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January 23, 2003

VIA FEDERAL EXPRESS

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street, Suite 100
Jefferson City, MO 65102-0360

FILED³

JAN 24 2003

**Missouri Public
Service Commission**

Re: TR-2001-65

Dear Mr. Roberts,

Enclosed for filing with the Commission in the above-referenced case is an original and eight (8) copies of Reply Brief of Fidelity Communication Services I, Inc., Fidelity Communication Services II, Inc., Fidelity Communication Services III, Inc. and Fidelity Cablevision, Inc.

Please stamp "Filed" on the extra copy and return it to me in the enclosed self-addressed envelope.

Thank you for your assistance.

Yours very truly,

GREENSFELDER, HEMKER & GALE, P.C.

By 
Sheldon K. Stock

SKS/kka
Enclosures
589348.1

cc: Office of the Public Counsel
Office of the General Counsel
Mr. John T. Davis
Mr. Dave Beier

January 23, 2003

TO: UNREPRESENTED PARTIES IN CASE NO. TR-2001-65:

Pursuant to the Missouri Public Service Commission's March 14, 2002, Order Adopting Procedural Schedule, Clarifying The Scope of This Proceeding, and Concerning Motion to Waive Service Requirement and Motion to Compel Discovery, Fidelity Communication Services I, Inc., Fidelity Communication Services II, Inc., Fidelity Communication Services III, Inc., and Fidelity Cablevision, Inc. hereby notify parties not represented by counsel that they have filed their Reply Brief. Any unrepresented party may obtain a copy of this pleading upon request at no cost.

Thank you for bringing this matter to the attention of the Commission.

Yours very truly,

GREENSFELDER, HEMKER & GALE, P.C.

By 
Sheldon K. Stock

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JAN 24 2003

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation of the)
Actual Costs Incurred in Providing)
Exchange Access Service and the Access) Case No. TR-2001-65
Rates to be Charged by Competitive Local)
Exchange Telecommunications)
Companies in the State of Missouri)

**REPLY BRIEF OF FIDELITY COMMUNICATION SERVICES I, INC.,
FIDELITY COMMUNICATION SERVICES II, INC., FIDELITY
COMMUNICATION SERVICES III, INC., AND FIDELITY CABLEVISION, INC.**

COME NOW Fidelity Communication Services I, Inc., Fidelity Communication Services II, Inc., Fidelity Communication Services III, Inc., and Fidelity Cablevision, Inc. (collectively, the "Fidelity CLECs") and for their Reply Brief in this case, state as follows:

1. The Fidelity CLECs' failure to sponsor testimony in this proceeding should not be interpreted as acquiescence to the status quo.

A few of the parties have interpreted the failure of any CLEC to sponsor testimony in this proceeding as agreement by all CLECs to the interim capping mechanism adopted in Case No. TO-99-596. For example, SBC Missouri states that "every party to this case agrees that a cap on CLECs' switched access rates is necessary and in the public interest," and AT&T states that "[n]o party to this proceeding has objected to the continuation of the CLEC cap." (SBC Missouri Initial Brief, 28; AT&T Initial Brief, 46). Given that this is an "investigatory" as opposed to an "adjudicatory" or contested proceeding, the failure to sponsor testimony or present evidence additional to that submitted in response to Staff's data requests should not be construed as acceptance of the status quo. At this point in time, the Fidelity CLECs simply lack the data concerning their intrastate switched access costs necessary to perform any meaningful "reality check" on Staff's and the other party's assumptions or proposed cost methodologies.

Further, as acknowledged by CenturyTel in its Initial Brief, the Fidelity CLECs have not been silent, but rather have expressed their views in opposition to the interim capping mechanism. (CenturyTel Initial Brief, 2; Tr. 1240). As more fully set forth in their Initial Brief, the Fidelity CLECs maintain that the Commission, while perhaps having an interest in ensuring the reasonableness of CLEC intrastate switch access rates, need not adopt any “hard-and-fast” cap on, or cost methodology with respect to, CLEC access rates. (Fidelity CLECs Initial Brief, 6-7). Although the Fidelity CLECs may be the lone voice in opposition to the cap, it is important to note that they are the only true CLECs participating in this proceeding.

- 2. There is almost universal agreement among the parties filing briefs that any capping mechanism adopted by the Commission in this proceeding should not bar a CLEC from charging intrastate switched access rates that exceed the directly competing ILEC rates, as long as such CLEC rates are cost-justified.***

Even assuming that the interim cap on CLEC intrastate switched access rates is necessary to protect the public interest, and should be made permanent, every party participating in this proceeding—save the Office of Public Counsel—acknowledges that a CLEC desiring to charge rates above the cap should be allowed to do so, at a minimum, upon showing that its costs exceed the capped rate. While there may be disagreement on issues such as who bears the burden of proof and what weight should be accorded to the presumption of reasonableness of the capped rate, the Fidelity CLECs, MCI-WorldCom, AT&T, CenturyTel, SBC Missouri, MITG, STCG, Sprint, Alltel and Staff all agree that some exception, to ensure due process, should be built into the capping mechanism. Further, the Fidelity CLECs find no opposition from the parties to the notion that CLEC rates should be capped only at the maximum rate charged by the directly competing ILEC, with CLECs not being required to match such ILEC’s reductions.

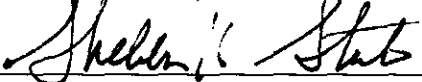
3. *OPC's refusal to recognize any exception to the capping mechanism is inconsistent with its position on loop costs.*

The Fidelity CLECs would like to highlight the inconsistency in OPC's positions on the issues of the allocation of loop costs and the exception to the cap on CLEC access rates. On the one hand, OPC supports the allocation of some portion of the loop cost to the cost of switched access, presumably out of a desire to keep local rates down. On the other hand, however, OPC opposes any cost-based exception to the cap on CLEC access rates. Basically, it is the OPC's position that the Commission should completely ignore CLEC *costs* and assume that the ILEC *rates* are sufficient to cover such costs, yet the Commission should support the increase of ILEC costs (and presumably rates) by allocating loop costs to the cost of switched access. Under OPC's recommendations, ILECs, both small and large have more costing/pricing flexibility than do CLECs—hardly a reasonable result in this or any other regulatory proceeding.

Dated: January 23, 2003

Respectfully submitted,

GREENSFELDER, HEMKER & GALE, P.C.

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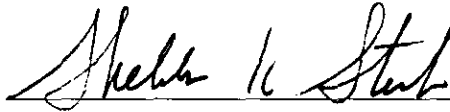
Fidelity Communication Services II, Inc.,

Fidelity Communication Services III, Inc.,

and Fidelity Cablevision, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing in Case No. TR-2001-65 was served upon all counsel of record on this 23rd day of January, 2003, by either hand delivery or placing same in postage paid envelope and depositing in the U.S. Mail.



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