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 Area Service After the Passage and Implementation of the Telecommunications Act of 1996.	)))))))	**Case No. TO-99-483**

Missouri Independent Telephone Group Initial Brief

The Missouri Independent Telephone Group (MITG), Alma, Chariton Valley, Choctaw, Mid-Missouri, MoKan Dial, Modern, and Northeast Missouri, submit the following initial brief after hearing in this proceeding:

Summary of Position

The MITG has no objection to CLECs being allowed to offer MCA service. CLEC MCA offering should not detract from the value of existing MCA service to customers. CLEC participation in MCA service should not be permitted to create advantage for CLECs over ILECs with whom they directly compete. CLEC participation should not be permitted to create advantage for CLECs over small ILECs with whom the CLEC does not compete.

CLEC Offering

CLECs should be allowed the option to offer MCA service, but only on the same terms and conditions as ILECs offer MCA service. If CLECs are unwilling to accept this limitation on offering MCA service, the only consequence should be a prohibition from naming any similar service offering as "MCA" or "Metropolitan Calling Area", or any other nomenclature suggesting they are participating in MCA service.

CLECs opting to offer MCA service should be required to call the service "Metropolitan Calling Area" service, offer the same geographical calling scope approved for ILECs, utilize the same pricing, and participate in the same "bill and keep"

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intercompany compensation in use between ILECs. In the event the Commission provides for MCA pricing flexibility, it should be equally available to CLECs and directly interconnected ILECs with whom the CLEC has an approved interconnection agreement providing a basis to directly compete for local customers. For small ILECs, in whose exchanges there is no direct interconnection or approved interconnection providing a basis to compete for local customers, there is no need for pricing flexibility.

Intercompany Compensation

CLECs opting to participate in MCA service should participate in the same intercompany compensation mechanism in place between ILECs today. The MITG would point out to the Commission that the "bill and keep" designation associated with MCA service is not an accurate description. For MCA calls there is only revenue to "keep" for the ILEC serving the MCA customer that originates the call.

ILECs serving the called party "keep" no revenue for terminating that call. When SWB, GTE, or Sprint serve neither the calling or called party, and only provide transport, these ILECs "keep" no revenue for the call. As an example, on a Kansas City MCA call from Freeman to Lathrop, MoKan Dial receives the end user revenue. Sprint and SWB both provide transport without compensation, and Lathrop provides termination without compensation. It is more apt to describe MCA "bill and keep" as an intercompany compensation whereby all ILECs keep their end user revenue regardless of the volume or placement of calls. In return all participating ILECs provide transport, or termination, or both transport and termination, without additional compensation.

The MITG sees no reason to change this to allow CLECs to participate in MCA. If CLECs so participate, there will be situations where they provide call transport and/or termination without revenue to keep. This is no different that what small ILECs have done in the past. Under this paradigm, both ILECs and CLECs would continue to "keep" the MCA subscriber revenue.

If CLECs are allowed to participate in MCA, retaining the existing compensation system has the advantage of not exacerbating the consequences of competition. Where CLECs and ILECs directly compete, there will be normal financial consequences of this competition. If, however, those consequences are exacerbated by providing for a different form of MCA compensation, there will be differing impacts *not* directly related to competition.

The MITG objects to any form of intercompany compensation which increases the cost of MCA service for MoKan Dial, Choctaw Telephone Company, or any other small ILECs providing MCA service. Unless such cost increases are now recovered from SWB, as they were when MCA service was established, small ILECs and their customers will be harmed by MCA rate increases produced by competition in urban exchanges.

The MITG does object to SWB collecting transport (transit) compensation for MCA calls where SWB serves neither the calling nor the called party. SWB has never collected such compensation from ILECs. Permitting the collection of transit only for CLECs, but not ILECs, establishes a potentially discriminatory framework. There is no justification for ILECs to pay SWB transiting compensation Any additional costs to small ILECs will cause upward pressure for MCA prices.[1] It is inappropriate for small ILEC customers to face price increases when competition is not intended to have this effect. This is especially so when there is no competition in the small ILEC exchanges. . In order for CLECs to be treated equally with ILECs, in a competitively neutral fashion, they should not have to pay SWB transiting compensation for MCA traffic.

This "transiting" proposal should not be adopted. In the past SWB has not charged for such transit to ILECs, and SWB would not be prejudiced from continuing to do so for CLECs. The Commission should either now override inconsistent provisions in any approved interconnection agreement insofar as they apply or would be applied to MCA traffic, or put the industry on notice that such provisions will no longer be allowed to apply after expiration of the current term of any such interconnection agreement.

The MITG objects to the CLEC "hybrid" compensation proposal, whereby CLECs could select either "bill and keep" or reciprocal compensation via "indirect" interconnection agreements with MoKan and Choctaw. Such an arrangement would allow the CLECs to take advantage of traffic balances. This would result in more revenue for CLECs, and commensurrately more MCA costs for MoKan and Choctaw. If

[1] Due to the high take rate for MCA service, most small ILEC local revenue is MCA revenue. These small ILECs have little intraLATA access revenue left after the conversion of intraLATA toll to MCA. Iit would be inappropriate to attempt to raise intraLATA access rates to recover these additional costs, as these rate

this were allowed to happen, the CLEC could take competitive advantage of MoKan and Choctaw when the CLEC was neither certificated to do business nor competiting for customers in their exchanges. If this were allowed to happen, competition will cause upward pressure on MCA service pricing in small ILEC exchanges where competition for local customers does not yet exist..

Traffic Verification

With the proliferation of carriers placing local as well as toll traffic on the toll network, and the proliferation of the types of traffic (MTS, local, MCA, Local Plus, 800, wireless, etc.), at a minimum it must be mandatory for all carriers involved to deliver and hand off this traffic with sufficient information to allow identification of the responsible carrier, and imposition and payment of the appropriate compensation. The MITG requests that the Commission establish an industry committee to review technical issues associated with proper identification and compensation for compensable traffic travelling the same network that noncompensable MCA traffic travels. This committee should be charged with the responsibility of reporting back by a date certain as to what protocols, including separate trunking, can or should be implemented to asssure the proper separation of compensable from noncompensable traffic, and methodsbywhich all carriers can make the proper identification of carriers and traffic, proper exchange of records, proper compensation, and acceptable verification of these systems.

It could be an additional charge of this committee to obtain comprehensive and universal traffic volume information upon which to consider Staff's proposed "MCA-2", or any other possible service modifications the Commission may want to consider.[2]

The PTC Plan is now terminated. Neither SWB, nor any other former PTC, has any contractual right of control over any former SC's network. With respect to the former SCs, SWB is nothing more or less than any other IXC wishing to terminate interexchange traffic.

It is inappropriate for SWB to abuse the former PTC Plan interconnection with former SC's by placing traffic of third party carriers on SWB's network for termination to

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are already high enough. This leaves only an increase in MCA rates themselves to recover the increased costs.

[2] The MITG notes that OPC has recently filed a request to consider expansion of the existing MCA tiers, which could be included in the committee's charge.

the former SC's. SWB should be responsible for paying this compensation to the small ILECs, and collecting the appropriate amounts from the carriers who use SWB's underlying facilities, as is normal when IXCs use underlying carriers.

The "indirect" interconnection scheme postulated by SWB, whereby SWB asserts it is not responsible for the traffic of other carriers that SWB chooses to place on this network, has resulted in discrimination and prejudice to these former SCs in that they are precluded from having direct interconnection agreements of their own, and or use of their networks has been taken without compensation.

SWB and the CLECs know that former SCs cannot block this traffic, and cannot identify it by originating carrier. SWB and the CLECs for over two years have provided no usage records, and no compensation has been paid. This is despite direction from this Commission not to send such traffic without either paying switched access or first obtaining an approved interconnection agreement to implement reciprocal compensation. The Commission should now end this unacceptable situation. Small ILECs and their customer base should not be required to continue to subsidize competition occurring in SWB exchanges.

MITG Initial Brief

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

MCA service was created before CLECs and local competition.[3] MCA provides more calling scope at lower pricing than competition will provide. Rather than consider the costs of MCA service, it has been advocated that MCA be retained as a "social goal", presumably because of the public desire to retain the service.[4] Retention of MCA service is therefore in the public interest.[5]

CLECs are not presently included in the MCA plan in the same fashion as ILECs. This docket is the first wherein the Commission has addressed the question of whether, on a generic basis, CLECs are to be allowed to participate in MCA Service as they have requested. The Commission created MCA service in 1992 in TO-92-306, prior to the

[3] Ex 8, pp 5-6, Stowell Direct; Ex 9, pp 4-7, Stowell Rebuttal.
[4] T. 173-174, 199-201, 304-311.

existence of CLECs. The approval of interconnection agreements between CLECs and SWB may have had the effect of "including" those CLECs in the MCA Plan from SWB's standpoint, but nor from the standpoint of small ILECs.[6] ILECs that are not party to the interconnection agreements between SWB and the CLEC are not to be affected by such interconnection agreements, as they are not party to those interconnection agreements or proceedings adopting them.[7] 47 USC 252(e)(2).

Unlike ILECs in 1992, today CLECs cannot be compelled to offer MCA service. However, due to the popularity of MCA service CLECs as a practical matter may have to be willing to offer MCA service if they desire to effectively compete with SWB. Therefore the MITG sees no unfairness in providing CLECs with the option of offering MCA service, with the *proviso* that the offering must be on the same service terms as required of ILECs.[8] If CLECs are unwilling to accept this condition or provision, they will be free not to offer MCA service. CLECs not offering MCA Service should be prohibited from using the service name "MCA" or "Metropolitan Calling Area", or any similar nomenclature suggesting they are participating in MCA Service.[9]

Permitting CLECs the option to offer MCA Service, and requiring CLECs who decide to make the offer conditioned upon service terms equally applicable to all LECs does not run afoul of the Telecommunications Act of 1996. As CLECs are not required to offer MCA, this could not constitute a barrier to entry prohibited by 47 USC 253. Subsection (b) of section 253 specifically authorize Missouri to impose, on a competitively neutral basis, requirements necessary to preserve and advance public welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Given the universal agreement that MCA service provides value to consumers that competition will not replace, permitting CLECs the option to offer MCA service only on the same basis as ILECs furthers the legitimate state interest of preserving MCA service while allowing local competition.

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[5] Ex 6, pp5-8, Meisenheimer Direct; T. 287-292, 299-300.
[6] T. 106.
[7] T. 140.
[8] Ex 41, pp 6-7, Matzdorff Direct.
[9] T. 195-197, 373-374.

At hearing the appropriate competitive classification for MCA service was discussed.[10] The MITG believes it appropriate to declare MCA as a competitive or transitionally competitive service only in ILEC exchanges where a CLEC has been certificated and obtained an approved interconnection agreement.[11] Additionally, should the Commission decide to allow price competition for MCA service between directly interconnected and competing carriers, this should be the sole form of "lesser regulation" allowed under this statute. The Commission should not allow calling scope deviation, as this is necessary to preserve the public interest in a uniform MCA calling plan. The Commission has this authority under § 392.361.6 RSMo to impose such conditions necessary to protect the public interest.

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?

Calling scope

CLECs should not be permitted to deviate from the MCA geographic calling scope. It is only if both ILECs and CLECs are required to offer MCA service with the same calling scope required of all carriers that MCA Service will continue to be a ubiquitous service maximizing customer value.[12] If CLECs can deviate from the established calling scopes the small ILEC ability to achieve appropriate compensation for terminating non-MCA calls will be further eroded.[13]

Due to the limitations of the network upon which SWB has chosen to place these calls for termination, the terminating small ILEC cannot make its own recordings of originating carrier and jurisdiction of the call. The placement of this traffic on this limited network was and is in violation of Commission Orders, as there is no approved interconnection agreement with the small ILECs allowing or addressing this traffic. So

[10] T. 110-113.
[11] T. 166-170.
[12] Ex 8, pp 10-11, Stowell Direct; Ex 9, pp 7-10, Stowell Rebuttal; Ex 10, pp 3-5, Stowell Surrebuttal; Ex 42, pp 3-4, Matzdorff Rebuttal.
[13] Ex 8, pp 10-11, Stowell Direct; Ex 9, pp 7-8, Stowell Rebuttal; Ex 10, pp 3-5, Stowell Surrebuttal; Ex 42, pp 3, Matzdorff Rebuttal; Ex 43, pp 4-5, Matzdorff Surrebuttal.

long as the CLEC is limited to the same calling scope as ILECs, and no compensation is due for MCA calls within this scope, CLEC MCA entry creates no additional difficulty.

If CLECs are allowed to deviate from the approved MCA calling scope, difficulties are created. Such calls should not be entitled to bill and keep compensation. Switched access would be the only lawful compensation unless an interconnection agreement is approved. Such calls coming from an MCA exchange would have to be recorded and records passed to assure terminating access is paid. However the present norm for switching and recording protocols is not to record traffic originating on a qualified MCA prefix. In order for small ILECs serving the non-MCA exchanges to whom such calls are terminated, the rest of the industry inside the MCA needs to create and implement a uniform method of identifying such calls, and creating and passing records and compensation therefore. Until a technical committee reports that this is doable, and the Commission approves the implementation of such a system, neither ILECs nor CLECs should not be allowed to offer a different MCA callling scope.

Intercompany compensation

See # 6 below.

Segregated NXXs

See # 5 below.

Pricing

The MITG believes it is in the overall best interests of customers--both CLEC and ILEC--for MCA prices to be mandated and uniform.[14] In allowing pricing competition or flexibility, the "looking over the fence" phenomenon that besieged the Commission for so many years prior to the 1992 creation of MCA, OCA, and COS service will be resurrected.[15] The MITG does not want to encourage similar pressures at this point. The issue is additionally complicated in that there are mandatory and optional MCA tiers.[16] Therefore the MITG does not support pricing flexibility for any LEC providing MCA service. The ability of any LEC to deviate from the terms and conditions of MCA service

[14] Ex 41, pp 7-8, Matzdorff Direct; Ex 42, pp 3-4, Matzdorff Rebuttal; Ex 43, pp 1-4, Matzdorff Surrebuttal.
[15] T. 176-178.
[16] T. 312-322.

will injure the ubiquitous nature of MCA service that makes it of such value to customers.

In the event the Commission provides for MCA pricing flexibility, it should be equally available to CLECs and directly interconnected ILECs with whom the CLEC competes for local customers. CLECs and ILECs that are directly interconnected, and have an approved interconnection agreement, should be allowed equal pricing flexibility. For small ILECs, in whose exchanges there is no direct interconnection with CLECs, no approved interconnection agreement, and hence no direct CLEC competition for customers in the small ILEC exchanges, there is no need for pricing flexibility. As there is no CLEC certificated to compete for local customers, there is not the same need for pricing flexibility until direct competition exists.

If the inclusion of CLECs as eligible providers of MCA service is allowed to occur on a basis that increases the costs of MCA service for small ILECs, it may well be that MCA price increases are necessary to remain revenue neutral. This is not "pricing flexibility" in the sense that SWB and the directly competing CLECs used the term at hearing. The MITG mentions it here to remind the Commission that disturbing the existing MCA compensation mechanism could create a need for small ILEC flexibility to increase MCA prices.

3. Should there be restriction on the MCA Plan (for excample resale, payphones, wireless, internet access, etc.)?

The original restrictions MCA imposed upon ILECs should also be imposed upon CLECs.

MCA should not be available for internet access. MCA was not designed for internet traffic. Internet traffic, with its extended holding times, ties up trunking and creates pressure for investment in new trunking capacity. Increased trunking requirements for internet traffic should be paid for by internet users, not toll users. The balance of internet traffic within the MCA will be heavily in favor of CLECs and against small ILECs in the outer tiers.[17] If the Commission does not prohibit use of MCA to reach ISPs, then bill and keep intercompany compensation must be retained. Bill and

[17] Ex 8, pp 13, Stowell Direct; Ex 10, pp 8-9, Stowell Surrebuttal; T. 117-118.

keep is the compensation mechanism which can best attempt to protect against adverse financial impacts to small ILECs serving the outer tiers.

With respect to wireless providers, they should not be allowed to offer MCA service. Wireless carriers are not subject to MoPSC jurisdiction for purposes of enforcement. The FCC has already determined that the entire MTA is the "local" calling scopes of wireless carriers. Because the MTAs completely include the MCA areas, there is no need for wireless carriers to be able to offer MCA service.[18] Because SWB has placed wireless traffic on the same network with toll calls, Local Plus calls, and MCA calls, without passing suitable call record information, there is no suitable way to distinguish between intraMCA and interMTA wireless traffic.

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

See Number 2 - Pricing - above.

5. How should MCA codes be administered?

In order to assure that customers are properly assigned MCA-eligible numbers, that MCA calls for which no intercompany compensation is due are distinquished from non-MCA calls for which intercompany compensation is due, it is necessary that all companies participating in MCA service use the same codes, switch translations and code administration. The manner in which SWB has allowed CLEC, wireless, and IXC traffic to be placed on the same network used for toll, Local Plus, and MCA traffic, and the nature of past industry disputes, establishes that it is necessary for there to be a neutral, independent entity with authority and responsibility for MCA code administration and intercompany compensation, as well as NXX conservation. The use of local exchange routing guide (LERG) tables alone is insufficent to assure uniform and orderly administration. Subject to Commission approval, this entity should also be given the authority to make determinations as to existing number reassignment and future code assignments.[19]

[18] Ex 8, pp 9-10, Stowell Direct.
[19] Ex 8, pp 11-13, Stowell Direct; Ex 9, pp 11-12, Stowell Rebuttal; Ex 41, pp8-10, Matzdorff Direct; Ex 42, pp 4-6, Matzdorff Rebuttal; Ex 21, pp 9-11, Starkey Rebuttal.

6. What is the appropriate intercompany compensation between LECs providing MCA service?

CLECs should be required to adhere to bill and keep intercompany compensation for MCA calls, just as is required of ILECs. In this manner all true MCA calls between all LECs offering MCA service would have the same compensation. This would apply to calls between ILECs as is occurring today. This should also be applied to MCA calls between an ILEC and a CLEC. This should be applied to MCA calls between a CLEC and another CLEC as well. This is the only intercompany compensation mechansim that will allow retention of MCA service, with CLEC participation, on a competitively neutral basis.[20]

This is an available option to the Commission.[21] The CLEC proposal to be able to "elect" a hybrid intercompany compensation format should be rejected.[22] The CLECs have proposed to use reciprocal compensation with SWB under interconnection agreements, and to have the option to select *either* bill and keep or "indirect" reciprocal compensation with small ILECs with whom the CLEC has no direct connection. This would allow the CLEC to select the type of compensation that traffic balances make favorable to it. ILECs would have no corresponding ability. CLECs should be denied the ability to so "game the system". The CLEC "hybrid" proposal would render MCA intercompany compensation unduly discriminatory and prejudicial to small ILECs. If the CLEC "hybrid" proposal is adopted, it will increase the cost of MCA service in outer tiers, which may increase MCA rates for some customers, and may lead to the determination that MCA service does not recover its costs for ILECs in the outer tiers.

At hearing it was established that if a CLEC wins a customer from another CLEC, there will be a change in the interconnection agreement applicable. Differences in the "balance of traffic" considerations in the two interconnection agreements could have an adverse impact upon small ILECs.[23] It is inappropriate for competition in major metropolitan areas to have such impacts on a small ILEC operating in noncompetitive

[20] Ex 9, pp 12-17, Stowell Rebuttal.
[21] T. 114.
[22] Ex 10, pp 6-7, Stowell Surrebuttal; Ex 42, pp 2-3, Matzdorff Rebuttal.
[23] T. 820-822.

exchanges miles away from St. Louis, Kansas City, or Springfield. The best way to avoid such impacts is to reject the CLEC "hybrid" proposal.

All other proposals will create disparate revenue impacts, which will disturb ILEC revenue neutrality, and may result in MCA service being lost because it is anticompetitive as being priced below cost. It is noted that one CLEC does not wish to have the burden of negotiating separate interconnection agreements with all ILECs. [24] Retaining bill and keep furthers the cause of adminstrative simplicity for proper MCA traffic.

At hearing the parties were asked to brief the issue of whether the Commission has the authority to override the compensation arrangements in existing interconnection agreements, as well as the issue of whether the Commission could require that future interconnection agreements base MCA compensation on a "bill and keep" basis.[25] The MITG believes the Telecommunications Act of 1996 grants the Commission the necessary authority to regulate the terms of an offering like MCA service which is necessary to safeguard consumer rights to continued availability of the service, so long as the mechanism used is implemented on a basis that is competitively neutral to CLECs and ILECs with whom the CLECs directly compete.

47 USC 251(d)((3)(A) provides:

"PRESERVATION OF STATE ACCESS REGULATIONS.--In presecribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any **regulation, order or policy of a State commission** that--
(A) establishes access and **interconnection obligations of local exchange carriers**;"

47 USC 252(e)(3) provides:

"PRESERVATION OF AUTHORITY.--Notwithstanding paragraph (2), but subject ot section 253, nothing in this section shall prohibit a State commission from **establishing or enforcing** other requirements of state law in its review of an agreement, **including requiring complicance with intrastate telecommunications service** quality standards or **requirements**."

With respect to the type of state law contemplated by 47 USC 252(e)(3),

[24] Ex 18, p 9, Wissenberg Rebuttal.
[25] T. 489-490.

§ 392.361.5 RSMo provides, in assigning competitive classifications CLECs and their services, may suspend or modify the applications of its rules of the applications of any statutory provisions contained in sections 392.200 to 392.340, excepts as provided in section 392.390. It has been the common or universal practice of the Commission, in granting CLEC certification, to suspend certain of these statutory provisions and rules.

Subsection (6) of § 392.361 RSMo provides that:

> "If the commission suspends the application of a statutory requirement under this section, it may **require** a telecommunications company to comply with **any conditions reasonably made necessary to protect the public interest** by the suspension of the statutory requirement."

47 USC 253(b) provides:

> "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, **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**."

The MITG would respectfully suggest that these statutes make it within the Commission's power, as a condition of allowing CLECs to offer MCA service, to require CLECs to participate in the existing MCA intercompany compensation mechanism established for MCA service. The public interest served is the interest in assuring that competition does not destroy or erode the valuable service attributes of MCA service.

As CLECs in this docket have formally sought permission to provide MCA service, these statutory provisions empower the Commission to either supersed existing reciprocal compensation provisions of an existing CLEC/ILEC interconnection agreement and impose MCA compensation for exchanged MCA traffic, or alternatively to require that future interconnection agreements base MCA compensation on the same MCA intercompany compensation structure approved at the time MCA was established.

Such a determination would in certain respects benefit CLECs. CLECs to date have violated the terms of Commission orders approving interconnection agreements. CLECs by Commission Order were directed to pay switched access to ILECs with whom the CLECs do not interconnect with until and unless superseded by an approved interconnection agreement. The CLECs are not paying, and neither SWB nor any CLEC is passing records from which usage or compensation can be computed.[26] It is interesting to note that, despite the clear mandate of Commission Order directing switched access compensation until an interconnection agreement between AT&T and small ILECs, instead of accomplishing such an interconnection agreement AT&T instead relied upon its belief in a "de facto" bill and keep arrangement.[27]

At the time interconnection agreements were first considered between SWB and CLECs affiliated with AT&T and MCI, and with McLeod's predecessor Dial US, the Commission respected the rights of small ILECs to have their own opportunity to develop interconnection agreements. The Orders approving those interconnection agreements prohibited the CLECs from handing off to SWB traffic destined for small ILEC networks. In order to incent the development of these agreements, the CLECs were to pay the small ILECs switched access until superseded by an approved interconnection agreement.[28]

Unfortunately the CLECs have not abided by the Commission's Orders.[29] They have sent traffic destined for the small ILECs to SWB. Both the CLECs and SWB knew the limitations of the network SWB placed this traffic upon precluded any ability of the small ILECs to identify the originating carrier, or jurisdiction of the call. To make matters worse, for years the CLECs and SWB have not bothered to develop a record exchange system for which they can verify traffic exhange betwteen them, much less traffic sent to third party small ILECs. It belies belief that AT&T, that has spent a tremendous amount of time, effort, and money to develop a tracking system for local traffic, cannot do so. Apparently AT&T is content to say it "does not know" why traffic to small ILECs can't be tracked. [30]

Instead of honoring their obligation to interconnect and establish interconnection agreements prior to sending traffic to small ILECs, the CLECs propose to be granted the

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[26] Ex 1, pp 50-54, Voight Direct; T. 140-149.
[27] T. 451.
[28] See Ex 1, pp 51-53, Voight Direct.
[29] CLEC Gabriel, which adopted the AT&T interconnection agreement, contends it is not bound by the terms of the Order approving that agreement. T. 824-826.
[30] T. 453-456.

right to elect a hybrid intercompany compensation format. The CLECs have proposed to use reciprocal compensation with SWB under interconnection agreements, and to have the option to select *either* bill and keep or "indirect" reciprocal compensation with small ILECs with whom the CLEC has no direct connection. This would allow the CLEC to select the type of compensation that traffic balances make favorable to it. ILECs would have no corresponding ability.

The implicit assumption underlying this CLEC "hybrid" proposal is that CLECs have a right to place traffic on SWB's network destined for small ILEC termination, without the necessity of an interconnection agreement with the small ILEC. This assumption is erroneous.

With termination of the PTC Plan, former SCs are no longer subject to the PTCs right to control the former SC's toll network. If a PTC desires to retain the former interconnection with the former SC it must do so pursuant to the terms and conditions of the former SC's state and federal access tariffs. Under those tariffs it is the directly interconnecting carrier that is responsible for traffic delivered over that connection. In turn, under its tariff (or interconnection agreement), that carrier collects it compensation from carriers it directly interconnects with.

With the plethora of carriers upstream from the small ILECs, the plethora of types of traffic and upstream interconnection arrangements, it makes no sense for the small ILEC to have to attempt to establish business relationships that vary according to the plethora of upstream relationships.[31] As we have seen in this docket as well as the wireless dockets, there is no vehicle short of a direct interconnection agreement to make this happen. It makes infinitely more sense for business relationships to be built upon direct interconnection relationships. Under the Act it is the direct interconnection which is the basis for building business relationships.

The former SC's have the right to determine where and how interexchange carriers must interconnect with them in order to terminate or originate traffic. See the October 4, 1996 *Memorandum Opinion and Order in the Matter of Allnet Communication Services Inc. v Public Service Telephone Company,* FCC File No. E-93-

[31] T. 1180-1182.

099, DA 96-1667; *Iowa Network Access Division,* Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 (Com. Car. Bur. 1988) (Iowa).

These FCC decisions hold that all non-RBOC LECs converting to equal access have the right to design their own networks and determine the routing of traffic thereon. Non-RBOC LECs have the right during equal access conversion to decrease their reliance on the tandem or interexchange facilities of RBOCs. LECs may establish their own tandem facilities, or determine upon which tandem they will depend for the delivery of terminating traffic. If the LEC opts not to "home" on the RBOC tandem for terminating traffic, it is inappropriate for any IXC to continue to deliver traffic terminating to that LEC to the RBOC tandem. See *Allnet v PSTC,* paragraphs16 through 20, 24-26, 32-37.

Under these opinions after implementation of equal access a LEC can require any carrier to deliver its traffic as FGD traffic to the LECs equal access end office or tandem, on separate trunks. It is inappropriate for any carrier, either SWB or any IXC, to bypass the designated LEC facility. In short, SWB is no different than any other IXC interconnecting with a small ILEC. It must pay the small ILEC for all traffic delivered over this interconnection. SWB will thereby pay for the costs of terminating its traffic, and pay the costs of terminating traffic of other carriers it contracts to carry. It would be up to SWB to collect the necessary compensation from the upstream carriers it agrees to interconnect with. SWB will therefore be no different than any other IXC operataing as an "underlying carrier" for the termination of traffic of other IXCs to the small ILECs.

It is inappropriate for interconnection agreements between SWB and CLECs to address and provide for traffic destined for third-party small ILECs who are not party to the interconnection agreement. The effect of such "indirect interconnection" or "transiting" provisions of the direct interconnection agreement between SWB and the CLECs is to deny these small ILECs an equal opportunity for direct interconnection agreements[32], which in turn deprives them of the ability to record and distinguish upstream carrier traffic. Although these upstream carriers are not to send such traffic, they have done so, which has resulted in a taking of use of the small ILEC networks without compensation.

[32] T. 170-172, 339-343.

The provisions of the 1996 Act, as corroborated by the testimony of some CLEC witnesses, indicate the law anticipates interconnection agreements built upon a direct interconnection between two carriers for the exchange of mutully defined local traffic, and reciprocal compensation rates for transport and terminationof such traffic between their two networks. [33]

The testimony of CLEC witnesses Cadieux and Starke lends support to the MITG view that reciprocal compensation is designed for two directly interconnected carriers that mutually exchange local traffic. Choctaw and MoKan, as well as other small ILECs, today are not directly interconnected to any CLEC or wireless carrier.

Mr. Cadieux's Direct testimony recognizes that reciprocal compensation is for the transport and termination of local traffic.[34] He describes the obligation of ILECs to allow interconnection to their networks by CLECs under Section 251(c)(2) of the Act. Indeed, at page 42 of his direct testimony, Mr. Cadieux testifies that, under the 1996 Telecommunications Act, that it via "directly interconnected" CLECs and ILECs that CLECs establish reciprocal compensation arrangements, and those agreements govern the applicable reciprocal compensation arrangements.

McLeod witness Starkey asserts that there are two types of compensation; exchange access for non-local traffic, and reciprocal compensation for local traffic.[35] At page 11 of his direct testimony, Mr. Starkey goes on to describe local reciprocal compensation traffic as traffic between **a** LEC and **a** telecommunications carrier. Starkey then cites verbatim the provisions of 47 CFR 51.701(e) specifying that reciprocal compensation arrangements are between **two** carriers. Reciprocal compensation is for the **transport** and termination of this traffic By FCC rule 47 CFR 7019c),the definition "transport" only applies for traffic transported between two carriers.

Mr. Starkey also testified that in his experience, interconnection agreements were always between two directly interconnected carriers, and the "preferred" way for a CLEC

[33] Ex 10, pp5-7, Stowell Surrebuttal; Ex 9, pp 12-17, Stowell Rebuttal; Ex 23, p 42, Cadieux Direct; Ex 20, pp 11-12, Starkey Direct.
[34] Ex 23 at pages 8-9, 25-27, 42.
[35] Ex 20, Starkey Direct, p 9.

and a small ILEC to have reciprocal compensation was via a negotiated and approved interconnection agreement.[36]

Under the "indirect" interconnection suggested by some parties, where SWB provides all intermediate transport between the small ILEC and CLEC/wireless carrier, it is clear that three carriers are involved in transporting and terminating calls between the small ILEC and the CLEC/wireless carrier. In this situation there cannot be reciprocal compensation as defined by the FCC.

This is all the more apparent in that, in converting to intraLATA equal access, small ILECs themselves do not originate 1+ intererexchange calls going to the CLEC/wireless carrier. Instead IXCs carry this traffic, and pay either originating or terminating exchange access to the small ILECs, as three carriers collaborate to complete these calls. When SWB is the intermediate interexchange carrier transporting interexchange calls to terminate in small ILEC exchanges, there should be no difference. Three carriers collaborate, and under the small ILEC access tariff SWB should pay terminating access, and collect compensation therefor from the originating carrier, just like any other underlying toll carrier does.

Attachment 1 to OPC witness Meisenheimer's Direct Testimony, Ex 6, also contains several pages of the FCC Order in 96-325 specifying that reciprocal compensation is designed for use between two carriers whose networks directly interconnect.

At hearing there was some discussion of the Commission's Order in the "Alma" tariff case.[37] The Commission's Order in Alma rejected a tariff on the grounds it could result in access being applied to intraMTA traffic. The Order did not decide whether the tariff language under consideration was appropriate for CLEC traffic (even though prior Commission orders did require interconnection agreements before sending third party ILECs traffic).

What the Commission unfortunately overlooked in Alma was the requirement of the 1996 Telecommunications Act, and the requirement of its own Orders, that in order to replace access with reciprocal compensation there is a condition precedent of an

[36] T. 607-608.
[37] Ex 70, T. 142-144.

approved interconnection agreement. Under the Alma tariff language access would only apply until superseded by an approved interconnection agreement. The agreement approval process is the mechanism the Act uses to replace access with reciprocal compensation.

Because wireless carriers and CLECs have had interconnection agreements approved that purports to cover traffic destined for carriers that are not party to the interconnection agreement, a scenario has been established where the CLECs and wireless carriers can accomplish termination of their traffic to third party LECs without establishing an agreement with them. Although this violates the Act and the Commission orders, the third party LECs cannot compel interconnection and are powerless to effectuate compensation.[38]

7. Is the compensation sought in the proposed MOU appropriate?

Not in the future. The only acceptable compensation mechanism consistent with continued MCA service viability is the present bill and keep mechanism. See # 2 and # 6 above. The MOU compensation is inappropprite as it would result in compensation other than "bill and keep" on MCA calls.

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

MCA Service should be retained as is, with CLEC participation as set forth above. This should be allowed to exist for not less than one year before the Commission considers modifying MCA service.

In order to fairly and thoroughly consider any proposed MCA modification, the Commission should accept modification requests, determine which such requests the Commission wishes to entertain, and initiate a docket in which to consider them. In that docket the one years' worth of data will be instrumental in evaluating any proposed

[38] Under 47 USC 251(c)(1) and (2) only ILECs have an obligation to negotiate interconnection agreements at the request of the "requesting carrier". It is only after having made such a request that the "requesting carrier" also has an obligation to negotiate: "The requesting carrier also has the duty to negotiate in good faith the terms and conditions of such agreements."

modifications.[39] The industry would there have the opportunity to measure and comment upon the effects of any proposed modification. It would be unwise for the Commission to consider any proposed modification without going through such a process.

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?

ILECs continue to be entitled to revenue neutrality for all changes the Commission makes to MCA service, unless the ILECs are granted the option to discontinue offering MCA service. Under the MITG position above, there would be no adverse revenue impacts for small ILECs where there is no direct competition, and no need to argue over revenue neutrality.[40]

With respect to SWB, GTE, and Sprint, who because of direct competition are no longer rate of return regulated, and it is not clear that the same entitlement to revenue neutrality that existed in 1992 exists today.

If in this case or in any future docket MCA service is modified, small ILECs will be entitled to revenue neutrality. The following are the MITG's initial categorizations of appropriate revenue neutrality components: lost originating access, lost terminating access, increased MCA revenue, and the costs of implementing any changes in MCA service ordered by the Commission. The following are the MITG's initial categorizations of such costs: billing system modifications, switch translations, business office training, customer notification, service order processing, network or trunking changes, directory changes, reorganization of NXXs or codes, and back office support system changes.

10. Should MCA traffic be tracked and recorded, and if so, how?

Originally MCA traffic was permitted to be placed on the monopoly PTC Plan intraLATA toll network, without tracking, recording, or reporting. Today this is no longer appropriate. The PTC Plan has been terminated and the PTCs no longer have the contractual right to control the former SCs' networks.

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[39] Ex 8, pp 7-8, Stowell Direct.
[40] Ex 8, pp 14-17, Stowell Direct.

The large carriers are capable of tracking MCA traffic. Although AT&T claims to have spent large sums to do so[41], it has yet to provide any traffic reports or to pay the switched access to small ILECs the Commission ordered. This is very significant as many if not most facilities based CLECs have IXC affiliates utilizing the same switch. With toll and local traffic of different carriers with different certicates and tariffs, it is very important to assure that non-MCA traffic is not terminated for free under the guise of it being treated as MCA traffic just because it terminates in an MCA exchange. [42]

It is no longer appropriate to assume that only toll and MCA traffic will be placed on the network. SWB has placed or allowed to be placed on this network, wireless traffic, IXC traffic, CLEC traffic, Local Plus traffic, and who knows what else. These different forms of traffic demand different forms of intercompany compensation, but neither SWB nor the other carriers are implementing suitable recording or record passing to provide for appropriate terminating compensation. While SWB has the opportunity to assure it records the information necessary for SWB to be appropriately compensated, other carriers to whom such traffic terminates do not.

If MCA traffic will continue to be placed on the same facilities as compensable traffic, provision must be made to track, record, and exchange acceptable traffic records between all carriers to assure that the appropriate compensation is being paid. The situation exists today for unethical carriers to game the system and deprive terminating LECs of appropriate compensation. [43]

In lieu of tracking and recording MCA traffic, MCA bill and keep, noncompensable traffic should be placed on separate trunks from those used for compensable traffic. [44]

Whichever choice the Commission makes, it should be the duty of the Code administrator to set up systems and procedures to preclude compensable traffic from being assigned to the MCA trunks, or if a separate trunks are not required, to set up systems and procedures to assure that the appropriate compensation is received for compensable traffic.

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[41] Ex 12, pp 10, Kohly Rebuttal.
[42] T. 159-166.
[43] T. 195-196.
[44] Ex 9, p 10, Stowell Rebuttal.

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ATTORNEYS FOR MITG

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 30 day of June, 2000, to all attorneys of record.

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