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July 17, 2000

Dale Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Truman State Office Building, 5th Floor
301 West High Street
Jefferson City, Missouri 65101-1517

Re: Case No. TO-99-483

Dear Mr. Roberts:

Enclosed please find for filing with the Commission an original and nine copies of the following:

1. Reply Brief of Gabriel Communications of Missouri, Inc.
2. Reply Brief of BroadSpan Communications, Inc.
d/b/a Primary Network Communications, Inc. and Proposed Report
and Order;
3. Reply Brief of WorldCom Companies and Proposed Report
and Order; and
4. Proposed Report and Order of Gabriel Communications of
Missouri, Inc.

Upon your receipt, please file stamp the extra copies received and return to the undersigned. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Carl J. Lumley

CJL:dn
Enclosures
cc. Parties of Records (W/Enclosures)

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BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of an Investigation for the Purpose	)	
of Clarifying and Determining Certain Aspects	)	
Surrounding the Provisioning of Metropolitan	)	Case TO-99-483
Calling Area Service after the Passage and	)	
Implementation of the Telecommunications	)	
Act of 1996.	)	

GABRIEL COMMUNICATIONS OF MISSOURI, INC.'S
PROPOSED REPORT AND ORDER

PROCEDURAL HISTORY

On April 22, 1999, the Staff of the Missouri Public Service Commission filed with the Commission a pleading entitled "Motion to Open Docket and Set Technical Conference". Staff's Motion recited that on March 9, 1998 MoKan Dial, Inc. (MoKan) and Choctaw Telephone Company (Choctaw) jointly had filed an application (Case No. TO-98-379) to determine certain aspects of the continued provisioning of Metropolitan Calling Area (MCA) service after the passage of the Telecommunications Act of 1996. Staff's Motion recited a list of fourteen MCA-related issues that had arisen in the MoKan/Choctaw case, all of which issues were common to and would affect Missouri interexchange and local exchange telecommunications companies in the provisioning of MCA service in metropolitan areas throughout the State. Staff's Motion requested that the Commission establish a new docket to investigate certain aspects surrounding the provisioning of MCA service throughout the State and that notice be given to all Missouri interexchange and local exchange telecommunication companies. The Staff also requested that the current parties to Case No. TO-98-379 be made parties to the new case.

By Order dated May 26, 1999, the Commission, in response to Staff's Motion, established this case for the purpose of investigating certain aspects surrounding the provisioning of MCA

service after the passage and implementation of the Telecommunications Act of 1996. The Commission ordered that all parties to Case No. TO-98-379¹ be made parties without the need to intervene. Those parties were:

Choctaw Telephone Company
MoKan Dial, Inc.
Southwestern Bell Telephone Company
Cass County Telephone Company
Citizens Telephone Company of Higginsville, Missouri, Inc.
Green Hills Telephone Corporation
Lathrop Telephone Company
Orchard Farm Telephone Company
Sprint Missouri, Inc., d/b/a Sprint
Sprint Spectrum LP d/b/a Sprint PCS
AT&T Communications of the Southwest, Inc.
TCG St. Louis, Inc.
TCG Kansas City, Inc.
Gabriel Communications, Inc.
AT&T Wireless Services, Inc.

On April 30, 1999, MCI Telecommunications Corporation (MCI) and MCImetro Access Transmission Services, LLC (MCImetro), in anticipation of the Commission establishing this case, filed their requests to participate without intervention. The Commission granted their applications in its Order dated May 26, 1999.² In that same Order, the Commission also directed that notice be given to all interexchange and local exchange telecommunication companies and required any interested parties to file applications to intervene or to participate without intervention no later than June 25, 1999.

Sprint Communications Company L.P. (Sprint), BroadSpan Communications, Inc. d/b/a Primary Network Communications (BroadSpan), ALLTEL Missouri, Inc. (ALLTEL), GTE

¹ Case No.: TO-98-379 was formally closed on December 8, 1999 when MoKan and Choctaw filed a Notice of Dismissal of their Joint Application.

² By Order dated May 9, 1999, the Commission granted the motion of MCI WorldCom Communications, Inc. to substitute for MCI WorldCom Network Services, Inc., f/k/a MCI Telecommunications Corporation.

Midwest Incorporated (GTE), GTE Communications Corporation (GTECC), Alma Telephone Company, Chariton Valley Telephone Corporation, Mid-Missouri Telephone Company, Northeast/Modern Missouri Rural Telephone Company, Peace Valley Telephone Company, Inc., Grand River Mutual Telephone Corporation (Grand River), and Birch Telecom of Missouri, Inc. filed timely applications to intervene. There were no objections to any of the applications to intervene or participate and all were granted by Order of the Commission on July 12, 1999. Intermedia Communications, Inc. filed an Application to Intervene Out of Time on November 5, 1999, and without objection, the Commission granted its intervention by Order dated November 30, 1999. On December 28, 1999, McLeod USA Telecommunication Services, Inc. (McLeod) filed its Application to Intervene Out of Time. On January 5, 2000, Nextlink Missouri, Inc. (Nextlink) filed its Application to Intervene Out of Time. No objections to these interventions were filed and by Order dated January 27, 2000, the Commission granted the interventions of McLeod and Nextlink.

On August 4, 1999, the Staff of the Missouri Public Service Commission (Staff) filed a Status Report indicating that the parties had met for a technical conference on July 20, 1999 and agreed to continue the technical conference to August 24, 1999. By Order dated August 20, 1999, the Commission ordered the Staff to file a Status Report regarding the progress of the technical conference no later than September 6, 1999. The Commission also ordered the parties to file a proposal procedural schedule by September 6, 1999. Both filings were made.

On October 8, 1999, Intervenors AT&T Communication, AT&T Wireless, ALLTEL Missouri, Grand River Mutual Telephone Company, Sprint Missouri, Staff, the Office of the Public Counsel, Gabriel Communications and Birch Telecom filed a Non-unanimous Stipulation and Agreement (Stipulation) which proposed to permit, on an interim basis, a competitive local

exchange company (CLEC) to join the Metropolitan Calling Area (MCA) plan pending a final decision by the Commission in the instant case. Southwestern Bell Telephone Company (SWBT) filed an objection to the stipulation. The Mid-Missouri Group of Local Exchange Companies (MMG) filed its partial opposition to the stipulation. After due consideration, the Commission, by Order dated November 30, 1999, rejected the proposed Stipulation. In that same Order the Commission adopted the procedural schedule previously proposed by the parties.³

On January 6, 2000, a pre-hearing conference was held. In an Order dated January 27, 2000, the Commission, on motion by SWBT, adopted a protective order for the case. In that same Order, the Commission also recognized a name change for a group of local exchange telephone companies from Mid-Missouri Group to Missouri Independent Telephone Group.⁴

By Order dated February 29, 2000, the Commission directed that local public hearings be scheduled as follows:

March 27, 2000	Springfield, Missouri
April 10, 2000	Clayton, Missouri
April 10, 2000	Chesterfield, Missouri
April 12, 2000	Kansas City, Missouri
April 12, 2000	Lees Summit, Missouri

In compliance with the Commission's procedural schedule, the parties filed prefiled Direct Testimony on February 1, 2000, Rebuttal Testimony on March 1, 2000, and Surrebuttal Testimony on March 28, 2000. By Order dated May 9, 1999, the Commission granted Motions to File Testimony Out of Time submitted by McLeod USA Telecommunications Services, Inc.,

³ On December 9, 1999, AT&T filed an Application for Rehearing or Reconsideration. On December 13, 1999, the Mid-Missouri Group filed Suggestions in Opposition to AT&T's Application for Rehearing/Reconsideration. On December 17, 1999, Southwestern Bell Telephone Company also filed its opposition. On May 9, 1999, the Commission issued its order denying AT&T's Application for Rehearing or Reconsideration.

⁴ Alma Telephone Company, Chariton Valley Telephone Corporation, Mid-Missouri Telephone Company, Northeast/Modern Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

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. On April 11, 2000, the parties filed a list of issues and on April 25, 2000, the parties submitted their position statements on the list of issues.

On April 21, 2000, the Staff filed a motion requesting that it be allowed to file Supplemental Direct Testimony for William L. Voight and Amonia L. Moore. On April 25, 2000, SWBT filed a response to Staff's Motion stating that it had no objection to Staff's motion, but requested that all parties be allowed to submit Additional Rebuttal Testimony Out of Time in response to Staff's Supplemental Direct Testimony. No other responses to Staff's motion were filed. By Order dated May 4, 2000, the Commission granted Staff's Motion to File Supplemental Direct Testimony and permitted all parties to file Supplemental Surrebuttal Testimony in response thereto by May 11, 2000. SWBT did so.

The Commission held the public hearings as scheduled and held an evidentiary hearing on May 15-19, 2000 at its offices in Jefferson City, Missouri. The hearing transcripts were filed and the parties filed their Initial Briefs on June 30, 2000 and Reply Briefs and Proposed Orders on July 17, 2000.

Exhibits 51, 53HC, 57, 71 and corrections to the testimony of Staff witness Amonia L. Moore, Exhibit No. 67HC, were filed as late exhibits. No objections were filed. SWBT filed a response to Exhibit 67HC, but did not object to its admission. Therefore, Exhibits 51, 53HC, 57, 67HC and 71 are received and made a part of the record of this matter.

MOTION TO STRIKE

On July 10, 2000 Cass County Telephone Company, et al. (Cass) filed a Motion to Strike (1) the last three sentences of the first full paragraph on page ten of the Initial Brief of Intermedia Communications, Inc. (Intermedia) and (2) "Attachment I" to Intermedia's Initial Brief. Cass averred that "Attachment I" was not included in any of Intermedia's prefiled testimony nor was it ever introduced into evidence at hearing. On July 14, 2000 Intermedia filed its response. The Commission Rules provide: "No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the Commission." 4 CSR 240-2.130(8). The Motion to Strike filed by Cass shall be granted. Accordingly, the last three sentences of the first full paragraph on page ten of Intermedia's Initial Brief and "Attachment I" to Intermedia's Initial Brief are stricken.

MOTION TO ESTABLISH CASE

On June 6, 2000, the Public Counsel filed a motion to establish a case to consider modification to the MCA Plan. That motion is granted herein.

Discussion

The Issues:

By Order dated May 26, 1999, the Commission established this case for the purpose of investigating provisioning of MCA service after the passage and implementation of the Telecommunications Act of 1996. Pursuant to Commission practice, and in compliance with the Commission's orders, the parties submitted a list of issues for determination by the Commission:

- a. Are CLECs currently included in the MCA Plan, and, if not, should CLECs be permitted/required to participate in the MCA Plan?

All parties agree that CLECs should be able to participate in the MCA Plan on a going forward basis. The incumbent LECs (ILECs) contend that CLECs are not currently participating. The CLECs, Staff and Public Counsel contend that the ILECs are currently unlawfully interfering with CLEC participation in the MCA and that the Commission needs to stop such interference immediately to restore the full operation and benefits of the Plan.

b. If permitted to participate in the MCA Plan, should CLECs be required to follow the parameters of the MCA Plan with regard to (a) geographic calling scope, (b) bill and keep inter-company compensation, (c) use of segregated NXXs for MCA service, and (d) price?

Most of the ILECs generally contend that CLECs should have to offer MCA service on exactly the same terms and conditions as the ILECs. The other parties generally contend that CLECs should continue to have the flexibility afforded them as competitive carriers. There does not appear to be a real dispute regarding calling scopes, with all parties agreeing that CLECs should offer the same calling scope for MCA service as the ILECs and that CLECs should also be able to offer additional outbound toll-free calling in conjunction with MCA service, but under a different service name, as the ILECs already do. The other issues are discussed below.

c. Should there be any restrictions on the MCA Plan (for example resale, payphones, wireless, internet access, etc.)?

A few parties seek restrictions on the use of MCA service for calling wireless carriers and internet service providers. The other parties oppose any new restrictions.

d. What pricing flexibility should ILECs and/or CLECs have under the MCA Plan?

Staff, Public Counsel, the CLECs, and several other parties contend that CLECs should have pricing flexibility as competitive companies. Public Counsel suggests that current ILEC

MCA prices should serve as a cap. The others contend such a cap is not permitted, but the ILEC prices will serve as such a cap for all practical purposes. Most of the ILECs assert that the CLECs should only have the same flexibility as the ILECs.

e. How should MCA codes be administered?

Nearly all parties agree that separate NXX codes are still required for the provision of MCA service. Staff would like to avoid the continued use of separate NXX codes. Some parties advocate a verified notification procedure for identifying MCA NXX codes, others advocate use of the LERG, and others seek third party code administration.

f. What is the appropriate inter-company compensation between LECS providing MCA services?

Staff and the CLECs propose that inter-company compensation between carriers operating in adjoining areas should continue to be handled on a bill-and-keep basis, and that reciprocal compensation should continue to be used between carriers competing against each other in the same service areas. Other parties propose to override interconnection agreements and use bill-and-keep arrangements for all MCA traffic.

g. Is the compensation sought in the proposed MOU appropriate?

SWBT is the only party that defends the proposed MOU compensation. Other parties that take a position oppose SWBT's proposal as an unlawful surcharge upon delivery of local dialing parity and a competitive loss recovery device.

h. Should the MCA Plan be retained as is, modified (such as Staff's MCA-2 proposal) or eliminated?

All parties agree that the MCA Plan should be retained as a result of this case. Some parties propose commencement of another proceeding to investigate future modifications to the Plan.

i. If the current MCA Plan is modified, are ILECs entitled to revenue neutrality? If so, what are the components of revenue neutrality and what rate design should be adopted to provide for revenue neutrality?

Several ILECs indicate that revenue neutrality would be appropriate if the Plan were to be modified in the future. Only SWBT claims any revenue neutrality is required in this case, and it proposes the MOU surcharge be used. Other parties that take a position assert there is no need to address revenue neutrality in this case and oppose the surcharge, as indicated above.

j. Should MCA traffic be tracked and reported, and if so, how?

The small ILECs express concern about their ability to identify MCA traffic being delivered to them. The other parties generally contend that there is no need to track MCA traffic being delivered to the ILECs because it is delivered on a bill-and-keep basis.

Findings of Fact

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

a. **Are CLECs currently included in the MCA Plan, and, if not, should CLECs be permitted/required to participate in the MCA Plan?**

In 1992, the Commission established its MCA Plan to address the expanded local calling needs of consumers in the metropolitan areas of Missouri. In the Order, the Commission expressly stated its primary goal was to deliver benefits to consumers. The Plan was the Commission's creation – it was not the proposal of any particular party. The Plan required that MCA be made available by all LECs operating in specified exchanges to all customers in those exchanges. The Plan allowed toll-free calling between MCA subscribers served by different companies and, therefore, required cooperation between the involved companies in order to deliver the intended benefits to consumers. See In the matter of the establishment of a plan for expanded calling in metropolitan and outstate exchanges, Case No. TO-92-306, Report and Order, 2 MoPSC 3d 1 (1992).

Since 1992, the Commission has repeatedly acted to preserve the benefits of MCA service for Missouri consumers. For example, in 1995, when the Commission allowed Cass County Telephone Company to purchase several GTE exchanges, MCA continued to be available in those exchanges through Cass County. See 3 MoPSC 3d 313.

In 1996, Congress passed the Telecommunications Act, the Missouri Legislature passed a companion bill, and the FCC adopted various rules, to accommodate and encourage the development of competitive local telecommunications services. Thereafter, the Commission continued its efforts to preserve the benefits of MCA service. Thus, when the Commission approved the Dial US/SWBT resale agreement later that year, it expressly approved resale of MCA by CLECs. In the course of approving CLEC resale of MCA service, the Commission stated that MCA is an essential part of incumbent LECs' service to consumers that had to

continue to be available in a competitive local market. See 5 MoPSC 3d 133. In the Dial US case and the subsequent ATT/SWBT arbitration, provision of MCA by facilities-based CLECs in the near-term was taken as a given by the Commission, in large part because SWBT indicated there was no issue regarding CLEC participation in the MCA. See Id., 5 MoPSC 3d 274. Specifically, SWBT told the Commission during the AT&T arbitration that CLECs should and would be able to participate fully in the MCA Plan. (Tr. 1007-08).⁵

In 1997, when the Commission terminated COS, it did so in part based on the continued availability of MCA service to all consumers in the pertinent exchanges without regard to the identity of their local service provider. See 6 MoPSC 3d 531.

Since 1996, the Commission has issued numerous certificates of service authority to CLECs for the provision of local exchange services and interexchange services, which include MCA service. The Commission has also approved CLEC tariffs for the provision of MCA service, often at rates below those of the ILEC serving the same area and often in conjunction with additional outbound toll-free calling. Further, the Commission has approved various

⁵ As Mr. Cadieux testified:

As summarized by the Commission, SWBT contended that "if AT&T and MCI do not pay access charges, SWBT will suffer financial losses and 'be unable to effectively compete through its MCA offerings.' The current bill and keep arrangement would allow AT&T and MCI to offer MCA service to its customers without charging them the MCA additive." Arbitration Order, p. 40, Case No. TO-97-40 (December 11, 1996).

It is noteworthy that SWBT did not contend in the arbitration, as it does now, that CLECs could not participate in the MCA absent Commission action. Rather, as shown by the Commission's summary of SWBT's position set forth above, SWBT acknowledged that CLECs would be participating in the MCA and expressed concerns about its ability to compete with them. Specifically, in its Initial Brief to the Commission (citing the testimony of witness Bill Bailey), SWBT contended that "the MCA additive which is charged by SWBT is set sufficiently high that the carriers will be able to pay access charges while profitably providing 6+ to 40+ hours of MCA calls to customers while matching SWBT's MCA rates." SWBT also described AT&T and MCI as being "able to offer full termination from and to MCA areas." (SWBT Initial Brief, pages 73-74, Case No. TO-97-40).

(Cadieux Rebuttal p. 25 and 27). Mr. Kohly also testified to SWBT's representations to the Commission. (Kohly Direct, p. 9-10).

interconnection agreements that provide for reciprocal compensation for MCA traffic exchanged between the CLECs and the ILEC with whom they are directly interconnected – usually SWBT. As indicated above, in several of these interconnection agreement cases, the Commission expressly authorized CLECs to provide MCA service.

Nonetheless, despite the foregoing actions of the Commission, the ILECs have prevented the CLECs from participating fully in the MCA Plan, thereby diluting the benefits of the Commission's Plan for consumers. While the ILECs initially recognized CLECs as full MCA participants, sometime in 1997 SWBT (and as a result the other ILECs) changed practices and ceased to recognize CLECs as full MCA participants. These practices were not immediately recognized by the CLECs, but rather became apparent as the CLECs evolved from resellers to facility-based carriers (as intended by Congress) and as they expanded their operations from the mandatory MCA zones into the outer optional service tiers. Currently, CLECs cannot fully participate in the MCA because SWBT screens and blocks its customers calls, so that its MCA subscribers cannot call CLEC MCA subscribers in outer tiers on a toll-free basis when the CLEC is using its own facilities and the CLEC subscriber did not port a former ILEC MCA telephone number. Other ILECs are likewise refusing to recognize many CLEC subscribers as MCA subscribers.

CLECs are still providing outbound MCA service and their MCA customers still receive toll-free calls from ILEC MCA subscribers when served by CLEC resale of incumbent service or by CLEC facilities with a ported former ILEC MCA telephone number. However, the ILECs are preventing a CLEC's other customers from receiving toll-free calls from that CLEC's customers who are served by resale or ported numbers. Because CLECs are providing MCA service to a certain extent, CLECs and ILECs operating in adjoining service areas (i.e. not competing head-

to-head and not directly interconnected) have at least in some instances been exchanging MCA traffic on a bill-and-keep basis. Further, under the approved interconnection agreements mentioned above, CLECs and ILECs that are competing head-to-head in the same service areas have exchanged some MCA traffic pursuant to the reciprocal compensation provisions of those agreements.

The ILECs have not adequately explained their lack of cooperation regarding CLEC participation in the Commission's MCA Plan. The ILECs concede their customers continue to want and need MCA service, yet the ILECs have diluted the benefits of the service by excluding CLECs and their customers from full participation. Obviously, each time an ILEC MCA customer changes providers to a CLEC and ceases to be recognized as an MCA subscriber by the ILECs, the benefits of the Plan are reduced for both that subscriber and all other MCA subscribers. The calling customers are not happy, and they let the called CLEC customers know it. The new CLEC customers, particularly business ones, then feel pressured to switch service back to the incumbent. Given these negative customer impacts and the various prior actions of the Commission described above, the Commission is disappointed to say the least that the ILECs have made it necessary for the Commission to reaffirm that CLECs and their customers are full MCA participants.

In particular, SWBT completely failed to articulate any legitimate basis for its MCA screening and blocking tactics, which completely contradict its above-referenced representations to the Commission about CLEC participation in the MCA. SWBT's policy witness contended in pre-filed testimony in this case that in refusing to recognize CLECs as MCA participants SWBT was simply abiding by the Commission's initial MCA order. (Hughes Rebuttal, p. 2). Yet, on cross-examination, SWBT's witness admitted the following:

- the ILECs implemented the Commission's MCA order by filing tariffs (Tr. 1002-04);
- SWBT's tariff states that its MCA subscribers can call in the first instance all "subscribers" in the mandatory zones and the same and interior optional zones, as well as in the second instance all MCA "subscribers" in the outer optional zones. (Tr. 1011-12) (See also Exhibit 59);
- Without any tariff changes, Commission order, or ILEC consent, SWBT has unilaterally varied its interpretation of the word "subscriber" in its tariff to mean in the first instance subscribers served by any company and in the second instance, at times only subscribers of original MCA participating ILECs and at other times also subscribers of CLECs that sign a private agreement with SWBT. (Tr. 1011-16). Mr. Stowell's testimony indicates that SWBT had a previous interpretation that the word "subscribers" meant subscribers of any company in all instances. (Tr. 368).

Hence, SWBT has not followed its tariff or any Commission order or rule. It has simply done whatever it felt like doing, to serve its own interests, and to obstruct and delay competitive entry into the local service market - all in complete disregard of the negative financial impact of imposing additional toll charges on its customers and the accompanying harm to competitors and their customers. Further, it unfortunately appears that SWBT will not cease and desist its screening and blocking tactics without an order from the Commission in this case reaffirming the status of CLECs and their customers as MCA participants.

MCA traffic comprises the vast majority of local traffic in the metropolitan areas, which are the only areas in which local competition is currently developing. Absent participation in the MCA, CLECs by definition could not effectively compete in the outer tiers of the metropolitan areas given the huge disparity in available local calling scopes that would result. If the identity of the called party's provider were to determine whether or not the calling party could place a toll-free MCA call (as has been the case because of SWBT's screening and blocking tactics), then incumbents' customers would enjoy toll-free calling to 90%+ of the market, while new entrants' customers would only be able to reach 10% or less of the market. Such disparities would severely deter customers from changing local service providers or sticking with such a change. Exclusion of facilities-based CLECs from the MCA would constitute a barrier to competitive entry that would deter beneficial investment in competitive facilities and undeniably deprive consumers of the intended benefits of local competition generally and the MCA Plan in particular.

CLECs have been and still are participating in the MCA at least in some respects, but their participation has been impaired by ILEC interference and lack of cooperation. All customers would suffer from the continuation of the conversion of the MCA from a multiple-carrier cooperative plan into separate and unrelated individual company plans that has resulted from the ILECs' actions. By the time of the hearing all parties agreed that CLECs should fully participate in the MCA in the future. Nonetheless, it appears that the Commission must reaffirm what should have been obvious, that CLECs are and must be full participants in the Commission's MCA Plan in order for the telecommunications industry to deliver the intended benefits of the MCA to Missouri consumers.

b. If permitted to participate in the MCA Plan, should CLECs be required to follow the parameters of the MCA Plan with regard to (a) geographic calling scope, (b) bill and keep inter-company compensation, (c) use of segregated NXXs for MCA service, and (d) price?

Inter-company compensation, segregation of NXXs and pricing are addressed later in this Report and Order.

Regarding geographic calling scopes, it does not appear that there is a contested issue beneath all the rhetoric. By the end of the hearing, all parties appeared to concur that CLECs should continue to be able to offer additional outbound toll-free calling in combination with MCA service, just as SWBT already does with its Local Plus service. When all was said and done, all of the parties who had tried to make an issue out of calling scopes essentially indicated that they did not oppose CLECs having the ability to offer additional outbound toll-free calling in conjunction with MCA service with bundled rates, albeit under distinct service names.

While the Commission considered allowing CLECs the competitive discretion to establish their own MCA calling scopes, as a practical matter the multi-lateral nature of the MCA Plan requires that CLEC MCA calling scopes be at least as large as the historic ILEC-to-ILEC calling scopes. In all likelihood CLECs would meet this requirement voluntarily out of competitive necessity. Many, if not all of them, already do.

There is no reason, however, to restrict CLECs from offering additional toll-free outbound calling beyond the scope of the current MCA geographic footprint in conjunction with MCA service. CLECs like Gabriel already offer such additional outbound toll-free calling pursuant to approved tariffs, so their customers already have the competitive choice of toll-free

calling throughout the MCA areas without regard to whether the called party is an MCA subscriber or non-MCA subscriber of the CLEC or another carrier. The Commission finds it should not order CLECs to reduce such MCA-wide calling scopes now. Furthermore, CLECs should be able to offer even greater outbound toll-free calling scopes, just as SWBT already does with Local Plus (and presumably CLECs should be able to do already as resellers of Local Plus or otherwise).⁶

As is the case with pricing flexibility, discussed below, it is essential that CLECs have the ability to differentiate their products through expanded calling scopes. Customers will not receive the benefits of competition absent such flexibility.

The ILECs attempted to create the impression that CLECs sought to compel the ILECs to reciprocally expand their toll-free calling scopes to match whatever the CLECs offered. The record reflects that is false. Indeed, it would be impossible for the ILECs to match multiple CLEC plans.

The ILECs also attempted to create the impression that CLECs seek to avoid access charges for the termination of toll-free calling outside the scope of the MCA Plan. Again, the record reflects that such claims are false. The CLECs acknowledged that they must pay terminating access charges to ILECs in adjoining areas for any toll-free calling outside the scope of the MCA Plan.

CLECs only requested confirmation that the adjoining ILECs will terminate CLEC customers' MCA calls on a bill-and-keep basis just as the adjoining ILECs do for SWBT, and just as the CLECs have been doing for the adjoining ILECs. Likewise, CLECs request that interconnecting ILECs like SWBT abide by the reciprocal compensation provisions of their

⁶ See Case No. TO-2000-667 (Local Plus Resale).

interconnection agreements and charge local compensation – not access - for local traffic, just as the CLECs do for SWBT.⁷ These inter-company compensation matters are addressed in greater detail below.

Finally, the ILECs, Staff and OPC expressed concern over the possibility that CLECs would cause customer confusion by using the name “MCA” to market the combination of the historic MCA calling scopes and additional outbound toll-free calling. The CLECs all confirmed that they could live with a requirement that they only use the name “MCA” to refer to the original calling scope, so again there is no contested issue. Most, if not all, of the CLECs already use other names for their expanded local calling services.

c. Should there be any restrictions on the MCA Plan (for example resale, payphones, wireless, internet access, etc.)?

The evidence presented in this case concerns the participation of CLECs in the MCA Plan. The Commission has previously established that CLECs are participants in the Plan, including by means of resale, and has reaffirmed their participation in this Report and Order.

The parties have not presented sufficient information for the Commission to address potential restrictions upon participation of other types of telecommunications providers in the Plan. The Commission does not find any need to change the restrictions that were established when the Plan was created regarding providers other than CLECs, or to establish any new restrictions.

⁷ The Commission has rejected prior LEC attempts to charge access for the termination of local traffic, both in the ATT/SWBT arbitration, 5 MoPSC 3d 274, and in the more recent Alma access tariff proceeding, Case No. TT-99-428.

Regarding customer participation in the Plan, the Commission finds that MCA service should continue to be available to all end users as it has since the Plan was created. Specifically, the Commission finds that it should not restrict customers from continuing to use MCA service to access internet service providers (ISPs) on a locally dialed and rated basis, or restrict ISPs from continuing to subscribe to MCA service. The Commission has relied upon the availability of toll-free calling between ISPs and other local service customers in various prior cases concerning expanded calling. Companies have been dealing with this traffic for some time, including in the making of interconnection agreements and in planning for network facilities, and there is no evidence they cannot continue to handle it. Further, the evidence suggests that it would not be practical to attempt to restrict such local calling now.

The Commission finds that it would be against the public interest to suddenly place limitations on the availability of MCA service for local calling between ISPs and other customers, particularly in the more rural portions of the MCA. As Ms. Dale testified:

... there is a perceived “digital divide” between urban and suburban customers and customers in rural areas, which can only be worsened by forcing MCA customers to place toll calls to reach the ISP of their choice. The Commission should not exacerbate any problems Missourians may have gaining access to online services by requiring them to place toll calls to reach their ISP when a local alternative exists.

(Dale Rebuttal, p. 6). There would be no doubt be significant public upset if local calls terminated to ISPs suddenly became toll calls. The parties have not shown any good reason to make such a change.

d. What pricing flexibility should ILECs and/or CLECs have under the MCA Plan?

Staff supports full pricing flexibility for CLECs providing MCA service. Of course, the CLECs also support it. SWBT ultimately acknowledged that it currently has pricing flexibility and CLECs should also continue to have it. No witness was able to articulate a legitimate objection. The small ILECs conceded they do not face any head-to-head local competition and have not experienced any problems from current CLEC pricing discounts in adjoining service areas. Public Counsel ultimately indicated that pricing flexibility was acceptable to it so long as CLECs do not charge more than the ILECs.

The Commission finds that it should continue to allow CLECs to price MCA service on a competitive basis. The Commission has uniformly classified CLECs as competitive telecommunications companies and their services as competitive telecommunications services. Such classification was recently reaffirmed in Case No. TO-99-596 (Report and Order, June 1, 2000). CLECs have been providing MCA service on a resale basis, and to some extent on a facilities-basis particularly within the mandatory zones, using competitive pricing.

There is no public purpose or interest to be served by imposing minimum or maximum pricing constraints upon CLECs. As new market entrants, with less than 10% market share, CLECs have no market power and do not control facilities essential to service by others. CLECs confront entrenched, dominant monopoly providers in every local market. CLECs have no ability to sustain excessive prices on end users or to sustain predatorily low prices to impede competition. There is simply no policy reason to constrain competitive pricing of MCA service by CLECs.

Restricting CLEC pricing flexibility would totally contradict the purposes of opening local markets to competitive entry. On the one hand, CLECs are already charging lower rates than incumbents for MCA service, and there is absolutely no legitimate reason to require sudden

rate increases now. On the other hand, while no CLEC may currently be charging more for MCA service than the ILECs, there is no reason either to prohibit CLECs from attempting to meet customer needs through competitive pricing packages for bundled services that include higher rates for MCA service, or to require CLECs to march in lock-step with any future ILEC MCA rate reductions. The pressures of the market will effectively constrain CLEC pricing of MCA services – that is the whole point of competitive entry.

In particular, regulated ILEC rates (whether price cap or rate of return) will continue to function as a de facto price ceiling for CLECs. However, there still is no legitimate reason for precluding a CLEC from proposing a higher rate for MCA service in conjunction with other offerings. Customers either will or will not like such competitive offerings, but the market should decide, not the Commission

As Staff witness Voight confirmed at the hearing, it is essential that CLECs have the ability to distinguish their MCA and other services from the services of the monopoly incumbents, including by means of price differentiation. Moreover, given that MCA service encompasses the vast majority of local traffic in the metropolitan areas, absent competitive pricing and, as described above, competitive outbound calling scopes, consumers would receive no benefits from local competition. In essence, customers would be able to buy MCA from various companies, but would have no choice in price or service.

In the mandatory zones, MCA is basic local service. The rate for MCA service is the rate for basic local service. Absent competitive pricing flexibility for MCA service, there would be no basic local service price competition.

In the optional zones, MCA can be priced as an additional charge to basic local services (and has been so priced by the ILECs). It is theoretically possible to have a uniform MCA

additive for all companies, combined with continued pricing flexibility for basic local service and other services, as Public Counsel proposed. However, such as artificial constraint on the MCA “additive” would at least somewhat impede competitive product differentiation and accomplish nothing. Consumers will compare the total charges for the total package of services. Companies will adjust their total charges to accomplish their competitive goals. An artificial constraint on the price of one rate element will not benefit anyone, will have little impact on total pricing strategies, and will only serve as an unnecessary annoyance.

It should be noted that from the inception of MCA service, the Commission recognized that MCA prices were subject to change. See 2 MoPSC 3d 1, 20. ILECs have always had the ability to propose price changes. Nonetheless, the ILECs have generally refrained from reducing prices for MCA services.

Only CLEC market entry has provided consumers with pricing benefits, subject to the ILEC interference with facilities-based competition that led to this case. It would be a substantial and detrimental step backward for the Commission to prohibit MCA price competition and lock-in uniform local rates for all providers and customers. Instead, the Commission finds that it should allow consumers to benefit from competitive pricing forces.

It would also be detrimental to continue to allow pricing flexibility to competitors that are reselling ILEC MCA services at a discount, but to deny such flexibility to facilities-based competitors. Such a distinction would only serve to discourage facilities-based market entry, and would be contrary to the public interest.

There simply is no policy support for price regulation of competitive MCA service offerings of CLECs. CLECs have no market power and should be allowed to continue to price MCA service on a competitive basis. The Commission finds that it should also expressly

reaffirm that ILECs have pricing flexibility for MCA service through applicable statutory procedures. One of the primary purposes of local competition is to afford consumers competitive rate alternatives.

e. How should MCA codes be administered?

The Commission finds that a simple verified notification process is clearly workable and preferable to any other more cumbersome and burdensome administrative process. All parties acknowledged that such a system would be sufficient.

Each LEC participating in the MCA, whether CLEC or ILEC, must provide notice to all other participating LECs and the Commission of the NXX codes it is using to provide MCA service. Such notices should be updated as needed to remain complete and accurate. Such notices should be in verified form (such as an affidavit) and should confirm that the NXX codes listed are associated with rate centers within the bounds of the geographic area of the Commission's MCA Plan and that the outbound calling scope of all customers assigned numbers within such NXX codes will be at least as large as prescribed by the Commission's MCA Plan. Attestation will eliminate any concerns that a carrier is somehow acting improperly.

Each MCA participant must honor the verified notices received from other carriers. Each participating company must recognize the designated MCA codes of the other participants, including but not limited to resold and ported numbers. No LEC shall act as a gatekeeper and make judgments about the validity of another carrier's notice or otherwise screen or refuse to recognize the designated MCA codes of another carrier. Any concern about the validity of another carrier's notice should be presented to the Commission for resolution.

The Commission finds that CLECs should be allowed to have both MCA and non-MCA NXX codes, just like ILECs. CLECs should not have to designate all numbers as MCA numbers, as Staff proposes. Otherwise, CLECs would not be able to offer facility-based non-MCA service as an alternative and customers purporting to purchase any purported non-MCA service would nonetheless receive all the inbound calling benefits of MCA service for free. On the other hand, if a CLEC chooses to provide non-MCA service strictly by means of resale, then it will not need a separate NXX of its own for non-MCA service. The Commission has already approved “bare bones” local exchange service offerings by CLECs. There is no reason to deny customers such options.

While segregation of NXX codes into MCA and non-MCA categories has some number conservation impacts, these impacts are unavoidable under the present circumstances regarding MCA calling scopes and will have to be dealt with in subsequent proceedings. Such impacts will presumably be lessened with the advent of 1000-block number assignment.

f. What is the appropriate inter-company compensation between LECS providing MCA services?

Adjoining LECs, whether CLEC or ILEC, have been providing MCA service on a bill-and-keep basis as provided in the existing MCA Plan, although the ILECs have not allowed their customers full toll-free calling to CLEC customers as required under the Plan. The reciprocal compensation provisions of existing interconnection agreements between CLECs and ILECs operating in the same exchanges govern MCA traffic.

Regarding adjoining LECs, whether CLEC or ILEC, there is no reason to alter the existing bill-and-keep provisions of the MCA Plan.⁸ It does not appear that any party proposes such an alteration. In particular, the ILECs that adjoin the certificated service areas of the CLECs support continued bill-and-keep relationships with adjoining CLECs and ILECs.

Continued implementation of the bill-and-keep methodology between adjoining LECs would be beneficial because the outer tier ILECs would not have to develop a means of differentiating between SWBT and CLEC MCA traffic (which would be discriminatory in any event), most of which will be carried over the same SWBT facilities. Further, given the size of the rural LECs' exchanges and related traffic volumes, the status quo of bill-and-keep prevents market entry delays and eliminates the need for unproductive and inconsequential multiple negotiations.

Regarding CLECs and ILECs that are directly interconnected head-to-head competitors, such companies should continue to be bound by the reciprocal compensation provisions of their approved interconnection agreements. The Commission has expressly approved interconnection agreements that establish reciprocal compensation rates for all local traffic, including MCA traffic. When asked to arbitrate the issue in the AT&T/SWBT proceeding, the Commission determined that such reciprocal compensation rates should apply to traffic throughout the MCA area, including both mandatory and optional areas. Other companies including Gabriel have adopted those provisions, which encourage correspondingly large CLEC local calling scopes. Other agreements, containing similar provisions, have been established and adopted by other CLECs.

⁸ While it is possible that in the future adjoining carriers may negotiate other arrangements and present them to the Commission for approval, no carriers have done so to date and the issue is not ripe for consideration.

These agreements also provide for reciprocal transit charges for traffic exchanged between adjoining LECs through a transiting carrier operating in the same territory as the originating carrier. Transit charges do not, and should not, apply in the context of bill-and-keep arrangements. The addition of such charges now would simply create windfall revenues for SWBT.

g. Is the compensation sought in the proposed MOU appropriate?

The Commission finds that it should prohibit any company, including SWBT, from charging or receiving SWBT's proposed "MOU" compensation. SWBT's proposed "MOU" compensation is an improper "competitive loss surcharge" and "dialing parity surcharge". SWBT is already fully compensated through its retail rates and interconnection agreements and such additional unilateral charges for fulfilling its legal obligations are unjustified. As discussed below, such charges violate the dialing parity, interconnection, reciprocal compensation, and free market entry provisions of the Telecommunications Act, as well as related rules and decisions of the FCC and this Commission and approved interconnection agreements (such as the reciprocal compensation provisions in the approved ATT/SWBT interconnection agreement that Gabriel adopted). Such charges impede the development of local competition in the outer MCA zones by penalizing a CLEC for winning over a customer and by requiring the CLEC to pay more to SWBT than SWBT pays the CLEC for the use of the involved terminating facilities, when the CLEC should not have to pay anything.

The MOU was clearly forced upon Intermedia by SWBT under exigent circumstances. It is not an appropriate agreement, either in purpose or content. It was not even submitted for approval under Section 252 of the Telecommunications Act.

The MOU surcharge is an improper competitive loss surcharge. Through the surcharge, SWBT seeks to recover at least in part the revenues it loses when one of its customers decides to switch to a competitor. SWBT would have CLECs pay 2.6¢ per minute to cover SWBT's competitive losses. Yet, SWBT admits it is not entitled to recover competitive losses.

The Commission rejects SWBT's contention that it would be unfair for SWBT to have to provide toll-free MCA calls to CLEC customers unless it receives the surcharge compensation in return. First, the record reflects that SWBT actually gained revenues at the inception of MCA service, so SWBT does not lose some type of toll revenue replacement when it loses MCA revenues of a particular customer to a competitor. Second, even if SWBT's MCA revenues had been designed to recover toll revenues lost at the inception of the Plan, such action occurred in an monopoly environment, from the Commission's mandate that toll service be converted into local. Now there is suppose to be a competitive market, and the Commission is not converting toll into local, but rather making sure that local customers can freely choose their providers. There is nothing unfair about a monopoly provider losing customers, and accompanying revenues, to competitors. That is what is supposed to happen.⁹

h. Should the MCA Plan be retained as is, modified (such as Staff's MCA-2 proposal) or eliminated?

It appears that all parties agree that the MCA Plan should be retained and should not be eliminated. It also appears that all parties agree that any modifications to the MCA Plan such as Staff's MCA-2 proposal should be considered later. The Commission will establish a separate case to consider such matters.

⁹ Likewise, from the moment a CLEC signs up its first customer, it is at risk of losing customers and the accompanying revenues to another provider.

i. If the current MCA Plan is modified, are ILECs entitled to revenue neutrality? If so, what are the components of revenue neutrality and what rate design should be adopted to provide for revenue neutrality?

It appears that all parties agree that SWBT and the other ILECs are not entitled to recover competitive losses. However, that is the only type of loss to be sustained by the ILECs upon the full competitive entry by CLECs into the MCA Plan that will occur as a result of the termination of ILEC interference with that participation under this decision. Hence, there is no need or justification for any type of revenue neutrality analysis or true-up process in conjunction with the resolution of the issues in the case.

j. Should MCA traffic be tracked and reported, and if so, how?

LECs operating in adjoining service areas and utilizing the bill-and-keep methodology do not currently track and report MCA traffic. There is no need to start tracking and reporting the traffic now. Tracking and reporting expenses should not be unnecessarily incurred in bill-and-keep situations.

LECs operating in the same service areas are party to interconnection agreements that already address tracking and reporting requirements for reciprocal compensation purposes. The Commission cannot and need not address these provisions in this case. See supra Section f of this Brief. The testimony indicates that the involved parties are in good faith already working out such tracking and reporting requirements and no specific dispute has been presented to the Commission.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Jurisdiction

All of the parties to this case, except the Staff and the Office of the Public Counsel, are telecommunications companies certificated by this Commission to provide telecommunications services in the state of Missouri. Each of these parties, therefore, is subject to the jurisdiction of the Commission.

a. **Are CLECs currently included in the MCA Plan, and, if not, should CLECs be permitted/required to participate in the MCA Plan?**

Given that the parties agree that CLECs should be full MCA participants, it appears that there is no dispute that all screening and blocking tactics must cease. Hence, the Commission will not herein dwell long on the point that such practices are unlawful. Suffice it to say that such practices not only violate the intent and purposes of the Commission's MCA Plan, but they also unlawfully impose dialing disparity and rate disparity on the calling party based solely on the fact that the called party has chosen a local service provider other than the incumbent. Currently, when a SWBT MCA customer in an optional tier changes local providers to a CLEC and subscribes to the CLEC's MCA service, SWBT screens and blocks local calls from its MCA subscribers to that customer and forces them to dial 1+ and pay toll charges, all solely because of the change in providers. Such dialing and rate disparity violate the dialing parity requirements of Sections 3(a)(2)(39) and 251(a)(3) of the Act and FCC rules 47 CFR 51.205-215,¹⁰ the

¹⁰ 47 CFR 51.207 expressly requires:

A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider. (Emphasis added).

interconnection quality requirements of Section 251(a) of the Act, the prohibition against barriers to entry of Section 253 of the Act, and the prohibition against discrimination of Section 392.200 R.S.Mo.

Hence, the Commission concludes it should prohibit any and all interference with CLEC participation in the MCA Plan, including SWBT's MCA screening and blocking practices. No carrier can unilaterally act as a gatekeeper to such a multi-carrier, Commission-designed calling plan. The Commission cannot accomplish the goals of its MCA Plan or comply with federal and state law without allowing the full competitive participation of CLECs.

Some parties suggest that the Commission should mandate that CLECs offer MCA service. In the mandatory tiers, where MCA and basic local service are one and the same, that has already occurred. Section 392.455 requires CLECs to offer basic local service as a separate and distinct service. On the other hand, no party has cited any authority or basis for requiring competitive CLECs to offer optional MCA service. The Commission concludes that CLECs should be allowed the competitive option of not offering optional MCA service, although as it probably is not a practical competitive option.

As discussed further below, to assure full competitive participation in the MCA by CLECs, the Commission needs to take the following actions:

Require the ILECs to recognize CLECs and their MCA subscribers as participants in the Plan, entitled to the full benefits of the Plan, including eligibility for toll-free calling by subscribers of other CLECs and ILECs in accordance with the Plan as it was conceived by the Commission.

Allow CLECs and ILECs to continue to offer greater calling scopes and better prices consistent with the different levels of PSC supervision of CLECs versus ILECs.

Allow existing interconnection agreements to run their course and deal with any intercompany compensation issues between competing interconnected carriers if and when presented under the Telecommunications Act.

Allow all adjoining LECs to continue to exchange MCA traffic on a bill-and-keep basis unless and until they mutually agree to another arrangement.

Prohibit Southwestern Bell and the other ILECs from imposing any additional charges on CLECs as a consideration for ILECs complying with the MCA Plan, and deny any and all efforts by the incumbents to collect compensation for their competitive losses. MCA subscribers are entitled to the full benefits of the Plan, regardless of the carrier they select. And no carrier is entitled to compensation on a subscriber who elects to choose a new provider.

By taking the foregoing five steps, the Commission will restore the full benefits of its MCA Plan and it will preserve the benefits of competition for consumers.

b. If permitted to participate in the MCA Plan, should CLECs be required to follow the parameters of the MCA Plan with regard to (a) geographic calling scope, (b) bill and keep inter-company compensation, (c) use of segregated NXXs for MCA service, and (d) price?

As indicated in the Findings of Fact, inter-company compensation, segregation of NXXs, and pricing are addressed herein under the respective specific issues.

The Commission concludes that CLECs must be able to offer "MCA" calling in conjunction with "other" calling, just as SWBT already does with regard to locally-dialed Local Plus. Both CLECs and ILECs should refrain from labeling a combined calling scope service as MCA service. Further, ILECs should not suggest in any way to consumers that they are the only authorized providers of MCA service. By continuing to allow such calling scope flexibility to CLECs and ILECs, the Commission will comply with Sections 392.185 and 392.200.4(2)

R.S.Mo. and deliver the benefits of competition to consumers. Likewise, the Commission will comply with Section 253 of the Telecommunications Act by avoiding the creation of a barrier to competitive entry in the form of an unnecessary calling scope restriction.

c. Should there be any restrictions on the MCA Plan (for example resale, payphones, wireless, internet access, etc.)?

The Commission has reaffirmed that CLECs are participants in the MCA Plan, including by means of resale of MCA service, as required by the Telecommunications Act. Other proposed restrictions on provision of MCA service must be strictly scrutinized in the context of the pro-competitive and non-discrimination purposes of the Telecommunications Act, FCC rules and decisions and state law. Proponents of such a restriction bear a heavy burden to show that the restriction is not contrary to federal and state law requirements, does not inhibit competition and is necessary to promote the public interest. The Commission concludes that the record does not demonstrate the need to address restrictions regarding participation by other telecommunications providers other than CLECs.

The Commission concludes that a restriction on use of MCA service by ISPs and by other end users to call ISPs would violate the FCC's policy of allowing ISPs to subscribe to local business service. In ruling that SWBT had agreed to pay reciprocal compensation on calls to ISPs served by CLECs, the Fifth Circuit Court of Appeals of the United States relied in part on the FCC's long-standing policy of requiring LECs to serve ISPs as end users out of local business tariffs. SWBT v. PUC of Texas, 208 F.3d 475 (5th Cir. 2000). See also Illinois Bell Tel. Co. v. WorldCom Technologies, Inc., 179 F.3d 566 (7th Cir. 1999). Hence, there is no legal means of limiting the availability of MCA service for local calling between ISP end users and other end users.

d. What pricing flexibility should ILECs and/or CLECs have under the MCA Plan?

The Commission has classified CLECs and their services as competitive. Competitive classification under Section 392.361 R.S.Mo. permits competitive pricing (tariff) adjustments under Section 392.500. The Commission concludes that it should abide by the competitive pricing statutes and allow such competitive pricing to continue. The Commission will thereby permit flexible regulation of competitive companies and bring the benefits of competition to customers in accordance with Sections 392.185 and 392.200.4(2) R.S.Mo.

Additionally, Section 253 of the Telecommunications Act of 1996 prohibits barriers to competitive entry, such as would be erected by a restriction against competitive pricing of MCA service, which service encompasses the vast majority of local traffic. As Mr. Cadieux testified:

- A. Price competition is an essential feature of a market that is, by law, open to competition. The dynamics of price competition among multiple providers creates the force that ensures the reasonableness of rates. The Commission should not accept SWBT's suggestion to make MCA service an enclave of collective pricing in a landscape of competition. To do so would harm the public interest by denying consumers the benefits of price competition. Moreover, such a restriction would violate the FTA's §253 prohibition against barriers to competition and thwart one of the fundamental purposes of the FTA and state law provisions authorizing competition in all telecommunications markets. SWBT's recommendation to prohibit price competition for MCA benefits SWBT and harms consumers.

(Cadieux Rebuttal, p. 35-36). The Commission simply cannot obstruct competitive local pricing under Section 253 of the Act.

Regarding ILECs, the Commission concludes that it should likewise continue to regulate pricing of MCA service in accordance with the applicable statutes. For price cap companies like SWBT, that means pricing flexibility subject to maximum allowable prices under Section 392.245 R.S.Mo. For rate-of-return companies, that means pricing flexibility subject to total

earnings limitations under Sections 392.220-392.240 R.S.Mo. ILECs can and should be allowed to respond to competition, subject to statutes and other safeguards against predatory pricing. The Commission rejects the argument advanced by SWBT and MITG that the Commission can regulate a price cap company under Section 392.361 rather than the price cap statute.

e. How should MCA codes be administered?

The process for administering MCA codes must be non-discriminatory and competitively neutral. The Commission concludes that the verified notification process described above satisfies these legal requirements. The Commission will use this case as a clearinghouse for such notifications until a rule is adopted and takes effect.

f. What is the appropriate inter-company compensation between LECS providing MCA services?

The parties agree that bill-and-keep should continue to serve as the method by which adjoining carriers exchange MCA traffic. The Commission concludes that it must allow the reciprocal compensation provisions of existing interconnection agreements to continue to apply as well, and consider such matters in individual arbitration proceedings when and if presented. The clear distinction between the relationship of neighboring LECs versus the relationship between competing LECs warrants such separate compensation programs.

The Commission does not have the authority to alter the reciprocal compensation provisions of existing interconnection agreements, particularly in a generic proceeding such as this case. Interconnection agreements are negotiated, arbitrated, submitted, and approved pursuant to Section 252 of the Telecommunications Act of 1996. The Commission's authority

regarding such contracts arises from the Act. The Act does not provide authority for state commissions to alter reciprocal compensation provisions of approved agreements prior to contract expiration. Any attempt at such an alteration would violate the Act.

While the FCC and state commissions may identify additional duties between interconnecting carriers to be added to existing agreements, such as has happened in the areas of collocation and unbundling of additional network elements, and may identify specific negotiated provisions that are unlawful, such authority does not extend to the alteration of existing lawful approved reciprocal compensation provisions.

In particular, given that the Commission has arbitrated and approved these reciprocal compensation provisions, it is constrained by its orders and cannot change them in a collateral generic proceeding such as this case. See Section 386.550 R.S.Mo.

Any ruling purporting to exempt MCA traffic from the reciprocal compensation provisions of existing agreements would essentially eradicate those provisions, because MCA traffic is the vast majority of local traffic.¹¹

The Commission concludes that it should not only refrain from interfering with existing reciprocal compensation provisions, but also that it should refrain from pre-judging future interconnection cases by making any non-binding pronouncement of future policy regarding such matters in this case. The present proceeding is an inappropriate vehicle to accomplish such a purpose and adequate industry notice has not been provided.¹²

¹¹ The Commission will address the applicability of existing reciprocal compensation agreements to MCA calls terminated to ISPs in a pending complaint case, TC-2000-225. Notwithstanding SWBT's discussion of this issue, it was not identified in the parties' issue list and is not before the Commission in this case. The question does not impact the smaller ILECs, because they exchange all MCA traffic, including local calls to ISPs, on a bill-and-keep basis.

¹² Even if the Commission commenced such a proceeding, it could still face significant limitations under Section 252 of the Act on its ability to disapprove negotiated agreements that did not incorporate the results of such a proceeding.

Moreover, the FCC's interconnection rules strictly limit a state commission's authority to impose bill and keep as the reciprocal compensation arrangement between two interconnecting carriers. 47 C.F.R. 51.713(b) provides, in part, that a state commission must first determine "that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so..." before it can impose bill and keep as the reciprocal compensation arrangement between two interconnecting carriers. No such showing has been made in this case. While subsection (c) of the rule provides that a state commission is not precluded from presuming that the amount of local telecommunications traffic from one network to the other is roughly balanced with amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, parties have a right to rebut such a presumption and a state commission is precluded from imposing bill and keep where the presumption is successfully rebutted. At this point, no such presumption has been made by the Commission with respect to any two particular interconnecting carriers. Further, the record in this case provides no support for any such presumption given that SWBT's efforts to avoid the reciprocal compensation provisions that it originally demanded strongly suggest that the traffic is not in balance. Thus, a Commission ruling in this case that would purport to modify the reciprocal compensation provisions of an existing interconnection agreement would violate the FCC's reciprocal compensation rules.

There is nothing unfair or improper about continued application and enforcement of the reciprocal compensation provisions of existing interconnection agreements. First, because such compensation is reciprocal, the parties to the agreements are compensated for the costs they incur in transporting and terminating each other's local traffic. Second, Section 251(b)(5) of the

Act and 47 CFR 51.701 et seq. require reciprocal compensation for the transport and termination of local traffic, when traffic flows are not in balance, unless the parties mutually agree to a bill-and-keep methodology. The Commission has determined that traffic within the MCA areas is local in the AT&T/SWBT arbitration and other CLECs have adopted the resulting interconnection agreement or similar provisions. See Arbitration Order, p. 41, Case No. TO-97-40 (December 11, 1996); Arbitration Order Regarding Motions for Clarification, p. 9 and Attachment B pages 18-22 (October 2, 1997).

SWBT appears to be the only ILEC confronted by head-to-head competition that opposes continued adherence to existing interconnection agreements. Yet, when CLECs proposed bill-and-keep arrangements in arbitrations and negotiations, SWBT opposed them. Now that CLECs have agreements and business plans in place, the Commission concludes it should reject SWBT's efforts to switch gears.

It is not clear, but some of the ILECs seem to suggest at times in their testimony and briefs that access charges should apply to MCA traffic. The Commission has rejected previous proposals to charge access for termination of local traffic, such as in the ATT/SWBT arbitration and the recent Alma access tariff case.¹³ It would be unlawfully discriminatory for outer tier ILECs to continue bill-and-keep relationships with SWBT (the inner tier ILEC), yet impose access charges on CLECs operating in SWBT's service areas. See Section 392.200 R.S.Mo.

g. Is the compensation sought in the proposed MOU appropriate?

The MOU surcharge is an illegal dialing parity surcharge. SWBT seeks to extract such payments by holding MCA traffic hostage through its illegal screening and blocking practices (see issue a. above). SWBT has an obligation to provide dialing parity without regard to the

identity of the called party's provider. See Sections 3(a)(2)(39) and 251(a)(3) of the Telecommunications Act; 47 CFR 51.205-215. In particular, 47 CFR 51.207 provides:

A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider. (Emphasis added).

SWBT has no right to levy an additional charge upon CLECs as a condition of fulfilling its legal obligation to provide dialing parity.

The surcharge also constitutes an unreasonable rate, term and condition that SWBT seeks to place on CLECs for interconnection, in violation of Section 251(a)(D) of the Act.

Further, the surcharge would violate the reciprocal compensation provisions of Section 251(b)(5) of the Act. In particular, FCC rule 51.703(b) expressly prohibits carriers from imposing charges on other carriers for originating traffic. SWBT would not pay any originating charges to the CLECs, and would charge them more than it pays in terminating compensation. Such non-reciprocal "inverse" compensation is not lawful under the Act.

The surcharge also would violate the prohibition against barriers to competitive entry of Section 253 of the Act. Such a charge would artificially inflate competitors' costs and substantially deter facilities-based local competition in the outer zones of the MCA. It would also effectively preclude competitors from offering MCA service, in violation of Section 253.

While SWBT attempted to minimize the negative impacts of its illegal surcharge by suggesting that it might become reciprocal or become subject to a cap, even if such "adjustments" were realistic (which is extremely doubtful in the case of reciprocity), the surcharge would remain improper and illegal.

¹³ 5 MoPSC 3d 274 and Case No. TT-99-428.

SWBT attempted to justify its proposed surcharge by claiming that it is the price that CLECs must pay to participate in the MCA Plan. But CLECs need not purchase an admission ticket from SWBT. The Commission can and should direct all LECs to cooperate and provide the MCA calling plan, and all LECs including SWBT should comply. SWBT admitted that the Commission can order it to provide toll-free calling.

The Commission does not have authority to allow SWBT to recover competitive losses from competitors, nor would such recovery be appropriate. See, e.g., State ex rel. Webb Tri-State Gas v. PSC, 452 SW2d 586 (Mo. App. 1970).

h. Should the MCA Plan be retained as is, modified (such as Staff's MCA-2 proposal) or eliminated?

As indicated, the Commission will establish a separate case to consider potential modifications to the MCA Plan.

i. If the current MCA Plan is modified, are ILECs entitled to revenue neutrality? If so, what are the components of revenue neutrality and what rate design should be adopted to provide for revenue neutrality?

If the Commission makes structural changes in a subsequent case, such as those proposed by Staff in conjunction with its MCA-2 Plan, then an inquiry into revenue neutrality may be in order. In any such inquiry, price cap companies must abide by the statute governing their voluntary selection of such regulation.

However, no company is entitled to protection from competitive losses under the guise of "revenue neutrality", whether by means of SWBT's proposed MOU surcharge or otherwise. No revenue neutrality mechanism should involve recovery from competitors. The only loss that

occurs when SWBT loses a customer to a CLEC participating fully in the MCA Plan is a competitive loss.

In any event, SWBT's proposed MCA surcharge is illegal for the reasons stated above, and in any event would not be an appropriate means by which to achieve revenue neutrality. Revenue neutrality should be achieved within a company's existing rate structure, and not by imposing a new charge that applies to a competitor when it wins over a new customer. As Mr. Cadieux testified:

It is difficult to conjure up a more directly anti-competitive mechanism than one in which the dominant service provider (in this case, SWBT or other incumbent LEC in a service area within an MCA) levies a surcharge on its new entrant competitors to replace revenues lost as a result of a new entrant's success in the market place – i.e. as a result of the new entrant convincing an outer MCA zone customer to select it as the customer's dial-tone service provider.

(Cadieux Surrebuttal, p. 23).

j. Should MCA traffic be tracked and reported, and if so, how?

The current respective arrangements between adjoining carriers and between competing carriers are non-discriminatory and should not be changed.

While it was not an issue presented on the issues list and, therefore, is not before the Commission for resolution according to the orders issued in this case, there was discussion during the hearings regarding the sufficiency of records being exchanged between adjoining carriers for non-MCA traffic that is subject to access charges, including locally-dialed traffic such as SWBT's Local Plus traffic.¹⁴ The access tariffs are in effect and enforceable and do not

¹⁴ On the other hand, as the Commission has previously recognized, access charges do not apply to local traffic, which includes MCA traffic, even when three carriers are involved in origination, transit, and termination. See In the matter of Alma Telephone Company's Filing to Revise its Access Service Tariff, Case No. TT-99-428, Report and Order, p. 13 (2000).

require attention. It would be completely inappropriate for ILECs to block access traffic. The ILECs are still working out the various involved reports themselves, following the dissolution of the PTC plan. All witnesses committed to continuing to develop these record exchanges in good faith. The Commission will have an opportunity to address such matters in other cases that are now pending.

IT IS THEREFORE ORDERED:

1. That Late-Filed Exhibits 51, 53HC, 57, 67HC, and 71 are received and made a part of the record of this matter.
2. That the Motion to Strike filed on July 10, 2000, by Cass County Telephone Co., et al is granted.
3. That all motions pending herein, not otherwise ruled upon, are denied.
4. That those local exchange telecommunications companies that were party to Case No. TO-92-306 and their successors in interest shall provide MCA service pursuant to their approved tariffs, and shall not impose toll charges on calls within the MCA calling scope regardless of the identity of the called party's local service provider, including calls to the subscribers of any other local service provider's MCA service, including by ILECs and CLECs.
5. That any telecommunications company which has been granted a certificate of service authority to provide basic local telecommunications service by the Commission may continue to provide MCA service pursuant to such certificate and tariffs approved thereunder, including by resale of incumbent LEC services or by means of its own facilities (including leased facilities such as unbundled elements), or may file tariffs offering such service for approval, and any

telecommunications company which is granted such a certificate in the future may likewise provide such service pursuant to such certificate and tariffs approved thereunder.

6. That any telecommunications company which is providing MCA service shall offer the full calling scope prescribed in Case No. TO-92-306, without regard to the identity of the called party's local service provider. Any company may offer additional toll-free outbound calling or other services in conjunction with MCA service, but in any such offering the company shall not identify any calling scope other than that prescribed in Case No. TO-92-306 as MCA service.

7. That a company may offer MCA service under another name for marketing purposes without affecting its authority to provide that service, and without affecting the obligations of other companies to provide toll-free calling to the subscribers of its service pursuant to the Commission's MCA Plan.

8. That MCA service shall continue to be available to internet service providers as subscribers, and all companies participating in the MCA shall continue to originate and terminate local MCA calls to internet service providers that subscribe to MCA service, regardless of the identity of their local service providers.

9. That each telecommunications company offering MCA service shall charge the rates for such service set forth in its approved tariffs, and may propose changes in such rates by filing revised tariffs for review and approval under the statutes then applicable to that company and its proposed tariff revision.

10. That any telecommunications company offering MCA service shall designate the particular NXX codes, or blocks of numbers thereunder when and if feasible, it is using to provide MCA service, by means of filing a verified notice thereof with the Commission that: (1) identifies the NXX codes being used; (2) confirms that such NXX codes are associated with rate

centers within the exchanges comprising the MCA calling areas as established in Case No. TO-92-306; (3) confirms that numbers within the designated NXX code(s) are being assigned to customers purchasing the calling scope prescribed in Case No. TO-92-306, either independently or in conjunction with other services and calling scopes; and (4) provides contact information (address, telephone, fax, email) so that other companies may provide it with copies of their notifications. Companies shall promptly update such notices as needed to keep them current and accurate. Companies reselling MCA service or providing MCA service in conjunction with ported numbers of former subscribers to another company's MCA service may rely upon the notifications of the other companies regarding the involved NXX codes, and no other company shall interfere with such resale or use of ported numbers to provide MCA service. All other companies shall accept such notices from other companies as true for all purposes including administration of their MCA calling scopes unless otherwise ordered by the Commission and shall provide MCA service to their customers in accordance therewith. Any disputes regarding such notices shall be presented to the Commission. The parties to this case shall file their initial notices with the Commission within ten (10) days of the effective date of this Report and Order and shall concurrently serve same upon all other parties hereto. The Commission directs its Staff to submit a proposed rule to further implement this notification process for all companies, including future providers of MCA service, within 30 days of the effective date of this Report and Order. Until such a rule takes effect, the parties hereto shall file and serve notices in this case. Any other company that wants to provide MCA service prior to the effective date of such rule may intervene herein for such purpose. The Commission directs its Staff to develop an information management system so that companies may gain ready access to the current notices and contact information of all companies providing MCA service including through use of the

Commission's web site. Staff shall report on the development of such management system regularly, starting 30 days from the effective date of this Report and Order, until the Commission is satisfied that the system is in effect and working properly.

11. That companies operating in adjoining service areas shall continue to exchange MCA traffic on a bill-and-keep basis as ordered in Case No. TO-92-306.

12. That companies operating in the same service areas shall continue to abide by their interconnection agreements with regard to reciprocal compensation for the termination of MCA traffic.

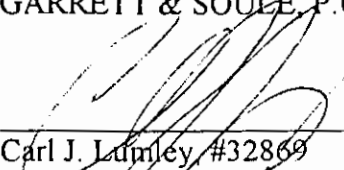
13. That SWBT's "MOU" compensation is unlawful. SWBT should refund any such charges paid by Intermedia. No telecommunications company shall charge any other telecommunications company any amount for the origination or termination of MCA traffic being exchanged by the companies except as may be permitted by the provisions of an approved interconnection agreement between the two companies.

14. That the Commission hereby establishes Case No. _____ to consider potential modifications to its MCA Plan. All parties hereto are hereby made parties to the new case. Notice of the case shall be given to the telecommunications industry and the public, and a schedule for interventions, an initial prehearing conference, and the filing of a proposed procedural schedule, shall be established by separate order in the new case.

15. That all parties shall work in good faith to fulfill the traffic reporting requirements of their respective interconnection agreements and tariffs. The Commission will continue to examine issues regarding traffic reporting and trunking arrangements in Case No. TO-99-593.

16. That this Report and Order shall become effective on _____.

CURTIS, OETTING, HEINZ,
GARRETT & SOULE, P.C.

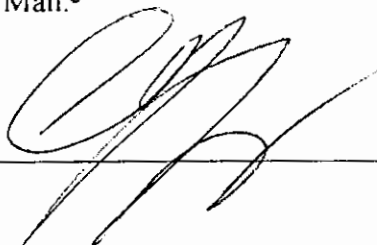


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CERTIFICATE OF SERVICE BY MAIL

A true and correct copy of the foregoing was served upon the parties identified in the attached service list on this 17 day of July, 2000, by placing same in a postage paid envelope and depositing in the U.S. Mail.



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