BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service after the Passage and Implementation of the Telecommunications Act of 1996.	))))	Case No. TO-99-483

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
CASS COUNTY TELEPHONE COMPANY ET AL.

COME NOW Cass County Telephone Company et al.[1] ("Cass County"), pursuant to the request for proposed Findings of Fact and Conclusions of Law by the Missouri Public Service Commission ("Commission"), and state as follows:

FINDINGS OF FACT

1. As the Kansas City, St. Louis, and Springfield metropolitan areas have grown, the telephone companies serving those areas have been pressured by their customers to provide flat rate, expanded local calling plans. For over twenty-five years, the Commission and the telecommunications industry have responded to economic development and public interest concerns by developing, implementing, and refining expanded calling plans.

2. In the mid-1970's, the Commission adopted an Extended Area Service ("EAS") Plan in order to recognize the calling patterns of Missouri customers. Specifically, the Commission recognized that school districts, places of employment, medical facilities, places of worship, and

[1] Cass County Telephone Company et al. includes the following incumbent local exchange companies: ALLTEL Missouri, Inc., Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Grand River Mutual Telephone Corporation, Lathrop Telephone Company, Green Hills Telephone Company, and Orchard Farm Telephone Company.

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shopping facilities often crossed exchange boundaries. The Commission observed that the calling patterns of businesses also crossed exchange boundaries. Accordingly, the Commission implemented the EAS plan in order to meet the economic development and public interest needs of Missouri customers.

3. The Commission revisited Missouri's calling scope issues about ten years later, and it withdrew the prior EAS rule and ordered the industry to implement an experimental Extended Measured Service ("EMS") plan.[2] A new case was opened to investigate the experimental EMS, and it was in this case that the Commission ordered the first incarnation of Community Optional Service ("COS").[3] The industry also proposed and attempted to implement an Extended Local Calling Scope ("ELCS") program.[4]

4. In 1991, the Commission continued to address Missouri calling scope issues by initiating a task force representing various communities, state agencies, and company officials. This task force developed a report, and in 1992 the Commission held hearings in Case No. TO-92-306. On December 23, 1992, the Commission issued its *Report and Order* which revised the COS plan and established the Metropolitan Calling Area ("MCA") Plan and the Outstate Calling Area ("OCA") Plan.[5] The Commission designated specific geographic areas where the MCA plan

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[2] See *In the Matter of the Investigation into All Issues Concerning the Provision of Extended Area Service (EAS) in the State of Missouri under Commission Rule 4 CSR 240-30.030*, Case No. TO-86-8, *Report and Order*, Mar. 20, 1987.

[3] See *In the Matter of the Investigation of Experimental Extended Measured Service (EMS)*, Case No. TO-87-131, *Report and Order*, Dec. 29, 1989.

[4] *Id.*

[5] *In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges*, Case No. To-92-306, *Report and Order*, Dec. 23, 1992.

would be offered, and it established a uniform set of rates for MCA service based upon the "tier" where the subscriber resided rather than the subscriber's local service provider.[6]

5. The Commission recognized MCA as a local service offering, while COS and OCA were classified as toll offerings. The form of intercompany compensation was also differentiated. MCA was provided under a "Bill and Keep" compensation arrangement where each company billed its own end user customers rather than creating billing records and billing other companies for interexchange traffic.[7] (COS and OCA, on the other hand, were recognized as toll services and were therefore access-based compensation plans.)

6. Since its implementation, MCA service has met the public interest, and customer complaints about calling scopes have been greatly reduced. Moreover, the companies involved in the implementation of the MCA plan have continued to cooperate in accordance with the Commission's directives.

7. In 1996, however, federal and state telecommunications legislation greatly changed the landscape of the telecommunications industry in Missouri. This legislation allowed for competition in the local telecommunications services market, and the entrance of new telecommunications providers lead to confusion about the availability of the MCA plan. On July 16, 1998, two small independent telephone companies filed a motion to clarify the situation. The

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[6] *Id.* at pp. 7-8; Attachments 1-6.

[7] *Id.* at pp. 28-29.

Commission opened Case No. TO-98-379 for this purpose.[8]

8. On April 22, 1999, the Commission's Staff ("Staff") filed a motion requesting that the Commission establish a case for the purpose of investigating "certain aspects surrounding the provisioning of metropolitan calling area service after the passage and implementation of the Telecommunications Act of 1996." In response, the Commission opened the present case.

9. The evidence in this case indicates that the MCA plan ordered by the Commission in Case No. TO-92-306 is still in the public interest. The evidence also indicates that Missouri telephone customers in the three major metropolitan areas of this state want MCA service and find it a valuable feature. No party has proposed eliminating the MCA plan.

10. CLEC participation in the MCA Plan. The MCA plan was established before the entry of Competitive Local Exchange Companies ("CLECs") into Missouri. Although CLECs have developed plans that are similar to MCA and have resold the present MCA service, there has been no Commission order that requires or permits CLECs to participate in the MCA plan. The evidence in this case indicates that the participation of CLECs in the MCA plan will serve the public interest. As explained more fully below, the Commission finds that CLECs should be allowed to participate in the MCA plan on a voluntary basis under the same rates, terms, and conditions that were ordered by the Commission for the Incumbent Local Exchange Companies ("ILECs") in Case No. TO-92-306.

11. Geographic Calling Scope. When the MCA plan was established, the calling scopes

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[8] *In the Matter of MoKan Dial, Inc. and Choctaw Telephone Company's Joint Request for Clarification and Determination of Certain Aspects as to the Continued Provisioning of MCA Service*. This case was later closed and the present case – Case No. TO-99-483 – became the lead case for the resolution of MCA plan issues.

and the cost of transporting services from those exchanges were carefully examined based on existing networks and revenue streams that they replaced. The MCA plan's present calling scope is reasonable and continues to serve the public interest.

12. CLECs are free to offer their own expanded calling offerings in addition to the existing MCA calling plan, and the CLECs are willing to pay the appropriate access charges for expanded calling that exceeds the boundaries of the current MCA plan. For example, Gabriel acknowledges that it must pay terminating access charges to ILECs in adjoining areas for any toll-free calling outside the scope of the MCA plan. Similarly, Sprint recognizes that if CLEC calling scopes differ from the present MCA calling scope, then other LECs should not be required to treat their outbound calls as local calls for any area larger than the Commission defined MCA area. Public Counsel commented that no CLEC or ILEC should be required to accept a call under any expanded calling plans as a non toll call if it was a toll call under the MCA.

13. In order to prevent any confusion within the telecommunications industry, the Commission will clarify that any expanded calling to areas outside the scope of the present MCA plan is subject to the appropriate terminating access charges. This is true if either a CLEC or an ILEC choses to expand the local calling scope for its customers beyond the current bounds of the MCA plan.

14. To prevent any confusion for Missouri's telephone customers in the metropolitan areas, the Commission finds that any plans with calling scopes that differ from the present MCA calling scopes should not be called "Metropolitan Calling Area" or "MCA" plans. The CLECs all appear to agree with this condition.

15. Intercompany Compensation. In Case No. TO-92-306, the Commission ordered

that intercompany compensation for MCA traffic occur on a "bill and keep" basis. Under the bill and keep method, carriers do not reimburse each another for traffic within the MCA. Rather, carriers bill their own end user customers for MCA service and keep these MCA revenues. The bill and keep method of intercompany compensation has worked since MCA service was implemented, and it continues to function well today.

16. Abandoning the MCA plan's current bill and keep intercompany compensation method in favor of usage based reciprocal compensation agreements will introduce upward pressure on rates for MCA service because the cost of providing the service will increase. This will ultimately threaten the viability of the MCA plan.

17. Similarly, the imposition of a transiting charge on MCA traffic will also produce upward pressure on rates for MCA service because the cost of provisioning the service will increase. This will also threaten the viability of the MCA plan.

18. The MCA plan has used a bill and keep method since its outset, and bill and keep is a competitively neutral method of intercompany compensation that will help ensure the continued provision of MCA service. Therefore, the Commission finds that the bill and keep method of intercompany compensation is best suited to preserve MCA service, and the use of bill and keep intercompany compensation is necessary to ensure the continued quality of telecommunications services in Missouri.

19. No showing of a traffic imbalance between carriers has been made in this case that would preclude the Commission from ordering that MCA service continue to be provisioned on a bill and keep basis. None of the CLECs in this case have presented any evidence of a traffic imbalance even though intercompany compensation has been an issue in this case from its outset.

In fact, it is unlikely that the CLECs could produce any evidence that a traffic imbalance exists given the fact that few, if any, of the CLECs appear to be tracking, recording, or reporting their traffic within the MCA.

20. Bill and keep intercompany compensation is the most appropriate form of intercompany compensation for the MCA plan at this time. The implementation of alternative intercompany compensation could make the cost of providing MCA service so high as to make the provision of the service impossible under current Commission rules. Anything other than bill and keep intercompany compensation is likely to lead to the termination of the MCA plan.

21. MCA NXX Codes. Although MCA service uses a greater number of NXX codes than other services, at this time the public interest in preserving a very popular and successful expanded calling plan outweighs the use of extra codes. NXX code depletion associated with the MCA plan may also be mitigated by the advent of 1000s block number pooling.

22. This proceeding was originally initiated as a result of confusion as to how NXX codes were to be processed. The Local Exchange Routing Guide ("LERG") tables alone will not solve the administrative problems because many companies receive the LERG table updates at different intervals (e.g. monthly, quarterly, or yearly). In addition, these tables may be abused if not properly overseen.

23. The central administration of MCA NXXs by a neutral third party will facilitate CLEC participation in the MCA plan. It will allow for fewer customer complaints, greater customer satisfaction, and reduced confusion among the industry. The Commission will approve any new MCA NXX's, and the Commission will know whether a CLEC has filed appropriate MCA tariffs and is properly providing MCA service. Therefore, it will be appropriate for the

Commission's Staff to perform the function of administering MCA NXX codes and notifying all parties participating in the MCA of new NXX codes that qualify for MCA service.

24. Pricing of MCA Service. MCA service is a Commission-mandated service that has not been cost based, and ILECs have been required to offer the service at set prices. Although the service is offered over the toll network, access rates are not imposed because retail rates would not support the access fees.

25. CLECs are free to develop and price their own expanded calling plans above and beyond the MCA plan. However, allowing CLECs to have pricing flexibility while requiring ILECs to conform to Commission mandated rates would provide CLECs with a regulatory-imposed competitive advantage, and it would endanger the viability of the MCA plan.

26. The rates for MCA service ordered in Case No. TO-92-306 continue to be just and reasonable. If a CLEC opts to provide MCA service, then it must offer MCA service under the same rates that were ordered by the Commission in Case No. TO-92-306. Uniform prices for MCA service will ensure that neither CLECs nor ILECs obtain a financial or competitive advantage. Thus, uniform prices will level the competitive playing field between competing providers of local exchange service without jeopardizing the continued existence of the MCA plan. Uniform prices will also eliminate the possibility of predatory pricing by large CLECs.

27. MCA Plan Restrictions. Except for the prohibition against resale, existing tariff restrictions on the MCA Plan should be continued (*e.g.* payphone restrictions). The existing tariff restrictions are lawful and reasonable, and there has been no evidence in this case that would allow the Commission to find otherwise.

28. So long as the existing bill and keep intercompany compensation method is

maintained, there is no reason why MCA subscribers cannot use MCA service for purposes of accessing the Internet.

29. Tracking and Recording of MCA Traffic. The evidence in this case indicates that CLECs are not doing a very good job of tracking, recording, and reporting their traffic. If CLECs choose to participate in the Commission's MCA plan, then the CLECs must create the necessary records that will allow Missouri's small ILECs to distinguish between MCA and non-MCA traffic sent by the CLEC to the small ILEC. Most of the CLECs concede that they will be responsible for paying terminating access charges on non-MCA traffic, yet the small ILECs have no way to bill for this traffic if the CLECs do not track the traffic and create the appropriate records. Therefore, CLECs must: (1) separately track and record MCA and non-MCA traffic, and (2) send reports to the small ILECs for all non-MCA traffic. Alternatively, the CLECs may choose to separately trunk their MCA traffic. Either of these alternatives will help to assure that Missouri's small ILECs are compensated for traffic that CLECs send to the small ILECs' non-MCA customers.

30. Staff's MCA-2 Plan. Before any changes are made to the existing MCA plan, the industry should develop data that would allow the Commission to understand the possible financial considerations and other implications. Because the essential data regarding the potential revenue impacts upon each ILEC end-user is not yet available, Staff's MCA-2 Plan cannot be adopted at this time. The parties all appear to agree that any modifications to the MCA plan such as Staff's proposed MCA-2 plan should not be implemented at this time.

31. Revenue Neutrality. Revenue neutral calculations were made when the MCA plan was implemented, and these calculations were used to develop the current optional rates to be

charged for MCA service. Any modifications to the MCA Plan should be done on a revenue neutral basis as well. Factors to be considered as a part of any revenue neutral calculation include changes in toll, access, and/or MCA revenues due to changes in calling scopes (i.e. local vs. toll) as well as changes in subscribership, and non-recurring costs associated with implementing changes to the MCA service (e.g. training costs, customer notice costs, billing system change costs, translation costs). Specific rate changes to maintain revenue neutrality should be made on an individual company basis.

CONCLUSIONS OF LAW

1. State Law. Under the provisions of Section 392.240 RSMo 1994, the Commission has authority over the rates and charges that are charged or collected by telecommunications companies operating in Missouri. Under Section 392.470 RSMo 1994, the Commission has the authority to impose conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest. Under Section 392.361 RSMo 1994, the Commission has the authority to require competitive telecommunications companies to comply with any conditions reasonably made necessary to protect the public interest.

2. Federal Law. Section 253(b) of the Telecommunications Act of 1996 ("the Act") authorizes the Commission to impose, on a competitively neutral basis, requirements necessary to preserve and advance the public welfare, ensure continued quality of telecommunications services, and safeguard the rights of consumers. Section 251(d)(3)(A) of the Act allows the Commission to enforce of any regulation, order, or policy that establishes access and interconnection obligations of local exchange carriers. Section 252(e)(3) of the Act allows the Commission to

establish or enforce other requirements of state law in its review of interconnection agreements.

3. The Commission has found in this case that the existing MCA plan continues to meet the expanded calling scope needs and desires of many customers in Missouri's three major metropolitan areas. There has been unanimous agreement among the parties that the MCA plan should continue. The Commission has found that the MCA plan is in the public interest and the rates are just and reasonable. The Commission concludes that allowing CLECs to participate in the MCA on a voluntary basis is in the public interest so long as CLECs participate under the same rates, terms, and conditions as ordered by the Commission in Case No. TO-92-306.

4. The Commission's Authority over Interconnection Agreements. Some parties have raised the issue of the Commission's authority over existing and future interconnection agreements. Because CLECs will be allowed to voluntarily participate in the MCA plan under the same rates, terms, and conditions as ordered by the Commission, it is not necessary to address the terms of existing or future interconnection agreements. Those CLECs that wish to offer MCA service must do so under the same rates, terms, and conditions as ordered by the Commission in Case No. TO-92-306. Specifically, CLECs that choose to offer MCA service must offer the same geographic calling scope, at the same prices, and under the same bill and keep intercompany compensation method.

5. Those parties that have argued about the Commission's authority over contracts and private agreements are missing the point. Two regulated utilities cannot contract around an order from the Commission, and the terms of a private agreement cannot override the terms of a pre-existing, Commission-mandated calling plan. Under Section 392.240 RSMo 1994, the Commission has authority over the rates and charges that are charged or collected by

telecommunications companies operating in Missouri. Moreover, a Commission order will supercede the terms of a contract agreement between two telephone companies as to the service rates they charge each other. *Oak Grove Home Telephone Co. v. Round Prairie Telephone Co.*, 209 S.W. 552, 553[4] (Mo. Ct. App. 1919).

6. Bill and Keep Intercompany Compensation. The Act expressly allows the Commission to order that intercompany compensation for MCA service continue on a bill and keep basis. However, some parties have questioned the authority of the Commission to issue such an order. These arguments confuse the elements of the FCC's rule and the burden on the parties. The FCC explains:

> ***States may, however, apply a general presumption that traffic between carriers is balanced and is likely to remain so. In that case, a party asserting imbalanced traffic arrangements must prove to the state commission that such imbalance exists.*** Under such a presumption, ***bill-and-keep arrangements would be justified unless a carrier seeking to rebut this presumption satisfies its burden of proof.*** We also find that states that have adopted bill-and-keep arrangements prior to the date this order becomes effective, either in arbitration or rulemaking proceedings, may retain such arrangements, unless a party proves to the state commission that traffic is not roughly balanced.

First Report and Order, CC Docket Nos. 96-98, 95-185, para. 1113. (emphasis added) Thus, this Commission may presume that traffic is balanced and is likely to remain so. None of the CLECs in this case have presented evidence to the contrary even though intercompany compensation has been an issue in this case from the outset. In fact, it is unlikely that the CLECs could produce any evidence of a traffic imbalance given the fact that the CLECs do not appear to be tracking, recording, or reporting MCA traffic. Thus, no showing has been made in this case that would prevent the Commission from ordering that MCA traffic continue to be exchanged on a bill and keep basis, and the Commission will order that MCA traffic continue on a bill and keep basis. The Commission will also clarify that no transiting charges are to be imposed on MCA traffic.

7. Section 253(b) of the Act authorizes the Commission to impose, on a competitively neutral basis, requirements necessary to preserve and advance the public welfare, ensure continued quality of telecommunications services, and safeguard the rights of consumers. Requiring all telecommunications providers to use the same bill and keep intercompany compensation mechanism is a competitively neutral requirement that will ensure the continued provision of MCA service. Preserving the present MCA service will help to ensure the continued quality of telecommunications services and safeguard the rights of consumers. Therefore, the Missouri Commission has the authority to order that all CLECs that choose to participate in the MCA plan must use the same bill and- keep intercompany compensation mechanism that is used by the ILECs today.

WHEREFORE, Cass County et al. respectfully request that: (1) the Commission adopt these proposed Findings of Fact and Conclusions of Law, and (2) issue such other orders as are appropriate in the circumstances.

Respectfully submitted,

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Certificate of Service

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