affiliate, SBC Advanced Services, Inc., which also collocates in SBC Missouri's central offices, has been excluded from this analysis).

³⁶ Ex. 15, Unruh Direct, p. 27.

interconnecting those loops to the CLEC's facilities in the collocation cage, and then adding the switching functionality through the CLEC's own switch located in another area.

13. In addition to showing investment and market commitment, collocation arrangements show capacity to serve. (Even in isolation, such arrangements show that CLECs have surmounted any technical barriers to entry, should they exist.) Such arrangements, even if only serving few customers, exert competitive discipline because the CLEC has the capacity -- at the ready -- to serve more customers.³⁷

14. The evidence also shows that CLECs who use their own facilities do not have to be collocated in every SBC Missouri central office. CLECs use Enhanced Extended Loops ("EELs") to serve end user customers located in exchanges where the CLEC does not have collocation. For example, a CLEC with a collocation arrangement in Moberly could use an EEL to serve a customer in the neighboring exchange of Higby.³⁸

15. Unquestioned evidence demonstrates that CLECs are utilizing UNE-P services obtained from SBC Missouri to provide core business switched services and line-related services in nearly every SBC Missouri exchange.³⁹ And the portion of the business market these carriers have captured, particularly in the MCAs, is significant.⁴⁰

16. The Commission specifically notes that UNE-P-based competitors should be included in the analysis of the competitive landscape even though the FCC's recent

³⁷ Ex. 2, Aron Surrebuttal, pp. 32-33.

³⁸ Ex. 15, Unruh Direct, pp. 27-28.

³⁹ Ex. 15HC, Unruh HC Direct, Schedule 13HC.

⁴⁰ Id.

Order that required the elimination of UNE-P, the fundamental premise of the FCC's Order is based on the FCC's binding determination that CLECs can effectively compete without unbundled switching obtained from the incumbent LEC at TELRIC-based prices.

17. The FCC in its Order established a 12-month transition period during which the CLECs will be able to continue their use of UNE-P until they make other switching arrangements for their customers' traffic. This transition period recognizes the significant investment these CLECs have made in acquiring this segment of their customer base and provides ample time for them to establish other switching arrangements and migrate their customers on an orderly basis.

18. UNE-P CLECs have several viable and readily-available alternatives to UNE-P: (a) Both during the transition and afterwards, CLECs can use their own switching.⁴¹ Uncontested evidence in this proceeding establishes that sufficient alternative switching capacity already exists in the state to handle CLEC customers currently being served via UNE-P (and many, many more). According to the Local Exchange Routing Guide ("LERG"), there are at least 30 traditional switches and another 38 alternative switches or switch-like equipment in Missouri;⁴² (b) CLECs can also use switching capacity provided by other CLECs. In fact, this is already occurring in Missouri. There are at least two CLECs that are now actively offering their switching and other facilities on a wholesale basis to other CLECs in Missouri. For example, McLeodUSA has announced agreements with AT&T and MCI under which AT&T and MCI will move services from SBC Missouri's UNE-P to a similar arrangement provided

⁴¹ Ex. 17, Unruh Surrebuttal, pp. 4-6.

⁴² Ex. 17, Unruh Surrebuttal, p. 6; Ex. 15, Unruh Direct, pp. 22-23, and Schedule 5.

through McLeod's network.⁴³ Likewise, XO Communications, which purchased Allegiance Telecom, announced that it has launched a wholesale local voice service as an alternative to LEC-provided UNE-P arrangements in 36 markets, including St. Louis. XO has agreements with at least nine other carriers across the country showing the viability of using XO's network.⁴⁴ And Covad Communications has launched a new telephone service that will allow its partners, such as AT&T, MCI, EarthLink and American On Line, to offer telephone service over regular copper lines but with all the features of Internet telephone technology;⁴⁵ (c) SBC Missouri remains willing to continue providing switching services to CLECs at commercially reasonable wholesale prices. For example, SBC has reached agreements with Sage Communications under which SBC will sell Sage network capacity that will replace UNE-P. Most significantly, this arrangement is being provided pursuant to commercially negotiated prices, rather than government-dictated TELRIC prices. And as should be expected in a competitive market, the prices SBC Missouri offers for its switching services will be going head-to-head with prices offered by XO Communications and McLeod (and likely others) for similar switching services.⁴⁶

19. In support of its position of supporting only minimal relief for SBC Missouri, Staff has offered market share analysis that excludes both resale and UNE-P

⁴³ Under this arrangement, McLeod will be purchasing unbundled loops from incumbents, like SBC Missouri, and then using its own switch to provide switching functions for other carriers like AT&T and MCI. Copies of press releases describing these migration plans are attached to Ex. 17, Unruh-Surrebuttal, Schedule 1. See also, Highly Confidential data request response from MCI confirming that the MCI/McLeodUSA covers Missouri attached to SBC Missouri witness Debra Aron's Surrebuttal Testimony, (Ex. 3HC) as Schedule 1HC. See, p. 3 of 14.

⁴⁴ Copies of press releases from XO Communications and material from its website describing its offering are attached to Ex. 17, Unruh Surrebuttal, Schedule 2.

⁴⁵ See, Ex. 17, Unruh Surrebuttal, Schedule 3.

⁴⁶ Ex. 17, Unruh Surrebuttal, p. 8.

access lines from its analysis. The Commission finds this exclusion inappropriate. Many of the CLECs operating in Missouri utilize a combination of resale, UNE-P and their own facilities (including their own switching facilities) to serve customers. Staff's analysis incorrectly assumes that customers served via UNE-P would simply return to SBC Missouri once the FCC's decision eliminating unbundled local switching as a UNE took effect. No evidentiary support has been offered for this assumption. Moreover, Staff's witness has acknowledged that it was "highly likely" that the CLECs that are utilizing their own switching in Missouri today would continue to serve

20. On the other hand, SBC Missouri's market share data is built upon the combination of resale lines, UNE-P lines and an estimated number of CLEC facilities-based access lines. The first two categories are beyond assail, as they are based on SBC Missouri's own data.⁴⁷ The last category, however, requires an estimate of the facilities-based lines served by CLECs since SBC Missouri does not have access to that data.⁴⁸ SBC Missouri utilized E-911 data to develop the estimate. The Commission has previously noted that the use of E-911 data is a conservative estimate of the access lines served by CLECs because access lines utilized for incoming calls would not be included in the database and hence would understate the number of lines actually served by CLECs.⁴⁹

21. As the Commission has seen from evidence presented in this case and in its day-to-day oversight of the industry, the telecommunications marketplace is rapidly changing. The market is now characterized by converging technologies, services, and

⁴⁷ T. 972, Peters.

⁴⁸ T. 973, Peters.

⁴⁹ Ex. 49, SBC Missouri First Competitive Classification Order, pp. 14-15.

providers. Such convergence requires changes to public policy and regulation, which has focused on traditional wireline services, and primarily on incumbent telephone companies like SBC Missouri.

22. Undisputed evidence demonstrates that wireless services are widely available throughout SBC Missouri's exchanges. Based on the FCC's latest information, there are over 2,691,255 wireless subscribers in Missouri.⁵⁰ Excluding both Cingular and AT&T Wireless, 75% of SBC Missouri's exchanges have two or more wireless providers. And at least 96% of landline customers in SBC Missouri's service territory have access to at least two wireless carriers, even after excluding Cingular and AT&T Wireless.⁵¹

23. Increasingly, the business customer is choosing to reduce the number of wireline business access lines and instead utilize wireless services. Besides the obvious applications of "mobile" users such as outside sales people and real estate agents, many diverse small businesses have adopted wireless service as their only means to stay in contact with their customers.⁵²

24. And wireless substitution for business landline service is not limited to small business customers. Recently, Sprint Corporation announced that it had signed a deal to provide wireless phone service for 8,000 of Ford Motor Company's product engineers.⁵³

⁵⁰ FCC Local Competition Report - June 18, 2004, Table 13, cited in Ex. 15, Unruh Direct, p. 35.

⁵¹ Ex. 15, Unruh Direct, pp. 36-37.

⁵² Ex. 4, Fernandez Direct, pp. 21-22.

⁵³ Ex. 37.

25. VoIP service is an immediate and growing competitive alternative to SBC Missouri's traditional circuit switched core telecom services such as basic business access lines, ISDN and others. Business customers are increasingly buying VoIP services, particularly because of the reduced cost of administering only one network rather than the historical need to manage both a voice network and a dated network.⁵⁴

26. Business VoIP service is being offered in Missouri by numerous providers including Delta 3, Global Crossing, IDT Net 2 Phone Corporate Solutions, i2 Telecom, Time Warner, Vonage, Nuvio, Covad,⁵⁵ and McLeodUSA.⁵⁶ The evidence shows that Time Warner has been aggressively promoting its Road Runner business class service in the Kansas City metro area where it is the dominant CableTV provider.⁵⁷ Similarly, EarthLink and Covad have been jointly marketing various business offerings with high speed business DSL service.⁵⁸ Covad also announced in October, 2004, that its business VoIP service is now available in the St. Louis and Kansas City markets.⁵⁹ And AT&T has a version of its Call Vantage VoIP Service targeted to small businesses and home office workers. AT&T recently expanded its distribution for CallVantage through a retail marketing agreement with Staples under which Staples is now offering AT&T Call

⁵⁴ Ex. 15, Unruh Direct, p. 38; see, also, Unruh Schedule 16, which is a map depicting where a selected set of VoIP providers offer service.

⁵⁵ Ex. 4, Fernandez Direct, pp. 22-23.

⁵⁶ Ex. 6, Fernandez Surrebuttal, pp. 4-5. A copy of McLeodUSA's press release concerning its VoIP services is attached to Ms. Fernandez Surrebuttal Testimony as Schedule 6.

⁵⁷ Ex. 6, Fernandez Surrebuttal, p. 4. Copies of some of Time Warner's print ads directed to business customers are attached to Ms. Fernandez Surrebuttal Testimony as Schedules 1 and 2.

⁵⁸ Ex. 6, Fernandez Surrebuttal, p. 4. Copies of direct mailings from EarthLink and Covad are attached to Mr. Fernandez Surrebuttal Testimony as Schedule 3.

⁵⁹ Ex. 6, Fernandez Surrebuttal, p. 4. A copy of Covad's news release describing this announcement is attached to Ms. Fernandez Surrebuttal Testimony as Schedule 4.

Vantage service in its 1,200 retail stores nationwide and specifically targeting small business and home office workers.⁶⁰

(b) **Alternative Providers Offer Functionally Equivalent Or Substitutable Services To SBC Missouri's Core Business And Line-Related Services..**

27. When products or services are reasonably good substitutes, they are considered to be in the same product market and they compete with one another. Substitutable products serve to constrain one another's prices, because if one product were to experience a price increase, consumers would purchase other products that are close substitutes.⁶¹

28. The standard economic approach to assessing whether two services are in a same market is to determine whether a substantial number of customers, over a period of time, would be willing to switch to the other service if the price of the service they are currently buying were to increase by a small but significant and non-transitory amount.⁶² Because in many cases it is difficult to determine quantitatively how responsive consumers are in their purchases of one product to a change in a price of another, economists and the Courts focus on the products' "reasonable interchangeability of use."⁶³ To make this determination, courts examine such factors as whether the services appear to serve the same or similar function from the customers' standpoint; whether

⁶⁰ Ex. 6, Fernandez Surrebuttal, p. 5. A copy of AT&T's press release concerning its Call Vantage VoIP marketing agreement with Staples is attached to Ms. Fernandez Surrebuttal Testimony as Schedule 7.

⁶¹ Exhibit 1, Aron Direct, p. 16.

⁶² Department of Justice and Federal Trade Commission Courts Merger Guidelines, April 2, 1992, Section 1.11. Exhibit 1, Aron Direct, p. 16.

⁶³ Brown Shoe Co. vs. the United States, 370 US 294, 325 (1962) Adopting the "reasonable interchange"ability of use" standard to determine whether two services are in the same market for the purpose of antitrust case law analysis. Exhibit 1, Aron Direct, p. 18.

customers view them as reasonably equivalent; whether they are sold in same marketing channels; or whether competitors market their services as a substitute for one another.⁶⁴

29. What is critical from an economic standpoint, and what the courts have recognized, is that the ultimate determinant of whether products are competitive substitutes is whether they “have the ability – actual or potential – to take significant amounts of business away from each other.”⁶⁵ And in fact, this is the standard of the Commission itself has employed, holding services or substitutable “if they have the actual or potential ability to take away significant amounts of business from each other.”⁶⁶

30. Here, the evidence demonstrates that the business and line related services being offered by other competing carriers are reasonably interexchangeable with those offered by SBC Missouri. And, in fact, the evidence has demonstrated that not only do these competing services have the potential to displace significant SBC Missouri’s business service, they have in fact actually done so.

31. Uncontested evidence shows that SBC Missouri’s CLEC competitors are providing business and line related services that are nearly identical to SBC Missouri’s noncomplex⁶⁷ and complex services.⁶⁸ These CLECs offer a variety of basic business access services that may be combined with business long distance services as well as

⁶⁴ Exhibit 1, Aron Direct, pp. 18-19.

⁶⁵ *SmithLine Corp. vs. Eli Lilly & Co.*, 575F 2nd 1056, 1063 3rd Circuit, cert. denied, 439 US 838 (1978) (emphasis added). Exhibit 1, Aron Direct, p. 20.

⁶⁶ Ex. 43, Sprint Competitive Classification Order, p. 40.

⁶⁷ Noncomplex or basic business access line services include exchange access line services, Basic Rate (ISDN DigiLine (service mark) Service), and other line related services and features such as Hunting, Caller ID and the tariff packages that include these features. Exhibit 4, Fernandez Direct, p. 2.

⁶⁸ Complex services include Analog Trunks (PBX Trunks), High Capacity Exchange Access Line Services, Digital Loop Services, SuperTrunk and Primary Rate ISDN Service (Digital PBX Trunks), SelectData and Plexar Centrex Service. Exhibit 4, Fernandez Direct, p. 2.

vertical features, data services, and internet services.⁶⁹ In addition to their certification by the Commission and Commission-approved tariffs, CLECs which provide core business switched services are listed in every white pages directory throughout SBC Missouri exchanges,⁷⁰ and advertise their services throughout Missouri.⁷¹

32. Additionally, alternatives such as CPE will perform many of the same functions as many of SBC Missouri's line-related services.⁷²

33. In the large business segment of the market, most if not all CLECs with whom SBC Missouri competes offer services that are functionally the same as SBC Missouri's ISDN PRI services (e.g., SmartTrunks) and SBC's Digital Trunking Services (e.g., SuperTrunk and Digital Loop Service).⁷³ The CLEC's pricing in this segment is competitive with that of SBC Missouri. For example, typical CLEC monthly rates for PRI services range from \$540.00 to \$850.00, which is significantly less than SBC Missouri's equivalent pricing which is typically in the one thousand dollar per month range.⁷⁴

34. As of June, 2004, on a statewide basis, CLECs alone now serve a minimum of over 383,000 business lines, which represents a 36% share of the business access lines market.⁷⁵ (SBC Missouri also presents highly confidential exchange-specific market share in Schedules 10HC-12HC in Mr. Unruh's direct testimony.) As the

⁶⁹ Ex. 4, Fernandez Direct, p. 6.

⁷⁰ Ex. 15, Unruh Direct, p. 26, Schedule 8.

⁷¹ Ex. 4, Fernandez Direct, pp. 18-20, and Schedules 6P, 7, 9-12; Ex. 6, Fernandez Surrebuttal, pp. 2-3, Schedules 1 and 2..

⁷² Ex. 4, Fernandez Direct, pp. 3, 14-16.

⁷³ Ex. 4, Fernandez Direct, pp. 10-11.

⁷⁴ Ex. 4, Fernandez Direct, pp. 10-11.

⁷⁵ Ex. 15, Unruh Direct, p. 21, Schedules 3, 4, and 12HC.

evidence demonstrates substantial competitive activity throughout each of SBC Missouri's exchanges and particularly in each of the MCA areas where competition is strong.⁷⁶ Competition is not limited to the MCAs⁷⁷ and it also exists in more rural exchanges:⁷⁸

(c) **Granting Competitive Status Will Advance The Purposes And Policies Of Chapter 392.**

35. The purposes and policies of Chapter 392 will be advanced by granting competitive classification to SBC Missouri's business access line and line-related services in all exchanges.

36. The broad telecommunications policy goals of the Missouri Legislature are set out in Section 392.185. There, the Legislature expressed the desire to promote universally-available, efficiently-supplied, and reasonably priced telecommunications services.⁷⁹ The Legislature also sought to promote diversity in the supply of telecommunications services, and to allow competition to function as a substitute for regulation whenever possible and consistent with the other goals of the statute.⁸⁰ And finally, the Legislature sought to promote parity of urban and rural telecommunications services, promote economic and other enhancements and protect consumer privacy.⁸¹

37. Chapter 392 specifically articulates a preference for competition over regulation whenever possible and consistent with the statutes' other goals. When there is competition in a market, it is both unnecessary and undesirable to impose artificial

⁷⁶ Ex. 15, Unruh Direct p. 32.

⁷⁷ Ex. 15, Unruh Direct, p. 33.

⁷⁸ Ex. 15, Unruh Direct, p. 34.

⁷⁹ Section 392.185 (1), (2) and (4) (2000).

⁸⁰ Section 392.185 (3), (5) and (6) (RSMo 2000).

⁸¹ Section 392.185 (7-9), (RSMo 2000).

regulatory requirements on participants in the market. It is unnecessary because markets function more effectively to protect consumers than can regulators. More importantly, it is undesirable because regulator restrictions are not innocuous in competitive markets. By preventing or hindering providers from quickly raising, lowering, restructuring, targeting, bundling or otherwise changing prices, providers are impeded in their ability to respond to competition, to differences in the cost of service, to customer-specific demands and preferences, and to changing market conditions to the detriment of social welfare and economic efficiency. Moreover, regulation can prevent a company from correcting prices that have been distorted by years of regulatory oversight. If such a company cannot price and respond to these legitimate market factors, the company is restricted in its ability to effectively meet customer demand, and customers suffer.⁸²

38. Permitting pricing flexibility makes it feasible for a firm to justify investments in innovation, which is inherently risky.⁸³ Permitting an incumbent carrier flexibility to price its services encourages investment in new facilities, and competitive markets provide the incentive to accelerate the deployment of advanced technologies. Maintaining a level of investment in innovation in a telecommunications infrastructure in Missouri is critical to maintaining the vibrancy of many industries in the state and preserving the status of the state as a place where businesses want to locate and talented workers want to live. Maintaining incentives to innovate and invest in telecommunications infrastructure is the most important factor for achieving the legislative goal of promoting “economic... enhancements” in the state.⁸⁴

⁸² Exhibit 1, Aaron Direct, p. 72.

⁸³ Exhibit 1, Aaron Direct, p. 74.

⁸⁴ Exhibit 1, Aaron Direct, p. 78-79.

39. On the other hand, firms will not choose to enter a market and deploy facilities unless they believe they will have a reasonable chance to recoup their investment. Lifting price cap regulation provides a signal to potential competitors that the incumbent's prices will not be forced below those that would prevail in a competitive market. If this commitment by the regulator is credible, and it is not expected to be reversed during the time in which the competitor hopes to recoup its investment, the deployment of new facilities would be encouraged.⁸⁵

40. The Commission in the Sprint Competitive Classification Order recognized that competition cannot fully perform its function in the presence of price cap regulation, because that regulation dampens the regulated carrier's ability to change its price in response to competition.⁸⁶ Current price cap regulation requires SBC Missouri to announce price changes 30 days in advance on a tariffed price change. By requiring it to signal its moves by filing 30 days in advance of its price changes (which is further amplified by an additional 30 day CLEC notification requirement), SBC Missouri is discouraged from decreasing prices and is handicapped from competing for specific customer business. If competitors have advance warning of SBC Missouri's price changes, they can use the 60 day period to counteract the change with their own price changes or marketing efforts in advance of SBC Missouri's price change becoming effective. Knowing that a price decrease could be preempted discourages SBC Missouri from making the decrease. Such an outcome dampens competition and harms customers.

⁸⁵ Exhibit 1, Aaron Direct, p. 79. In addition, the prospect of having sufficient flexibility to maintain prices that are enumerative level, to the extent permitted by competition, and the prospect of competitive investment by CLECs and other competitors will also encourage efficient investment by incumbent LECs as well.

⁸⁶ Ex. 39, Sprint Competitive Classification Order, p. 31.

While SBC Missouri would still be saddled with a 30 day CLEC notification requirement in many cases, removing at least 30 of the 60 days' prior notification obligation advances and strengthens competition and benefits customers by helping to remove some constraint that discourages competition price reduction.⁸⁷

41. While Section 392.245.5 sets out the process for deregulating telecommunications services of price cap regulated LECs, it also contains a “safety valve” allowing the Commission to re-evaluate previously-granted competitive classification in the future if conditions warrant. Specifically, the statute allows the Commission to rescind competitive classification and re-impose price caps in an exchange if it finds that effective competition no longer exists in the exchange:

The Commission shall from time to time, but no less than every five years, review the state of competition in those exchanges where it has previously found the existence of effective competition, and if the commission determines, after hearing, that effective competition no longer exists for the incumbent local exchange telecommunications company in such exchange, it shall re-impose upon the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices is established by the provisions of subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices established for the telecommunications services of such incumbent local exchange telecommunications company shall reflect all index adjustments which were or could have been filed from all preceding years since the company's maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.

The legislature's provision of this “safety valve” to adjust the level of regulation in the event of deterioration in the competitive landscape demonstrates the legislature's intent to

⁸⁷ Exhibit 1, Aron Direct, p. 77.

encourage the Commission to make competitive reclassifications in order to allow the market to work and competition to develop unfettered by asymmetric price regulations.⁸⁸

42. Some parties have alleged an issue concerning predatory pricing.⁸⁹ But, as Dr. Aron explained in her surrebuttal testimony, predatory pricing as a result of competitive reclassification is unlikely to be attempted because the market structure would simply not support it.⁹⁰ In order to be successful, any attempt at predatory pricing requires that (1) SBC Missouri drive out all competitors from the market by pricing below cost, (2) after all competitors are driven from the market, SBC Missouri must increase its retail prices sufficiently and for a long enough period of time to recoup its losses and (3) SBC Missouri must do all of this without attracting the attention of the antitrust authorities and regulators.⁹¹ On its face, it is apparent that SBC Missouri could not successfully engage in such a practice even if it were so inclined.

43. The claim that SBC Missouri would be able to achieve the predation by increasing rates in rural areas also lack substantive merit. This purported “strategy” suffers from the same deficiencies as identified above. SBC Missouri would not be able to increase rates in rural areas unless the Commission found that effective competition existed. If, after a finding of effective competition in these rural areas, rates were raised above the competitive level, wireless, VoIP providers and CLECs would be able to increase their customer base by maintaining or lowering their prices to consumers. Accordingly, such a “strategy” could not succeed. But even assuming SBC Missouri

⁸⁸ Exhibit 1, Aaron Direct, p. 80.

⁸⁹ Ex. 32, Kohly Amended Rebuttal, p. 3.

⁹⁰ Ex. 2, Aron Surrebuttal, p. 22.

⁹¹ Id.

were able to raise rates above the competitive level in rural exchanges, there is little question but that the Commission would re-impose price cap regulation as it is permitted to do under Section 392.245.5 RSMo (2000). Again, the purported “strategy” simply could not succeed.

44. The claim that SBC Missouri would be able to raise its rates in rural areas in order to price below cost in urban areas also fails to take into account the relative size of these markets. While SBC Missouri serves a substantial number of lines in rural Missouri, it serves many times that number in its urban and suburban exchanges. The total number of SBC Missouri lines in each exchange are depicted in Schedule 10HC to Mr. Unruh’s direct testimony, while a further breakdown into business and residential lines is provided in Schedules 11HC and 12HC. Even if it were not constrained by market forces, it would be impossible for SBC Missouri to raise the price in an amount sufficient to cover the lost revenue it would experience by engaging in predatory pricing in the urban and suburban area. The relative size of the markets simply would not permit this to occur.

(d) No Material Economic Or Regulatory Barriers To Entry Exist.

45. There are no substantial barriers to competitors offering business services, as demonstrated by the substantial number of competitors actually operating in each exchange and the substantial market share obtained.

46. Technology has had profound impacts on the nature and extent of competitive entry into the local exchange markets by reducing entry barriers. Services provided over a number of new technologies or alternative technologies are increasing competitive pressure on traditional ILEC wireline services. Such technological changes

have reduced the “specificity” of the capital investment in communications facilities, diminishing the sunk costs as barrier to entry. For example, investment in CableTV facilities now can be expected to generate a return not only from providing pay television service, but also from providing cable telephony or VoIP service.⁹²

47. The Telecommunications Act of 1996 has substantially reduced the barriers to entry into the local exchange business. The provisions of the Act are remarkable in their scope and in their requirement for the incumbent to open the door and “lend a hand” to competitors. Under the Act, incumbent LECs face special obligations to help their competitors far beyond those normally imposed on unregulated firms. ILECs must interconnect with competing carriers; they must unbundle their network and provide certain network elements to their competitors at cost-based rates; they must provide end-to-end service for the resale of telecommunications services to their competitors at avoided-costs wholesale rates; and they must permit their competitors to collocate equipment in their central office.⁹³ Each of these requirements reduces entry barriers and facilitates entry into the local exchange market.⁹⁴

48. The Missouri Commission has acknowledged SBC Missouri’s First Competitive Classification case that resale, as well as UNEs and combinations of UNEs provide:

Effective ways for CLECs to enter the market with little capital investment. Given the multitude of companies providing services, it is clear that the regulatory barriers that once prevented competitors from offering alternatives in the marketplace are disappearing.⁹⁵

⁹² Ex. 1, Aron direct, pp. 54-55.

⁹³ Federal Telecommunication Act of 1996, Section 251(c)(1)-(6).

⁹⁴ Ex. 1, Aron Direct, p. 56.

⁹⁵ SBC Missouri’s First Competitive Classification Order, p. 28.

49. The Commission’s prior conclusions regarding entry barriers is “contingent” on the continued availability of UNEs and combination of UNEs.⁹⁶ First, it is incorrect as a factual matter to imply that UNEs have been eliminated from the market. Based on the FCC’s recent unbundling order, most UNEs will be retained, including all voice grade copper loops and most DS1 loops, and resale will continue to be available for all telecommunication services. Carriers will thus still have the ability to use UNEs and resale to overcome any entry barriers that would otherwise exist.⁹⁷ It is also incorrect to imply that the removal of UNE-P from the market creates an entry barrier. Moreover, SBC Missouri, as in its previous competitive classification case, has similarly supplied evidence of a multitude of companies providing services, including a large number who are facility-based.⁹⁸

50. The future expiration of SBC Missouri’s M2A agreement also does not create a barrier to entry. SBC Missouri notified all CLECs well in advance of the agreement’s pending expiration and outlined various options for CLECs to obtain a replacement agreement. This process ensures no gap in the availability of an interconnection agreement.

51. Given the multitude of carriers that are actually providing functionally equivalent or substitutable services in every SBC Missouri exchange, it is clear that there are no barriers to entry preventing competitors from offering alternatives in the

⁹⁶ Ex. 32, Kohly Amended Rebuttal, p. 26.

⁹⁷ Ex. 2, Aron Surrebuttal, p. 66.

⁹⁸ See, e.g., Ex. 16, Unruh HC Direct, Schedule 13HC.

marketplace.⁹⁹ And to the extent that any barriers to entry or expansion exist, this evidence demonstrates that SBC Missouri's competitors are actively overcoming them.¹⁰⁰

Issue 2. In which SBC Missouri exchanges, if any, does effective competition exist for SBC Missouri's Plexar services such that those services should be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

1. Effective competition exists for SBC Missouri's Plexar® brand of Centrex services¹⁰¹ throughout its territory and these services should be classified as competitive in each SBC Missouri exchange pursuant to Section 392.245.5 RSMo. 2000.

(a) Competing Services Are Widely Available From Alternative Providers Throughout The State.

2. The Commission has already recognized that LEC-provided Centrex services are subject to effective competition across the state. The Commission made this determination in the Sprint Competitive Classification Order based on the wide-spread competition it identified from (1) the ability of other competing telecommunications companies to provide Centrex services and (2) from non-regulated companies supplying switching equipment installed on the business customer's premises that provides similar functionality:

⁹⁹ Ex. 15, Unruh Direct, p. 44. See also, Schedule 3 (showing growth of CLEC services being provided over CLEC-owned switches), Schedule 5 (showing competitive switch sites and numbering resources in SBC Missouri exchanges), Schedule 6HC (showing number of active CLECs operating within individual SBC Missouri exchanges), Schedule 7 (showing individual CLECs offering service in each SBC Missouri exchange based on MoPSC website), Schedule 9HC (showing CLEC collocation sites), Schedules 10HC-13HC (showing minimum estimated CLEC market share by exchange).

¹⁰⁰ Ex. 1, Aron Direct, p. 57.

¹⁰¹ Plexar is the trademarked brand under which SBC Missouri sells its Centrex service. Centrex is a central office based communications system that allows business customers to use SBC Missouri's central office technology instead of purchasing their own premise-based switching equipment. The Plexar family of services includes Plexar-1, Plexar Express, Plexar II and Plexar-Custom. Like other Centrex systems, Plexar services provide basic call processing capabilities, such as call hold, call transfer, and three-way calling. Additionally, some Plexar services also offer advanced voice and data call handling, such as basic rate interface (BRI) and integrated service digital network (ISDN) capabilities. Ex. 4, Fernandez Direct, p. 12.

Other competitive local exchange companies can offer this service in competition with Sprint, but much of Sprint's competition comes from companies that sell switching equipment, such as PBX (primary branch exchange) and key system hardware, to individual customers. Such customer-owned equipment manages calls between stations on the customer's premises without utilizing the central office switch, and handles calls to and from the public switched network. The availability of such equipment allows a business customer to choose to pay Sprint to provide a Centrex service for its switching needs; or it can choose to satisfy its need for that function by purchasing the necessary equipment from any one of several companies willing to sell that equipment . . . Because Sprint's competition for its Centrex service is coming from equipment sellers rather than competing service providers, that competition is not limited to specific exchanges.¹⁰²

Based on these findings, the Commission granted state-wide competitive classification to Sprint's Centrex services.¹⁰³ On the same basis, Staff supports a competitive classification here for SBC Missouri's Plexar services.¹⁰⁴

3. Undisputed evidence in this case shows that several CLECs in Missouri offer tariffed central office based Centrex services in Missouri that are similar to Plexar. These CLECs provide such services using their own switching equipment or that of another CLEC, UNEs from SBC Missouri, or by reselling SBC Missouri's Plexar services to their end-user customers. CLECs offering Centrex include Everest Communications, IDT, MCI, XO Communications, Big River Telephone and Nuvio.¹⁰⁵

4. Here, SBC Missouri has demonstrated that its business customers have had competitive alternatives to its Plexar brand of Centrex services for decades. Key telephone systems and PBXs were developed and offered to business customers to

¹⁰² Ex. 49, Sprint Competitive Classification Order, pp. 15-16 (emphasis added).

¹⁰³ Ex. 43, In the Matter of the Investigation of the State of Competition in the Exchanges of Sprint Missouri, Inc., Case No. IO-2003-0281, Report and Order, issued December 4, 2003 at pp. 39-41 ("Sprint Competitive Classification Order")

¹⁰⁴ Ex. 20, McKinney Rebuttal, pp. 13-14.

¹⁰⁵ Ex. 4, Fernandez Direct, pp. 12-13.

replace central office based service offerings for larger business customers, and continue to be an attractive competitive alternative for business customers that choose to own their own voice system.¹⁰⁶ And new Internet Protocol ("IP") technology has energized the PBX market.¹⁰⁷

5. Some of the major equipment-based competitors SBC Missouri faces are Avaya (for key and PBX systems), Nortel (for key and PBX systems), NEC (for key and PBX systems), Toshiba (for key systems), and Siemens (for PBX systems).¹⁰⁸

(b) **Alternate Providers Offer Functionally Equivalent Or Substitutable Services To SBC Missouri's Plexar Brand Of Centrex.**

6. Both CLEC and non-regulated equipment vendors provide alternatives to SBC Missouri Plexar services which are functionally the same as or substitutable for SBC Missouri's Plexar services, and are offered at comparable rates, terms and conditions. Although there is no statutory requirement to experience any level of market share loss to obtain competitive classification, SBC Missouri's Centrex market share has declined substantially and is projected to decline even further, in line with national trends,¹⁰⁹ demonstrating that business customers are in fact substituting these alternatives for SBC Missouri's Plexar service.

7. CLEC's Centrex services generally provide the same features and services as SBC Missouri's Plexar service, such as call forwarding-busy line-all calls, call forwarding-don't answer-all calls, call forwarding-variable, call hold, call pick-up, call transfer-all calls, Direct Inward Dialing (DID), Direct Outward Dialing (DOD), Hunting-

¹⁰⁶ Ex. 4, Fernandez Direct, pp. 14-16.

¹⁰⁷ Ex. 4, Fernandez Direct, pp. 15-16.

¹⁰⁸ Ex. 4, Fernandez Direct, Schedule 5.

¹⁰⁹ Ex. 5, Fernandez HC Direct, p. 15.

Basic, Station-To-Station (Intercom Dialing), Three Way Calling and Touch Tone Dialing. These services are offered at comparable rates, terms and conditions as SBC Missouri Plexar service.¹¹⁰

8. PBX or key telephone systems are likewise substitutable for, or functionally equivalent to SBC Missouri's Plexar Service. In fact, these systems were developed by manufacturers to replace the central office based offerings that telephone companies provided to larger business customers. And they are specifically marketed by various vendors as a "functionally equivalent substitute" for LEC-provided Centrex services. Over time, the prices for PBX systems have been driven down by competition and by advances in switch technology. Evidence presented in this case shows that PBXs and key telephone systems continue to be attractive alternatives for business customers that wish to "own" their voice system.¹¹¹

9. The Commission has, consistent with well-accepted economic principles, previously ruled that goods or services are substitutable: "if they have the actual or potential ability to take away significant amounts of business from each other."¹¹²

10. Here, uncontested evidence shows that business customers are in fact actually substituting PBXs and key systems for SBC Missouri's central office based Plexar service. For example, large business customers such as Washington University, Bi-State Development Agency, and the Edward Jones brokerage firm have opted to construct private networks using PBXs to handle their communications needs.¹¹³

¹¹⁰ Ex. 4, Fernandez Direct, pp. 12-13, 15-16.

¹¹¹ Ex. 4, Fernandez Direct, p. 14.

¹¹² Ex. 43, Sprint Competitive Classification Order, p. 40.

¹¹³ Ex. 4, Fernandez Direct, p. 17.

11. In the Sprint Competitive Classification Order, the Commission found that Sprint's loss of a significant portion of its Centrex business demonstrated the substitutability of PBX and other customer-owned equipment for Centrex:

The evidence indicates that Sprint has lost 20% of its CENTREX business since June of 2001. It is reasonable to attribute most of this business loss to competition from customer-owned equipment . . . potential customers realize they can use either alternative to satisfy the demand for switching services. As a result, customer-owned equipment is substitutable for Sprint's CENTREX service and satisfies the second consideration.¹¹⁴

12. Here, the substitutability of CLEC Centrex and non-regulated customer-owned equipment for SBC Missouri's Plexar services can similarly be seen in the steady decline in SBC Missouri's Plexar business. From January, 2002 until September, 2004, SBC Missouri lost a larger number of its Plexar lines, which represents a significant percentage of its Plexar business.¹¹⁵ These Plexar service losses are in line with national industry trends, which show Centrex line growth to be declining while other forms of business service, such as VoIP, to be increasing.¹¹⁶

(c) **Granting Competitive Classification Will Advance The Purposes and Policies of Chapter 392.**

13. In the Sprint Competitive Classification Case, the Commission found the purposes and policies of Chapter 392 were satisfied with respect to Sprint's Centrex service based on the effect of the unregulated PBX and key system market on the price for LEC-provided Centrex service;

Customer-owned switch equipment is sold by unregulated competitors in an unregulated market. Therefore, the market determines the price charged for that equipment. If Sprint wishes to compete for that business,

¹¹⁴ In the Matter of the Investigation of the State of Competition in the Exchanges of Sprint Missouri, Inc., Case No. IO-2003-0281, p. 40.

¹¹⁵ Ex. 5HC, Fernandez HC Direct, p. 15, and Schedule 4HC.

¹¹⁶ Ex. 4, Fernandez Direct, p. 15, Schedule 5P.

the prices it can charge for its services will be determined by that market as well. The third consideration is therefore satisfied.¹¹⁷

14. Here, the prices SBC Missouri can charge for its Plexar services are subject to the same competitive forces exerted by the unregulated customer equipment market. Accordingly, this element of the statutory test should similarly be satisfied. And Staff concurs, as it supports SBC Missouri's request for a competitive classification of SBC Missouri's Plexar services in all SBC Missouri exchanges in Missouri.¹¹⁸

(d) No Material Economic Or Regulatory Barriers To Entry Exist.

15. In the Sprint Competitive Classification Case, the Commission found that no economic or regulatory barriers to entry existed because "the competition for Sprint's Centrex services is coming from the unregulated market for equipment."¹¹⁹ Here, SBC Missouri's Plexar brand of Centrex service is subject to the same competition coming from the unregulated market for equipment. Accordingly, no economic or regulatory barriers to entry should be found to exist.

Issue 3. The Commission, pursuant to Section 392.245.5 RSMo. 2000, previously classified SBC Missouri's residential access line and residential line-related services in the Harvester and St. Charles exchanges as competitive in Case No. TO-2001-467. In which additional SBC Missouri exchanges, if any, does effective competition exist, such that SBC Missouri's residential access line and residential line-related services should be classified as competitive?

¹¹⁷ Ex. 43, Sprint Competitive Classification Order, pp. 40-41.

¹¹⁸ Ex. 20, McKinney Rebuttal, pp. 13-14.

¹¹⁹ Ex. 43, Sprint Competitive Classification Order, p. 41.

1. Effective competition exists for SBC Missouri's residential access line services¹²⁰ and its line-related services¹²¹ throughout its territory and these services should be classified as competitive in all remaining SBC Missouri exchanges.

(a) **Residential Access Line And Line-Related Services Are Widely Available From Alternative Providers Throughout SBC Missouri's Territory.**

2. Numerous CLECs provide tariffed residential telecommunications services throughout SBC Missouri's service territory that are functionally equivalent to or directly substitutable for SBC Missouri's residential access line and line-related services. The evidence also shows that such services are also widely available from non-regulated providers such as wireless carriers, cable companies, and VoIP service providers.

3. CLECs provide such services by purchasing UNEs from SBC Missouri, or by utilizing their own facilities or those of another CLEC.¹²² CLECs offer such services at rates that are comparable to SBC Missouri's rates,¹²³ and offer the same local calling scopes.¹²⁴ CLECs are also actively marketing their residential line services in Missouri.¹²⁵

4. Wireless service is now a viable substitute for landline service and a survey of Missouri metropolitan area wireless users indicates 18% of wireless users do

¹²⁰ Residential access line services includes those services that provide basic voice access to the telecommunications network. For residential service, the most typical service is flat rate telephone service. In addition, there are other forms of access including measured service and message rate service. (Ex. 10, Stoa Direct, p. 10.)

¹²¹ SBC Missouri's residential access line related services include vertical services and custom calling features such as calling waiting, auto redial, three-way calling, call blocker, caller ID with name delivery, caller ID with number delivery, speed dial 8 and call waiting ID. (Ex. 10, Stoa Direct, p.21).

¹²² Ex. 10, Stoa Direct, pp. 3, 10-13; Ex. 15, Unruh Direct, p. 19.

¹²³ Ex. 10, Stoa Direct, pp. 11-12

¹²⁴ Ex. 10, Stoa Direct, pp. 12-13.

¹²⁵ Ex. 10, Stoa Direct, p. 13, and Schedule 7.

not have a landline phone.¹²⁶ Cable telephony, which uses cable TV wiring, is a direct substitute for SBC Missouri's landline telephone services as are VoIP providers.¹²⁷ Both cable telephony and VoIP provide the same service and basic features as SBC Missouri's residential access line and line-related services.¹²⁸

5. The most recognizable form of competition today comes from CLECs in Missouri providing the exact same types of residential access lines and line-related services that SBC Missouri provides. Based on the number of CLECs passing wholesale orders to SBC Missouri during recent months, there are over 65 CLECs actively competing in SBC Missouri's service territory throughout the state, and there are CLECs operating in each SBC Missouri exchange.¹²⁹ Based on information provided on the Commission's own website, there appears to be at least 21 CLECs in each SBC Missouri exchange that hold themselves out to provide residential service (excluding prepaid providers).¹³⁰

6. SBC Missouri has presented very detailed information identifying the minimum number of CLECs that are actually providing service in each SBC Missouri exchange. For example, SBC Missouri presented maps showing the range (i.e., 1-2 CLECs, 3-5 CLECs, 6-9 CLECs, 10+ CLECs) of the number of CLECs actively serving customers in each SBC Missouri exchange. These maps geographically depict information contained in SBC Missouri's wholesale records, such as the number of resold lines, CLECs' purchase of UNE-P, or the presence of an E-911 listing in the 911

¹²⁶Ex. 13, Shooshan Direct, pp. 4, 17-18; Ex. 10, Stoia Direct, pp. 13-15, Schedule 8.

¹²⁷ Ex. 10, Stoia Direct, pp. 4, 16-18.

¹²⁸ Ex. 10, Stoia Direct, pp. 16-18.

¹²⁹ Ex. 15, Unruh Direct, p. 21.

¹³⁰ Ex. 15, Unruh Direct, p. 26, Schedule 7.

database.¹³¹ SBC Missouri also provided a spreadsheet identifying the minimum number of CLECs actively serving customers in each SBC Missouri exchange and the breakdown of CLEC-served lines by the method of provisioning.¹³²

7. In addition, SBC Missouri demonstrated the specific exchanges in which CLECs have obtained numbering resources (entire NXX codes or 1000 blocks). This information was obtained from the Local Exchange Routing Guide (“LERG”), which is an industry database used for routing traffic between carriers. Having numbering resources in an exchange allows, a CLEC to provide voice service to customers in that exchange and signifies the CLECs use of its own switching facilities (or those of a third party other than SBC Missouri). SBC Missouri demonstrated where CLECs have switches and points of interconnection where those numbering resources are located.¹³³ SBC Missouri also identified the specific exchanges in which CLECs (information excluding SBC Missouri’s affiliate ASI) have established collocation, which shows the approximately 88% (where CLECs have deployed facilities to customers of the traditional landlines in SBC Missouri’s territory are in exchanges where CLECs have established collocation arrangement.)¹³⁴

8. According to SBC Missouri’s internal wholesale business records,¹³⁵ CLECs are actually providing service in nearly every SBC Missouri exchange, both

¹³¹ Ex. 15, Unruh Direct, p. 24 and Schedule 6HC.

¹³² Ex. 16, Unruh HC Direct, Schedule 13HC.

¹³³ Ex. 15, Unruh Direct, p. 22-23, Schedule 5.

¹³⁴ Ex. 15, Unruh Direct, p. 27, Schedule 9HC.

¹³⁵ SBC Missouri identified the CLEC as actively serving customers by their purchase of resold lines, purchase of UNE-P, or the presence of an E-911 listing in the 911 database. Ex. 15, Unruh Direct, p. 14.

urban and rural.¹³⁶ And competition within the MCAs is particularly acute. According to SBC Missouri's wholesale business record, there are numerous CLECs that are currently serving customers within the MCA exchanges.¹³⁷

9. While CLECs continue to provide significant competition in the residential telecommunications services market, SBC Missouri now also faces significant competition from non traditional and non-regulated service providers such as wireless carriers, CableTV providers and VoIP service providers. The evidence presented demonstrates that these services represent not just potential competition, but actual competition, as the evidence shows that these services are actually displacing wireline telephone services.

10. Increasingly, consumers are opting to substitute their wireless service for traditional residential wireline service. Wireless service can more efficiently meet the multifaceted needs of the growing population of technology savvy consumers. Undisputed evidence demonstrates that wireless services are widely available throughout SBC Missouri's exchanges (excluding both Cingular and AT&T Wireless). 75% of SBC Missouri exchanges have two or more wireless providers, and at least 96% of SBC Missouri's customers have access to at least two wireless carriers (again excluding Cingular and AT&T wireless).¹³⁸

¹³⁶ Ex. 16, Unruh HC Direct, pp. 30-31, Schedule 6HC, Schedule 13HC (these schedules do not reflect the number of other providers such as wireless or VoIP providers).

¹³⁷ Ex. 16HC, Unruh HC Direct, p. 33; see also, Schedules 10HC, 11HC and 12HC. Tables displaying minimum CLEC market share within the MCAs and representative areas outside the MCA are set out under Issue 1, Section (b)(2) above.

¹³⁸ See, Section Issue 1(a)(2)(A).

11. In many cases, residential consumers have decided that they no longer need a landline telephone, and instead rely primarily or even exclusively on their wireless phone to make calls to friends and family. According to a Missouri-specific survey conducted in September and October, 2004, 18% of wireless consumers (distributed across all age groups) have cut the cord and now exclusively use wireless for their telephone service. Of the remainder surveyed, 64% frequently use their cell phones in their homes to make and receive calls 16% use their cell phone as their primary home phone. And 72% believe cellular service would be a satisfactory replacement for all calls made and received at home.¹³⁹

12. Staff concedes that substitutability must be measured from the perspective of the consumer, not the supplier.¹⁴⁰ And at the hearing, Staff also conceded that wireless did act as a substitute for wireline, at least for some consumers.¹⁴¹ As Mr. Shooshan noted, the issue is not whether all consumers consider wireless as a substitute for wireline, but is instead whether enough perceive wireless as a substitute that it constrains wireline pricing.¹⁴²

13. The evidence in this case shows that CableTV companies are now providing telephone service over their existing cable networks. These carriers bundle CableTV and Cable Telephony at a discounted price point. For example, Time Warner offers digital phone service that includes unlimited local intra and interstate long distance calling for “as low as \$39.95 per month.” This offer includes not only local

¹³⁹ Ex. 13, Shooshan Direct, pp. 4, 17-18.

¹⁴⁰ T. 888, McKinnie.

¹⁴¹ T. 891-893, McKinnie.

¹⁴² T. 247, Shooshan.

service, but also popular features such as CallerID, Call Waiting, Call WaitingID, enhanced 911, free installation and reporting of the customer's current telephone number.¹⁴³

14. Cable companies that offer telephone service in Missouri include Time Warner, Charter and Comcast. In the previous SBC Missouri competition case, the Commission recognized the competitive force being exerted by Charter Cable in the market for residential telecommunications services in the St. Charles and Harvester exchanges and granted competitive classification based on that competition. The Commission notes that Charter has greatly expanded its operations and now actively provides residential telephone service in the following SBC Missouri exchanges:

St. Charles	High Ridge
Harvester	Sappington
Chesterfield	Webster Groves
Pond	Kirkwood
Manchester	Mehlville
Eureka	St. Louis
Valley Park	Ladue
Fenton	Creve Coeur ¹⁴⁴
Pacific	

15. The newest competitor to enter the residential marketplace are VoIP providers. These competitors provide telecommunications services via the Internet. With VoIP service, consumers can receive the same type of services they receive from traditional local exchange carriers, but without limits on calling scopes.¹⁴⁵

16. All that is required to establish VoIP service is an easy-to-connect plug-in telephone adapter that is usually provided by the VoIP provider (or its retail outlet), a

¹⁴³ Ex. 10, Stoa Direct, p. 4.

¹⁴⁴ Charter FiberLink-Missouri L.L.C. Local Exchange Tariff, 4th Revised Title Page, Effective June 21, 2004); see, Ex. 10, Stoa Direct, Schedule 12, p. 1 of 62.

¹⁴⁵ Ex. 10, Stoa Direct, p. 4.

broadband Internet connection, and a regular telephone supplied by the consumer.

According to industry press releases, VoIP service is simple to use and easy for customers to install, typically in 10 minutes.¹⁴⁶

17. Carriers offering VoIP service to residential customers in Missouri include Charter, AT&T, Time Warner ComCast, CableVision, Level 3 Communications, Vonage, Nuvio, and Packet 8.¹⁴⁷

(b) **Alternate Providers Offer Functionally Equivalent Or Substitutable Services To SBC Missouri's Residential And Line-Related Services.**

18. The evidence demonstrates that residential services offered both by regulated CLECs and non-regulated wireless, CableTV and VoIP providers are directly substitutable for or functionally equivalent to, at comparable rates, terms and conditions, the residential switched access lines services and line-related services offered by SBC Missouri. The substitutability of these alternatives is confirmed by the fact that they are actually displacing wireline residential service. On statewide basis, and looking only at CLEC competitors, SBC Missouri has lost approximately 11% of residential access lines. (SBC Missouri also presents highly confidential exchange-specific market share information in Mr. Unruh's direct testimony.)¹⁴⁸ In the three years since the last competitive classification case, CLEC residential lines have more than tripled.¹⁴⁹

19. As reflected in approved tariffs filed with the Commission, the residential telephone service being provided by CLECs in Missouri are essentially the same as what

¹⁴⁶ Ex. 10, Stoa Direct, p. 6.

¹⁴⁷ Ex. 10, Stoa Direct, p. 20.

¹⁴⁸ Ex. 15, Unruh Direct, pp. 21, 43, Schedules 3, 4, 13HC and 18.

¹⁴⁹ Ex. 15, Unruh Direct, p. 21.

SBC Missouri offers its own residential customers.¹⁵⁰ In addition to the individual access line and individual features, CLECs offer bundled services to residential customers in which they package local service, popular calling features and often long distance. These bundles offer similar services as those offered by SBC Missouri at comparable prices.¹⁵¹

20. Local calling scopes offered by CLECs are also comparable to those offered by SBC Missouri. At a minimum, CLECs typically match SBC Missouri's local calling scopes. However, in the areas where optional MCA is available, CLECs sometimes do not assess their customers a separate charge for MCA service. For example, Sage includes the MCA calling plan as part of its bundled offering and does not charge an additional fee for the extended calling like SBC Missouri charges. As a result, SBC Missouri has lost a significant number of residential customers in these optional MCA areas.¹⁵²

21. CableTV providers, such as Charter and Time Warner, also provide the same service and basic features as traditional residential phone service provided by SBC Missouri. These carriers also offer bundled residential service similar to that offered by SBC Missouri.¹⁵³

22. Wireless service is also a viable substitute for landline residential service. In addition to offering individual calling features that are similar to those offered by

¹⁵⁰ See, Sage Telecom, Inc. Local Exchange Telecommunications Service Tariff, MoPSC No. 1, Section 3, Description of Services and Section 4 Rates and Charges, effective February, 2002, attached as Schedule 11 to Ex. 10, Stoa Direct.

¹⁵¹ Ex. 10, Stoa Direct, p. 11, Schedule 6 (a price comparison of packages offered by Charter, SBC Missouri, Sage, VarTec and AT&T). See also, Schedule 9 (comparison of competitive calling bundled prices and features comparing CLEC, VoIP, and wireless bundle offerings with those of SBC Missouri).

¹⁵² Ex. 10, Stoa Direct, pp. 12-13.

¹⁵³ See, Charter FiberLink Local Exchange Tariff, Section 1.8, Local Exchange Service - Description and Rates; Ex. 10, Stoa Direct, p. 16, Schedule 12

landline telephone companies, wireless providers have devised several creative marketing initiatives that encourage increased wireless usage, leading to further landline displacement. Some usage plans allow customers to carry unused minutes over to the next month. “Group/Family Plans” allow families or groups to talk for free or share minutes, encouraging groups of customers to subscribe to service together. In addition to mobility that SBC Missouri residential wireline service cannot provide, wireless service also usually offers much larger calling scopes than SBC Missouri provides. And like SBC Missouri, wireless carriers typically bundle their services into attractive packages. For example, Verizon Wireless offers its “America’s Choice” plan in Missouri. Pricing for these plans begins at \$34.99 and includes unlimited night and a weekend home calling, 3-Way Calling, 411 Connect, Call Forwarding, Call Waiting, CallerId, Voice Mail and Text Messaging.¹⁵⁴

23. And VoIP providers offer not only the traditional local service and telephone service features like Call Waiting, 3-Way Calling and CallerID, VoIP providers offer more advanced features like “Call Logs” to track incoming and outgoing calls; “Do Not Disturb” to receive calls only when wanted; “Locate Me” which rings up to five phones all at once or sequentially; “Voice Mail With eFeatures” to listen to messages from any phone or PC and then forward them to anyone on the web; and “Personal Conferencing” to set up meetings with up to nine additional callers.¹⁵⁵

24. Although the statute does not require SBC Missouri to experience any particular level of market share loss in order to have its services classified as competitive, SBC Missouri has lost a significant portion of its business in the residential service

¹⁵⁴ Ex. 10, Stoa Direct, pp. 3-4.

¹⁵⁵ Ex. 10, Stoa Direct, p. 5.

market. In the three years since SBC Missouri's last competitive classification case, SBC Missouri has lost over 260,000 residential access lines. SBC Missouri has lost lines to traditional CLECs, cable companies, wireless companies, and VoIP providers.¹⁵⁶

25. The marketing efforts of SBC Missouri's competitors throughout the state reflect the substitutability of these competitors' products for residential wireline services offered by SBC Missouri. These offers make it clear that these competitors are advertising their services as substitutes for SBC Missouri's residential services and their advertisements seek to entice consumers to disconnect SBC Missouri's residential service and purchase the competitors' service instead.¹⁵⁷

(c) **Granting Competitive Status Will Advance The Purposes And Policies Of Chapter 392.**

26. For the reasons set out in detail under Issue 1, Section (c), the Commission finds that the purposes and policies of Chapter 392 will be advanced by the Commission's grant of competitive classification to SBC Missouri's residential access line and line-related services.

(d) **No Material Economic Or Regulatory Barriers To Entry Exists.**

27. For the reasons set out in detail under Issue 1, Section (d), the Commission finds that there are no substantial barriers to entry in the residential access line market.

¹⁵⁶ Ex. 10, Stoa Direct, p. 9. The growth in residential CLEC access lines is shown in the table presented in the Executive Summary of this Brief.

¹⁵⁷ Ex. 10, Stoa Direct, p. 13, Schedule 7 (showing advertisements from MCI, Everest Communications, VarTec, Time Warner, Sage, Charter, AT&T, Sprint, Vonage, and McLeodUSA); Ex. 13, Shooshan Direct, Schedule 2 (showing wireless plan summaries, product materials from the web, and wireless carrier advertising).

Issue 4. In which SBC Missouri exchanges, if any, does effective competition exist for SBC Missouri’s directory assistance (DA) services such that those services should be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

1. Effective competition exists for SBC Missouri’s Directory Assistance (“DA”) services throughout its territory. Accordingly, these services should be classified as competitive in each SBC Missouri exchange in Missouri pursuant to Section 392.245.5 RSMo. 2000.

2. DA Services provide callers with assistance in obtaining telephone listing information. SBC Missouri’s DA services include local directory assistance (which provides callers with listed telephone numbers of subscribers who are located in the same local calling area and in the calling customers’ home numbering plan area), directory assistance call completion provides the customer the option of having local or intraLATA long distance calls automatically completed by pressing “1” after the listed telephone number is received from directory assistance, and National Directory Assistance and telephone listing information for areas outside the customer’s local calling area.¹⁵⁸

(a) DA Services Are Widely Available From Alternate Providers Throughout The Entire State.

3. Numerous competitive DA providers offer services that are functionally equivalent to, or substitutable for, SBC Missouri’s DA service at comparable rates and terms throughout Missouri, including all SBC Missouri exchanges. These competitors include regulated telecommunications companies, like long distance carriers and CLECs (who provide directory services to their customers through their own facilities, through a combination of their own facilities and UNEs purchased from SBC Missouri, or by

¹⁵⁸ Ex. 5, Moore Direct, p. 3).

reselling SBC Missouri's services); as well as non-regulated wireless service providers, internet content providers, directory publishers, independent directory services providers, software companies and others.¹⁵⁹

4. The Commission has, consistent with well-accepted economic principles previously ruled that goods or services are substitutable: "if they have the actual or potential ability to take away significant amounts of business from each other."¹⁶⁰

5. Here, uncontested evidence shows that SBC Missouri customers are in fact actually substituting these other directory assistance alternatives for SBC Missouri's DA services.¹⁶¹ The evidence shows that SBC Missouri's directory assistance call volumes have significantly declined since 1998, although the overall directory assistance marketplace has grown. During this time, SBC Missouri's total local directory assistance call volume has decreased significantly.¹⁶² There can be no question that there is a healthy and effective, competitive marketplace for directory assistance services throughout Missouri.

6. The substitution of these other DA alternatives for SBC Missouri's DA service is confirmed by a comprehensive market research study SBC Missouri commissioned to study customer usage of various directory assistance alternatives.¹⁶³ The results of this study clearly indicate that competition exists for directory assistance listings and

¹⁵⁹ Ex. 5, Moore Direct, pp. 4-13.

¹⁶⁰ Ex. 43, Sprint Competitive Classification Order, p. 40.

¹⁶¹ Ex. 6, Moore Surrebuttal, p. 4.

¹⁶² Ex. 5HC, Moore Direct, pp. 20-22.

¹⁶³ This study surveyed customers via telephone interviews throughout 12 SBC states to determine how customers obtain directory assistance listing information. 3,262 interviews were conducted (250 in each state, except California where 501 interviews were conducted). This study screened for customers who had utilized a phone source or an on-line source of directory assistance within the last 3 months. Exhibit 5, Moore Direct, pp. 18-19.

competitive alternatives do in fact include non-phone sources for obtaining this type of information.

7. The evidence in this case demonstrates that there is no link between competition for DA services and the level of competition for the underlying access line. Although the Commission in SBC Missouri's previous competitive classification case denied state-wide competitive classification for DA services because it found competition for DA services to be "tied" to competition for the underlying access line, no such evidence has been presented in this case. In fact, all the evidence is to the contrary.

8. Regardless of the level of competition for local service, SBC Missouri's local customers have numerous choices besides SBC Missouri's 411 service for DA service. If an SBC Missouri local customer is dissatisfied with SBC Missouri's DA service or its price, the customer can easily access numerous competitive alternatives that exist independent of the customer's choice of local service provider.¹⁶⁴

9. Staff supports competitive classification for SBC Missouri's DA services. Acknowledging the Commission's prior denial of competitive classification and its basis for doing so, Staff testified that the "close link between DA and basic local telecommunications service" has "diminished."¹⁶⁵ Based on its review and analysis of the evidence supplied by SBC Missouri and its own independent research and analysis, Staff found:

- DA services are widely available from numerous providers using alternative technologies as well as traditional wire line telecommunications service;

¹⁶⁴ Ex. 5, Moore Direct, pp. 12-16.

¹⁶⁵ Ex. 18, Cecil Rebuttal, p. 5.

- DA services provided by competitors are functionally equivalent and are provided at comparable rates, terms and conditions;
- Barriers to entry, economic and regulatory, are not inappropriately indiscriminatory.¹⁶⁶

Accordingly, Staff found that the various DA services being offered in the state “are highly substitutable to one another, especially when many of them are free.”¹⁶⁷

10. No other party addressed this specific issue on a substantive basis in its testimony. In its surrebuttal testimony, OPC referenced the Commission’s prior denial of competitive classification based on DA being “closely linked to the competitiveness of basic service.”¹⁶⁸ And the CLECs merely reiterated this bare claim in their position statement. But no party offered any evidence to support the existence of such a “link” nor did anyone offer any evidence in opposition to a grant of competitive classification for DA services.

11. OPC and the CLECs’ unsupported claim completely ignores the voluminous evidence of competitive alternatives available to SBC Missouri’s DA services. Both SBC Missouri and Staff showed that there are a multitude of competing providers of DA services which are available to end users which do not depend on the end user’s choice of a local carrier. OPC and the CLECs completely disregard this evidence. OPC and the CLECs’ position also ignores the fact that the FCC has found the DA services marketplace to be competitive.¹⁶⁹ In addition, OPC and the CLECs’ position

¹⁶⁶ Ex. 18, Cecil Rebuttal, pp. 7-8.

¹⁶⁷ Ex. 18, Cecil Rebuttal, pp. 8-9.

¹⁶⁸ Ex. 28, Meisenheimer Surrebuttal, p. 4.

¹⁶⁹ Initial Brief of SWBT, p. 80.

ignores the undisputed evidence that SBC Missouri's DA services have been directly impacted by the increasingly competitive DA marketplace.

12. In its position statement, OPC states that it does not believe SBC Missouri has demonstrated that these Directory Assistance Services are subject to effective competition.” However, OPC fails to identify how SBC Missouri's evidence of effective competition is lacking, if at all.

(b) **Competitive DA Providers Offer Functionally Equivalent Or Substitutable Services.**

13. The comparable alternatives discussed above and described in Ms. Moore's direct testimony in detail offer the same, and sometimes expanded functionality, as the directory assistance services provided by SBC Missouri.¹⁷⁰ For example, many wireless providers offer information services, such as directions, stock quotes, weather and traffic reports, all via their directory assistance service.¹⁷¹ Likewise, AT&T's "00" Information Service and Internet sites provide business category searches as well.¹⁷² Furthermore, the rates available from comparable, alternative service providers are competitive with SBC Missouri's rates for directory assistance services.¹⁷³ Many of the alternatives described above and in more detail in Ms. Moore's direct testimony are not regulated by the Commission. However, all of the alternatives described above and in more detail in Ms. Moore's direct testimony are available in every SBC Missouri exchange throughout the state of Missouri.¹⁷⁴

¹⁷⁰ Ex. 5, Moore Direct, p. 14.

¹⁷¹ Id.

¹⁷² Id.

¹⁷³ Id. See Schedule 8.

¹⁷⁴ Ex. 5, Moore Direct. P. 15.

(c) **Granting Competitive Classification Will Advance The Purposes And Policies Of Chapter 392.**

14. The FCC on numerous occasions has found the DA services marketplace to be competitive. In its UNE remand order, the FCC removed directory assistance services from the list of unbundled network elements on the basis that such services were available from other providers on a competitive basis. The FCC stated that “competition in a provision of... directory assistance has existed since divestiture...[s]uch competition has accelerated in the directory assistance market as a result of the Supreme Court’s decision to allow copying of carriers’ white page listings in their entirety.”¹⁷⁵

15. Similarly, in its declaratory ruling on Qwest’s provision of national directory assistance service, the FCC found that there were a large and increasing number of players in the directory assistance services market. In particular, when the FCC evaluated Qwest’s request for forbearance from federal 272 separation requirements for non-local directory assistance, the FCC found that the company faced competition from numerous sources, including CLECs, AT&T, and MCI WorldCom.¹⁷⁶ And in its Notice of Proposed Rulemaking regarding the provision of directory listing information under the Act, the FCC again stated that “the provision of directory assistance has become increasingly competitive.”¹⁷⁷

16. Directory assistance services have been officially recognized as being competitive, deregulated, nonbasic or have been granted complete pricing flexibility in at

¹⁷⁵ Feist Publications, Inc. vs. Rural Service Co., 499 US 340 (1991).

¹⁷⁶ Ex. 5, Moore Direct, p. 16, citing In the Matter of Petition of US West Communications, Inc. for a declaratory ruling regarding the provision of national directory assistance, petition of US West Communications, Inc. for forbearance, CC Docket No. 97-172; the use of N11 codes and other abbreviated dialing arrangements, CC Docket No. 92-105, September 27, 1999.

¹⁷⁷ Id. citing FCC Notice of Proposed Rulemaking, CC Docket No. 99-273, September 9, 1999.

least 33 states. These include Alabama, Arizona, Arkansas, Colorado, Delaware, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Ohio, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Dakota, Ohio, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin and Wyoming.¹⁷⁸

17. The fact that SBC Missouri's prices are constrained by regulation limits its ability to respond to changes in customer demands and to changing competitive markets. Customers will be the benefactors if competitive classification for SBC Missouri's directory assistance services is granted. With such classification, for its DA services, SBC Missouri will be able to respond more quickly to the competitive marketplace, offering new products when appropriate at prices in line with those offered by its competitors. Such an environment will allow for unfettered competition to drive product innovation. All competitors in today's competitive market should be permitted to operate on a level playing field, thus allowing for open competition to drive product innovation.¹⁷⁹

(d) **No Material Economic Or Regulatory Barriers To Entry Exist In The DA Services Market.**

18. The Directory Assistance services marketplace is characterized by the lack of market entry barriers.¹⁸⁰ Directory listings are available to local exchange and toll carriers on reasonable and nondiscriminatory terms under Section 251(B)(3) of the

¹⁷⁸ Exhibit 5, Moore Direct, p. 18.

¹⁷⁹ Exhibit 5, Moore Direct, p. 20.

¹⁸⁰ Ex. 5, Moore Direct, p. 5.

federal Telecommunications Act of 1996.¹⁸¹ All directory assistance service providers obtain listings from a variety of sources, including incumbent LECs such as SBC Missouri, in order to maintain accurate databases.¹⁸² The sources include the providers' own listings, listings of other local exchange companies, and commercially available listing information. Providers of directory assistance services and other functionally equivalent services are able to freely copy white pages directories without copyright restrictions.¹⁸³

19. In short, SBC Missouri's residential and business customers throughout SBC Missouri's Missouri exchanges have multiple alternatives, substitutable in both function and price, to using SBC Missouri's directory assistance services. As a result, SBC Missouri's directory assistance services are subject to "effective competition" as defined in Section 386.020(13), RSMo 2000 and these services should be declared to be competitive pursuant to Section 392.245.5 RSMo 2000.

Conclusion

The Commission has examined the status of competition within each SBC Missouri exchanges. The Commission considered all the relevant factors set out in Section 386.020 (13), and the purposes of chapter 392, is set out in Section 392.185, and made the above findings and conclusions. Therefore, the Commission, in accordance with those findings and conclusions, will designate certain SBC Missouri services in its Missouri exchanges as competitive.

¹⁸¹ Provision of Directory Listing Information under the Telecommunications Act of 1934, as amended, First Report and Order, FCC 01-27, par. 10, January 23, 2001.

¹⁸² Ex. 5, Moore Direct, p. 6.

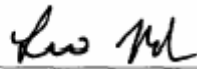
¹⁸³ Feist Publications, Inc., v. Rural Service Co., 499 U.S. 340 (1991).

IT IS THEREFORE ORDERED:

1. That the core business switched services (including high capacity services) and line related services of SBC Missouri in all SBC Missouri exchanges are classified as competitive.
2. That the Plexar services of SBC Missouri in all SBC Missouri exchanges are classified as competitive.
3. That the residential and line related services of SBC Missouri in all SBC Missouri exchanges are classified as competitive.
4. That the directory assistance services of SBC Missouri in all SBC Missouri exchanges are classified as competitive.
5. That any motion not previously ruled on is denied and any objection not previously ruled on is overruled.
6. That this Report and Order shall become effective February 28, 2002.

Respectfully submitted,

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

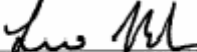
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by electronic mail on February 18, 2005.



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