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Missouri Public
Service Commission

Case No. _____

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Rural Customers Have Lost Ground

One of the most serious deficiencies of competition has been the rural consumer's loss of reasonably priced expanded calling plans that allowed residents call schools, local government, work, medical assistance, and nearby family, friends, and businesses and services toll free. Although urban areas enjoy large toll free calling scopes and expanded calling plans, rural customers do not have reasonable options in both price and scope of service. Since Community Optional Service was terminated in 1999, rural customers have fallen farther behind urban residents in comparable telecommunications services and local calling scopes. To try to reclaim some of the benefits lost with the end of COS,

SBC customers relied on the Local Plus flat rate unlimited LATA-wide calling plan. However, as of February 1, 2003, SBC discontinued Local Plus provoking consumer frustration and anger that rural service options are once again curtailed with no suitable alternative even at higher prices.

Closing The Gap Between Urban And Rural Customers

Because of the widening gap in telecommunications services between urban and rural Missouri, Public Counsel seeks to close that gap. It is in the public interest and it is beneficial to telecommunications ratepayers in rural areas of the state for the PSC to address the serious need for expanded local calling in specific rural communities and to provide a process to grant relief to the telecommunications customers in those areas that demonstrate this need.

Public Counsel suggests that the PSC consider and evaluate expanded calling plans to bring parity in the availability of telecommunications services to specific communities in rural Missouri so that concrete implementation plans can be developed so that rural customers will not be denied the benefits afforded to urban customers. Public Counsel suggests that this case develop specific plans for expanded calling scopes in rural areas together with a method to spur or provide an incentive to the telecommunications industry to serve these communities with adequate local calling service at just, reasonable and affordable prices.

Not Just Another Investigation And Study Request

The Commission has studied the issues involved in expanded calling over many years. These studies include the cases in the early 1990's that created Expanded Area Service (EAS), Community Optional Service (COS) and Metropolitan Calling Area

(MCA) and their predecessor plans. Since the passage of the Federal Telecommunications Act of 1996 and Senate Bill 507, the Commission has also conducted investigations into the continuation of the Primary Toll Carrier plan, expanded calling proposals and competition in the MCA plan regions and Community Optional Service and other expanded calling plans in a competitive environment.

The time has come to take advantage of the collective information and discussion from those investigations and to take specific action to address the failure of the present competitive environment to protect rural customers from increased prices, decreased service options, and reduced levels of service.

Rural customers expected at least not to be worse off than before the new telecommunications laws and competition. However, those expectations were not realized when low cost calling plans within their communities of interest were ended to facilitate competition that, in turn, failed to deliver reliable, convenient, affordable, and reasonably priced substitutes for the lost services. As a result, the real value of the telecommunications system for the rural customer has diminished. This places those customers and their communities at an economic and social disadvantage compared to the urban areas of the state.

End Of SBC's Local Plus Triggers Rural Consumer Complaints

SBC's recent discontinuation of its Local Plus and Designated Number unlimited calling plans has brought the need for strong, positive action to the forefront. Companies that compete with SBC and resell those calling plans also have discontinued those services since they are no longer an SBC retail item and, therefore, cannot be resold. Customers in the rural communities have contacted the Office of the Public Counsel, the

Public Service Commission, SBC, and state legislators with complaints about this action and the need to have a suitable substitute. These consumers contend that the block of time calling plans offered by SBC to replace Local Plus and Designated Number are inadequate and costly and are not anything close to comparable with the service and price of the prior plans.

Utility companies usually point out that the hundred or so complaints received are just a small percentage of the affected customers and that this indicates a general overall satisfaction with the action taken or the options available. However, the actual number of complaints is usually only a small tip of a larger iceberg of consumer dissatisfaction, confusion, and ire. The frustration and anger must reach a high degree for customers to be motivated to make written complaints about utility service, given the wide range of day-to-day issues a family and a business must face. The growing tabulation of Local Plus related complaints (now at more than 130) indicates that consumers believe that their present service options are inadequate. These rural customers are demanding action to provide them with adequate service and a fair measure of parity with urban areas.

Public Counsel commits to assist the Commission to fashion a remedy to meet the calling needs of rural Missouri. Public Counsel also plans to take independent action to educate consumers and identify consumer calling needs. However, no matter what Public Counsel does to educate consumers and to identify deficiencies in service, it alone cannot order or implement a remedy. That is the province of the PSC. Rather than await more studies without an end or solution in sight, Public Counsel suggests that the PSC use information gathered from the prior investigations, studies, and reports as a base and with that take positive action now toward providing relief. This is needed so that those

customers will see a response and see some benefits as soon as practical. The rural customers must be reassured that the PSC will address their concerns and protect their interests in these matters.

A Place To Start, Starting Now

No doubt many starting places could be suggested or a number of strategies pursued. Public Counsel does not have all the answers and may not have even identified the best way to proceed. But the effort must be made to move ahead, starting now and then making needed course corrections as the process moves forward. This is not a blind journey; the industry, the Staff, Public Counsel, and the Commission have looked at this road a number of times in the last decade and are aware of the multitude of issues and problems that will arise along the way. Some in the industry may say that this field has been plowed too many times with no harvest to show for the effort and should be left to pasture. But rural Missouri's economy should not be relegated to a second-class status by naysaying and reticence. Constructive and positive criticism and reasonable caution are necessary attitudes in this effort. But just as vital and just as necessary is a commitment to fashion a remedy, even if it is not the perfect solution, and implement it as soon as possible.

Public Counsel suggests these steps as essential to address the needs of the rural communities:

- (1) identify the rural communities where the present local calling scopes and the available toll calling plans do not provide adequate telecommunications service at just, reasonable, and affordable rates on a parity with urban areas,

(2) educate telecommunications customers in those rural areas of calling plans or toll plans that currently exist, if any, to immediately reduce the costs and inconvenience to communicate within their communities of interest, including outreach with local government, civic, and business groups to disseminate information such as calling card options and calling plans

(3) where adequate service does not exist at just, reasonable and affordable rates establish and implement expanded local calling plans or suitable alternatives by

- (a) increasing the local calling scopes available with basic local service;
- (b) authorizing a Rural Calling Area Plan to provide optional expanded calling within the community of interest;
- (c) providing incentives to companies to increase the local calling scope and to provide expanded calling plans through cost reimbursement from the Missouri Universal Service Fund

The Public Interest

Expanding local calling scopes that provide rural communities with telecommunications service at parity with urban and suburban areas on price, quality, and service options would have a positive impact on Missouri's economy. It would improve the health, safety, and general welfare of Missourians in those communities and in the state as a whole.

The thrust of telecommunications competition is to bring better service, more choices, and lower prices to Missouri customers, without regard to location. The General Assembly has declared parity of services between urban and rural areas as a matter of this

state's public policy. Section 392.185(7) RSMo 2000. This was re-emphasized in joint resolution that the General Assembly adopted when COS was ended by PSC order.

Competition fails the rural customer and fails Missouri if rural customers receive a reduced or an inferior level of service as compared to the urban customer. Competition also fails the rural customers if they must pay unreasonable prices and cannot afford a diverse supply of telecommunications services and products that are available in other areas of the state. Today customers in the metropolitan areas can reach thousands of customers in numerous exchanges through their local exchange service or by reasonably priced optional MCA plans. Rural customers often cannot even call the neighboring exchange or the next town or the county seat without a toll charge.

The Commission and the industry must address the expansion of local service or the provision of calling plans so that customers can have reasonable assurance that the cost of communication within a community of interest does not inhibit or thwart economic development or pose an obstacle to maintaining and improving the health, safety, and welfare of rural Missouri. This is not a question of subsidy, but rather is an issue of a single, interrelated public switched telecommunications network and one interrelated economy.

MISSOURI'S RURAL HERITAGE AND FUTURE

Missouri rural communities form the backbone of the state economy. Agriculture or agricultural related fields provide one out of every 6.6 Missouri jobs. But rural Missouri is also the target for an increasing number of residents and businesses who will require an infrastructure comparable in quality and price to the urban areas. If rural areas

are to compete for and attract economic growth to Missouri, they must be equipped with modern telecommunications at just, reasonable, and affordable prices.

Missourians have a concern for “fiscal efficiency and communities of quality” said a December 2002 report from the Brookings Institution Center on Urban and Metropolitan Policy, “Growth in the Heartland: Challenges and Opportunities for Missouri,” (p. 3). The state’s population and job growth is decentralizing far beyond the metropolitan areas. During the 1990’s, residency in unincorporated (“open country”) areas grew faster (12.3%) than residency within cities and towns. (8.1%) (Growth in the Heartland, p. 16). The report also noted that in 76 of 93 rural Missouri counties, 71% of all growth was outside of towns. Rex Campbell, professor of rural sociology at the University of Missouri-Columbia School of Agriculture, Food and Natural Resources was quoted as saying that the arrival in rural Missouri of thousands of retirees, urban émigrés, Hispanic workers and others guarantee that the “good old days” when “rural” meant “agricultural” and “pastoral” are “gone forever, never to return.” However, the report went on to observe that “the change brings fresh avenues, more jobs and improved opportunities.” Joplin, Columbia, the Springfield area and other regional centers are “filling with new people, new affluence, and new diversity.” (Growth, p. 16).

When COS service was terminated by the PSC in 1998, the Commission established a case to investigate local calling scopes. As part of that case, the Missouri Public Service Commission held public hearings in the communities of: Cameron (4/23/98), Columbia (4/27/98), Sedalia (4/30/98), West Plains (5/11/98), Memphis (5/18/98), and Springfield (5/28/98). The hearing transcripts show that the consumers were concerned about the following issues:

1. The effect of ending COS has on the customers and their community.
2. Whether they could afford to continue calling the same people, businesses, and services as they did with COs.
3. Whether there was a way they could duplicate the calling scope they now have with basic service coupled with COS and EAS.
4. Access to Internet providers at a flat rate or at a reasonably priced rate.
5. Concern that once COS is eliminated, no replacement service will be available and they will "lose ground."
6. Comparison of their calling scope with the metropolitan areas and the MCA plans.
7. A general willingness to paying more for expanded calling like COS or for local service if they had a suitable calling scope that served their community of interest.
8. Rural customers have limited calling scopes so that, even with expanded local calling, they pay more for less in comparison to MCA.
9. In Memphis, the customers wanted a countywide calling scope to meet their community of interest.
10. Affordable access for families with school children so parents and teachers can communicate and parents and children can contact each other.
11. The elderly, disabled, or persons on fixed incomes have affordable telecommunications services to reach vital community services, such as medical and emergency assistance.

12. Affordable access for customers to check on children, sick or elderly family and friends, or to operate their businesses, and to generally conduct daily activities

RURAL CALLING AREA PLAN PROPOSAL

Public Counsel asks the PSC to establish a Rural Calling Area (RCA) plan and proposes the following plan as a prototype for discussion and to serve as a concrete starting point for industry and public comments and hearings.

1. The RCA plan provides for the establishment of expanded calling areas between communities of interest that so that customers can subscribe at a fixed flat fee for unlimited calling (or a very high minute package/block of time 2,000+ minutes) within that community of interest.
2. A county commission or a municipality may petition the PSC to establish a RCA. The petition should outline the general boundaries of the requested RCA or the county's or municipality's claimed community of interest.
3. Upon application, the PSC will investigate the feasibility of a RCA in the area proposed in the petition or as modified by considering exchange boundaries, other local calling scopes, geography, similar requests from adjoining areas, and other matters deemed relevant by the commission.
4. In determining whether or not to establish a RCA, the Commission shall consider the following factors:
 - the boundaries of the proposed RCA and the relevant communities of interest (COI) within the RCA;
 - calling traffic patterns within the proposed RCA and the community of interest (COI);
 - prior history of the availability of COS, OCA, and EAS in that RCA or COI and the take rate for those calling plans;

- the availability of discounted toll calling plans and the number of toll carriers that make these calling plans available in that RCA;
 - the availability of discounted calling plans offered in the RCA or COI by the incumbent LEC and any CLEC;
 - the availability of CLECs other than prepaid local service providers that require toll blocking for customers;
 - the recommendations of state and local governments and consumer, civic and business organizations in the proposed RCA or COI on the economic and social and other impacts of toll free calling within the RCA or COI;
 - customer and public comments made at public hearings or sent to PSC and Public Counsel;
 - the financial requirements, including price and rate structure, to implement the flat rate plan;
 - comments of any telecommunications company offering service within the RCA or COI;
 - public interest considerations and any other factor the PSC deems relevant to establishing a RCA at just, reasonable, and affordable rates.
5. The PSC shall hold public hearings to provide ratepayers in the RCA or COI with an opportunity to comment on the need, desirability, and proposed price of the RCA.
 6. The PSC shall determine if local exchange companies in high cost areas that provide RCA service are eligible for state or federal USF funds for the expanding calling plan.
 7. The PSC shall make a finding based upon the record that the public interest would be served by the establishment of the RCA and that the fixed additive RCA rate (or revised local rate within the RCA) is necessary for the promotion of the public interest and to provide adequate telecommunications service at levels and prices that are at parity with urban areas, and to ensure that rural customers have reliable access to internet, broadband, and advanced

telecommunication services at just, reasonable, and affordable rates.

LEGAL AUTHORITY FOR PSC TO ADOPT RURAL CALLING AREA PLANS

The General Assembly created the Commission in 1913 and delegated to it the police power to establish utility rates and to protect the consumer against the natural monopoly of the public utility, generally the sole provider of a public necessity. Lightfoot v. City of Springfield, 361 Mo. 659, 236 S.W.2d 348 (1951); May Dep't Stores Co. v. Union Electric Light & Power Co., 341 Mo. 299, 107 S.W.2d 41, 48 (1937). To that end, the Commission is authorized to ensure that the facilities provided by telephone corporations are adequate and that their rates are just and reasonable. Section 392.200.1.RSMo 2000.

The Commission has jurisdiction and authority to investigate and to provide relief pursuant to Section 386.230.1,RSMO 2000 (relating to the general supervision of telephone companies), Section 386.330.1 and .2 (relating to the PSC's investigatory power), and Section 392.200.1 (relating to adequate telecommunications service). Section 392.200.7 states: "The commission shall have power to provide the limits within which telecommunications messages shall be delivered without extra charge."

The PSC has long recognized that expanded local calling plans meet the social and economic needs of consumers and are in the public interest. *In The Matter Of The Investigation Into All Issues Concerning The Provisioning Of Expanded Area Service* (EAS) TO-86-8 (March 20, 1987); *In The Matter Of The Investigation Of Experimental Measured Service*, Case No. TO-87-131 (December 28, 1989).

The PSC has statutory authority to establish expanded calling scopes in all exchanges in the state. *In The Matter Of The Establishment Of A Plan For Expanded*

Calling Scopes In Metropolitan And Outstate Exchanges, TO-92-306 (December 23, 1992). Section 392.240.2, RSMo authorizes the Commission to determine if the rates and the services supplied by telecommunications companies are reasonable, adequate and sufficient; if it finds that they are not, it shall determine the just and reasonable rates and the reasonable and sufficient service to be offered. The Commission may also order repairs, improvements, changes or additions in telecommunications facilities and service to promote the public convenience.

The Commission conducted an investigation into calling scopes in 1975 when it responded to a "deluge" of requests for toll free calling into an adjoining exchange or into a metropolitan area. *In The Matter Of The Investigation Of All Factors Relative To The Calling Scope Of All Telephone Exchanges In Missouri*, Case No. 17,898 (May 20, 1975) 20 Mo. PSC (N.S.) 35. In that case, the PSC found that the intrastate toll tariff of Southwestern Bell which had been adopted by all Missouri telephone companies was unjust and unreasonable and ordered a change in the tariffs. The PSC said that the public should have some relief from the necessary and burdensome short-haul toll charges. The PSC took into consideration the economic impact on all people of Missouri who use the telephone toll network. It also noted evidence in the case that the rural farming communities and exchanges adjacent to metropolitan areas would benefit from a change in the toll rate structure that reflected the actual use and duration of calls. The PSC fashioned a remedy to meet the reasonable demands of the public that would economically benefit the consumers.

The introduction of price cap regulation did not affect the authority of the PSC over expanded area calling scope issues. Section 392.245.6 RSMo provides that the price

cap statute does not “alter the commission’s jurisdiction over quality and conditions of service” and does not relieve companies from the obligation to comply with minimum basic local and interexchange service rules. Price cap companies are not regulated under subsection 1 of Section 392.240; however, price cap companies are subject to the remainder of the statute.

The Commission applied its regulatory authority concerning expanded calling scopes in metropolitan areas (MCA) to rate of return, price cap and competitive telecommunications companies. *In The Matter Of An Investigation For The Purpose Of Clarifying And Determining Certain Aspects Surrounding The Provisioning Of Metropolitan Calling Area Service After The Passage And Implementation Of The Telecommunications Act Of 1996* (TO-99-483) September 7, 2000).

The public interest rationale for Commission found in establishing extended area service (TO-86-8) and MCA service (TO-92-306) remains viable today. The Commission had no difficulty in *In the Matter of an Investigation for the Purposes of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service after the Passage and Implementation of the Telecommunications Act of 1996, TO-99-483* (issued September 7, 2000), finding that “the public policy considerations and needs addressed by this Commission in Case No. TO-92-306 still exist today” (at p. 18) and that MCA service is still in the public interest.

A competitive classification or price cap regulation does not set the company free from all PSC supervision of its rates and conduct (Section 386.320), but rather allows for flexibility for rate making within the statutory parameters (Sections 392.245; 392.200)

and by the PSC in the exercise of its authority (Section 392.470 and 386. (2) (7); Sec. 392.200).

The PSC exercised its authority over rate of return, price cap, and competitive companies in TO-99-483 involving the pricing and the provision of Metropolitan Calling Area plans in St. Louis, Kansas City, and Springfield. This case was decided after the enactment of S. B. 507 recognizing competitive local exchange companies and price cap regulation. The PSC specifically found that the original MCA rates it set in 1992 rates remain just and reasonable and are still a just and reasonable cap on the price of MCA to protect consumers from price increases. This MCA cap did not exempt price cap, rate of return or competitive companies.

Section 392.185, RSMo (4) requires the PSC to “ensure that customers pay only reasonable charges for telecommunications service.” Section 392.185 (6) allows “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.**” (Emphasis supplied).

THE OUTCOME OF COMPETITION IN RURAL MISSOURI

Many of the Commission decisions since 1996 have left to the competitive marketplace the manner in which telecommunications services are provided in Missouri. These decisions include approval of price cap treatment for SWBT, Verizon, and Sprint, increased local basic rates as a result of Sprint and Verizon rebalancing, the approval of AT&T's request to be relieved of its obligation as the carrier of last resort, and the termination of the PTC plan. The termination of Community Optional Service in the

name of promoting a competitive environment brought considerable cost, inconvenience, and frustration to the affected communities and customers. In other cases, the PSC has decided to let "competition substitute for regulation" in matters such as the access recovery charges proposed by AT&T and Sprint and the withdrawal of unlimited Local Plus and Designated Number calling plans by SWBT.

However, from the customer reaction that was generated by the termination of COs and SBC's termination of Local Plus, Public Counsel suggests that the Commission should chart a new course for the rural areas given that the competitive environment has not responded to the consumer's needs. The Commission should take a hard look at the competitive options available to the residential and small business customer in the marketplace to assure that the needs of the communities for expanded local calling are adequately addressed by the market or, if not, can be addressed by expanded calling plans.

ECONOMIC VIEW OF RURAL MARKETPLACE

Companies compete on the basis of quality as well as price. Economic theory suggests that customers are better served by effective competition than by an unchecked monopoly. When a company has monopoly power they are likely not only to provide less variety in the services they offer, but also distort levels of quality and discriminate against low-end customers. Given the opportunity, the telecommunications firm that retains its monopoly or retains its market power in the face of less than effective competition will tend to reduce quality for users of basic services in order to encourage the purchase of better service at higher prices by those able to afford it.

As applied to the rural areas, when there is a lack of effective competition, the provider with market power can withdraw low profit services at will and force customers to turn to its more profitable products, even though those products may be more expensive or provide less value than the withdrawn product. The lack of effective competition for Local Plus allowed SBC to withdraw the product with little fear of loss of local service and intraLATA toll customers to other providers.

For the foregoing reasons, Public Counsel requests the Commission to establish a Rural Calling Area plan to respond to the needs and the interests of the rural consumers and for such other and additional relief as the Commission deems necessary.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed or hand-delivered this 25th day of February 2003 to the following attorneys of record:

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/s/ **Michael F. Dandino**

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