

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.)	

OPPOSITION TO CWA INTERVENTION

COME NOW Brooks Fiber Communications of Missouri, Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (herein collectively "MCI"), and pursuant to 4 CSR 240-2.075 and 2.080, state their opposition to the Motion to Intervene submitted by the Communications Workers of America (CWA) on or about January 22, 2004, as follows:

1. The Commission issued notice of this case on or about November 5, 2003. The Commission set an intervention deadline of November 12, 2003, required parties to file position statements in November as well, and has already required the submission several rounds of pre-filed testimony.

2. CWA identifies itself as "the certified bargaining representative of employees of Southwestern Bell Telephone Company, AT&T and other telecommunications carriers participating in this proceeding."¹ CWA infers the rights and interests of telecommunications industry employees are inadequately represented in the instance proceeding by the current parties.²

3. MCI opposes CWA's intervention for two reasons. First, the November 12, 2003, intervention deadline set by the Missouri Public Service Commission (Commission) long has lapsed, and CWA provides no good cause reason for not making its request consistent with the

¹ Communications Workers of America's Motion to Intervene. (CWA Motion) at ¶ 1.

² Id. at ¶ 2.

Commission's timeframe. Nor can there be any good reason, as CWA would be hard-pressed to assert it was unaware any state would be conducting a Triennial Review Order proceeding within a nine-month timeframe, resulting in abbreviated intervention deadlines.

3. More importantly, however, CWA lacks standing to intervene. The Commission's Order Creating Case and Establishing Initial Deadlines (Order Opening Docket) was served on all incumbent local exchange carriers (ILECs), all competitive local exchange carriers (CLECs), Staff and the Public Counsel. The Commission did not contemplate the intervention of non-carriers. As a non-carrier, CWA has no knowledge of and can add nothing to those matters noticed for investigation. CWA has no access to any of the information critical to the investigation—nor should it. Responses to data requests, seeking to establish each of the above and other issues, are confidential and proprietary to each telecommunications carrier.³

5. Nor does CWA represent the public interest that was a major consideration in the implementation of the federal Telecommunications Act of 1996⁴ and again in the Triennial Review Order.⁵

6. CWA's pleading does not comply with the requirements of the Commission's rules, including 4 CSR 240-2.075 and 2.080.

III. Conclusion

³ Such has been the case in all other jurisdictions wherein information about these issues has been produced.

⁴ Telecommunications Act of 1996, Pub L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.).

⁵ *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147: Report and Order on Remand and Further Notice of Proposed Rulemaking, released August 21, 2003 (*Triennial Review Order*). See, e.g., ¶ 528 (“In instances when existing network elements may potentially be eliminated pending a fact-intensive investigation, we find that section 251(d)(2) gives us authority to promulgate reasonable transition rules to protect the *public interest* by preserving the status quo pending the

7. As expressly set forth in its motion for intervention, “CWA’s sole state in this proceeding is to ensure that the rights and interests of its members and other telecommunication industry employees are represented in this proceeding.”⁶ The rights and interests of telecommunications industry employees are not at issue in nor relevant to this proceeding. There is no reason to believe that CWA has interests in this proceeding that are distinct from those of the general public.

WHEREFORE, MCI opposes the Motion to Intervene filed by CWA and asks the Commission to deny that motion.

Respectfully submitted,

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/s/ Carl J. Lumley

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outcome of the investigation and by giving competitive carriers a realistic opportunity to deploy their own facilities (footnote omitted).”)

⁶ CWA’s Motion at ¶ 2.

Certificate of Service

A true and correct copy of the foregoing was served as required by Commission Order in this case on this 23rd day of January, 2004 and upon counsel for CWA by facsimile transmission using the number shown on their pleading.

/s/ Carl J. Lumley