

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

In the Matter of a Commission Inquiry into the	)	
Possibility of Impairment without Unbundled Local	)	Case No. TO-2004-0207
Circuit Switching When Serving the Mass Market.	)	

**CENTURYTEL’S PHASE I BRIEF**

Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (collectively referred to as “CenturyTel”) respectfully submit this Phase I Brief in support of their positions that: (1) Metropolitan Statistical Areas (“MSAs”) are the relevant geographic markets within the state of Missouri for purposes of examining whether there is “non-impairment” in the provision of unbundled local switching to serve mass-market customers; and (2) for purposes of the DS0/DS1 crossover analysis, the Commission should utilize the FCC’s default rule, which it has determined to be four lines or more in density zone one of the top 50 MSAs (accordingly, those multi-line customers served by three DS0 loops or fewer would be considered part of the mass market, while those multi-line customers served by four or more DS0 lines would be considered part of the enterprise market).

**I. INTRODUCTION**

On November 5, 2003, the Commission issued its Order Creating Case and Establishing Initial Filing Deadlines (“November 5<sup>th</sup> Order”) in this matter, finding that a contested case procedure was necessary to investigate the issues and to make the requisite determinations as set forth in the Federal Communications Commission’s (“FCC”)

Triennial Review Order (“TRO”).<sup>1</sup> Among other actions taken in its November 5<sup>th</sup> Order, Southwestern Bell Telephone Company, LP d/b/a SBC Missouri, Sprint Missouri, Inc. and CenturyTel were made parties to this case, and the Commission ordered that “any party or proposed intervenor that plans to challenge the FCC’s finding of impairment for mass market switching, loops and transport shall file a pleading stating that intent no later than November 12, 2003” (specific additional information to be included in such pleading also was listed in the Order). (November 5<sup>th</sup> Order at 2). In accordance with the Commission’s directive, CenturyTel filed its Response to Order Directing Filing on November 12, 2003, advising the Commission that it intended to challenge the FCC’s finding of impairment for mass market switching, transport and loops. In particular, CenturyTel notified the Commission that it would be challenging the impairment finding with regard to the St. Louis, Missouri-Illinois Metropolitan Statistical Area. SBC Missouri made its responsive filing to the Commission’s Order on November 10, 2003.

Pursuant to the Commission’s Order Establishing Procedural Schedule issued on December 1, 2003, the Commission adopted the recommendations of its Staff, SBC Missouri and CenturyTel and concluded “that presentation of the evidence will be more manageable and more efficient under the three-phase proposal . . .” (Order at 2).

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<sup>1</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug.21, 2003) (“Triennial Review Order” or “TRO”). Excerpts from the Executive Summary of the TRO can be found in Martinez Direct, Ex. 5, pp. 5-6.

Accordingly, the following Three Phases were identified and accompanying procedural schedules for each phase were established:

**Phase I:** Define particular geographic markets and the appropriate multi-line DS0 customer cross-over between the mass and enterprise markets;

**Phase II:** Determine whether FCC-defined triggers to measure existing switch deployment are met or whether a potential deployment analysis shows non-impairment and, if necessary, approval of the incumbent LEC batch hot cut process; and

**Phase III:** Determine whether FCC-defined triggers or potential deployment analysis for a finding of non-impairment have been met for specific types of high-capacity loops – dark fiber, DS3, or DS1 – at particular customer locations, and whether FCC-defined triggers or potential deployment analysis for a finding of non-impairment have been met for non-access to incumbent LEC transport on specific routes.

While the Commission clearly directed the parties to address the issues delineated for Phase I of the proceeding prior to moving on to Phase II in order to achieve a “more manageable and more efficient” process, unfortunately, some of the parties continue to argue that any Phase I determinations should be only “tentative” or “interim” and that Phases I and II must be melded together for purposes of analysis. However, as Staff Witness Chris Thomas testified, the Commission should not start down this slippery slope.

(Chair Gaw) Q. Assuming we don’t make the initial order tentative?

(Mr. Thomas) A. Yes, assuming that it is – that it is a permanent order. And I think I would like to urge you, Commissioner, to make it a binding order, because if you look at how much testimony you’ve gotten in this proceeding, you’ll get that testimony plus some – Mr. Magness referred to a proceeding in Florida where there were 54 witnesses. So if you have a tentative market definition, you open the possibility to the same testimony you’ve already heard and then some.

(Tr. 897).

(Mr. Dority) Q. Okay. Well, before I go on, that is one point of my confusion. I thought I heard you testify yesterday that you were – and I’m sorry, Staff is really looking for a definitive order from this Commission as it relates to the geographic area?

(Mr. Thomas) A. Yes.

Q. And I think as you termed it, so the parties won’t be coming in again with another 15 different points of view overlaid on top of what the trigger analysis should be?

A. Yes. Yes.

(Tr. 953).

Focusing on the two issues identified, Direct and Rebuttal Testimony for Phase I of this proceeding has been filed and received on behalf of CenturyTel by Mr. Arthur Martinez, Director of Government Relations (Exhibits 5 and 6, respectively). Evidentiary hearings for Phase I were held on January 27 and February 2-4. At the conclusion of the hearings, Judge Mills directed the parties to file briefs on the Phase I issues by February 13, 2004.

## **II. GEOGRAPHIC MARKET DEFINITION**

The FCC’s TRO calls on state commissions to “define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market.”<sup>2</sup> (Martinez Direct, Ex. 5, p. 7). Consistent with its initial pleading filed in this case (CenturyTel’s Response to Order Directing Filing), CenturyTel supports the position that Metropolitan Statistical Areas (“MSAs”) are the relevant geographic market within the state of Missouri for purposes of examining whether there is non-impairment in the provision of unbundled switching to serve mass market customers. (*Id.*, pp. 7-10, Martinez Rebuttal, Ex. 6, pp. 2-5).

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<sup>2</sup> TRO, ¶ 495.

In addition to CenturyTel, SBC Missouri, through its witnesses Gary A. Fleming and Timothy J. Tardiff, and Sprint, through their witness Mark D. Harper, recommend that this Commission adopt MSAs to define the geographic markets for the purpose of the mass market switching analysis. (See, Fleming Direct, Exs. 3 and 3HC, pp. 6-24, Schedules GAF-1-5; Fleming Rebuttal, Exs. 4 and 4HC, pp. 4-17; Tardiff Direct, Ex. 1, Tardiff Rebuttal, Ex. 2; Harper Direct, Ex. 7; Harper Rebuttal, Ex. 8). MSAs are defined by the Office of Management and Budget in OMB Bulletin No. 03-04, June 6, 2003. Under the Office of Management and Budget definition, an MSA has at least one urbanized area with the population of at least 50,000 plus adjacent territory that has a "high degree of social and economic integration" with the core area as measured by commuting ties.<sup>3</sup>

As discussed in the testimony and during cross-examination, SBC Missouri and CenturyTel would refine the MSAs for purposes of defining the market areas as those portions of the MSAs located within Missouri, and that the entire service area of a wire center be treated as part of the MSA in which the central office is physically located. (Fleming Direct, Ex. 3, pp. 7-8; Martinez Rebuttal, Ex. 6, p. 5; Tr. 444-445).

MSAs reflect a geographical area which competitors do enter, or are capable of entering, when they decide to expand their operations into a new geographic market area. As reflected in the cross examination of SBC Witness Fleming, the facts show that CLECs are using their switches to provide service to customers throughout the MSA. (Tr. 243-247). *See also*, Tr. 349-350:

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<sup>3</sup> Office of Management and Budget, Standards for Defining Metropolitan and Micropolitan Statistical Areas, 65 Fed. Reg. 82, 238 (December 27, 2000).

(Commissioner Murray) Q. And how broad is the area that that switch can serve?

(Mr. Fleming) A. Well, it's hard to say how broad it is. Let me just say that CLECs have testified in front of this Commission that it, in the case of AT&T, and that's in my testimony, that AT&T testified that their switches could cover as much as SBC's tandem switches. So CLECs have represented themselves that switches can handle large geographic areas.

We believe, and I think there's places in the TRO, although I can't – I can't direct you to the specific cite, where they've indicated as well that switches have the capability of serving very large geographic areas, up to and including perhaps an entire LATA or entire state.

The rebuttal testimonies and cross examination of SBC Missouri, CenturyTel and Sprint witnesses thoroughly rebut the CLEC testimony advocating the use of individual ILEC wire centers as the appropriate geographic market. And yet, CLEC witnesses would suggest that exceptions may exist even to this narrow definition of the appropriate market. As noted previously, some witnesses would advocate the adoption of the wire center as only a "starting point" or a "provisional" definition, and suggest that this Commission only adopt a "tentative" market definition in this phase of the proceeding. (Ankum Direct, Ex. 15, Gillan Direct, Ex. 11).

Staff Witness Cecil testified that in the Staff's view and in the context of the Triennial Review Order, the wire center is not an appropriate geographic definition for unbundled local switching mass-market local telecommunications services. (Cecil Rebuttal, Ex. 22, p. 8.) Staff Witness Thomas, in supporting his "exchange" definition, notes that CLECs market their services to consumers in areas wider than a wire center, and that there are scale and scope economies to be obtained from serving areas wider than a wire center. (Thomas Rebuttal, Ex. 21, pp. 9, 14.)

The Staff's recommendation of the use of "exchange area" as the appropriate geographic market is also flawed. It remains inconsistent with actual competitive entry

and the TRO's admonition of "not defining the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies." (Martinez Rebuttal, Ex. 6, p. 5).

(Mr. Lane) Q. All right. If a rational CLEC were choosing to place a switch in the St. Louis area to serve the metropolitan area, would they utilize one switch for each exchange in the MSA? I'm sorry. Would they use a separate switch for each exchange within the MSA?

(Mr. Thomas) A. I think not.

Q. Would they tend to utilize one switch to serve multiple exchanges?

A. I believe that would be the rational course of action.

Q. And the rational CLEC would do that because using a switch to serve multiple exchanges would give it the scale and scope economies necessary to make that a good business decision?

A. Yes. I can agree with that.

Q. Okay. That would argue, would it not, for consideration of a market area that is larger than an exchange with regard to Chesterfield, in particular?

A. I would agree that we can create markets of varying sizes and that that could be one outcome.

(Tr. 1008-1009).

While Staff maintains its advocacy for the adoption of an exchange as the appropriate geographic area, it acknowledges that the adoption of an MSA would be consistent with the parameters set forth in the TRO.

(Mr. Dority) Q. In fact, you've testified that the MSA would be consistent with the TRO; isn't that correct?

(Mr. Cecil) A. Yes, it would be.

(Tr. 1024-1025).

Although opponents of the MSA as the appropriate geographic definition would suggest that it “isn’t a telephony term, defined by a regulatory body, etc.,” it is clear that its basic precepts – recognizing a high degree of social and economic integration – have been an integral part of the public policy analysis associated with telecommunications issues for many years.

(Mr. Dority) Q. I just have a couple of questions for you, and I’ll try to keep them brief. And I think they can be answered with a yes or no, hopefully, and I would ask you to try to do that if you can.

I noticed in your direct testimony, particularly the exhibit that was attached to it that lists your experience and qualifications, you indicate that a number of dockets that you have been involved in previously dealt with expanded local calling scopes; is that correct?

(Mr. Gillan) A. Yes.

Q. And I expect during your time on the Illinois Staff and in many of these cases that you had to deal with many of the policy debates and issues associated with that issue of expanding the local calling scope; is that correct?

A. Yes.

Q. And would you agree with me that a part of the considerations involved in those debates dealt with social issues or social considerations, such as ability to call neighbors, school, family members –

A. Yes.

Q. -- would that be correct?

And likewise, the consideration of economic factors, such as the ability to call my local office or a doctor or businesses with whom I wish to deal with, those economic considerations were also involved in those policy debates, correct?

A. To a certain extent.

Q. Okay. I mean, generally speaking, the idea of social and economic integration is not something foreign to the debates that go on in the telecom policy world. Would you agree with me with that?

A. Yes.

(Tr. 521-523).



While the Staff may have characterized its recommendation of an exchange as a “reasonable compromise” (Cecil Rebuttal, Ex. 22, p. 10), it appears from the record that the utilization of the Commission’s Metropolitan Calling Area or “MCA” may be viewed by some parties as a compromise worthy of examination. (*See*, Tr. 356-357, 952, 1025).

### **III. CROSS-OVER POINT BETWEEN MASS MARKET AND ENTERPRISE MARKET**

The second issue to be addressed in this Phase of the proceeding is the appropriate number of DS0 lines that must be supplied to a multi-line DS0 customer before that customer will be considered to be an “enterprise” customer rather than a “mass market” customer.

CenturyTel proposes to utilize the FCC's default rule for the DS0 crossover which it has determined to be four lines or more in density zone one of the top 50 MSAs. Under the FCC's proposal, those multi-line customers served by three DS0 loops or fewer would be considered part of the mass market, while those multi-line customers served by four or more DS0 lines would be considered part of the enterprise market. SBC Missouri Witness Fleming provided the Commission with a detailed analysis demonstrating that such an approach is appropriate, and CenturyTel concurs in his recommendation. (Martinez Direct, Ex. 5, pp. 11-12; Martinez Rebuttal, Ex. 6, pp. 5-6; Fleming Direct, Ex. 3, pp. 24-34; Fleming Rebuttal, Ex. 4, pp. 17-37).

Staff Witness Thomas offers a general summary of the parties’ positions on this issue in his Rebuttal Testimony. (Thomas Rebuttal, Ex. 21, pp. 3-4). The range of other

positions extends from no recommendation at this time, to a cutoff of 10 DSOs or 13 DSOs, to any number of DSO loops always being considered as mass market.<sup>4</sup>

The evidence reflects that the analyses performed by opponents of the FCC's default position do not appear to factor in the increased revenue opportunities associated with provisioning service via a DS1 loop, as envisioned by the FCC's rule and the TRO.<sup>5</sup>

#### **IV. CONCLUSION**

CenturyTel respectfully submits that the record evidence supports a Commission determination that: (1) Metropolitan Statistical Areas (as refined herein) are the relevant geographic markets within the state of Missouri for purposes of examining whether there is "non-impairment" in the provision of unbundled local switching to serve mass-market customers; and (2) for purposes of the DS0/DS1 crossover analysis, the Commission should utilize the FCC's default rule, whereby those multi-line customers served by three DS0 loops or fewer would be considered part of the mass market, while those multi-line customers served by four or more DS0 lines would be considered part of the enterprise market.

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<sup>4</sup> Sprint Witness Maples utilizes statewide average figures to determine his crossover point, an approach which is supported by Staff. (Tr. 845-846).

<sup>5</sup> 51.319(d)(2)(iii)(B)(4); TRO, ¶ 519.

Respectfully submitted,

/s/ Larry W. Dority

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 13th day of February, 2004.

/s/ Larry W. Dority

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