



**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

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

**CLECs' OBJECTIONS**  
**TO SBC'S DATA REQUESTS 1-8**

Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., Socket Telecom, LLC, DIECA Communications, Inc., d/b/a Covad Communications Company, Big River Telephone Company, LLC, XO Missouri, Inc., and NuVox Communications of Missouri, Inc. (“CLECs”), respectfully submit the following objections to Data Requests (“DRs”) 1-8 submitted by SBC

## General Objections

The following objections apply to all of SBC's DRs

1 CLECs have interpreted SBC's DRs to apply to CLECs' regulated intrastate operations in Missouri and will limit their responses accordingly. To the extent that SBC's DRs are intended to apply to matters that take place outside the state of Missouri and which are not related to Missouri intrastate operations subject to the jurisdiction of the Public Service Commission of the State of Missouri ("Commission"), CLECs object to such DRs as irrelevant, overly broad, unduly burdensome, and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence.

2. CLECs object to SBC's DRs to the extent they seek information which is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other

applicable privilege. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, work product doctrine, or other applicable privileges or doctrines.

3. CLECs object to SBC's DRs to the extent they are vague, ambiguous, overly broad, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these DRs.

4. CLECs object to SBC's DRs to the extent they seek information not reasonably calculated to lead to the discovery of admissible evidence, and/or information that is not relevant to the subject matter of this action.

5. CLECs object to SBC's DRs to the extent they seek information or documents, or seek to impose obligations on CLECs which exceed the requirements of the FCC's Triennial Review Order ("TRO"), Missouri Rules of Civil Procedure, Missouri law, the Commission's Rules of Practice and Procedure and other Commission rules or any other applicable laws, rules, or procedures.

6. CLECs object to SBC's DRs to the extent they seek information that is already in the public record before the Commission or which is otherwise equally available to SBC through public sources or records because such requests subject CLECs to unreasonable and undue annoyance, oppression, burden and expense. Examples include information contained in or regarding the LERG, V&H coordinates, and SBC collocations.

7. CLECs object to SBC's DRs to the extent they are duplicative and overlapping, cumulative of one another, overly broad, unduly burdensome, expensive, oppressive, or excessively time consuming as written.

8. Some CLECs have employees located in many different locations in Missouri and in other states. In the course of their business, CLECs create countless documents that are not subject to the Commission's or FCC's retention of records requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document will be identified in response to these requests. CLECs will conduct a reasonable and diligent search of those files that are reasonably expected to contain the requested information, and will supplement their discovery responses if appropriate. To the extent that SBC's DRs purport to require more, CLECs object on the grounds that compliance would impose an undue burden or expense.

9. CLECs object to SBC's DRs to the extent they request that CLECs provide information that CLECs do not maintain in the ordinary course of business. This objection includes, but is not limited to, information at the exchange or ILEC wire center (district level). CLECs do not typically maintain certain data at exchange or ILEC wire center (district level). Rather, CLECs typically maintain that data at a higher level, such as the "NPA/NXX" level.

10. CLECs object to SBC's DRs to the extent they seek to have CLECs create documents not in existence at the time of the request.

11. CLECs object to SBC's DRs to the extent they are not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this docket, as such discovery is overly broad and unduly burdensome.

12. In light of the short period of time CLECs are afforded to respond to SBC's DRs, the development of CLECs' positions and potentially responsive information to SBC's DRs will

necessarily be ongoing and continuing. CLECs expressly reserve the right to supplement or modify their discovery responses based on ongoing inquiry.

13. CLECs object to SBC's DRs to the extent they seek to obtain "all," "each," or "every" document, item, customer, or other such piece of information, to the extent that such discovery is overly broad and unduly burdensome.

14. CLECs object to SBC's DRs to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to the "Missouri Uniform Trade Secrets Act." RSMo 417.450 et seq. CLECs object to the requests to the extent they seek confidential business, financial, or other proprietary documents or information. CLECs further object to the requests to the extent they seek documents or information protected by the privacy protection of the Missouri or United States Constitution, or any other law, statute, or doctrine. To the extent that SBC's DRs seek proprietary, confidential or highly confidential business information which is not the subject of the "trade secrets" privilege, CLECs will make such information available pursuant to the terms of the Protective Order issued in Case No. TO-2004-0207, In the Matter of a Commission Inquiry into the Possibility of Impairment Without Unbundled Local Circuit Switching When Serving the Mass Market.

15. CLECs object to SBC's DRs to the extent they seek information regarding so-called "voice-grade equivalent lines" ("VGEs") as this term is not typically used by CLECs in the course of business, and CLECs do not typically maintain information regarding "voice-grade equivalent lines" in the ordinary course of business.

16. CLECs object to SBC's DRs that seek information regarding non-switched services (e.g., services that do not depend on local Class 5 switches) as such discovery is

irrelevant for purposes of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

17. CLECs object to SBC's DRs to the extent they seek information regarding CLECs' operations in areas other than SBC's service area within the state of Missouri, as such information is irrelevant to SBC's case in this docket and such discovery is overly broad and unduly burdensome.

18. CLECs object to the phrases "qualifying service" and "non-qualifying service," and each and every one of SBC's DRs that includes such terms, as CLECs do not use such terms in the ordinary course of business, do not maintain information regarding "qualifying service" and "non-qualifying service" in the ordinary course of business, and answering in these terms would require CLECs to provide a legal interpretation of the FCC's terms. With the exception of the specific services the FCC has designated as qualifying or non-qualifying, the term is not clearly defined by the FCC or by SBC's DRs. For example, as the FCC stated in footnote 466 of the TRO Order (FCC 03-36, released August 21, 2003), "Our list is intended to identify general categories of services that would qualify as eligible services. It is not intended to be an exhaustive list or to identify services in a more particular manner." Thus, such discovery is vague and it would be unduly burdensome to respond.

19. CLECs object to the phrases "hot cut," "batch hot cut," and "individual hot cut," and each and every one of SBC's DRs that include such terms, because it is not clear whether or to what extent SBC's practices are consistent with the FCC's use of such terms, however such terms may be defined by the FCC. Thus, such discovery is vague. CLECs further object to the use of such terms as they apply to SBC's individual hot cut process as CLECs are not privy to each and every process or procedure employed by SBC in implementing such hot cuts.

20. CLECs object to SBC's DRs to the extent they seek information not within CLECs' possession, custody, or control, or information that is already in SBC's possession, custody or control. Examples include information in or regarding the LERG, V&H coordinates, and SBC collocations.

21. CLECs object to each and every one of SBC's DRs to the extent they seek information regarding CLECs' projections regarding future services, revenues, marketing, strategies, equipment deployments, or other such future business plans as such requests are trade secrets and, for purposes of this proceeding, would be highly speculative and irrelevant to the issues to be decided in this docket.

22. CLECs object to the requests to the extent that they seek to impose an obligation on CLECs to respond on behalf of subsidiaries, affiliates, or other persons that are not subject to the jurisdiction of the Commission on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

23. CLECs object to each and every DR that seeks to any extent to obtain information regarding former employees, contractors, agents, or others employed by or acting on behalf of CLECs as such information is not within CLECs' control, would be unduly burdensome to attempt to obtain, and is likely irrelevant.

24. In the Triennial Review Order, the FCC concluded that in applying the switching triggers, states "must consider packet switches to the extent they are used to provide local voice service to the mass market." Order at ¶199 n.1549. On this basis, CLECs interpret "local service" to mean the provision of local voice service. As such, for purposes of this inquiry required by the FCC, discovery related to equipment that is not used to provide local voice

services is irrelevant to both the “triggers” and “potential deployment” analysis in this docket, and not reasonably calculated to lead to the discovery of admissible evidence.

25. CLECs object to the requests to the extent they seek precise locations of equipment and facilities, when general locational information is sufficient. Unjustified intrusion upon proprietary matters is oppressive and burdensome.

26. CLECs object to the requests to the extent they seek information regarding costs or revenues, as such information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

27. CLECs object to the requests to the extent they seek information regarding types of transport facilities or loops that are not at issue. Such information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

### Specific Objections

The following additional objections apply to SBC's DRs:

#### DR 1

- 1-01 The use of the word "ability" is vague and ambiguous. CLECs will interpret it to refer to actual use, rather than some irrelevant level of hypothetical "ability". This objection extends to all requests which refer or relate back to this request, or use this word in the same context.

This request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, including to the extent the request seeks the identity of other entities.

- 1-04 This request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, including to the extent the request seeks equipment type and manufacturer identity.

The request is vague, including in its use of the word "capacity".



Parts of the request duplicate others. Information regarding service to enterprise customers is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Information regarding specific customers is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

CLECs object to this request on the ground that it is overly broad and unduly burdensome.

This request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, including to the extent the request seeks the identity of other entities.

The request is vague, including in its use of the word "capacity". This request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, including to the extent the request seeks the identity of other entities.

The request is vague, including in its use of the word "capacity"

- 2-06 The request is vague, including in its use of the word "ensure"
- 2-11 The request is vague, including in its use of the words "capacity" and "capability"
- 2-12 The request is vague, including in its use of the word "allows"
- 2-13 The request is vague, including in its use of the words "capacity" and "capability"
- 2-14 The request is vague, including in its use of the words "capacity" and "capability"
- 2-17 The request is vague, including in its use of the phrase "rural areas"

### DR 3

- 3-01 To the extent CLECs are not providing wholesale service, the request is irrelevant and not reasonable calculated to lead to the discovery of admissible evidence.
- 3-01 (c) CLECs object to this request on the ground that it is overly broad and unduly burdensome, to the extent that CLECs do not track equipment capacity.
- 3-02 To the extent CLECs are not providing wholesale service, the request is irrelevant and not reasonable calculated to lead to the discovery of admissible evidence.

(c) CLECs object to this request on the ground that it is overly broad and unduly burdensome to the extent CLECs do not track equipment capacity.

To the extent CLECs are not providing wholesale service, the request is irrelevant and not reasonable calculated to lead to the discovery of admissible evidence.

CLECs object to this request on the ground that it is overly broad, and that it is unduly burdensome, including to the extent the request seeks the identity of other entities.

- 4-03 Use of the words "capacity" and "capable" is vague
- 4-04 CLECs object to this request on the ground that it is overly broad, and that it is unduly burdensome, including to the extent the request seeks the identity of other entities.
- 4-05 Use of the words "capacity" and "capable" is vague.
- 4-07 CLECs object to this request on the ground that it is overly broad, and that it is unduly burdensome, and seeks to improperly place the burdens of proof and production on CLECs.
- 4-08 This request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. CLECs object to this request on the ground that it is overly broad, and that it is unduly burdensome, and seeks to improperly place the burdens of proof and production on CLECs.
- 4-09 CLECs object to this request on the ground that the phrase "any route in your service areas in Missouri" is vague and ambiguous, that it seeks a legal conclusion, that it is overly broad, and that it is unduly burdensome.
- 4-10 CLECs object to this request on the ground that the phrase "any particular route where your company provides services in Missouri" is vague and ambiguous, that it seeks a legal conclusion, that it is overly broad, and that it is unduly burdensome.
- 4-11 CLECs object to this request on the ground that it is overly broad, and that it is unduly burdensome.
- 4-12 CLECs object to this request on the ground that it seeks a legal conclusion, that it is overly broad, and that it is unduly burdensome.
- 4-13 CLECs object to this request on the ground that the phrase "any particular route where you company provides services in Missouri" is vague and ambiguous, that it seeks a legal conclusion, that it is overly broad, and that it is unduly burdensome.

CLECs object to this request to the extent that they do not track or retain this information.

(b) The request is vague including in its use of the word "widely"

(h) The request is vague including in its use of the word "capacity"

The word "relevant" is vague as used, and appears to require a legal conclusion. The word "capacity" is vague.

(a) This request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, including the request for customer names.

5-07 (d) The requested information is equally available to SBC from the same sources CLECs would use.

5-07 (j) This request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

#### DR 6

6-02 This request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

6-03 To the extent CLECs do not use ATM-based packet "switches" to provide "local service to the mass market," any response would be irrelevant for the purposes of this proceeding. CLECs further object to this request on the grounds that it is not reasonably calculated to lead to discovery of admissible evidence and is, consequently, irrelevant, including to the extent it seeks information regarding costs. CLECs further object to this request on the ground that it is overly broad and unduly burdensome.

6-04 The request seeks speculative information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

Curtis, Oetting, Heinz,  
Garrett & O'Keefe, P.C.

/s/ Carl J. Lumley

Carl J. Lumley, #32869  
Leland B. Curtis, #20550  
130 S. Bemiston, Suite 200  
Clayton, MO 63105  
(314) 725-8788  
(314) 725-8789 (FAX)  
[clumley@cohgs.com](mailto:clumley@cohgs.com)  
[lcurtis@cohgs.com](mailto:lcurtis@cohgs.com)

Attorneys for Brooks Fiber Communications of Missouri, Inc.  
Intermedia Communications, Inc., MCImetro Access Transmission  
Services, LLC, MCI WorldCom Communications, Inc., Societ Telecom,  
LLC, DIECA Communications, Inc. d/b/a Covad Communications  
Company, Big River Telephone Company, LLC, XO Missouri, Inc and  
NuVox Communications of Missouri, Inc.

### Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 5th day of December, 2003 by either placing same in the U.S. Mail, postage paid or via e-mail:

Robert J. Gryzmala  
SBC Missouri  
One Bell Center, Room 350  
St. Louis, Missouri 63101  
[robert.gryzmala@sbcm.com](mailto:robert.gryzmala@sbcm.com)

/s/ Carl J. Lumley