BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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.	))))	Case No. TO-99-483

INITIAL BRIEF OF CASS COUNTY TELEPHONE COMPANY ET AL.

W. R. England, III Mo. #23975
Brian T. McCartney Mo. #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456

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I. INTRODUCTION

Metropolitan Calling Area ("MCA") Service was developed to meet the needs of Missouri customers in the Kansas City, Saint Louis, and Springfield metropolitan areas. Today, MCA Service continues to serve the desires and needs of Missouri customers, and there has been no public outcry to change the service. In fact, public sentiment appears to favor the preservation of this valuable calling plan.

In this brief, Cass County Telephone Company et al.[1] ("Cass County") will show that the public interest will be best served by allowing CLECs to participate in the existing MCA Plan under the same rates, terms, and conditions as those ordered by the Commission in Case No. TO-92-306. CLECs should also be free to offer their own expanded calling plans outside of MCA service. However, CLECs wishing to offer a Commission-mandated MCA service should be required to follow the current parameters of the MCA plan with regard to price, geographic calling scope, and inter-company compensation that were originally ordered by the Commission in Case No. TO-92-306. Anything short of this will likely to lead to the end of the MCA plan.

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[1] Cass County Telephone Company et al. includes the following incumbent local exchange companies: ALLTEL Missouri, Inc., Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Grand River Mutual Telephone Corporation, Lathrop Telephone Company, Green Hills Telephone Company, and Orchard Farm Telephone Company.

II. BACKGROUND

A. Expanded Calling Services

The concept of flat rate, expanded calling services was first developed in the early 1960's, primarily as a response to the cost of processing ticketed messages in the metropolitan areas. At that time, the manual processes in use for recording and billing the messages, along with the short-haul nature of the calls, made the toll charges uneconomic. Therefore, the primary service provider in the major metropolitan areas, Southwestern Bell Telephone Company ("SWBT"), began tariffing flat rate, expanded local calling plans.

As the metropolitan areas grew, other telephone companies were pressured by their customers to provide similar services, but the development of these services was hampered by the intercompany compensation issues between the neighboring companies. Communities pressured company personnel and public servants to provide expanded calling services, and they cited public interest issues and economic development interests as support for their requests. In certain areas, real estate was actually "redlined" where metropolitan calling plans were not present. Increasing complaints led to inquiries by community officials and state legislators. (Matzdorff Direct, Ex. Ex. 41, p. 4)

B. Commission Action

In the mid-1970's, the Commission adopted an Extended Area Service ("EAS") in order to recognize Missouri customers' calling patterns and habits.[2] At this time, the Commission found:

> Since mid 1973, the Commission has been deluged with requests from various telephone exchanges around the State of Missouri for expanded calling scopes. These cases are generally in the form of requests for "toll free" calling into an adjoining exchange or into a metropolitan area. The requests have been most numerous around the perimeters of the boundaries of the Wide Area Service Plans (WASP) of Kansas City and St. Louis.
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> The WASP boundaries were established some years ago and since that time the suburban areas around them have grown at a rapid rate. There is no doubt that because of this growth that many people in the exchanges around the boundaries have a need for numerous toll calls into all or portions of the WASP. Their school districts sometimes cross the boundaries, their place of employment is in the metropolitan area, sometimes their churches, their relatives, social clubs, shopping centers, and medical facilities are within the plan.
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> The people inside the WASP boundaries also have a need to make numerous toll calls out into the neighboring exchanges for similar reasons. The businessmen, both in and out, deal with people on both sides of the boundaries.
>
> Some, but not *all,* of the telephone subscribers in these areas are being burdened by high long distance toll bills. They need some relief . . . In short, the calling patterns and habits of the telephone subscribers in Missouri have changed in recent years and there is a need to change the method of pricing and the timing of toll calls to meet the needs of the people.

The Commission revisited Missouri's calling scope issues about ten years later, and it withdrew the prior EAS rule and ordered the industry to implement an experimental Extended Measured Service ("EMS") plan.[3] A new case was opened to investigate the experimental EMS,

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[2] See *In the Matter of the Investigation of all Factors Relative to the Calling Scope of All Telephone Exchanges in Missouri*, Case No. 17,898, *Report and Order*, May 20, 1975.

[3] See *In the Matter of the Investigation into All Issues Concerning the Provision of Extended Area Service (EAS) in the State of Missouri under Commission Rule 4 CSR 240-*

and it was in this case that the Commission ordered the first incarnation of Community Optional Service ("COS").[4] The industry also proposed and attempted to implement an Extended Local Calling Scope ("ELCS") program.[5]

C. The Commission's Metropolitan Calling Area ("MCA") Plan

In 1991, the Commission continued to address Missouri calling scope issues by initiating a task force representing various communities, state agencies, and company officials. This task force developed a Report, and in 1992 the Commission held hearings in Case No. TO-92-306. On December 23, 1992, the Commission issued its *Report and Order* which revised the COS plan and established the MCA Plan and the Outstate Calling Area ("OCA") Plan.[6] The Commission designated specific geographic areas where the MCA plan would be offered, and it established a uniform set of rates for MCA service based upon the "tier" where the subscriber resided rather than the subscriber's local service provider.[7]

The Commission recognized MCA as a local service offering, while COS and OCA were

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30.030, Case No. TO-86-8, *Report and Order*, Mar. 20, 1987.

[4] See *In the Matter of the Investigation of Experimental Extended Measured Service (EMS)*, Case No. TO-87-131, *Report and Order*, Dec. 29, 1989.

[5] *Id.*

[6] *In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges*, Case No. To-92-306, *Report and Order*, Dec. 23, 1992.

[7] *Id.* at pp. 7-8; Attachments 1-6.

classified as toll offerings. The form of inter-company compensation was also differentiated. MCA was provided under a "Bill and Keep" compensation plan where each company billed its own end user customers rather than creating billing records and billing other companies for interexchange traffic.[8] (COS and OCA, on the other hand, were recognized as toll services and were therefore access-based compensation plans.)

Since its implementation, MCA service has met the public interest, and customer complaints about calling scopes have been greatly reduced. Moreover, the companies involved in the implementation of the MCA plan have continued to cooperate in accordance with the Commission's directives. In 1996, however, federal and state telecommunications legislation greatly changed the landscape of the telecommunications industry in Missouri. This legislation allowed for competition in the local telecommunications services market, and the entrance of new telecommunications providers lead to confusion about the availability of the MCA plan. On July 16, 1998, two small independent telephone companies filed a motion to clarify the situation. The Commission opened Case No. TO-98-379 for this purpose.[9]

On April 22, 1999, the Commission's Staff ("Staff") filed a motion requesting that the Commission establish a case for the purpose of investigating "certain aspects surrounding the

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[8] *Id.* at pp. 28-29.

[9] *In the Matter of MoKan Dial, Inc. and Choctaw Telephone Company's Joint Request for Clarification and Determination of Certain Aspects as to the Continued Provisioning of MCA Service.* This case was later closed and the present case – Case No. TO-99-483 – became the lead case for the resolution of MCA plan issues.

provisioning of metropolitan calling area service after the passage and implementation of the Telecommunications Act of 1996." In response, the Commission opened the present case – Case No. TO-99-483.

As the Commission considers the possibility of changes to the MCA plan, it should be cognizant that the present MCA plan is the end result of more than twenty-five years of cooperation and effort by the Commission and Missouri's telecommunications industry. These efforts involve a wide range of issues including, among other things, end user pricing, networking, and intercompany compensation. Successful calling plans such as the MCA plan were not achieved overnight, so the Commission should proceed with caution before making any substantial modifications to such plans. Any major changes to the MCA plan will have serious implications for Missouri's calling scopes. Therefore, at this time, the Commission should strive to make only the minimal changes necessary to allow CLECs to participate in the MCA plan.

III. ARGUMENT

The specific positions taken by Cass County in this proceeding are addressed in the order in which the issues were set forth in Staff's List of Issues. In addition, Cass County will respond to the issues raised at the hearing concerning: (1) the Commission's authority over interconnection agreements between CLECs and ILECs; (2) the Commission's authority to direct CLECs to work out agreements with the small ILECs; and (3) SWBT's new interpretation of "bill and keep" inter-company compensation. To the extent that Cass County does not take a position with respect to a particular issue, this should not be construed as support for or opposition to any party's position.

A. THE ISSUES LIST

(1) Are CLECs currently included in the MCA Plan, and, if not, should CLECs be permitted/required to participate in the MCA Plan?

CLEC participation in the MCA Plan is the crux of the case now before the Commission. In Case No. TO-92-306, the Commission ordered all local exchange companies serving the designated MCA exchanges to implement local tariffs to provide MCA service. There has been no subsequent Commission order that requires or permits CLECs to participate in the MCA Plan. The MCA-like services established by the CLECs are clearly not the same as the MCA service that this Commission ordered in Case No. TO-92-306. If they were, we would not be having this case and CLECs would not be trying to "participate in the MCA."

Cass County's position is that CLECs should be permitted to provide MCA service as an optional service so long as the CLECs do so on the same terms and conditions as ILECs. (Matzdorff Direct, Ex. 41, p. 7) CLECs may also choose to offer services different than the MCA Plan, but these plans should not be referred to as "MCA" in order to avoid customer confusion and industry uncertainty. If a CLEC does offer an expanded calling plan that differs from the

Commission's MCA plan, the CLEC should be required to enter into an appropriate interconnection agreement with all LECs with whom it seeks to directly connect and/or terminate traffic. (Matzdorff Surrebuttal, Ex. 42, pp. 5-6)

The Commission should remember that the MCA plan was initiated as a mandatory service in 1992 for public interest reasons, and nothing has changed to affect those public interest concerns. As Public Counsel recognizes:

> This case should be used to reinforce the concept that MCA is a geographically based local calling plan that is available to customers in designated exchanges regardless of the customer's local service provider. It is in the public interest that customers within the same metropolitan area have the option to subscribe to a reasonably priced flat rate, two-way, toll free calling plan. The availability of such an option reduces customer costs and makes calling within a community of interest convenient and affordable.

(Meisenheimer Direct, Ex. 6, p.5)

Today's MCA Plan continues to address the needs of Missouri's customers, and Cass County's position is best suited to preserving MCA service. Under Cass County's proposal, MCA service will continue to be available to customers who are currently within the designated MCA serving territory. Additionally, customers will have the choice of receiving MCA service from either their incumbent local exchange carrier or a CLEC. Allowing a customer to select MCA service from either a CLEC or an ILEC will provide for competitive neutrality and continue to meet the public interest issues that continue to exist.

(2) **If permitted to participate in the MCA Plan, should CLECs be required to follow the parameters of the MCA Plan with regard to (a) geographic calling scope, (b) bill and keep inter-company compensation, (c) use of segregated NXXs for MCA service, and (d) price?**

If CLECs choose to participate in the MCA plan, CLECs should be required to follow the current parameters of the MCA plan with regard to geographic calling scope, bill and keep inter-company compensation, use of segregated NXXs for MCA service, and price.

(a) Geographic Calling Scope. Some CLECs have proposed that they be allowed to expand their calling scope for MCA service beyond the existing boundaries, but this proposition should be rejected. When the MCA plan was established, the calling scopes and the cost of transporting services from those exchanges were carefully thought out based on existing networks and revenue streams that they replaced. CLECs should not be allowed to avoid paying the costs associated with transporting toll traffic by simply renaming it as "MCA" traffic. CLECs are free to develop their own expanded calling plans, but they should not refer to these offerings as "MCA" plans.

(b) Bill and Keep Inter-company Compensation: The compensation methodology is a critical aspect of MCA service. The "Bill and Keep" methodology used between incumbent local exchange companies should continue to be utilized. Without a continuation of the existing inter-company compensation arrangement, there would be no way in which to provide a statewide rate schedule and meet the revenue neutral requirements of the individual companies. The implementation of alternative intercompany compensation arrangements could make the cost of providing the service so high as to make the provision of MCA service impossible under current Commission rules. (Matzdorff Direct, Ex.41, p. 8) Anything other than "bill and keep" will likely lead to the termination of MCA service, just as it did for COS service. (Matzdorff Surrebuttal, Ex. 43, p. 4)

(c) Segregated NXXs: Although MCA service uses a greater number of NXX codes than other services, at this time the public interest aspect of MCA service far outweighs the use of extra codes. Therefore, after balancing these two interests, the Commission should determine that the public interest in preserving a very popular and successful expanded calling offering clearly outweighs the depletion of NXX codes necessary to allow competitors to offer MCA service. (Matzdorff Direct, Ex. 41, pp. 9-10) The Commission should also note that the advent of 1000s block number pooling may mitigate NXX code depletion associated with the MCA plan.

(d) Price: MCA is a Commission-mandated service that has not been cost based, and ILECs have been required to offer the service at set prices. In order to preserve MCA service, all carriers should be allowed to participate in the offering of the service at the same rates. The rates for MCA service should continue to be those ordered by the Commission in Case No. TO-92-306. This will allow equal treatment for all customers, regardless of the company selected, and it will maintain competitive neutrality between competing providers of local exchange service. (Matzdorff Direct, Ex. 41, p. 8)

A Commission-mandated MCA service should not be used to give one provider an advantage over another provider, and it is equitable for all providers to offer MCA service under the same rates, terms and conditions. If a CLEC opts to provide MCA service, then it should receive equal compensation. CLECs are always free to offer an expanded calling service that differs from the present MCA plan, and CLECs already have the flexibility to determine whatever price they wish to offer such services to the consumer and to establish the appropriate inter-company compensation arrangements with other LECs. But if the CLEC determines that it would rather use the existing MCA network, in effect for free, then it should not have pricing flexibility.

Maintaining the existing pricing structure for MCA is simply the only way to even the competitive playing field without jeopardizing the continued existence of the MCA plan. The CLECs argue that MCA service is being used to gain competitive advantage by the ILECs, but they then argue that they should have pricing flexibility on a service that is price mandated to incumbents. This would simply create for them the same competitive advantage that they so vehemently argue against. (Matzdorff Rebuttal, Ex. 42, p. 4)

(3) **Should there be any restrictions on the MCA Plan (for example resale, payphones, wireless, internet access, etc.)?**

Except for the prohibition against resale, existing tariff restrictions on the MCA Plan should be continued (*e.g.* payphone restrictions). The existing tariff restrictions are lawful and reasonable, and there has been no evidence in this case that would allow the Commission to find otherwise.

Cass County does not object to MCA subscribers using MCA service for purposes of accessing the Internet, provided that intercompany compensation remains under a bill and keep arrangement.

(4) **What pricing flexibility should ILECs and/or CLECs have under the MCA Plan?**

All LECs should charge the same rates for MCA that were established in Case No. TO-92-306. This will prevent any competitive advantages or disadvantages. If the CLECs wish to participate in a Commission-mandated plan, then they should be required to do so on the same terms that were required for the ILECs. CLECs are free to develop their own calling plans instead of or in addition to MCA service. However, CLECs should not advertise or designate a service as "MCA service" unless it adheres to the exact rates, terms, and conditions of the Commission's defined "MCA" plan. Otherwise, customer confusion and industry uncertainty will result. In those situations where CLECs voluntarily offer expanded calling plans different than MCA service, they must enter into the appropriate interconnection agreements with all LECs with whom they seek to directly connect and/or terminate traffic. (Matzdorff Surrebuttal, Ex. 42, pp. 5-6)

Many CLECs have proposed that they should be allowed to price MCA service at any rate they wish, and one has even gone so far as to suggest that CLECs "have the option of providing MCA service at no additional charge to customers." (Kohly Direct, Ex.11, p. 30) This argument is not persuasive. First, the MCA-like services are clearly not the same as the MCA service that was ordered in Case No. TO-92-306. If they were, then they would not be so involved in this case and trying to "participate in the MCA." Second, while competitive companies are given a great deal of latitude in the filing of tariffs, that does not necessarily mean that they have unlimited flexibility in the provisioning of a Commission-mandated service. Non-competitive companies have no discretion as to whether or not they will offer MCA service or as to the terms, rates and conditions under which they will offer that service. CLECs who want to be permitted to participate in the offering of this mandatory service should also be required to adhere to the same rates, terms, and conditions that were mandated by the Commission. This is a reasonable solution, and anything less would be discriminatory. (Matzdorff Surrebuttal, Ex. 43, p. 2)

The same authority that allowed the Commission to implement a mandatory service such as MCA for all ILECs is the same statutory authority by which the Commission could direct CLECs to provide such service. If the Commission does not wish to mandate a service for a CLEC, then it can simply make that service available to the CLEC on the condition that the CLEC is willing to accept the previously established rates, terms and conditions for that service. This relatively simple solution will assure that all LECs will be treated the same.

The Commission should also recall that the rates established for the various MCA tiers were designed to avoid the "looking over the fence" syndrome. For this reason, customers in the same tier of exchanges currently pay exactly the same rate regardless of the company that provided them with the local exchange service.

Allowing CLECs but not ILECs to have proposed pricing flexibility would be an unfair advantage to the CLECs. This is true because when MCA was implemented the Commission did not develop cost-based rates. Although the service was, and continues to be, offered over the toll network in place at the time, access rates were not imposed because the retail rates would not support the access fees. (Matzdorff Surrebuttal, Ex. 43, p. 3)

Finally, pricing flexibility for MCA service is unnecessary because CLECs have other avenues to set their service offerings apart. Although the MCA additive is required to be the same among companies, each company's underlying local exchange rate may differ. For example, Orchard Farm's basic local rate in tier three of the St. Louis MCA is different from that of SWBT's local rate in tier three. Thus, the overall total bill for local service, assuming just basic local and MCA, may differ. Additional local calling features such as custom calling features can also be offered by the CLEC. Thus, CLECs already have some pricing flexibility in the outer MCA tiers, and the MCA additive is merely one element in a multi-element local exchange bill. (*See* Tr. 332-33)

(5) **How should MCA codes be administered?**

This proceeding was originally initiated as a result of confusion as to how NXX codes were to be processed. The Commission should designate a method by which all parties participating in the MCA are notified of new NXX codes that qualify for MCA service. This would allow for fewer customer complaints and greater customer satisfaction. Processing of NXX codes should be handled by a neutral third party such as the Commission's Staff. (Matzdorff Direct, Ex.41, p. 9) The Commission must approve any new MCA NXX's, and the Commission will know whether a CLEC has filed appropriate MCA tariffs and is properly providing MCA service. Therefore, it will be appropriate for the Commission's Staff to perform this function.

The Local Exchange Routing Guide ("LERG") tables alone will not solve the administrative problems because many companies receive the LERG table updates at different intervals (e.g. monthly, quarterly, or yearly). Also, these tables may be abused if not properly overseen.

NXX codes within the MCA should be recognized in each of the central office switches that reside within the designated exchanges of the MCA service. These codes should be administered by the Commission's Staff and distributed to all affected parties. (Matzdorff Direct, Ex. 41, p. 10)

(6) **What is the appropriate inter-company compensation between LECs providing MCA service?**

Currently, the form of inter-company compensation between ILECs providing MCA service is bill and keep. This was the inter-company compensation method that was originally advocated by the three largest ILECs and subsequently required by the Commission in Case No. TO-92-306. Revenue neutral calculations were based upon that form of compensation, including the optional rates to be charged for MCA service. Bill and keep is the only appropriate form of inter-company compensation for MCA service at this time. Anything other than bill and keep inter-company compensation will likely lead to the termination of MCA service, just as it did for COS service. (Matzdorff Direct, Ex. 41, p. 8)

(7) **Is the compensation sought in the proposed MOU appropriate?**

Cass County has no position on this issue at this time.

(8) **Should the MCA Plan be retained as is, modified (such as Staff's MCA-2 proposal) or eliminated?**

None of the witnesses have suggested that MCA be eliminated in the short term, and the public appears to favor retaining the MCA plan. Before any changes are made to the existing MCA plan, the industry should develop data that would allow the Commission to understand the possible financial considerations and other implications. Because the essential data regarding the potential revenue impacts upon each ILEC end-user is not yet available, MCA-2 should not be adopted at this time. (*See* Voight Supplemental Direct, Ex. 2, p. 2: "The completed data is simply not yet available; therefore, Staff is unable to recommend approval of MCA-2 at this time.")

(9) **If the current MCA Plan is modified, are ILECs entitled to revenue neutrality? If so, what are the components of revenue neutrality and what rate design should be adopted to provide for revenue neutrality?**

Revenue neutrality recognizes the property interest that a public utility has in the revenues it collects under lawful rates, and the Missouri Supreme Court has ruled that a public utility company's lawfully collected revenues are protected by the due process provisions of the state and federal constitutions. See *Lightfoot v. City of Springfield*, 361 Mo. 659, 236 S.W.2d 348, 354[10] (Mo. 1951) The Cole County Circuit Court has strictly enforced the requirement of revenue neutrality.[10] Therefore, Commission must provide for revenue neutrality whenever a Commission Order adversely affects a public utility's existing revenue and expense structure.

The requirement of revenue neutrality is triggered when the Commission: (1) issues an order that alters a utility's existing lawful revenue streams, and (2) fails to hold a hearing for the purpose of examining and making findings as to the lawfulness and reasonableness of a utility's revenue and expense structure. Accordingly, revenue neutral calculations were made when the MCA plan was implemented, and these calculations were used to develop the current optional rates to be charged for MCA service. (See Case No. TO-92-306, *Report and Order* at

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[10] Most recently, the Court stated: "In three previous decisions (Judgments in Case Nos. CV190-190CC, CV193-66CC, and CV-198-666CC), ***this Court has ruled that the Commission may not direct a change in Relators' revenue and expense structure without a proper proceeding challenging them, and without findings of unlawfulness or unreasonableness . . .in such a situation, the Commission must provide the utility, at the utility's election, with revenue neutrality (i.e. keep them whole)***." Case Nos. CV19V019901082 and CV19V019901098, *Findings of Fact, Conclusions of Law, Decision and Order,* issued Jan. 27, 2000, p. 12 (emphasis added)

pp. 41-46; *see also* Tr. 220-21)

Any modifications to the present MCA Plan should be done on a revenue neutral basis as well. Factors to be considered as a part of any revenue neutral calculation include: (a) changes in toll, access, and/or MCA revenues due to changes in calling scopes (i.e. local vs. toll) as well as changes in subscribership, and (b) non-recurring costs associated with implementing changes to the MCA service (e.g. training costs, customer notice costs, billing system change costs, translation costs, etc.). Specific rate changes to maintain revenue neutrality should be made on an individual company basis.

(10) **Should MCA traffic be tracked and recorded, and if so, how?**

MCA traffic should be separately tracked and recorded. If CLECs are allowed to participate in the MCA, the Commission should give the CLECs clear guidance that they are responsible for creating the necessary originating records that will allow Missouri's small independent LECs to distinguish between MCA and non-MCA traffic sent by the CLEC to the small ILEC.

Today, CLECs are initiating local traffic that is dialed by customers on a seven or ten digit basis and that utilizes the Feature Group C ("FGC") network, yet many of the CLECs are not currently creating any records for this traffic. (See e.g. Tr. 788) Additionally, CLECs concede that some traffic they intend to classify as "local" to their end-user customers will actually be interexchange traffic for intercompany compensation purposes. (See e.g. Tr. 780 "[F]or calls to non-MCA NXXs we will be subject to access charges because that's what Southwestern Bell is subject to.") However, unless the CLECs track this traffic and create the appropriate records, the small LECs will not be able to bill the CLECs. Therefore, the Commission must make clear to the CLECs that MCA traffic must be separately tracked and recorded due to the difficulty of distinguishing MCA traffic from non-MCA traffic at this time.

Alternatively, the Commission may opt to order that MCA traffic is separately trunked. During the hearing, Staff agreed that this alternative would be appropriate:

> Q. As a general matter, doesn't it make sense to you if we're going to have a category of traffic that is – we'll say non-compensatory or for which there is going to be no intercompany compensation or payments, doesn't it make some intuitive sense to segregate that and put that on a different trunk group than along with traffic for which you are to be paid?
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> A. It does to me. And I harken back to my days as working in the central office. That's the way I recall it always being done. You know, even going back pre-divestiture and so forth. If there was a toll trunk, you could always count on that being a toll call for – that was compensated in a certain way that other non-compensable traffic was accounted for. And those trunks were separated. . . .

(Tr. 154-55)

If the Commission allows CLECs to participate in the Commission-mandated MCA plan, the Commission must assure that the small ILECs are appropriately compensated for traffic that CLECs send to the small ILECs' non-MCA customers. The Commission may require CLECs to: (1) accurately capture, record, and report such traffic; (2) segregate the traffic on separate trunk groups; or (3) choose between the first two options. However, the Commission should avoid future confusion and difficulties by making sure that CLEC MCA traffic is either recorded and reported or separately trunked in order to ensure that Missouri's small ILECs are not harmed by the entrance of CLECs into the MCA plan.

B. ADDITIONAL ISSUES

(1) The Missouri Commission's Authority over Interconnection Agreements

During the hearing, the Commission asked the parties to address the Commission's authority over the compensation arrangements in interconnection agreements:

> I would like to ask all the parties to please take note and do brief that, on whether the Commission has the authority to override the existing reciprocal compensation arrangements that are in some existing interconnection agreements. And I believe the second part of that would be and if not, would we have the authority to say that any future agreements would have to be based only on bill and keep and could not have other types of reciprocal compensation for MCA services? And I would appreciate that being in the briefs.

(Tr. 490)(by Commissioner Drainer)

As a preliminary matter, Cass County notes that the Commission need not order a change in the existing interconnection agreements if it determines that CLECs may participate in the MCA plan on the same terms and conditions as the ILECs. Under this scenario, the Commission would simply be making a Commission-mandated plan *available on an optional basis* to the CLECs. CLECs could thus choose to participate in offering the MCA plan on the same rates, terms, and conditions (including bill and keep compensation), but all other local traffic would continue to be handled pursuant to the existing interconnection agreements. By opting to offer the Commission-mandated MCA plan, a CLEC would voluntarily agree to the terms of the plan, including bill and keep intercompany compensation. CLECs would still be free to develop other calling plans and pursue other intercompany compensation arrangements.

Although Cass County does not believe the Commission will need to exercise its authority over existing interconnection agreements, Cass County does believe the Commission has this authority. Cass County will address both parts of the Commission's question in turn.

a. The Commission's authority over existing interconnection agreements

Federal law preserves the Missouri Commission's authority to impose competitively neutral requirements upon telecommunications providers in order to preserve the existing quality of telecommunications services available to consumers. Section 253 of the Act addresses the removal of barriers to entry, and this section preserves the states' authority to impose competitively neutral requirements:

> **(b) State Regulatory Authority**
> Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Requiring all telecommunications providers to use the same bill-and-keep intercompany compensation mechanism is a "competitively neutral" requirement that will ensure the continued provision of MCA service. Preserving the present MCA service will help to ensure the continued quality of telecommunications services and safeguard the rights of consumers. Therefore, the Missouri commission has the authority to override the reciprocal compensation arrangements in existing interconnection agreements to the extent that they conflict with the Commission-mandated MCA Plan.

Additionally, state law provides the Commission with the authority to "impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest and consistent with this chapter." Section 392.470 RSMo 1994. Thus, both federal and state law provide the Missouri Commission with the general regulatory authority over the reciprocal compensation arrangements in existing interconnection agreements.

b. The Commission's authority over future interconnection agreements

In addition to the authority explained in the previous discussion, Section 252 of the Act gives state commissions the authority to review and either approve or reject any interconnection agreement adopted by negotiation or arbitration. Section 252(e)(2) allows the Commission to reject any interconnection agreement that: (1) discriminates against a telecommunications carrier not a party to the agreement; or (2) is inconsistent with the public interest, convenience, and necessity. In addition, section 252(e)(3) preserves the Missouri Commission's authority to establish or enforce other requirements as it reviews an interconnection agreement:

> [N]othing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement . . .

Finally, the FCC's Rules recognize bill-and-keep arrangements as appropriate for intercompany compensation.[11] Thus, the Commission may require a bill and keep compensation arrangement for the origination and termination of MCA traffic in future interconnection agreements.

(2) **The Commission May Direct CLECs to Enter into Agreements with Small ILECs.**

During the hearing, the Commission asked the parties to address the Commission's authority to direct CLECs to enter into agreements with Missouri's small ILECs:

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[11] **Sec. 51.713 Bill-and-keep arrangements for reciprocal compensation**.

(a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of local telecommunications traffic that originates on the other carrier's network.

(b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to Sec. 51.711(b).

(c) Nothing in this section precludes a state commission from presuming that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

> I really do want to know if the Commission is perceived as having the legal authority to direct the CLECs to work out agreements with the small ILECs, and then if they have an Interconnection with [GTE] or Southwestern Bell, any other large ILEC, that [the] Interconnection Agreements basically say that they're supposed to work out agreement with the small LECs, and if they haven't can this Commission instruct you that you need to block those calls until such time they give you proof that they have worked out those agreements?

(Tr. 1145)(by Commissioner Drainer) Cass County will address both parts of the Commission's question in turn.

a. The Commission's Authority over CLECs and ILECs

Missouri statutes provide the Commission with jurisdiction and supervisory powers over telecommunications companies that operate in the state of Missouri. Section 386.250(2) RSMo Supp. 1999 provides that the Commission's jurisdiction and powers extend:

> To all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state . . .

This provision is equally applicable to both CLECs and ILECs. *See* Section 392.380 RSMo 1994 In addition, the Commission has the power to impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest and consistent with the provisions of Chapter 392. *See*

Section 392.470 RSMo 1994.

Finally, the Commission has the power to: (1) order two telecommunications to establish a physical connection; and/or (2) establish joint rates, tolls or charges for service by or over their facilities. *See* Section 392.240.3 RSMo 1994.

Therefore, the Commission may direct the CLECs to work out agreements with the small ILECs.

b. Blocking Traffic

Blocking of MCA traffic from CLECs to third party LECs should not be the Commission's first step, but the Commission may need to order that traffic be blocked in situations where a CLEC ultimately refuses to enter into an appropriate agreement with a third party LEC. It may be possible for the Commission to avert the necessity to block this traffic by establishing a clear set of guidelines for CLECs to follow in order to implement the Commission-ordered MCA service. The Commission's guidelines should clarify that any traffic sent by a CLEC customer to an optional zone non-MCA customer is an interexchange call for purposes of intercompany compensation between the CLEC and the ILEC, regardless of whether the CLEC offers the call as a "local" call to its end-user customer. The Commission should require CLECs to enter into appropriate agreements with the small independent LECs so that this traffic can be properly recorded, accurate billing records can be created, and all LECs can receive appropriate intercompany compensation.

(3) Transport and Termination Charges are Inappropriate for MCA Traffic.

During the hearing, Southwestern Bell made a new proposal to alter the existing MCA Plan by allowing SWBT to impose a transiting charge on MCA traffic. (*See* Tr. 952-55) SWBT's eleventh hour proposal is lacking in evidentiary support, but its more serious flaw is that it is likely to spell the end of the MCA plan.

Today, when an MCA customer in Cass County's Peculiar exchange calls an MCA customer in Lathrop Telephone Company's Lathrop exchange, that calls transits SWBT's facilities and is terminated by Lathrop Telephone company in its exchange. Under the MCA plan's present bill and keep arrangement, there is no compensation paid by Cass County to either Lathrop for terminating that call or SWBT for transiting that call. However, under SWBT's proposal, Cass County would be required to pay SWBT a transiting charge in the future for this same function. (Tr. 953-54) SWBT concedes that such a change to the intercompany compensation arrangement will, in all likelihood, put upward cost pressure on the prices that some carriers have to charge for MCA service. In fact, SWBT's proposal may make it financially impossible for the MCA plan to continue. Therefore, the Commission should reject SWBT's last-minute suggestion and order that the transiting of MCA traffic will continue in the same manner it has since the MCA plan was implemented.

IV. CONCLUSION

Today's MCA service is the end result of over twenty-five years of effort by the Commission and the telecommunications industry. The MCA plan ordered by the Commission in Case No. TO-92-306 continues to serve the public interest, and there has been no public outcry to change or eliminate the service. Cass County's proposal to permit CLECs to offer MCA service on the same terms and conditions as those imposed upon the ILECs is the best way for the Commission to preserve this valuable service. Therefore, for the reasons set forth above, the Commission should maintain the MCA plan and allow CLECs to participate in the MCA plan on the same terms and conditions as the ILECs.

Respectfully submitted,

Brian T. McCartney

W. R. England, III Mo. #23975
Brian T. McCartney Mo. #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
(573) 635-7166

Attorneys for Cass County et al.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed, United States Mail, postage prepaid, this 30th day of June, 2000, to:

Michael Dandino
Office of Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

Craig S. Johnson
Andereck, Evans
P.O. Box 1438
Jefferson City, MO 65102

Paul G. Lane/Leo J. Bub/
Anthony K. Conroy/Mimi MacDonald
Southwestern Bell Telephone Company
One Bell Center, Room 3536
St. Louis, MO 63101-1976

Linda K. Gardner
Sprint Missouri, Inc.
5454 West 110th Street
Overland Park, KS 66211

Pete Mirakian
1000 Walnut Street, Suite 1400
Kansas City, MO, 64106-2140

Brad Kruse
McCleodUSA Telecommunication Corporation
6400 C Street SW
Cedar Rapids, IA 52406-3177

Paul S. DeFord
Lathrop & Gage, L.C.
2345 Grand Boulevard
Kansas City, MO 64108

Marc Poston
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Carl J. Lumley/Leland B. Curtis
Curtis Oetting
130 South Bemiston, Suite 200
Clayton, MO 63105

Edward J. Cadieux/Carol Keith
Gabriel Communications, Inc.
16090 Swingley Ridge Road, Suite 500
Chesterfield, MO 63006

Stephen Morris
MCI Telecommunications Corporation
701 Brazos, Suite 600
Austin, TX 78701

Charles Brent Stewart
Stewart & Keevil, L.L.C.
1001 Cherry Street, Suite 302
Columbia, MO 65201

Mary Ann Young
William Steinmeyer, P.C.
P.O. Box 104595
Jefferson City, MO 65110-4595

Brian T. McCartney

W.R. England/Brian T. McCartney