BEFORE THE PUBLIC SERVICE COMMISSION
FOR 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 Areas Service After the Passage and Implementation of the Telecommunications Act of 1996.	)))))))	Case No. TO-99-483

SOUTHWESTERN BELL TELEPHONE COMPANY'S REPLY BRIEF

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July 17, 2000

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Comes now Southwestern Bell Telephone Company ("SWBT") and, for its Reply Brief in this Matter, states as follows:

Executive Summary

In this docket, the competitive local exchange carriers ("CLECs") are requesting the Commission to order SWBT to provide toll-free calling to SWBT's own customers in the Metropolitan Callings Areas ("MCAs") when SWBT customers call CLEC customers. The CLECs use a code word, "screening," claiming that SWBT is "screening" MCA NXX codes. The CLECs continual use of the term "screening" is nothing more than an attempt by the CLECs to divert this Commission's attention away from the fact that the CLECs want to control SWBT's retail offerings by dictating when SWBT charges toll to its customers. Moreover, the CLECs want to do so without compensating SWBT for agreeing to waive its tariffed toll rates.

The Metropolitan Calling Area ("MCA") Plan, which the Commission ordered the incumbent local exchange carriers ("ILECs") to provide in its MCA Order in TO-92-306, is in the public interest. If the Commission wants to allow CLECs to participate in the MCA Plan, such entrance must be accomplished in a manner that will ensure the continued viability of the MCA Plan. In order to meet this objective, the Commission must make the following six

determinations. First, CLECs must be required to follow the geographic calling scope as defined in the Commission's MCA Order. Second, CLECs must be required to follow the bill and keep inter-company compensation mandate that is set forth in the Commission's MCA Order. Third. CLECs must use segregated NXX codes to distinguish MCA subscribers' NXX codes from non-MCA customers' NXX codes. Fourth, CLECs must offer MCA Service to their customers at the rates that are mandated in the Commission's MCA Order. Fifth, SWBT is entitled to revenue neutrality for the loss of toll revenue associated with the return-calling aspect of the MCA Plan. CLECs, therefore, must compensate SWBT 2.6 cents per minute for calls from SWBT's MCA subscribers in the metropolitan exchanges (the Principal Zone, MCA-1 and MCA-2 in St. Louis and Kansas City and the Principal Zone and MCA-1 in Springfield) to CLEC customers in the optional MCA tiers, which is the minimum amount SWBT would receive if the call were treated as toll. Sixth, and finally, all local exchange carriers ("LECs") must compensate a transiting company, whomever that may be, for transiting traffic that originates from one LEC, transits the transiting company's facilities, and terminates to a third party. If any LEC desires any other LEC to perform a transiting function, compensation for the provision of such service must be achieved through negotiation.

Argument

I. Background

A. The Implementation Of The Metropolitan Area Calling Plan

As stated in SWBT's Initial Brief, because of the complexity of the MCA Plan, and because many of the CLEC participants in this case demonstrated substantial misunderstanding of the parameters of the MCA Plan, SWBT felt it appropriate to explain the history and scope of MCA Service. SWBT refers the Commission to pages 10 through 16 of its Initial Brief for this

summary. Although SWBT believes that the parties generally agree about the history of MCA Service, a review of the CLECs' briefs indicates that there are some continued inaccuracies regarding the MCA Plan as it exists today. Thus, SWBT will further correct some of the CLEC inaccuracies in subpart I(B) below.

B. The Metropolitan Calling Area Plan At Work

1. SWBT's Treatment of Customers Who Do Not Subscribe To Metropolitan Calling Area Service Does Not Violate The Dialing Parity Requirements Of The Federal Telecommunications Act Of 1996

As expected, Gabriel continues to contend that dialing parity rules require calls from SWBT customers to CLEC customers within the MCA to be locally dialed. (See Initial Brief of Gabriel Communications of Missouri, Inc., p. 10). As noted in SWBT's Initial Brief, it is ironic that Gabriel contends that SWBT is violating the dialing parity rules because Gabriel's Non-Standard Access Line Service allows toll-free calling from the Principal Zone to MCA subscribers in Tiers 3, 4, and 5. (See T. 749, Gabriel, Cadieux). However, if the SWBT called party is not an MCA subscriber, a toll charge would apply. Id. Thus, if Gabriel's contention is correct, which it is not for the reasons explained below, Gabriel would equally be in violation of the dialing parity rule.

The basis for Gabriel's erroneous contention that dialing parity rules require calls from SWBT customers to CLEC customers within the MCA to be locally dialed is 47 C.F.R. 51.207. That rule is, quite simply, not applicable. (See Ex. 33, Hughes Rebuttal, p. 21).

As discussed in SWBT's Initial Brief, dialing parity is a term that is specifically defined in the federal Telecommunications Act of 1996. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 18). Specifically, 47 U.S.C. §153(15) provides:

> [t]he term "dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner

> that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among two (2) or more telecommunications service providers (including such local exchange carrier).

(See 47 U.S.C. Section 153(15)). SWBT neither requires any CLEC's customer to use an access code to reach his or her chosen carrier nor does SWBT advocate that any CLEC's customer should have to use an access code to reach his or her chosen local exchange carrier. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 18). Further, to the extent that calls within the MCA are intraLATA toll calls, a SWBT customer can reach: (a) another SWBT customer that does not participate in the MCA Plan; or (b) a CLEC's customer, through simple 1+ dialing. Id. No access codes or other additional digits are required. Id. Thus, there is parity for all toll calls. Id.

Further, there is no violation of local dialing parity, as the number of digits is not dependent on the identity of the calling party's or called party's local service provider. Id. The determination of whether a call is locally dialed depends on whether the called customer is a subscriber to the Commission-mandated MCA Service, not on the identity of the customer's local service provider. (See Ex. 33, SWBT, Hughes Rebuttal, p. 21). The undisputed fact is that SWBT provides dialing parity. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 18).

Although not mentioned in Gabriel's Initial Brief, Gabriel concedes that it is the called party that controls how incoming calls are treated by his or her choice of whether to subscribe to MCA Service. (See Ex. 24, Gabriel, Cadieux Rebuttal, pp. 10-11). Given this, there is no way SWBT could be in violation of the dialing parity requirements, as the dialing pattern is determined by the called party's subscription to MCA Service, not by either the calling party's and/or the called party's choice of carrier. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 19).

2. SWBT Assesses Toll Charges For Calls From Its Customers Located In The Metropolitan Exchanges To Non-MCA Subscribers Located In The Optional MCA Tiers. SWBT, Not CLECs, Should Be Able To Control SWBT's Retail Offerings.

SWBT continues to be extremely concerned that CLECs are seeking to dictate when SWBT charges toll to its customers without paying compensation to SWBT. (See Initial Brief of SWBT, p. 23, citing Ex. 32, SWBT, Hughes Direct, p. 7). Specifically, the CLECs seek to control the manner in which SWBT provides its retail offering to its own customers. Id. SWBT believes this is improper and not authorized under the federal Telecommunications Act of 1996. Id.

Instead of admitting that what the CLECs want in this docket is for SWBT to provide toll-free calling from its customers in the metropolitan exchanges (the Principal Zone, MCA-1, and MCA-2 in St. Louis and Kansas City and the Principal Zone and MCA-1 in Springfield) to CLEC customers in the optional MCA Tiers, the CLECs utilize a code word, "screening," claiming SWBT is "screening" CLEC MCA NXX codes. Some CLECs argue that as a result of this "screening," a CLEC customer in an optional MCA tier is confronted by an unexpected situation that he or she can no longer be reached from the mandatory tiers by means of a local call and that the only reason for this is the customer's choice to switch its telecommunications carrier from SWBT to a CLEC. (e.g. see Initial Brief of Nextlink Missouri, Inc., p. 4).

The CLECs continual use of the term "screening" is nothing more than attempt by the CLECs to divert this Commission's attention away from the fact that the CLECs are attempting to control SWBT's retail offerings by dictating when SWBT charges toll to its customers. (See Ex. 32, SWBT, Hughes Direct, p. 7). Further, although the CLECs want to dictate when SWBT charges toll to its customers, the CLECs do not want to pay any compensation to SWBT in exchange for SWBT agreeing to waive its tariffed toll rates. Id.

As explained in SWBT's Initial Brief, SWBT assesses toll charges on calls to SWBT's own customers in the metropolitan exchanges for calls to non-MCA subscribers located in the optional MCA tiers, unless the calling customer has a service that would make the call a locally dialed call (for example, Local Plus®), because this type of call is not a local call pursuant to the terms of the MCA Plan. (See Ex. 35, SWBT, Unruh Direct, p. 8). This includes calling to SWBT or other ILEC customers who do not subscribe to MCA Service as well as CLEC customers located in the optional MCA tiers because these customers are not MCA subscribers under the Commission's MCA Order. Id. The determining factor of whether a call is going to be a toll call is not based on the identity of the called party; rather, it is based on whether or not the called party has purchased the Commission-mandated MCA Service. One CLEC, after being instructed to answer a question, with a: "yes, no, I don't know, or I don't understand the question" response, reluctantly admitted this during the hearing. Specifically, McLeod witness Michael Starkey was asked the following question and gave the following answer:

> Q. My question is simply, isn't it fair to say that the determining factor of whether a call is going to be a toll call is not based on the identity of the called party, rather it's based on whether or not the called party is a participant in the MCA Plan?
>
> A. I'm not good at yes or no answers. Yes, but I don't think that tells the whole story.

(Emphasis added). (See T. 591, McLeod, Starkey). Thus, the one and only determining factor of whether a call is going to be a toll call is not based on the identity of the called party; it is simply based on whether or not the called party is a participant in the Commission-mandated MCA

Plan.[1] Id. The very basis of this docket is to determine whether CLECs should be allowed to participate in the MCA Plan.

As is discussed in SWBT's Initial Brief, CLECs were neither initially included in the MCA Plan nor are they currently included in the MCA Plan. (See Ex. 35, SWBT, Unruh Direct, p. 6; see also Ex. 34, Hughes Surrebuttal, p. 2). Thus, unless or until this Commission determines that CLECs should be allowed to participate in the MCA Plan, SWBT, not the CLECs, should control SWBT's retail offerings which have been repeatedly demonstrated to be consistent with the Commission's MCA Order.

II. Issue 1: Are CLECs Currently Included In The MCA Plan. And, If Not, Should CLECs Be Permitted/Required To Participate In The MCA Plan?

A. It Is Clear That CLECs Were Neither Initially Included In The MCA Plan Nor Are They Currently Included In The MCA Plan

It is clear that CLECs were neither initially included in the MCA Plan, in that CLEC entry was brought about by the passage of the federal Telecommunications Act of 1996, nor are they currently included in the MCA Plan. (See Ex. 35, SWBT, Unruh Direct, p. 6; see also Ex. 34, Hughes Surrebuttal, p. 2). However, some CLECs continue to argue otherwise. These claims must be dismissed as illogical, unsubstantiated and outright ludicrous for the reasons set forth in Section II(b) below.

B. The Claims Of Certain CLECs, That They Are Participants In The MCA Plan, Are Illogical, Unsubstantiated And Ludicrous

Claims that the Commission intended to include CLECs in the MCA Plan are illogical, unsubstantiated and ludicrous given the facts that: (1) resellers were initially excluded from the

[1] Gabriel contends that SWBT witness Thomas F. Hughes admitted that the sole determining factor regarding whether a call is considered to be a toll call is based on identity of the called party's carrier. (See Initial Brief of Gabriel Communication of Missouri, Inc., p. 10, citing T. 1029-1030). SWBT invites the Commission to check the citation for this proposition. Thomas F. Hughes only indicated that SWBT does not consider CLECs as Commission-mandated MCA Plan providers. (See T. 1029-1030, SWBT, Hughes).

MCA Plan; (2) payphone providers both initially and today are excluded from the MCA Plan; and (3) CLECs did not exist. (See Ex. 33, SWBT, Hughes Rebuttal, p. 8). Thus, CLEC claims that they are MCA participants must be dismissed. SWBT will explain why the reasons that CLECs advance the proposition that they are MCA participants are inaccurate, below.

1. The Commission Has Not Yet Determined Whether CLECs Are Bound By The MCA Order

Nextlink submits that it is included in the MCA Plan because:

> CLECs are under the supervision and jurisdiction of the Commission and are subject to all Commission orders. Therefore, they must submit the obligations of the order in Case No. TO-92-306, but in turn they are entitled to enjoy its benefits.

(See Initial Brief of Nextlink Missouri, Inc., p. 5). Nextlink's contention must be dismissed because the Commission has not yet determined whether CLECs are bound by the MCA Order. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 3). That is the very purpose of this docket.

SWBT notes that it is interesting that although Nextlink contends that it is included in the MCA Plan because it is bound by the Commission's MCA Order, Nextlink does not believe that it needs to comply with any of the Commission mandates which are set forth in the MCA Order. (See Initial Brief of Nextlink Missouri, Inc., p. 5). There has been no certification proceeding in which MCA Plan participation was discussed, nor is there any certification order that would allow any CLEC the right to modify the portions of the MCA Plan at the CLEC's option, as Nextlink contends. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 3). For these reasons, Nextlink's contention that it is an MCA Plan participant must be dismissed.

2. CLECs' Claims That Approval Of Tariffs Offering MCA-Like Services Does Not Equate To A Radical Revision Of The MCA Plan Or Of The ILEC's Rights Under That Plan

Some CLECs contend that they are MCA Plan participants based on their approved basic local service tariffs. These claims are made although most of the tariffs, which CLECs now

claim served to modify the MCA Plan, never mention MCA Service much less follow the Commission-mandated terms of that Plan. For example, Nextlink's purported MCA tariff never mentions MCA Service. (T. 856, Nextlink, Pomponio). Further, Nextlink's tariff omits numerous exchanges that are within the Commission's definition of the MCAs as set forth in the MCA Order. Id. Moreover, Nextlink does not offer "MCA Service" at MCA-prescribed rates. (See T. 860, Nextlink, Pomponio).

Similarly, nothing in Gabriel's tariff denominates its service as MCA Service. (See T. 730, Gabriel, Cadieux). Unstated intentions in CLECs' "MCA-like" tariffs of their desires to be MCA participants, do not amount to a radical revision of the terms of the MCA Plan and/or of the ILECs' rights under that plan. Until the commencement of this proceeding, no hearing was conducted or notice given to the public or the ILECs that the Commission was examining whether to change the terms and conditions of the MCA Plan. Thus, approval of CLECs' basic local service tariffs, offering "MCA-like" services, neither altered the existing MCA Plan nor required ILECs to modify their calling scopes.

3. The Commission Did Not Determine That Facilities-Based CLECs Are Entitled To Participate In The MCA Plan In TO-96-440.

AT&T argues that: "[t]here is not doubt the Commission has previously authorized CLECs to participate in the MCA." (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City, p. 4). In support of this position, AT&T cites this Commission's Report and Order in In the Matter of the Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement under the Telecommunications Act of 1994 with Communications Cable-Laying Company, d/b/a Dial US, TO-96-440, September 6, 1996. Although AT&T properly cited the proposition that: "MCA Service, where mandatory, is an essential part of basic local telecommunications service and as

such is part of the service that LECs must provide to competitors under the Act" (see Dial US Report and Order, p. 6), AT&T intentionally omitted the following two sentences which indicate that the Commission's order is limited to resale of MCA Service. Specifically, the omitted sentences provide:

> The Commission finds that resale of the service by Dial US does not discriminate against Choctaw or any other telecommunications carrier since all MCA arrangements would still be provided by SWB since it is still, in effect, SWB's service that is being provided. Compensation arrangements will be made under the terms of MCA service now offered by SWB.

Id. In situations other than resale, MCA arrangements will not be provided by SWBT, or any other ILEC for that matter, and it is not SWBT's service that is being provided. Thus, despite AT&T's blatant attempt to mislead the Commission, the Commission certainly has not determined that facilities-based CLECs are MCA Plan participants or this docket would not have been necessary.

4. CLEC Certification Proceedings Regarding Basic Local And Local Exchange Service Have Never Addressed MCA Participation.

AT&T claims that CLECs are MCA Plan participants because the Commission granted the CLECs certificates of service authority to provide basic local and local exchange service. (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City, p. 6). This claim is disingenuous in that AT&T admitted during the hearing of this matter that neither AT&T nor TCG specifically requested permission or authority to provide MCA Service in their applications to provide basic local service. (See T. 413, AT&T, Kohly; see also Ex. 49). It simply cannot be claimed that the Commission granted authority that had not been requested and when the Commission did not reference MCA Service at all in its certification orders. (See T. 416, AT&T, Kohly).

Further, AT&T's citation to SWBT witness Thomas F. Hughes' testimony for the proposition that: "[b]eyond a certificate of service authority from the Commission, SWBT is unable to identify any additional authority from a Commission that a CLEC would need to obtain before being allowed to provide MCA Service," is galling. (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City, p. 6). A review of the transcripts makes it abundantly clear that Mr. Hughes asserted that CLECs are not MCA Plan participants unless and until the Commission decides to permit such entry. (For example, see T. 969, SWBT, Hughes). Clearly, it is SWBT's position that CLECs must obtain Commission approval before being allowed to provide MCA Service. If the Commission had already determined that certification alone was enough to provide MCA Service, this docket would not be necessary.

5. AT&T And SWBT Did Not Arbitrate The Issue Of SWBT's Retail Charges To Its Own Customers

Next, AT&T contends that: "[i]t is inconceivable that SWBT would arbitrate the issue of inter-company compensation for exchange of MCA traffic between itself and AT&T while not believing that AT&T could offer the service." (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City, p. 7). Again, AT&T is blatantly attempting to mislead this Commission. To begin with, AT&T and SWBT did not arbitrate the issue of inter-company compensation for the exchange of MCA traffic; rather, AT&T and SWBT arbitrated the issue of inter-company compensation for the exchange of traffic within the MCAs. This distinction is critical because not all traffic within the MCAs is "MCA traffic."

Moreover, the interconnection agreement between AT&T and SWBT does not address the issue of inter-company compensation for "MCA traffic." AT&T admitted this during the hearing of this matter. Specifically, AT&T admitted that in the interconnection agreement

between SWBT and AT&T. the parties expressly agreed that notwithstanding the definition of local traffic for terminating compensation purposes, the interconnection agreement was not intended to and did not address the retail charges that each could make to its own customers. (See T. 440, AT&T, Kohly). Additionally, AT&T admitted that in the interconnection agreement, SWBT and AT&T further agreed that either party is free to define its own local calling areas for purposes of its provision of telecommunications services to its end-users. Id. at 442. SWBT neither has considered nor does consider AT&T an MCA Plan participant. AT&T's repeated attempts to mislead the Commission into believing that it is an MCA Plan participant and that this issue has already been determined are improper.

III. Issue 2: 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 Scope; (b) Bill And Keep Inter-Company Compensation; (c) Use Of Segregated NXXs For MCA Service; And (d) Price?

If CLECs are permitted to participate in the MCA Plan, they should be required to follow the parameters of the MCA Plan including but not limited to: (a) geographic calling scope; (b) bill and keep inter-company compensation; (c) use of segregated NXXs for MCA Service; and (d) price. (See Ex. 32, Hughes Direct, pp. 11-12); see also Ex. 33, SWBT, Hughes Rebuttal, p. 4).[2] This position is not a barrier to entry; rather, it is consistent with the federal Telecommunications Act of 1996. Specifically, 47 C.F.R. §253 provides:

> Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and

[2] Gabriel outlines five steps the Commission needs to take to assure that CLECs can fully participate in the MCA Plan. (See Initial Brief of Gabriel Communications of Missouri, Inc., pp. 7-8). Gabriel, thereafter, states that it appears that the ILECs concede that these steps would be sufficient to achieve full competitive participation in the MCA Plan by CLECs and cite the testimony of SWBT witness, Thomas F. Hughes. Id. at 8. So it is perfectly clear, Gabriel's citation to Mr. Hughes' testimony neither supports Gabriel's suggested actions nor represents SWBT's position in this matter. SWBT has consistently taken the position that if CLECs are permitted to participate in the MCA Plan, they should be required to follow the parameters of the MCA Plan including but not limited to: (a) geographic calling scope; (b) bill and keep inter-company compensation; (c) use of segregated NXXs for MCA Service; and (d) price. (See Ex. 32, Hughes Direct, pp. 11-12; see also Ex. 33, SWBT, Hughes Rebuttal, p. 4).

welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(See 47 C.F.R. §253). Permitting CLECs the option to offer MCA Service under the same terms and conditions under which ILECs must offer MCA Service would ensure the continued viability of the MCA Plan, thereby ensuring the continued quality of telecommunications services and safeguarding the rights of consumers, while at the same time allowing local competition.

If CLECs are not required to follow the terms of the MCA Plan, then they will not really be part of the "MCA Plan." They will simply be deriving benefits of the MCA Plan; namely, toll-free return calling from SWBT.

A. If CLECs Are Permitted To Participate In the MCA Plan And Offer "MCA Service" They Should Be Required To Follow The Geographic Calling Scope Of The MCA Plan Which Is Set Forth In The Commission's MCA Order

If CLECs are permitted to participate in the MCA Plan, they should be required to follow the geographic calling scopes of the MCA Plan as set forth in the Commission's MCA Order. (See Ex. 33, SWBT, Hughes Rebuttal, p. 12). Although there was some indication during the hearing that the parties almost unanimously agreed with this position, the briefs, once again, indicate that certain CLECs want a competitive advantage.

Specifically, Nextlink indicates that: "if they choose to participate in the MCA Plan[3], CLECs should be required to offer, at a minimum, the current calling scope of the MCA Plan, but should not be restricted from offering a larger calling scope." (See Initial Brief of Nextlink of Missouri, Inc., p. 6). Nextlink further indicates that it would not oppose a decision that required CLECs to offer a calling scope at least as large as that offered by the incumbent LECs as long as the CLEC's MCA Service numbers have been properly identified. Id.

[3] This phrase alone indicates that Nextlink does not truly believe that as a result of the Commission's MCA Order, certification and tariffs, CLECs are participants in the MCA Plan. Nextlink quite obviously believes that CLECs get to choose to participate in the MCA Plan.

While Nextlink contends that it wants to set its own calling scope, it is actually seeking to control SWBT's outbound calling scopes. (See Ex. 34. Hughes Surrebuttal, p. 6). Nextlink will gain an advantage if it provides an expanded calling scope beyond the MCA boundaries. Id. SWBT would not know the called party's location and would apparently be required to provide toll-free return calling for calls beyond the MCA boundaries. Id. Nextlink may also be seeking to avoid access on outbound calls originated by its customers from beyond the MCA boundary to customers within the MCA as it failed to address this problem in its briefs. Id. These financial and competitive advantages should not be permitted.

If the Commission determines that LECs should be permitted to define outbound calling scopes that are larger than the Commission-approved footprint of the MCA, it should specify that: (1) calls placed from the expanded calling area into the MCA are subject to access charges because they are not MCA calls; (2) LECs providing service within the MCA need not provide toll-free return calling to customers in the expanded calling area; and (3) LECs who offer such expanded calling plans must call any such plans something other than "MCA Service."

B. If CLECs Are Permitted To Participate In The MCA Plan, They Should Be Required To Follow The Bill And Keep Inter-Company Compensation Mandate Which Is Set Forth In The Commission's MCA Order

SWBT remains firm in its position that if the Commission allows CLECs to participate in the MCA Plan, they should be required to follow the bill and keep inter-company compensation mandate which is set forth in the Commission's MCA Order. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 9). SWBT also remains firm in its position that if the Commission allows CLECs to participate in the MCA Plan, a transiting company, whomever that may be, is entitled to be compensated for transiting traffic that originates from one party, transits the transiting company's facilities, and terminates to a third-party. (See T. 931, 951, and 952-954, SWBT,

Hughes). The reason for this position was explained by Tom Hughes during the hearing of this matter:

> If you want to talk about bill and keep, one of the parts of bill and keep is that you're billing someone in order to keep it. If we're solely transiting, we're not billing anyone. So there is nothing to keep.

(See T. 953, SWBT, Hughes).

As Cass County and MITG point out in their Initial Briefs, this would be a change to the bill and keep inter-company compensation arrangement that is in place at this time. (See Initial Brief of Cass County Telephone Company, et al., p. 26; see also MITG's Initial Brief, pp. 2-3). Under the current MCA Plan, the large ILECs do not receive compensation for transiting traffic. Id. However, this change is necessitated if the Commission allows CLECs to participate in the MCA Plan. The reason for this is simple. While SWBT performs a very limited transiting function today, that rate would grow drastically if SWBT is forced to transit traffic without compensation. SWBT has the majority of telecommunications facilities in the MCA geographic areas. If the Commission retains the existing bill and keep inter-company compensation mechanism currently in effect and does not allow transiting companies to recover the cost of providing the service of transiting traffic, CLECs will have no economic incentive to invest in their own facilities within the MCA. Rather, they will use SWBT's facilities for free. The amount of traffic for which SWBT performs a transiting function would increase significantly. (See T. 993, SWBT, Hughes). SWBT would become a wholesale transiting carrier that would receive absolutely no compensation for the use of its facilities.

Thus, while SWBT provides a limited transiting function under the existing MCA Plan to ILECs, this arrangement is no longer viable because the increase in transiting traffic will give

every other LEC in the State of Missouri a competitive advantage at SWBT's expense. The prejudice to SWBT, quite simply, cannot be denied.

C. If CLECs Are Permitted To Participate In The MCA Plan, They Should Be Required To Follow The Dedicated NXX Code Mandate Which Is Set Forth In The Commission's MCA Order

As SWBT explained in its Initial Brief, since part of the MCA local calling scope permits local calls to other MCA subscribers, the MCA subscribers must be identifiable so that locally dialed calls to these subscribers can be permitted. (See Ex. 35, SWBT, Unruh Direct, p. 12). The industry uses dedicated MCA NXXs to permit these calls to be dialed on a local basis. Id. If CLECs are permitted to participate in the MCA Plan, they should be required to segregate NPA-NXX codes so that the other providers will know how to determine whether the called party is an MCA Plan participant. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 7).

Although most parties agree that the use of dedicated MCA NXXs is currently the only reasonable method of providing MCA Service, (See T. 699, Birch, Mulvany; T. 769, see Gabriel, Cadieux; see T. 853-854, Nextlink, Pomponio; see Ex. 35, SWBT, Unruh Direct, p.13; see Initial Brief of Sprint Communications Company, L.P., Sprint Missouri, Inc., and Sprint Spectrum L.P. d/b/a Sprint PCS), Staff proposes that the Commission: "order ILECs to recognize CLEC codes, NXX codes, as MCA codes and vice versa." (See T. 106, Staff, Voight). Staff professes that: "a single company is required to use two codes to serve customers in a single exchange when a single code may be capable of serving all of the customers in that exchange." (See Initial Brief of the Staff of the Missouri Public Service Commission, p. 4).

A single company is required to use two codes to serve customers only in the optional tiers. If the Commission were to order ILECs to recognize CLEC NXX codes as MCA codes and CLECs to recognize ILEC MCA NXX codes as MCA codes, what the Commission would

be saying is that MCA Service is not an optional service in the outer tiers for CLEC customers; rather, all CLEC customers would be required to be MCA subscribers. CLECs would be forced to provide their customers MCA Service even if some of their customers preferred not to subscribe to MCA Service. CLECs would then either have to increase the rates for their customers who elected not to subscribe to MCA Service or the MCA calling patterns would be significantly modified. For example, if CLEC did not increase the rates for their customers who did not subscribe to MCA Service to the rates the CLECs charge their customers who subscribe to MCA Service (and thereby make all of their customers MCA subscribers), MCA calls could be locally placed to non-subscribers (e.g. an MCA-3 subscriber would be able to call a CLEC MCA-4 non-subscriber on a toll-free basis). ILECs, and particularly SWBT, would also bear the financial impact of eliminating the mandatory use of segregated NXX codes as they would be required to provide toll-free calling whenever a CLEC customer is called. Staff proposes no compensation in this instance, even though a significant financial impact could result. For these reasons, Staff's proposal must be rejected.

D. If CLECs Are Permitted To Participate In The MCA Plan, They Should Be Required To Follow The Rates Which Are Set Forth In The Commission's MCA Order

SWBT agrees with the Missouri Independent Telephone Group ("MITG") that if CLECs are permitted to participate in the MCA Plan, and opt to offer MCA Service, they should be required to follow the rates, which are set forth in the Commission's MCA Order. (See MITG's Initial Brief, pp. 1 and 8). SWBT, however, opposes MITG's suggestions that in the event that the Commission provides for MCA pricing flexibility: (1) it should be equally available to CLECs and directly interconnected ILECs with whom the CLEC has an approved interconnection agreement, thereby providing a basis to directly compete for local customers;

and (2) that for small ILECs, in whose exchanges there is no direct interconnection or approved interconnection agreement providing a basis to compete for local customers, there is no need for pricing flexibility. (See MITG's Initial Brief, pp. 2 and 9). There is absolutely no reason to draw any distinction between large ILECs and small ILECs. Rather, if CLECs are permitted to participate in the MCA Plan, they should be subject to the same pricing requirements as are applicable to all ILECs. (See Ex. 32, SWBT, Hughes Direct, p. 12). One way to accomplish this would be to have all LECs, ILECs and CLECs, charge the same for MCA Service. (See T. 100, Staff, Voight). Another way to accomplish this would be to give all LECs equal pricing flexibility by declaring MCA Service to be a competitive service under Section 392.361, R.S.Mo.[4] (See T. 110-112, Staff, Voight).

Although SWBT agrees that one way to ensure that all LECs are subject to the same pricing requirements is to give all LECs equal pricing flexibility by declaring MCA Service to be a competitive service, SWBT disagrees with the implication in Staff's brief that ILECs only be allowed to change their MCA Service charges in response to competition brought on by flexible pricing for MCA Service by CLECs. (See Initial Brief of the Staff of the Missouri Public Service Commission, p. 11). If ILECs are required to wait to change their MCA Service charges in response to some unspecified level of competition brought on by flexible pricing for MCA Service by CLECs, pricing requirements will have to be repeatedly addressed by this Commission. Thus, SWBT supports equal pricing requirements for all LECs; the Commission should either require all LECs to charge the same for MCA Service or allow all LECs equal upward and downward pricing flexibility. (See Ex. 32, SWBT, Hughes Direct, p. 12).

[4]SWBT notes that one advantage of declaring MCA Service to be a competitive service under Section 392.361, R.S.Mo. is that it would allow pricing flexibility in the mandatory MCA zones which mandatory pricing would not allow. This alternative would satisfy Gabriel's concerns. (See Initial Brief of Gabriel Communications of Missouri, Inc., p. 17).

Finally, mandated pricing would not be "overturning a fundamental tenet of competition," as Birch contends (see Brief of Birch Telecom of Missouri, Inc., page 5). Specifically, Birch argues that the only CLEC rates that are subject to price-cap regulation are rates for switched access. (See Brief of Birch Telecom of Missouri, Inc., page 4). Birch states:

> In fact, the way CLEC access rates are capped gives further evidence of the foundational nature of the premise that CLEC rates must be determined by competitive conditions—the cap is not applied by statute or by rule, but by the terms of the standard stipulation entered into by and among the parties to each new CLEC's basic local exchange application proceeding. Thus, the only price caps applicable to CLECs in Missouri are contractually determined. If the Commission were to mandate that CLECs offer MCA service at the prices fixed for ILECs, the Commission would be overturning a fundamental tenet of competition.

Id. at 4-5. Birch's contention that the only price caps applicable to CLECs in Missouri are contractually determined is erroneous. Apparently, Birch has not had the opportunity to read this Commission's Report and Order in In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri, Case No. TO-99-596, June 1, 2000. The Commission determined that: "a cap on exchange access rates is reasonable and necessary in order for the service to be classified as a competitive service and for the Commission to suspend or modify the application of its rules or certain statutory provisions." Id. at 22. The Commission explained that Section 392.361.6 provides that the Commission "may require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement." Id. at 22-23. The Commission further determined that a cap on exchange access rates is reasonably necessary to protect the public interest and is consistent with the purposes and provisions of Chapter 392, R.S.Mo.: (a) to ensure that customers pay only reasonable charges for telecommunications purposes; and (b) to allow full and fair competition to function as a

substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest, citing Section 392.185, R.S.Mo. Id. at 22-23. The Commission, thereafter, determined that the public interest would best be served by capping CLEC exchange access rates at the level of the access rates of the directly competing ILEC. Id. at 24.

As with access rates, if the Commission were to order all LECs to provide MCA Service at the rates specified in the MCA Order, the Commission would be protecting the public interest. Specifically, the Commission would be ensuring the longevity of the MCA Plan, a plan which meets the desires and needs of Missouri customers.

IV. Issue 3: Should There Be Any Restrictions On The MCA Plan (For Example, Resale, Payphones, Wireless, Internet Access, Etc.)?

As stated in SWBT's Initial Brief, SWBT supports prior Commission decisions: (1) prohibiting IXCs from reselling MCA; and (2) allowing the resale of MCA Service by CLECs so long as each CLEC and its end-user customers abide by all of the same terms and conditions as the ILECs and their end users. (See Initial Brief of Southwestern Bell Telephone Company, pp. 42-43).

BroadSpan contends that: "[t]he Commission should not restrict customers from continuing to use MCA Service to access internet service providers (ISPs) on a locally dialed basis." (See BroadSpan Communications, Inc., d/b/a Primary Network Communications, Inc.'s Initial Brief, p. 1). SWBT not only agrees that customers who subscribe to MCA Service should be allowed to call ISPs on a local basis, but also contends that ISPs should be permitted to subscribe to MCA Service. (See Ex. 33, SWBT, Hughes Rebuttal, p. 14; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 9). However, SWBT disagrees with BroadSpan's suggestions that, with regard to "MCA traffic," such traffic should: (1) "continue to be exchanged between adjoining

LECs on a bill-and-keep basis"; and (2) "continue to be exchanged between competing LECs pursuant to their approved interconnection agreement." (See BroadSpan Communications, Inc., d/b/a Primary Network Communication, Inc.'s Initial Brief, p. 2).

To begin with, the terms of approved interconnection agreements apply only to the price to terminate a call, not the charge either provider makes to its own end user customer. SWBT assesses toll charges to its end users for calling non-MCA Plan participants pursuant to the terms of its tariffs, which are not inconsistent with the terms of its interconnection agreements. Thus, it is factually inaccurate to state that "MCA traffic" should "continue to be exchanged between competing LECs pursuant to the terms of their approved interconnection agreements" as those agreements do not address charges to each carriers' retail customers. The very purpose of this docket is to determine whether CLECs should be allowed to participate in the MCA Plan and, if so, under what terms and conditions. Clearly, there has been no determination that ILECs are to ignore the terms of their own tariffs and refrain from charging applicable toll charges.

Even if CLECs are allowed to participate in the MCA Plan, under no circumstances should terminating local reciprocal compensation apply to calls to ISPs. (See Ex. 33, SWBT, Hughes, Rebuttal, p. 14; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 9). SWBT adamantly maintains that calls to ISPs are primarily interstate and international calls, not local, regardless of the dialing pattern that is used to reach the ISP. Id. Treating these calls as local could have devastating financial impacts on ILECs because ILECs may face net revenue losses without even considering the costs to provide local service. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 9-10). Thus, if CLECs are permitted to participate in the MCA Plan, it should be clear that no inter-company compensation charges apply to Internet bound traffic, even if bill and keep inter-company compensation is not adopted. Id.

V. Issue 4: What Pricing Flexibility Should ILECs And/Or CLECs Have Under The MCA Plan?

As indicated above, if CLECs are permitted to participate in the MCA Plan, they should be required to follow the rates that are set forth in the Commission's MCA Order. (See Ex. 32, SWBT, Hughes Direct, p. 12). However, if the Commission should determine that pricing flexibility is appropriate, such flexibility should apply equally with respect to all LECs.

Although SWBT is not opposed to price competition if all LECs have equal pricing flexibility, SWBT does not believe that the Commission must allow competitive pricing; a position advanced by AT&T. (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City). As Cass County explains, pricing flexibility for MCA Service is unnecessary because CLECs have other avenues to set their service offerings apart. (See Initial Brief of Cass County Telephone Company, et al., p. 14). Cass County illustrated this in its Initial Brief. Id. Specifically, Cass County noted that Orchard Farm's basic local rate in Tier 3 of the St. Louis MCA is different from SWBT's local rate in Tier 3. Id. Thus, the overall total bills for local service, assuming just basic local and MCA, may differ. Id. Additional local calling features such as custom calling features can also be offered by the CLEC. Id. Thus, CLECs already have some pricing flexibility in the outer MCA tiers. The MCA additive is only one element in a multi-element local exchange bill. Thus, flexible pricing with regard to MCA Service can be, but need not be, granted by this Commission.

VI. Issue 5: How Should MCA Codes Be Administered?

A. The Use Of Dedicated NXX Codes, As Can Be Identified By Each Carrier In The Local Exchange Routing Guide, Is The Only Reasonable Method Of Providing MCA Service

As previously discussed, the industry uses MCA NXX codes to permit local calls to other MCA subscribers. (See Ex. 35, SWBT, Unruh Direct, p. 12). The use of dedicated NXX codes

is currently the only reasonable method of providing MCA Service. Id. at 13. Further, the MCA NXX codes should be identified using the Local Exchange Routing Guide ("LERG"). Id. As Sprint explains in its brief: "[t]he LERG is the sole database relied upon by all telecommunications carriers throughout the United States to ensure accurate NXX notification." (See Initial Brief of Sprint Communications Company, L.P., Sprint Missouri, Inc., and Sprint Spectrum L.P. d/b/a Sprint PCS, p. 3).

B. Neither A Third Party Administrator Nor The Creation Of A New Database Should Be Considered Until Such Time As There Is Evidence That The Local Exchange Routing Guide Report Cannot Be Successfully Used To Identify MCA NXX Codes

As expected, in the Initial Brief of Cass County Telephone Company, et al., Cass County expresses concern that using the LERG may not be feasible and it could be subject to abuse. (See Initial Brief of Cass County Telephone Company, et al., p. 15). Cass County, therefore, suggests a neutral third party, such as the Commission Staff, would be appropriate to administer MCA NXX codes. Id. As SWBT stated in its Initial Brief, SWBT shares Cass County's concern that the process could be abused. (See Ex. 38, SWBT, Unruh Surrebuttal, p. 10). However, SWBT questions whether a third party would be able to stop any perceived abuse. Id. Conceivably, a third party would not have the authority to dictate to companies how they were going to use their NXX codes. Id. Moreover, SWBT is concerned about a neutral third party administering MCA NXX codes as this may create an additional administrative burden. Id. The industry already has a standard means of identifying codes, the LERG report. Id. at 10-11. The LERG report can and should be utilized to identify MCA NXX codes. Id. A third-party administrator should not be considered until such time as there is evidence that the LERG cannot be successfully used to identify MCA NXX codes.

Although SWBT believes the Commission should refrain from ordering carriers to notify other MCA participants about NXX codes that are to be treated as MCA NXX codes until such time as there is evidence that the LERG report cannot be successfully used to identify MCA NXX codes, if the Commission determines (for whatever reason) that the LERG should not be used to identify MCA NXX codes, SWBT supports consideration of Gabriel's proposal, i.e. that each LEC be required to submit a verified list of MCA and non-MCA NXX codes to the Commission and to every other LEC involved in the MCA Plan verifying that the outbound local calling scope of the carrier making the request is at least as large as the MCA Plan local calling scope and that every NXX listed is associated with a rate center that is located within the boundaries of the MCA. (See T. 828-829, Gabriel, Cadieux; see also Initial Brief of Gabriel Communications of Missouri, Inc., pp. 19-20). SWBT agrees with Birch that this is: "simple enough to avoid the need for a separate administrator and powerful enough to be enforceable by ordinary complaint procedures." (See Brief of Birch Telecom of Missouri, Inc., p. 6).

VII. Issue 6: What Is The Appropriate Inter-Company Compensation Between LECs Providing MCA Service?

A. The Appropriate Inter-Company Compensation Between LECs Providing MCA Service Is Bill And Keep Inter-Company Compensation

As previously discussed above, if CLECs are permitted to participate in the MCA Plan, the appropriate inter-company compensation is bill and keep for all locally dialed calls within the MCA, meaning that neither carrier reimburses the other for traffic within the MCA. (See Ex. 32, SWBT, Hughes Direct, p. 13; see also Ex. 33, SWBT, Hughes Rebuttal, p. 13; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 9). This position is consistent with the inter-company compensation arrangement between ILECs as required by the Commission in the establishment of the MCA Plan. (See Ex. 33, SWBT, Hughes Rebuttal, p. 13).

B. This Commission Should Not Allow CLECs To Choose Either Bill And Keep Inter-Company Compensation Or Local Reciprocal Compensation Under An Interconnection Agreement Because Such Choice Would Allow CLECs An Unfair Financial And Competitive Advantage

Sprint proposes to give CLECs the option to chose either bill and keep inter-company compensation or local reciprocal compensation under an interconnection agreement. (See Ex. 30, Sprint, Cowdry Direct, p. 4; see also Ex. 33, Hughes Rebuttal, p. 14). CLECs, simply, should not have choices that are not available to ILECs who participate in the MCA Plan because such choice would give CLECs an unfair financial and competitive advantage. CLECs would chose whichever compensation was more advantageous to it, and, therefore, less advantageous for the ILEC involved.

C. This Commission Should Not Mandate Bill And Keep Inter-Company Compensation For ILECs With Compensation For CLECs To Be Based On Interconnection Agreements

Staff proposes a bill and keep inter-company compensation arrangement for ILECs with compensation based on interconnection agreements for CLECs. (See Ex. 1, Staff, Voight Direct, p. 48; see also Ex. 33, SWBT, Hughes Rebuttal, p. 13; see also T. 113, Staff Voight). Although the CLECs generally support this position (see e.g. Initial Brief of Nextlink of Missouri, Inc., p. 7), it should be denied.

If the Commission decides to permit CLECs to participate in the MCA Plan, CLECs should participate on the same basis as ILECs. (See Ex. 33, SWBT, Hughes Rebuttal, p. 13). This should include bill and keep inter-company compensation for all locally dialed calls within the MCA. CLECs should not have the ability to choose a different measure of compensation while obtaining the benefits of the MCA Plan. Id.

As is evidenced by the testimony, the hearing transcript, and the briefs that have been filed in this case, what the CLECs are really saying with regard to inter-company compensation

is that they want reciprocal compensation arrangements with SWBT, but they want bill and keep inter-company compensation with regard to all other ILECs and CLECs. This request should be denied for the reasons set forth above. Additionally, as explained in Sprint's Initial Brief: "[e]ach move toward reciprocal compensation increases the pressure on the rate because the cost of provisioning the service increases. (See Initial Brief of Sprint Communications, L.P., Sprint Missouri, Inc., and Sprint Spectrum, L.P., d/b/a Sprint PSC, p. 2). Rate increases in turn may lead to the demise of the MCA Plan. For this reason, the Commission should not mandate inter-company compensation to be based on interconnection agreements.

SWBT notes that if the Commission allows CLECs to participate in the MCA Plan and bill and keep inter-company compensation is not retained with respect to MCA traffic, as evidenced by the controversial nature of this topic in this docket, SWBT anticipates that this issue will be hotly contested and will result in the Commission revisiting this issue in subsequent arbitration(s).

D. Bill And Keep Inter-Company Compensation Is Not Inconsistent With The Commission's Determination in TO-97-40

AT&T contends that the bill and keep inter-company compensation mechanism for MCA traffic is inconsistent with the Commission's determination in the AT&T/MCI arbitration with SWBT. (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City, p. 15). Issues concerning AT&T's possible participation in the MCA Plan were not addressed in In the Matter of AT&T Communications of the Southwest's Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, TO-97-40, et al., December 11, 1996 ("AT&T Arbitration Order"). Instead, the AT&T Arbitration Order addresses the appropriate inter-company compensation with regard to calls which

originate and terminate within SWBT's portion of the MCA. (See AT&T Arbitration Order, pp. 40-41; see also Ex. 33, SWBT, Hughes Rebuttal, p. 17-20; see also T. 439, AT&T, Kohly; see also T. 124, Staff, Voight). In such situations, the Commission determined that the appropriate inter-company compensation is local reciprocal compensation. Id. It is permissible, however, and not inconsistent with the AT&T arbitration to condition AT&T's participation in the MCA Plan on adoption of a bill and keep arrangement for all calls originating and terminating within the geographic boundaries of the MCA Thus, SWBT's proposal to have bill and keep inter-company compensation for MCA traffic is not inconsistent with the AT&T Arbitration Order.

E. Cost Increases Related To The Implementation Of The MCA Plan Were Neither Initially Recovered From SWBT Nor Should They Be Recovered From SWBT In This Docket

Finally, SWBT notes that MITG:

> objects to any form of inter-company compensation which increases the cost of MCA service for MoKan Dial, Choctaw Telephone Company, or any other small ILECs providing MCA service. Unless such cost increases are now recovered from SWB, as they were when MCA service was established, small ILECs and their customers will be harmed by MCA rate increases by competition in urban exchanges.

(See MITG's Initial Brief, p. 3).

When the MCA Plan was established, the Commission prescribed MCA rates as part of an overall plan to maintain revenue neutrality among the ILECs that it required to provide MCA Service. (See Ex. 68, MCA Order, pp. 24-25; see also Ex. 35, SWBT, Unruh Direct, p. 5; see also T. 102, Staff, Voight; see also T. 591, McLeod Starkey). The rates in the optional tiers were set to reflect the amount of lost toll that the ILECs would experience once the MCA Plan was implemented. (See T. 1131, GTE, Evans). The end result was revenue neutrality for all ILECs. MITG's suggestion that cost increases were recovered from SWBT when the MCA Plan was established is misleading; increased costs were recovered through MCA rates and revenue

neutrality was achieved, in part, through inter-company compensation. Further, MITG's suggestion that any cost increase that the small ILECs may incur as a result of this docket should be borne by SWBT is nothing more than a request for a Commission-mandated transfer of funds at SWBT's expense.

VIII. Issue 7: Is The Compensation Sought In The Proposed MOU Appropriate?

A. The Proposed MOU

As is evidenced by the title of the document, the Proposed MOU is a "Memorandum of Understanding Between Southwestern Bell Telephone Company and Intermedia Communications, Inc." Regardless of Intermedia's current characterization of the Proposed MOU as "SWBT's MOU," the undeniable fact is that both parties negotiated the MOU and executed the MOU. Specifically, as SWBT explained in its Initial Brief, Intermedia agreed to compensate SWBT at a rate of 2.6 cents per minute in return for SWBT permitting its own customers to call Intermedia's customers on a toll-free basis within SWBT's portion of the MCA. (See Ex. 32, SWBT, Hughes Direct, p. 10).

Intermedia now contends that it had: "no choice but to agree to its terms or risk very serious consequences for both itself and its customers." (See Initial Brief of Intervenor Intermedia Communications, Inc., p. 14). Intermedia's contention belies the factual background of the MOU. It is undisputed that SWBT advised Intermedia in May, 1999, that calls from SWBT's customers to Intermedia's customers were treated as MCA calls because Intermedia's NPA NXXs were opened with an incorrect local calling scope. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 16). SWBT and Intermedia, thereafter, negotiated the Proposed MOU for a period of **five** months. Clearly in the five-month interval, if Intermedia felt that SWBT's actions

were inappropriate, it could have invoked the dispute resolutions of the parties' Interconnection Agreement and/or have raised the issue to the Commission. Id.

Intermedia also contends that the terms of the Proposed MOU require Intermedia to pay the 2.6 cents per minute charge for all toll-free return calling—even for those calls from SWBT customers in the Principal Zone to Tiers 1 and 2 to Intermedia customers in Principal Zone and Tiers 1 and 2 where MCA is mandatory and not an optional service. (See Initial Brief of Intervenor Intermedia Communications, Inc., p. 16). As noted in SWBT's Initial Brief, it agrees that all calls which originate and terminate within the Principal Zone, MCA-1 and MCA-2 should not be subject to this 2.6 cent per minute compensation. (See Initial Brief of Southwestern Bell Telephone Company, p. 55, footnote 10).

B. The Compensation Sought In The Proposed MOU Is Appropriate

The compensation sought in the proposed MOU is appropriate. To the extent that CLECs seek to have calls from SWBT customers within the MCA be placed on a local basis, compensation is appropriate. These calls are toll calls and toll charges should apply; if SWBT is asked to provide the service to its customers without charge, then compensation by the CLEC is appropriate.[5]

The Federal Communications Commission's recent Memorandum Opinion and Order, in In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region,

[5] McLeod makes the unsupported allegation that the proposed MOU offers less profits for its facilities-based service than were McLeod to simply continue reselling SWBT service. (See Initial Brief of McLeod USA, p. 2). As pointed out by Vice Chair Drainer during the hearing of this matter, McLeod's figures do not appropriately reflect the UNE costs in the optional tiers because the individual exchanges in the optional tiers were not considered; if McLeod had used Zone 2 rates, which represent many of the exchanges in the optional MCA tiers, the UNE costs would be substantially lower. (See T. 680-681, 684-687, McLeod, Wissenberg).

InterLATA Services in Texas. CC Docket No. 00-65. June 30. 2000 ("Memorandum Opinion and Order Regarding SBC's Texas 271 Application") makes clear that such compensation is appropriate. The FCC specifically states:

> 384. Nor are we persuaded by WorldCom's allegations that SWBT's Extended Area Service (EAS) additive charge is a non-cost-based fee intended to compensate SWBT for lost revenues, in violation of our rules. EAS enables residential and business customers to extend the coverage of their flat-rate local calling area for a set monthly fee. A customer subscribing to EAS pays a higher monthly flat rate to have a larger non-toll calling area. Under one-way EAS, a SWBT customer would be able to call another SWBT customer within its extended area without paying a toll. Under two-way EAS, the SWBT subscriber pays a higher fee to allow other SWBT customers within the extended calling area to call in without paying toll charges.
>
> 385. When either the originating or terminating end user is not a SWBT customer, however, EAS will not work. If a SWBT EAS customer calls a competitive LEC customer in the extended area, the competitive LEC ordinarily would charge SWBT terminating access, which SWBT would pass on to its SWBT customer. Similarly, when a competitive LEC customer in the extended area calls a SWBT customer, SWBT would charge the competitive LEC terminating access, which the competitive LEC would pass on to its customer. Carriers, however, may agree to waive toll charges that would otherwise be assessed. In the alternative, carriers may agree to bill each other a per-minute charge.

(See Memorandum Opinion and Order Regarding SBC's Texas 271 Application, paragraphs 384 and 385).

C. The Proposed MOU Does Not Violate 47 C.F.R. §51.703(b)

AT&T contends that the MOU violates 47 C.F.R. §51.703(b). (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City, p. 10). To begin with, section (b) must be read in connection with section (a). Further, it is clear that the MOU does not violate 47 C.F.R. §51.703(b).

47 C.F.R. §703 addresses reciprocal compensation obligations of LECs. It provides:

> (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier.
>
> (b) A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

(See 47 C.F.R. §703). Thus, subpart (a) specifies that all LECs must establish reciprocal compensation arrangements regarding local telecommunications traffic with any requesting telecommunications carrier. Subpart (b) specifies that a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network. The MOU does not address charges for the exchange of telecommunications traffic. The proposed MOU addresses the appropriate inter-company compensation between Intermedia and SWBT for SWBT agreeing not to assess toll charges to its customers for calls that would otherwise be considered toll calls under SWBT's tariffs. (See Ex. 33, SWBT, Hughes Rebuttal, p. 20). In such situations, the parties determined that Intermedia would compensate SWBT 2.6 cents per minute. Id. SWBT does pay Intermedia the local reciprocal compensation rate to terminate calls as is required by the terms of Intermedia's and SWBT's Interconnection Agreement as well as 47 C.F.R. §703. Thus, the Proposed MOU does not violate 47 C.F. R. §703(b).

D. The Proposed MOU Does Not Violate The Dialing Parity Requirements Of The Federal Telecommunications Act Of 1996

AT&T and Gabriel contend that the MOU violates the dialing parity requirements of the federal Telecommunications Act of 1996. (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City, p. 10; see also Initial Brief of Gabriel Communications of Missouri, Inc., p. 28). As SWBT explained in its Initial Brief as well as in

Section I(B)(1) above, dialing parity is a term that is specifically defined in the federal Telecommunications Act of 1996. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 18). It means that a person, that is not an affiliate of a local exchange carrier, is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among two (2) or more telecommunications service providers (including such local exchange carrier). 47 C.F.R. Section 153(15). SWBT neither requires any CLEC's customer to use an access code to reach his or her chosen carrier nor does SWBT advocate that any CLEC's customer should have to use an access code to reach his or her chosen local exchange carrier. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 18). Further, to the extent that calls within the MCA are intraLATA toll calls, a SWBT customer can reach: (a) another SWBT customer that does not participate in the MCA Plan; or (b) a CLEC's customer, through simple 1+ dialing. Id. No access codes or other additional digits are required. Id. Thus, there is parity for all toll calls. Id.

Further, there is no violation of local dialing parity, as the number of digits is not dependent on the identity of the calling party's or called party's local service provider. Id. The determination of whether a call is locally dialed depends on whether the called customer is a subscriber to the Commission-mandated MCA Service, not on the identity of the customer's local service provider. (See Ex. 33, SWBT, Hughes Rebuttal, p. 21). The undisputed fact is that SWBT provides dialing parity. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 18).

E. The Proposed MOU Does Not Violate Section 251(c)(2) Of The Federal Telecommunications Act Of 1996

McLeod contends that the Proposed MOU violates §251(c)(2) of the Telecommunications Act of 1996 because it is an unreasonable and discriminatory rate, term and

condition imposed on CLECs wishing to interconnect with the SWBT network. (See Initial Brief of McLeod USA, p. 9). This contention is erroneous. The 2.6-cent charge is not a condition imposed on CLECs wishing to interconnect with the SWBT network. It is undeniable that SWBT has consistently in the past and continues to provide CLECs the ability to interconnect with SWBT's network. The 2.6 cents per minute of use mechanism compensates SWBT for permitting its own customers to call Intermedia's customers on a toll-free basis within SWBT's portion of the MCA. (See Ex. 32, SWBT, Hughes Direct). Thus, the Commission must dismiss this contention.

IX. Issue 8: Should The MCA Plan Be Retained As Is, Modified (Such As Staff's MCA-2 Proposal) Or Eliminated?

A. The MCA Plan Should Be Retained As Is

SWBT believes the current design of the MCA Plan is in the public interest and should be retained. (See Ex. 32, SWBT, Hughes Direct, p. 13). However, in addition to the provisions of the MCA Plan as it exists today, and as described in this brief, SWBT believes that the Commission should allowing transiting carriers to recover a fee for transiting traffic.

B. It Is Premature To Modify The MCA Plan (Such As Staff's MCA-2 Proposal)

SWBT agrees with Staff, and numerous other parties, that it is premature to modify the MCA Plan, including via Staff's MCA-2 proposal. (See T. 84, 105-106, Staff, Voight).

X. Issue 9: 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?

A. SWBT Is Entitled To Revenue Neutrality If CLECs Are Permitted To Participate In The MCA Plan

Assuming that the Commission allows CLECs to participate in the MCA Plan, SWBT believes that it is entitled to revenue neutrality for the loss of toll revenue associated with the

return-calling aspect of the current MCA Plan. (See Ex. 33, SWBT, Hughes Rebuttal, p. 5). SWBT further believes that revenue neutrality can be achieved by assessing a 2.6-cent per minute charge for calls from SWBT's MCA subscribers to CLECs' MCA subscribers when those calls would otherwise be treated as toll calls. Id. at 6. This payment is based upon SWBT's originating access charges, which would be the minimum revenue flowing to SWBT for a toll call. Id. SWBT is also willing to explore the possibility of establishing a cap on the originating revenues it receives from a CLEC who requests such an arrangement so that CLECs do not pay more in compensation than they receive for providing service to their customers. Id. at 7.

Although Nextlink admits that ILECs are entitled to revenue neutrality due to loss which are not "competitive losses," Nextlink contends that the revenue replacement should not be collected from the CLECs via an MOU surcharge or otherwise. (See Initial Brief of Nextlink Missouri, Inc., p. 11). This contention is meritless. If the Commission's Order adversely affects the ILECs' existing revenues and expense structures, the Commission must provide for revenue neutrality and one appropriate way to provide neutrality is through a provision such as that contained in the MOU as that recovers the loss from the party which directly benefits by being permitted into the MCA Plan.

B. SWBT's Recovery Of Revenue For The Loss Of Toll Associated With The Return Calling Aspect Of The Current MCA Plan Is Not Revenue Recovery For A Competitive Loss

As explained in SWBT's Initial Brief, when the Commission established rates for MCA Service, the Commission assessed the loss of toll revenue from the mandatory area to the optional areas and vice versa. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 11). This is important because some of the parties erroneously state that SWBT is attempting to recover a competitive

loss by establishing a revenue recovery mechanism. Despite the views of some of the parties (see Ex. 1, Staff, Voight Direct, pp. 44-45; see also Ex. 11, AT&T, Kohly Direct, p. 3; see also Ex. 23, Gabriel, Cadieux Direct, p. 18), SWBT's recovery of revenue for the loss of toll associated with the return calling aspect of the current MCA Plan is not revenue recovery for a competitive loss. (See Ex. 33, SWBT, Hughes Rebuttal, p. 6).[6] SWBT does not seek compensation for the competitive losses it expects to incur when customers switch to CLEC-provided service, including but not limited to revenues from local service and vertical services. (See Ex. 38, SWBT, Unruh Surrebuttal, p. 2). SWBT expects to lose these revenues and SWBT does not seek compensation for these losses. Id. SWBT does not and will not seek compensation for such losses because SWBT is no longer required to provide local or vertical services to the CLEC's customer. Id. at 3.

However, SWBT does seek recovery if it is requested to continue providing return calling services without assessing its customers toll charges. MCA optional rates were established to recover both outbound calling revenues and inbound or return toll calling revenues. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 12). When SWBT loses an optional MCA subscriber, it is no longer providing the outbound service to the customer and SWBT is not seeking any recovery for the competitive loss of outbound calling revenues. Id. It is only the payment, which the optional MCA subscriber made to receive calls on a local basis that is at issue. Id. On those return calls, SWBT is willing to provide the service, but only if it is compensated for it. Id. SWBT is not seeking compensation for a competitive loss; it is seeking compensation only where the CLEC wants SWBT to provide a toll-free return calling service to SWBT's customer.

[6] Gabriel's citation to the testimony of Tom Hughes for the proposition that the only loss that occurs when SWBT loses a customer to a CLEC participating fully in the MCA Plan is a competitive loss is not only false but not supported by the cited authority. (See T. 1026-1027, SWBT, Hughes).

Id. This is not compensation for a competitive loss; it is compensation for providing a service. Id.

C. SWBT Is Entitled To Revenue Neutrality If The MCA Plan Is Modified, As In Staff's MCA-2 Proposal

If the Staff's MCA-2 proposal were adopted, SWBT would be entitled to recover implementation costs as well as revenue neutrality for the revenue impacts of implementing the plan including such items as the loss of access and intraLATA toll revenues, and the loss of revenue for optional MCA subscribers who would no longer subscribe to the service because the Plan eliminates the return calling feature of MCA Service. The details of an MCA-2 Plan must be determined and evaluated before a rate design for revenue neutrality can be proposed.

XI. Issue 10: Should MCA Traffic Be Tracked And Recorded, And If So, How?

Whether MCA traffic should be tracked and recorded depends on how this case is ultimately resolved. (See Ex. 35, SWBT, Unruh Direct, p. 12). How inter-company compensation is structured will determine how traffic should be tracked and reported. Id.

XII. With Regard To Inter-Company Compensation, Does The Commission Have The Authority To Override Reciprocal Compensation Provisions Contained In Existing Interconnection Agreements? If No, Does The Commission Have The Authority To Require Bill And Keep Inter-Company Compensation In All Future Interconnection Agreements Between ILECs And CLECs, Thereby Prohibiting Reciprocal Compensation For MCA Service?

As SWBT explained in its Initial Brief, SWBT does not believe that it is necessary to override reciprocal compensation provisions contained in existing interconnection agreements. The Commission can simply impose appropriate conditions on CLEC participation in the MCA, including a requirement to follow the inter-company compensation mechanisms of the Plan. If a CLEC wants to participate in the MCA Plan, it must agree to follow all of the parameters of the MCA Plan, including bill and keep inter-company compensation for all calls within the MCAs.

This may require a CLEC to modify its existing interconnection agreements with ILEC(s). If a CLEC does not want to participate in the MCA Plan, then the provisions of its Interconnection Agreement with SWBT (and/or with any other ILEC) would apply.

SWBT believes the Commission has the authority to condition participation in the MCA Plan. Both federal law and state law support this conclusion. As previously stated, 47 C.F.R. §253(b) provides:

> STATE REGULATORY AUTHORITY. – Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(See 47 C.F.R. §253(b)). Requiring all telecommunications providers to use the same bill and keep inter-company compensation mechanism is a "competitively neutral" requirement that will help to ensure the continued quality of services and safeguard the rights of consumers by ensuring the continued viability of the MCA Plan, a service Missouri customers desire and need.

Further, state law provides the Commission with the authority to "impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest and consistent with this chapter." Section 392.470, R.S.Mo. 1994. The continued viability of the MCA is clearly within the public interest. Thus, both federal and state law provide the Commission with the regulatory authority to override provisions in an interconnection agreement.

Additionally, federal law supports the Commission's authority over future interconnection agreements. This conclusion is supported by 47 U.S.C. §252(e), 47 U.S.C. §252(e)(3), as well as by the Federal Communications Commission's Rules. Section 252(e) gives state commissions the authority to review and either approve or reject any interconnection

agreement adopted by negotiation or otherwise. Section 252(e)(2)(A) allows the Commission to reject: (1) if the Commission finds that the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (2) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

Section 252(e)(3) provides for the preservation of State authority to establish or enforce other requirements as it reviews an interconnection agreement. Section 252(e)(3) provides in pertinent part:

> . . . nothing in this section shall prohibit a State Commission from establishing or enforcing other requirements of State law in its review of an agreement. . .

Finally, the FCC's Rules recognize bill and keep arrangements as appropriate for inter-company compensation. 47 C.F.R. §51.705, which is entitled: "Incumbent LEC's rates for transport and termination," provides:

> (a) An incumbent LEC's rates for transport and termination of local telecommunications traffic shall be established, at the election of the state commission, on the basis of:
>
> (1) the forward-looking economic costs of such offerings, using a cost study pursuant to §§51.505 and 51.511 of this part;
>
> (2) default proxies, as provided in §51.707 of this part; or
>
> (3) a bill-and-keep arrangement, as provided in §51.713 of this part.

(See 47 C.F.R. §51.705).[7] Further, 47 C.F.R. §51.713, which is entitled: "Bill-and-keep arrangements for reciprocal compensation," provides:

> (a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of local traffic that originates on the other carrier's network.
>
> (b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of local traffic from one network

[7] AT&T admits this in its Initial Brief. (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City, p. 16).

to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to Sec. 51.711(b).[8]

(c) Nothing in this section precludes a state commission from presuming the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

Thus, the Commission may require a bill and keep inter-company compensation arrangement for the origination and termination of MCA traffic in future interconnection agreements.[9]

XIII. Does The Commission Have The Authority To Direct CLECs To Negotiate Terminating Traffic Agreements With Small ILECs? If A CLEC Has An Interconnection Agreement With A Large ILEC That Provides That The CLEC Must Have A Terminating Traffic Agreement With The Small ILEC Before Sending Calls To The Small ILEC's Network, Does The Commission Have The Authority To Order A Large ILEC To Block Calls Until The CLEC Provides The Large ILEC With Proof That It Has Such An Agreement?

As stated in SWBT's Initial Brief, SWBT believes that the Commission has the authority under the Telecommunications Act to direct CLECs to negotiate traffic termination agreements with small ILECs. Birch and Intermedia, nevertheless, argue otherwise citing Section 392.200.6, R.S.Mo.

[8] AT&T cites subsection (b) and argues that the Commission would be acting beyond the scope of its authority if it were to simply impose bill and keep inter-company compensation on all future interconnection agreements because this would deny the parties the chance to offer evidence of actual future costs in the form of a forward-looking price study. (See Initial Brief of AT&T Communications of the Southwest, Inc., TCG-St. Louis, and TCG-Kansas City, p. 23). SWBT disagrees. Subsection (c) provides that a state commission may presume the amount of local telecommunications traffic is roughly balanced and is expected to remain so unless and until a party rebuts such a presumption. 47 C.F.R. §51.713(c). Thus, this Commission can determine that the amount of local traffic is roughly balanced and can make bill and keep inter-company compensation a mandatory provision of the MCA Plan until a party proves the amount of local traffic is not roughly balanced.

[9] Gabriel contends that: "no such presumption has been made by the Commission with respect to any two particular interconnecting carriers (and the record in the case provides no support for any such presumption) and, consequently, the right to rebut the presumption has not been triggered. 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." (See Initial Brief of Gabriel Communication of Missouri, Inc., p. 27). Gabriel's logic is flawed. 47 C.F.R. §51.713 provides that a party has to rebut the presumption that traffic from one network to another is roughly balanced, not the Commission. (See 47 C.F.R. §51.713(c). Thus, until such time as this presumption is rebutted, the Commission may mandate bill and keep inter-company compensation in current and/or future interconnection agreements.

Section 392.200.6 requires every telecommunications company operating in Missouri to: "receive, transmit, and deliver, without discrimination or delay, the conversation and messages of every other telecommunications company with whose facilities a connection may have been made." Section 392.200.6, R.S.Mo. It is not apparent why an order to negotiate an agreement would violate this statutory provision. In any event, it is permissible under the Telecommunications Act to require such negotiation. Clearly, if the CLECs are routing traffic to small ILECs where there is no traffic termination agreement with such ILECs, not only are these CLECs violating the terms of their respective interconnection agreements with SWBT that prohibit CLECs from terminating traffic to third-party LECs with whom the respective CLEC has no terminating traffic arrangement, but the CLECs are using the small ILECs' facilities without permission and/or just compensation. The CLECs owe appropriate reciprocal compensation for terminating such calls.

It is SWBT's further position that the Commission does have the authority in order to order the blocking of CLEC traffic and that such an order would not: "run afoul of the interconnection, universal service and pro-competition policies and provisions of the Federal Act, especially Section 253(a) which on its face states that no state regulation or requirement 'may prohibit, or have the affect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications service'" as suggested by Intermedia. (See Initial Brief of Intervenor Intermedia Communications, Inc., p. 13). Call blocking, if ordered by the Commission, would not prohibit the ability of any entity to provide intrastate telecommunications service; it would only condition the ability to provide intrastate telecommunications service upon the express showing that the CLEC had traffic termination agreements with the small independent LECs.

Finally, SWBT disagrees with MITG's suggestion that SWBT should be responsible for paying compensation to the small ILECs and collecting the appropriate amounts from the carriers who use SWBT's underlying facilities. (See MITG's Initial Brief, p. 5). SWBT also disagrees with Intermedia's contention that: "much of the ongoing billing and technical issues between SWBT and the independent LECs are outside the control of the CLECs." (See Initial Brief of Intervenor Intermedia Communications, Inc., pp. 10-11). As explained during the hearing of this matter, according to the terms of their respective interconnection agreements, CLECs are not supposed to pass traffic to SWBT that is destined for the independent LECs' exchanges until they have either authorization and/or some type of termination arrangement. (See T. 923, SWBT, Hughes). The carrier that originates the call is responsible for sending SWBT a record and is also responsible for sending a record to either the independent LEC or the CLEC where the call is terminating. (See T. 925-926, SWBT, Hughes). There is not a dispute over "ongoing records and technical issues between SWBT and the independent LECs over compensation for third-party traffic" as suggested by Intermedia (see Initial Brief of Intervenor Intermedia Communications, Inc., p. 14). The issue is between the independent LECs and the CLECs who are not providing them with appropriate records from which they can determine appropriate compensation for the termination of traffic within their exchanges.

XIV. The Commission Should Not Require Information About The MCA Plan To Be Included In Directories. However, If The Commission Determines It Should Do So, It Should Require All Carriers That Have Codes Listed In The Directories To Contribute Financially To Implementation And Provision Of This Service.

No party addressed this issue in their brief; therefore, SWBT incorporates herein by reference its position as set forth on page 72 of its Initial Brief.

XV. The Commission Should Refrain From Ruling On Trunking Arrangements And Signaling Protocols Because These Issues Are Pending In TO-99-593. Further, The Commission Should Not Require MCA Traffic To Be Placed On Separate Trunk Groups Because This Commission Has Already Rejected This Proposal And No New Evidence Has Been Presented Which Would Require This Commission To Change Its Opinion.

As expected, MITG requests the Commission to establish an industry committee to:

> review technical issues associated with proper identification and compensation for compensable traffic traveling the same network that noncompensable MCA traffic travels. This committee should be charged with the responsibility of reporting back by a date certain as to what protocols, including separate trunking, can or should be implemented to assure (sic) the proper separation of compensable from noncompensable traffic, and methods by which all carriers can make the proper identification of carriers and traffic, proper exchange of records, proper compensation, and acceptable verification of these systems.

(See MITG's Initial Brief, p. 4). This request should be flatly denied. The Commission already established TO-99-593 to further investigate trunking arrangements and signaling protocols. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 20). Moreover, at the hearing, MITG's own witness, Donald Stowell, admitted that no action on this proposal should be taken in this case given the pendency of TO-99-593. (See T. 346, Stowell, MITG). Finally, with regard to MITG's request that the committee should consider separate trunking for MCA traffic, SWBT disagrees. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 21). A similar proposal was made in case number TO-99-254 concerning the PTC plan. Id. The Commission rejected the proposal because no hard evidence of the number of trunks or cost was presented. Id. At the hearing of this matter, MITG not only admitted that the Commission rejected the proposal because no hard evidence of the number of trunks or costs was presented, MITG also admitted that it had not presented any evidence of the number of trunks that would be involved in segregating MCA traffic and/or the cost of doing so. (See T. 345-346, MITG, Stowell). Thus, the Commission should deny these requests.

Conclusion

SWBT is not opposed to CLEC entry into the MCA Plan. However, if CLECs are either permitted and/or required to participate in the MCA Plan, they should be required to follow all of the parameters of the MCA Plan. Specifically, CLECs should be required to: (a) follow the geographic calling scope as defined in the MCA Order; (b) follow the bill and keep inter-company compensation mandate which is set forth in the Commission's MCA Order; (c) use segregated NXX codes to distinguish MCA subscribers' NXX codes from non-MCA customers' NXX codes; and (d) offer MCA Service to their customers at the rates which are mandated in the Commission's MCA Order.

Further, if CLECs are either permitted and/or required to participate in the MCA Plan, SWBT believes that it is entitled to revenue neutrality for the loss of toll revenue associated with the return-calling aspect of the current MCA Plan. SWBT believes that revenue neutrality can be achieved by assessing a 2.6-cent per minute charge for calls from SWBT's MCA subscribers to CLECs' MCA subscribers when those calls would otherwise be treated as toll calls. SWBT is willing to explore the possibility of establishing a cap on the originating revenue it receives from a CLEC who requests such an arrangement so that CLECs do not pay more in compensation than they receive for providing service to their customers.

Finally, if CLECs are either permitted and/or required to participate in the MCA Plan, a transiting company, whoever that may be, is entitled to be compensated for transiting traffic that

originates from one party, transits the transiting company's facilities, and terminates to a third party.

Respectfully submitted,

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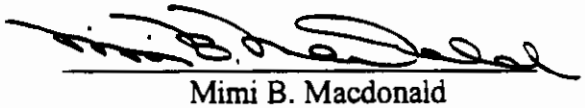
CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on July 17, 2000.



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