

**BEFORE THE PUBLIC SERVICE COMMISSION
FOR 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 Areas)	Case No. TO-99-483
Service After the Passage and)	
Implementation of the Telecommunications)	
Act of 1996.)	

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
INITIAL BRIEF**

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**SOUTHWESTERN BELL TELEPHONE COMPANY'S
INITIAL BRIEF**

Comes now Southwestern Bell Telephone Company ("SWBT") and, for its Initial Brief in this Matter, states as follows:

Executive Summary

Competitive Local Exchange Carriers ("CLECs") want SWBT to provide toll-free calling to our own customers when calling CLECs' customers even though those calls are toll calls under SWBT's tariffs. Although CLECs assert that they want SWBT to "open up the NXX codes" or "throw open the switch" or "prohibit SWBT from screening calls from SWBT customers to CLEC customers", what they really mean is they want this Commission to mandate toll-free calling from SWBT's customers to CLEC customers. CLECs want their customers to receive treatment superior to that which SWBT provides to its own customers who are non-MCA subscribers; principles of revenue neutrality require compensation to be included if the MCA Plan is modified to permit CLEC participation.

Although SWBT is not opposed to CLEC entry into the Metropolitan Calling Area Plan ("MCA Plan"), if CLECs are either permitted and/or required to participate in the MCA Plan, they should be required to follow all of the parameters of the MCA Plan. Specifically, CLECs should be required to: (a) follow the geographic calling scope as defined in the MCA Plan; (b)

follow the bill and keep inter-company compensation mandate which is set forth in the Commission's MCA Order; (c) use segregated NXX codes to distinguish MCA subscribers' NXX codes from non-MCA customers' NXX codes; and (d) offer MCA Service to their customers at the rates which are mandated in the Commission's MCA Order and have pricing flexibility equal to that of the incumbent local exchange carrier ("ILEC") with whom the CLEC seeks to compete.

Issue 1: Are CLECs Currently Included In The MCA Plan, And,
If Not, Should CLECs Be Permitted/Required To Participate In The MCA Plan

It is clear that CLECs were neither initially included in the MCA Plan, in that CLEC entry was brought about by the passage of the Telecommunications Act of 1996, nor are they currently included in the MCA Plan. If CLECs are permitted to participate in the MCA Plan, it should be accomplished in a manner that is fair to both the MCA customers and the companies providing the service. CLEC participation should only be permitted if the terms and conditions of the MCA Plan apply equally to all participants and no participant obtains a competitive or financial advantage.

Issue 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 Scope;(b) Bill And Keep Inter-Compensation;
(c) Use of Segregated NXXs For MCA Service; And (d) Price?

If CLECs are either permitted and/or required to participate in the MCA Plan, they should be required to follow all of the parameters of the MCA Plan, including but not limited to: (a) geographic scope; (b) bill and keep inter-company compensation; (c) use of segregated NXXs for MCA Service; and (d) price. These parameters are all integral to the operation of the MCA Plan. If permitted to participate and to vary those internal components of the MCA Plan, the CLECs would obtain a competitive and/or financial advantage at the ILEC's expense.

Specifically, with regard to geographic calling scopes, the CLECs want to establish calling scopes broader than the MCA Plan and require SWBT and other ILECs to provide toll-free return calling to the new calling scope. Such a proposal would allow CLECs to avoid payment of access charges on calls originating in the expanded calling scope. The Commission should prohibit such action because it would give CLECs an unfair competitive and financial advantage.

Additionally, the CLECs either seek to avoid the Commission's mandate of bill and keep inter-company compensation, or, even worse, to elect either reciprocal compensation or bill and keep inter-company compensation based on which is more advantageous. Again, this would give the CLECs an unfair competitive and financial advantage. If CLECs are either permitted or required to participate in the MCA Plan, they should be required to follow the bill and keep inter-company compensation mandate which is set forth in the Commission's MCA Order. Further, the Commission should order compensation for any company that transits traffic (i.e. if one party originates a call, it transits a second party's facilities, and terminates to a third-party's facilities, the second party would be transiting traffic).

CLECs also want to avoid the use of dedicated NXX codes so that SWBT and other ILECs cannot determine which calls are to MCA subscribers and which are not. The Commission should require CLECs to use dedicated NXX codes for MCA service so that all ILECs would know whether the call was within the MCA calling scope or an expanded calling scope that the CLEC decided to offer. This would ensure that neither ILECs nor CLECs would obtain a financial or competitive advantage.

Finally, the CLECs want pricing flexibility for themselves, yet some want to retain the Commission-mandated pricing for the ILECs. These demands are unreasonable, as they would

give CLECs a financial or competitive advantage. Thus, if CLECs are permitted to participate in the MCA Plan, they should be required to offer MCA Service at the rates which are set forth in the Commission's MCA Order and should have the same pricing flexibility as the ILEC with whom they compete.

Issue 3: Should There Be Any Restrictions On The MCA Plan (For Example, Resale, Payphones, Wireless, Internet Access, Etc.)?

Yes. The Commission previously determined that IXC's are not permitted to resell MCA service because if IXC's were allowed to do so, IXC's could avoid having to pay tariffed access charges. Report and Order, In the Matter of the Establishment of a Plan for Expanded Calling Scopes in the Metropolitan and Outstate Exchanges, TO-92-306, December 23, 1992. SWBT supports this decision.

Finally, it is SWBT's position that although: (1) customers who subscribe to MCA service, should be allowed to call Internet Service Providers ("ISPs") on a local basis; and (2) ISPs should be allowed to subscribe to MCA Service, under no circumstances should terminating local reciprocal compensation apply to calls to ISPs as these calls are primarily interstate calls, not local, regardless of the dialing pattern that is used to reach the ISP. Thus, if CLECs are permitted to participate in the MCA Plan, it should be clear that no inter-company compensation charges apply to Internet-bound traffic.

Issue 4: What Pricing Flexibility Should ILECS And/Or CLECs Have Under The MCA Plan?

If CLECs are permitted to participate in the MCA Plan, they should be subject to the same pricing requirements and receive the same level of pricing flexibility as the ILEC with whom the CLEC seeks to compete.

Issue 5: How Should MCA Codes Be Administered?

Since part of the local MCA calling scope permits local calls to other MCA subscribers, the MCA subscribers must be identifiable so local calls to these subscribers can be permitted. The industry uses dedicated MCA NXXs to permit these calls to be dialed on a local basis. The use of dedicated NXX codes is currently the only reasonable method of providing MCA Service.

If MCA Service continues to be provisioned through the use of specifically identified MCA NXX codes, then a mechanism should be in place to identify the MCA NXX codes. This mechanism should be a neutral, easy-to-use procedure, whereby all participants could identify the appropriate NXX codes. SWBT support using the Local Exchange Routing Guide ("LERG"). The LERG is an industry report providing NPA/NXX information throughout the nation.

Issue 6: What Is The Appropriate Inter-Company Compensation Between LECs Providing MCA Service?

If CLECs are either permitted or required to participate in the MCA Plan, the appropriate inter-company compensation is bill and keep for all locally dialed calls within the MCA, meaning that neither carrier reimburses the other for traffic within the MCA.

Issue 7: Is The Compensation Sought In The Proposed Memorandum Of Understanding ("MOU") Appropriate?

Yes. SWBT and Intermedia reached an interim agreement ("the proposed MOU") under which Intermedia agreed to compensate SWBT at a rate of 2.6 cents per minute in return for SWBT permitting its own customers to call Intermedia's customers on a toll-free basis within SWBT's portion of the MCA.¹

¹ This payment reflects compensation at a level equal to originating access charges, which is the minimum amount SWBT would receive if the call were treated as toll.

The proposed MOU is appropriate. To the extent that a CLEC seeks to have calls from SWBT customers to CLEC customers within the MCA be placed on a local basis, compensation is required under principles of revenue neutrality. SWBT believes the MOU represents the fairest way to achieve that revenue neutrality.

Issue 8: Should The MCA Plan Be Retained As Is,
Modified (Such As Staff's MCA-2 Proposal) Or Eliminated?

SWBT believes the current design of the MCA plan is in the public interest and should be retained.

Staff currently proposes that the Commission postpone consideration of MCA-2 because Staff does not feel that it has the data to make a firm recommendation regarding the implementation of this plan. SWBT agrees that it is premature to modify the MCA Plan, including via the Staff's MCA-2 proposal, because there are too many unresolved issues involving this proposed modification.

Issue 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?

Assuming that the Commission allow CLECs to participate in the MCA Plan on the same terms and conditions that apply to ILECs, SWBT believes that it is entitled to revenue neutrality for the loss of toll revenue associated with the return calling aspect of the current MCA Plan. SWBT believes this can best be achieved by assessing a 2.6 cent per minute charge for calls from SWBT's MCA subscribers to CLECs' MCA subscribers when those calls would otherwise be treated as toll calls.² SWBT would support establishing a cap on the originating revenues from a

² This payment is based upon SWBT's originating access charges, which would be the minimum revenue flowing to SWBT for a toll call.

CLEC who requests such an arrangement so that CLECs do not pay more in compensation than they receive for providing service to their customers.

SWBT is also entitled to revenue neutrality if the MCA Plan is modified, as in Staff's MCA-2 proposal. SWBT would be entitled to recover implementation costs as well as revenue neutrality for the revenue impacts of implementing the plan, including such items as the loss of access and intraLATA toll revenues, and the loss of revenue from optional MCA subscribers who would no longer subscribe to the service because the Plan eliminates the return calling feature of MCA Service. The details of an MCA-2 Plan must be determined and evaluated before a rate design for revenue neutrality can be proposed.

Issue 10: Should MCA Traffic Be Tracked And
Recorded, And If So, How?

Whether MCA Traffic should be tracked and recorded depends on how this case is ultimately resolved. How inter-company compensation is structured will determine how traffic should be tracked and/or reported. SWBT's existing interconnection agreements include mutually agreed upon language which addresses tracking and reporting of traffic exchanged between SWBT and parties to the agreement. Depending on the Commission's decision in this case, there may be a need to change the process.

Issue 11: With Regard To Inter-Company Compensation,
Does The Commission Have The Authority To Override
Reciprocal Compensation Provisions Contained In Existing
Interconnection Agreements? If No, Does The Commission Have The
Authority To Require Bill And Keep Inter-Company Compensation
In All Future Interconnection Agreements Between ILECs and CLECs,
Thereby Prohibiting Reciprocal Compensation for MCA Service?

If the Commission determines that CLECs should either be permitted or required to participate in the MCA Plan, the Commission can and should condition participation upon

modification of interconnection agreements to provide for bill and keep inter-company compensation on calls within the MCA Plan.

With respect to future interconnection agreements between ILECs and CLECs, SWBT believes that the Commission has the authority to require bill and keep inter-company compensation.

Issue 12: Does The Commission Have The Authority To Direct
CLECs To Negotiate Interconnection Agreements With Small ILECs? If A
CLEC Has An Interconnection Agreement With A Large ILEC That
Provides That The CLEC Must Have A Terminating Agreement With The
Small ILEC Before Sending Calls To The Small ILEC's Network, Does
The Commission Have The Authority To Order A Large ILEC To Block Calls
Until The CLEC Provides The Large ILEC With Proof That It
Has Such An Agreement?

SWBT believes that the Commission has the authority to direct CLECs to negotiate interconnection agreements with small ILECs. Further, SWBT has the technical ability to block calls between local exchange companies until local exchange companies provide proof of interconnection agreements between the parties. SWBT notes, however, such blockage would involve not only local calls between the two local exchange companies but would include interstate calls as well.

SWBT would only implement blocking upon an express order from this Commission which required it to do so. The Commission should be cognizant, however, that the Federal Communications Commission ("FCC") may override any order which required a local exchange company to block traffic between two local exchange companies who have not reached an interconnection agreement based on either the FCC's authority over: (a) interstate traffic; or (b) the implementation of the federal Telecommunications Act of 1996.

Issue 13: The Commission Should Not Require Information About
The MCA Plan To Be Included In Directories. However, If The Commission
Determines It Should Do So, It Should Require All Carriers That
Have Codes Listed In The Directories To Contribute Financially
To Implementation And Provision Of This Service.

Public Counsel argues that the Commission should require the information about the MCA Plan be included in directories. The Commission should not require such action. First, since directories are static documents, the MCA information can be out of date even before the directories are distributed to customers. Second, SWBT has concerns about the Commission's authority to impose this requirement on directory providers, especially alternative providers. Third, SWBT has concerns about further allegations of anti-competitive behavior. If information about the MCA Plan is included in directories, CLECs might argue that the information about their own unique calling plans must be included as well. Fourth, if CLECs are permitted to establish their own "MCA plans" it may become difficult to identify these plans in the directories. Finally, if the Commission were to determine that it is appropriate to place information about the MCA Plan in the directories, there may be a substantial cost in implementing and providing this service. Thus, if the Commission determines that it should be placed in the directories, the Commission should require all carriers that have codes listed in the directories to contribute financially to implementation and provision of this service.

Issue 14: The Commission Should Refrain From Ruling On Trunking
Arrangements And Signaling Protocols Because These Issues Are
Pending In TO-99-593. Further, The Commission Should Not Require MCA
Traffic To Be Placed On Separate Trunk Groups Because This Commission
Has Already Rejected This Proposal And No New Evidence Has Been Presented
Which Would Require This Commission To Change Its Opinion.

MITG raises a concern over the manner in which SWBT is routing traffic between CLECs and the other ILECs. MITG is referring to the use of Feature Group C ("FG-C") signaling rather than Feature Group D ("FG-D") signaling. This Commission has previously

rejected the claim that the FG-D network should be used instead of FG-C for all intraLATA toll calls. The Commission also established TO-99-593 to further investigate trunking arrangements and signaling protocols. No action on this proposal should be taken in this case, given the pendency of TO-99-593.

MITG also contends that MCA traffic should be placed on separate trunking groups. SWBT disagrees. A similar proposal was made in case number TO-99-254 concerning the PTC plan. The Commission rejected the proposal because no hard evidence of the number of trunks or cost was presented. At the hearing of this matter, MITG admitted that it had not presented any evidence of the number of trunks that would be involved in segregating MCA traffic and/or the cost of doing so. Thus, a similar result should be reached here.

Argument

I. Background

Because of the complexity of the Metropolitan Calling Area Plan ("MCA Plan"), and because many of the CLEC participants in this case demonstrated substantial misunderstanding of the parameters of the MCA Plan, SWBT believes that it is appropriate to explain the history and scope of MCA Service, as well as to correct some of the CLEC inaccuracies.

A. The Implementation Of The Metropolitan Area Calling Plan

On December 23, 1992, the Commission ordered the implementation of Metropolitan Calling Area ("MCA") Plan in its Report and Order, In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges, Case No. TO-92-306, December 23, 1992 ("MCA Order"). (See Exhibit 68, MCA Order). The primary goal of the docket was to fashion new expanded calling scope services that would address existing customer complaints, desires, and needs, and that would also put in place services that would adequately

meet customers' long-term requirements. (See Exhibit 68, MCA Order, p. 5). The Commission stated:

[a] substantial number of customer complaints and dissatisfaction with exchange services originated from exchanges in areas which were once rural but which now consider themselves part of a metropolitan area. The growth of the three metropolitan areas [St. Louis, Kansas City, and Springfield] has expanded beyond individual company boundaries and has expanded beyond the current exchange boundaries and local calling scopes of individual exchanges. Especially in Kansas City and St. Louis, this phenomenon has caused almost constant complaints by customers in outlying exchanges desiring the calling scope and calling pattern and rate structure enjoyed by exchanges included within the metropolitan calling areas.

(See Ex. 68, MCA Order, p. 6).

The Commission noted that SWBT provided local service in the predominant portion of the three metropolitan areas and that SWBT, at the time, offered a Wide Area Service Plan ("WASP") to metropolitan exchanges around St. Louis and Kansas City and to three exchanges in Springfield. Id. The Commission further noted that the WASP allowed for a basic local exchange customer to subscribe to the WASP service and thus extend that customer's calling scope for a flat rate. Id. Finally, the Commission noted that the WASP was the type of service customers of other companies and in other SWBT exchanges wished to be offered. Id. The Commission proposed the MCA Plan as a modification and expansion of the WASP service offered by SWBT. Id.

I. Definition Of Calling Scopes For The Three MCAs

The Commission defined the following calling scopes for the three MCAs:

St. Louis

MCA-Central: St. Louis Principal Zone

MCA-1: St. Louis Zone 1

MCA-2: St. Louis Zone 2

- MCA-3: Chesterfield, Manchester, Valley Park, Fenton, Maxville, Portage Des Sioux, St. Charles, Imperial, and Orchard Farm.
- MCA-4: Harvester, Pond, Eureka, High Ridge, Antonia, Herculaneum, St. Peters, O'Fallon, and Dardenne.
- MCA-5: Winfield, Moscow Mills, Old Monroe, Troy, Foristell, Wentzville, New Melle, Augusta, Defiance, Gray Summit, Pacific, Cedar Hill, Ware, Festus, Hillsboro, and DeSoto.

Kansas City

MCA-Central: Kansas City Principal Zone

- MCA-1: Kansas City Zone 1
- MCA-2: Kansas City Zone 2
- MCA-3: Leavenworth, Farley, Platte City, Ferrelview, Smithview, Kearney, Missouri City, Buckner, Grain Valley, Lake Lotawana, and Greenwood.
- MCA-4: Weston, Camden Point, Edgerton, Trimble, Holt, Excelsior Springs, Orrick, Oak Grove, Lone Jack, Pleasant Hill, Harrisonville, Peculiar, and Cleveland.
- MCA-5: Dearborn, Plattsburg, Lathrop, Lawson, Richmond, Henrietta, Wellington, Odessa, Holden, Kingville, Strasburg, East Lynne, Garden City, Archie, Freeman, and Drexel.

Springfield

MCA-Central: Springfield

- MCA-1: Republic, Willard, Fair Grove, Strafford, Rogersville, and Nixa/South Nixa.
- MCA-2: Billings, Clever, Marionville, Hurley, Highlandville, Ozark, Sparta, Fordland, Marshfield, Elkland, Pleasant Hope, Morrisville, Walnut Grove, Ash Grove, Halltown.

(See Ex. 68, MCA Order, Attachment 4; see also Attachment 1 to SWBT's Brief).

Thus, the MCA areas are structured in tiers radiating out from the centers of St. Louis, Kansas City, and Springfield. (See Ex. 35, SWBT, Unruh Direct, p. 3). In St. Louis and Kansas

City, there are six tiers, the Center tier³ and MCA tiers 1-5. Id. In Springfield, there are three tiers, the Center tier and MCA tiers 1 and 2. Id. In St. Louis and Kansas City, the Center tier, MCA-1 and MCA-2 comprise the metropolitan exchange. Id. In Springfield, the Center tier and MCA-1 comprise the Springfield metropolitan exchange. Id. Further, as is reflected in the lists above, unlike the metropolitan exchanges in St. Louis, Kansas City, and Springfield, the optional MCA tiers 3, 4, and 5 in St. Louis, and the optional tier 2 in Springfield, are actually composed of several individual exchanges within each MCA tier. Id.

2. Definition Of Calling Patterns For The Three MCAs

The Commission also defined the calling patterns for the three MCAs as follows. In St. Louis and Kansas City:

All MCA-Central, MCA-1 and MCA-2 customers would be able to call:

1. all MCA-Central, MCA-1, and MCA-2 customers;
2. all MCA-3, MCA-4, and MCA-5 subscribers.

All MCA-3 subscribers would be able to call:

1. all MCA-Central, MCA-1, MCA-2 and MCA-3 customers;
2. all MCA-4 and MCA-5 subscribers.

MCA-4 and MCA-5 subscribers would be able to call:

1. all MCA-Central, MCA-1, MCA-2, MCA-3, and MCA-4 customers;
2. all MCA-5 subscribers.

MCA-3, MCA-4, and MCA-5 non-subscribing customers would be able to call:

1. all customers in own local exchange and EAS points, if any.

(See Ex. 68, MCA Order, pp. 19-20; see also Ex. 68, MCA Order, Attachment 5; see also Ex. 35, SWBT, Unruh Direct, p. 4).

³ The center tier is referred to as MCA-Central, Central tier, Center zone, and Center tier. (See Ex. 35, SWBT, Unruh Direct, p. 3).

In Springfield:

All MCA-Central and MCA-1 customers would be able to call:

1. all MCA-Central and MCA-1 customers; and
2. all MCA-2 subscribers.

MCA-2 subscribers would be able to call:

1. all MCA-Central and MCA-1 customers; and
2. all MCA-2 subscribers.

MCA-2 non-subscribing customers would be able to call:

1. all customers in own local exchange and EAS points, if any.

(See Ex. 68, MCA Order, pp. 19-20; see also Ex. 68, MCA Order, Attachment 5; see also Ex. 35, SWBT, Unruh Direct, pp. 4-5).

Thus, in general, the MCA calling patterns provide for an expanded out-bound local calling cope to: (a) all customers in certain designated areas; and (b) to MCA subscribers in other designated areas. (See Ex. 35, SWBT, Unruh Direct, p. 4). The MCA Plan also provides subscribers with the ability to receive in-bound toll-free calling from certain customers within the MCA. Id. Specifically, the MCA Plan provides an MCA subscriber the ability to receive toll-free calls from other MCA subscribers and from customers in the MCA Center tier, MCA-1 and MCA-2 tiers (MCA Center tier and MCA-1 in Springfield), of the respective metropolitan exchanges. (Id. at p. 5). For example, the MCA Plan provides an MCA-5 subscriber the ability to receive toll-free calls from customers located in the MCA Center tier, MCA-1 and MCA-2 tiers plus other MCA subscribers in MCA-3, MCA-4, and MCA-5. Id.

3. MCA Rate Design

The Commission ordered MCA service to be a mandatory service offering in MCA-Central, MCA-1, and MCA-2 in Kansas City and St. Louis, as well as MCA-Central and MCA-1 in Springfield. (See Ex. 68, MCA Order, p. 21). The Commission determined that in these

exchanges, MCA service would replace basic local service, except for those customers who chose local measured service where that service was available. Id. at 22. The Commission further determined that MCA Service would be an optional service to which a customer could subscribe in MCA-3, MCA-4, and MCA-5 in Kansas City and St. Louis, as well as MCA-2 in Springfield. Id. In Missouri, MCA Service is basic local service for 83% of all MCA subscribers; only 17% of the MCA subscribers are optional MCA subscribers. (See T. 174, Staff, Voight).

The Commission mandated the rates that must be charged for MCA service. (See Ex. 68, MCA Order, p. 26 and Attachment 6). These rates are as follows:

	<u>Residential</u>	<u>Business</u>	
<u>St. Louis and Kansas City</u>			
MCA-Central	\$11.35	\$33.55	Mandatory
MCA-1	\$11.85	\$35.00	Mandatory
MCA-2	\$12.50	\$36.95	Mandatory
MCA-3	\$12.35	\$24.80	Optional Additive
MCA-4	\$21.55	\$46.75	Optional Additive
MCA-5	\$32.50	\$70.70	Optional Additive
<u>Springfield</u>			
MCA-Central	\$10.10	\$25.70	Mandatory
MCA-1	\$11.40	\$28.00	Mandatory
MCA-2	\$11.45	\$21.75	Optional Additive

The Commission prescribed these rates as part of an overall plan to maintain revenue neutrality among the ILECs that it required to provide MCA service. (See Ex. 68, MCA Order, pp. 24-25; see also Ex. 35, SWBT, Unruh Direct, p. 5; see also T. 102 Staff, Voight; see also T. 591, McLeod, Starkey). The rates in the optional tiers were set to reflect the amount of lost toll that the ILECs would experience once the MCA Plan was implemented. (See T. 1131, GTE, Evans).

4. The Commission Adopted The Joint Recommendation Of The Technical Committee For Local Tariffing Of MCA Service

The Commission adopted the Joint Recommendation of the technical committee for local tariffing of MCA service. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 5). SWBT, as well as other ILECs offering MCA service, filed tariffs consistent with the MCA Order. Id. (See also T. 1002-1003, SWBT, Hughes).

B. The Metropolitan Calling Area Plan At Work

1. SWBT's Special Circumstances

The circumstances under which SWBT provides MCA Service are different than the circumstances under which the other ILECs provide MCA Service because SWBT is the only incumbent provider with customers in each geographic area where MCA Service is mandatory. (See Ex. 32, SWBT, Hughes Direct, p. 3). More importantly, no ILEC, other than SWBT, serves customers in the mandatory zones of the MCA, the primary area from which CLECs want toll-free return calling. Additionally, SWBT faces the most competition of any of the ILECs. Id. Finally, SWBT has the most MCA subscribers in the State and, therefore, will be impacted more by any changes that come about as a result of this docket. Id.

2. Level Of Competition Within Missouri And, Specifically, Within The Metropolitan Calling Areas

Staff quotes specific levels of competition within Missouri. (See Ex. 1, Staff, Voight Direct, p. 10; see also Ex. 33, SWBT, Hughes Rebuttal, p. 9). While the outcome of this case is not necessarily dependent on the exact number of access lines served by CLECs, SWBT does not believe that Staff's estimates fairly reflect the level of competition in Missouri. (See Ex. 33, SWBT, Hughes Rebuttal, p. 9; see also T. 1019, SWBT, Hughes). Schedule 7 from the HC version of Staff witness Amonia Moore's testimony, entitled "Total Competitive Access Lines

Facilities Based and Resale (as of December 31, 1999)," indicates that there are approximately 115,00 access lines served by CLECs in Missouri. Several CLECs participating in this case who admittedly serve Missouri customers were not listed by Staff, as the Staff report relies solely on voluntary reporting by CLECs, and many do not provide reports. (T. 132-134, Staff, Voight). Based on SWBT's analysis, SWBT estimates that the CLECs have gained over 225,000 of the local exchange access lines (both resold and facilities-based) solely in SWBT's Missouri service area. Id. at 10. This estimate is nearly double the estimate contained in Staff's testimony. Id.

Further, Schedule 5, attached to the Direct Testimony of Staff witness Amonia Moore, reflects: "Access Lines In Service In The MCAs (ILECs and CLECs)." (See Ex. 4, Staff, Moore). Again, SWBT does not believe that Staff's estimate fairly reflects the level of competition in the MCAs. Specifically, as admitted by Ms. Moore, at least two parties to this case do not appear on the chart. (See T. 251, Staff, Moore). Additionally, during the hearing, one CLEC indicated that the number of access lines that it has is substantially larger than what is represented on Schedule 5. (See T. 723, Birch, Mulvany). Thus, the number of access lines represented on Schedule 5 may be underestimated. Id.

3. SWBT's Treatment Of Customers Who Do Not Subscribe To Metropolitan Calling Area Plan Service

Since the implementation of the MCA Order, SWBT has provided and continues to provide MCA service under the rules set forth above, which SWBT believes the Commission's order dictates. (See Ex. 33, SWBT, Hughes Rebuttal, p. 3). When the Commission ordered the implementation of the MCA Plan, the only companies ordered to provide MCA Service were ILECs. (See Ex. 32, SWBT, Hughes Direct, p. 4). It is clear that the CLECs were neither initially included in the MCA Plan, in that CLEC entry into the local exchange market was

brought about by the passage of the federal Telecommunications Act of 1996, nor are they currently included in the MCA Plan. (See Ex. 35, SWBT, Unruh Direct, p. 6).

Because CLECs are not currently included in the MCA Plan, SWBT generally treats calling to CLEC customers just as it treats calling to its own customers who do not subscribe to SWBT's optional MCA service.⁴ Id. (See also T. 591, McLeod, Starkey; see also T. 762, Gabriel, Cadieux). For example, a SWBT MCA-3 subscriber can call all customers (not just other MCA subscribers) in MCA-3 on a local basis. (See Ex. 35, SWBT, Unruh Direct, p. 6). This includes the ability to call, on a local basis, all CLEC customers located within MCA-3. Id. Similarly, a SWBT MCA-4 subscriber can call, on a local basis, all customers (including CLEC customers) located in MCA-3 and MCA-4. Id. In contrast, a SWBT customer in tier 3 who does not subscribe to SWBT's optional MCA service can only call, on a local basis, other customers within the customer's own exchange (and to other applicable exchanges under an Extended Area Service arrangement). Id. at 6-7.

SWBT's MCA-3, MCA-4, and MCA-5 subscribers can place toll-free calls to all customers, including CLEC customers, within the metropolitan exchanges (principal zone and MCA-1 and MCA-2 for St. Louis and Kansas City; principal zone and MCA-1 for Springfield). Id. at 7. Further, SWBT's metropolitan exchange customers can make toll-free calls to SWBT's MCA-3, MCA-4, and MCA-5 subscribers. Id. Stated another way, as part of SWBT's MCA service purchased by SWBT's MCA-3, MCA-4, and MCA-5 subscribers, these subscribers can receive toll-free return calling from SWBT's metropolitan exchange customers. Id.

⁴Although SWBT generally treats calling to CLEC customers just as it treats calling to its own non-MCA subscribers, there is one exception to this general treatment. (See Ex. 35, SWBT, Unruh Direct, pp. 6 and p. 11). SWBT has reached an agreement with Intermedia Communications to facilitate Intermedia's ability to offer an optional "MCA-like" service. Id. at 11. Under this agreement, which is discussed in Section VIII below, Intermedia is compensating SWBT, through a per minute of use compensation charge, to provide toll-free calling to Intermedia's MCA-like customers. Id.

Whether a CLEC's customers in the metropolitan exchange can make toll-free calls is the serving CLEC's decision. Id. SWBT does not to dictate the calling scope that CLECs provide to their customers who are located within the metropolitan exchanges. Id. For example, assume a customer in Chesterfield (St. Louis MCA-3) subscribes to optional MCA service and a customer located in Ladue (St. Louis MCA-1), is trying to call the SWBT MCA subscriber in Chesterfield. Id. If SWBT provides local service to the customer located in Ladue, then SWBT is able to provide the toll-free return calling capability for the SWBT Ladue customer to locally call SWBT's Chesterfield MCA-3 subscriber. Id. at 8. However, if a CLEC is providing service to the Ladue customer, then SWBT is unable to ensure that the call from the CLEC's Ladue customer to SWBT's MCA-3 subscriber will be local because this call is dependent on the CLEC's calling scope as defined in its tariff. Id.

4. SWBT's Treatment Of Customers Who Do Not Subscribe To Metropolitan Calling Area Plan Service Does Not Violate The Dialing Parity Requirement Of The Federal Telecommunications Act of 1996

AT&T and Gabriel contend that dialing parity rules require calls from SWBT customers to CLEC customers within the MCA to be locally dialed. (See Ex. 11, AT&T, Kohly Direct, p. 18; see also Ex. 23, Gabriel, Cadieux Direct, p. 24; see also Ex. 33, SWBT, Hughes Rebuttal, pp. 20-21).⁵ Those parties cite 47 C.F.R. 51.207. That rule is not applicable. Id. at 21.

⁵It is ironic that Gabriel contends that SWBT is violating the dialing parity rules because Gabriel's Non-Standard Access Line Service allows toll-free calling from the principal zone to MCA subscribers in Tiers 3, 4, and 5. (See T. 749, Gabriel, Cadieux). However, if the called party is not an MCA subscriber, a toll charge would apply. Id. Thus, if Gabriel's contention is correct, which it is not, it would equally be in violation of the dialing parity rule.

Dialing parity is a term that is specifically defined in the federal Telecommunications Act of 1996. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 18). It means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among two (2) or more telecommunications service providers (including such local exchange carrier). 47 U.S.C. Section 153(15). SWBT neither requires any CLEC's customer to use an access code to reach his or her chosen carrier nor does SWBT advocate that any CLEC's customer should have to use an access code to reach his or her chosen local exchange carrier. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 18). Further, to the extent that calls within the MCA are intraLATA toll calls, a SWBT customer can reach: (a) another SWBT customer that does not participate in the MCA Plan; or (b) a CLEC's customer, through simple 1+ dialing. Id. No access codes or other additional digits are required. Id. Thus, there is parity for all toll calls. Id.

Further, there is no violation of local dialing parity, as the number of digits is not dependent on the identity of the calling party's or called party's local service provider. Id. The determination of whether a call is locally dialed depends on whether the called customer is a subscriber to the Commission-mandated MCA service, not on the identity of the customer's local service provider. (See Ex. 33, SWBT, Hughes Rebuttal, p. 21). What is in dispute in this case is inter-company compensation, which are pricing/policy issues, not whether SWBT can and will provide dialing parity. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 18). The undisputed fact is that SWBT does so. Id.

Gabriel concedes that it is the called party that controls how incoming calls are treated by his or her choice of whether to subscribe to MCA service. (See Ex. 24, Gabriel, Cadieux Rebuttal, pp. 10-11). Given this, there is no way SWBT could be in violation of the dialing parity requirements, as the dialing pattern is determined by the called party's subscription to MCA service, not by either the calling party's and/or the called party's choice of carrier. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 19). As discussed later, it is of the utmost importance that the Commission determine that there is only one Commission-approved MCA Plan and that if CLEC are permitted to participate in the MCA Plan, then CLECs must abide by all of the terms and conditions of the MCA Plan, including but not limited to using segregated NXX codes, so that all carriers are able to determine whether the called party is an MCA Plan participant. Id.

5. SWBT Assesses Toll Charges For Calls From Its Customers Located In The Metropolitan Exchanges To Non-MCA Subscribers Located In The Optional MCA Tiers

SWBT assesses toll charges for calls from SWBT's customers in the metropolitan exchanges to non-MCA subscribers located in the optional MCA tiers, unless the calling customer has a service that would make the call a locally dialed call (for example, Expanded Area Service or Local Plus®), because this type of call is not a local call pursuant to the terms of the MCA Plan. (See Ex. 35, SWBT, Unruh Direct, p. 8). This includes calling to ILEC customers who do not subscribe to MCA Service as well as CLEC customers located in the optional MCA tiers because these customers are not MCA subscribers under the Commission's MCA Order. Id. The determining factor of whether a call is going to be a toll call is not based on the identity of the called party; rather, it is based on whether or not the called party is a participant in the MCA Plan. (See T. 591, McLeod, Starkey).

The toll-free return calling component of MCA service is a feature of the optional MCA subscriber's service. Id. at 9. SWBT receives compensation for the toll-free return calling aspect of MCA service from SWBT's optional MCA subscribers. Id. For example, the rate SWBT charges to a SWBT customer for MCA service in MCA-3 compensates SWBT for the toll-free return calling from SWBT's customers in the metropolitan exchange. Id. Referring back to the Chesterfield MCA subscriber and the Ladue customer described above, it is the Chesterfield MCA-3 subscriber who is compensating SWBT for the toll-free call from SWBT's Ladue customer to SWBT's Chesterfield MCA subscriber. Id. Thus, if a SWBT optional MCA subscriber disconnects service with SWBT and migrates to a CLEC, SWBT loses compensation for the toll-free return calling from the metropolitan exchange. Id. Quite simply, the compensation SWBT received for the toll-free return calling was provided by SWBT's optional MCA subscriber who migrated to the CLEC. Id. Since the customer who switched to the CLEC no longer purchases SWBT's service that provides the toll-free return calling from the metropolitan exchange, SWBT begins assessing the appropriate toll charges to its end users in the metropolitan exchange for calls to that non-MCA subscriber who is now served by a CLEC. Id. The same is true when a SWBT customer in the optional MCA tiers either does not subscribe or discontinues optional MCA service but receives basic local service from SWBT. Id. At that point, SWBT begins assessing appropriate toll charges to its end users in the metropolitan exchanges for calls to that SWBT customer who discontinued the optional MCA service. Id. (See also Ex. 32, SWBT, Hughes Direct, pp. 8-9).

Thus, SWBT treats calls from its customers located in the metropolitan exchanges to CLEC customers located in the optional MCA tiers just as SWBT treats calls from its customers located in the metropolitan exchanges to SWBT customers in the optional MCA tiers that do not

subscribe to MCA service; toll charges apply to these calls because the called party is not an MCA subscriber and no one has paid SWBT to eliminate the toll charge to its customer. (See Ex. 32, SWBT, Hughes Direct, p. 6). Toll charges apply because the called customers have not paid SWBT to provide toll-free service. Id. at 8. This distinction is important because when the MCA Plan was established and revenue neutrality calculations were made, the revenue associated with out-going calling from the metropolitan exchange to the optional tiers was offset by the MCA additive paid by the optional MCA subscribers. Id. at 9. No additive was charged to customers in the metropolitan exchanges, which were designated as mandatory MCA areas. Id. When a competitor takes one of SWBT's optional MCA subscribers, SWBT loses the revenue which compensated SWBT for toll-free calling from its customers in the metropolitan exchange to SWBT's optional MCA subscribers. Id. This loss goes far beyond being classified as merely a "competitive loss" because of the design of the existing MCA. Id. It is for this reason, as will be discussed below, that SWBT believes that compensation for the return-calling feature is appropriate if CLECs are permitted to participate in this MCA Plan. Id.

6. The CLECs Are Attempting To Control SWBT's Retail Offerings

SWBT is very concerned that CLECs are seeking to dictate when SWBT charges toll to its customers without paying any compensation to SWBT. (See Ex. 32, SWBT, Hughes Direct, p. 7). Specifically, the CLECs seek to control the manner in which SWBT provides its retail offerings to its own customers. Id. SWBT believes this is improper and not authorized under the federal Telecommunications Act of 1996. Id.

As discussed above, the MCA Plan includes two aspects. (See Ex. 32, SWBT, Hughes Direct, p. 11). The first is the ability of the MCA subscriber to place outgoing calls to other MCA subscribers and to certain other customers. Id. The second aspect is the ability of the

MCA subscriber to receive calls with no toll charge being assess to the calling party. Id. With respect to the out-going calling of their customers, CLECs are free to establish whatever calling plans they desire. Id. However, return calling involves the retail calling plans of another carrier and is not subject to negotiation under the Act. Id. Moreover, it is not appropriate for one company, particularly one in competition with another, to seek to control the retail offerings of another company. Id. In effect, this would allow a CLEC to establish a vast local calling area and then force other companies to allow their customers to place calls to the CLEC's customers on a toll-free basis. Id.

7. Clarification of Inaccurate Statements Concerning MCA Calling Scopes

Before turning to the issues that are presented to the Commission in this case, SWBT will clarify some of the inaccurate statements concerning MCA calling scopes. SWBT believes this will aid the Commission in understanding the complexities of the MCA Plan.

a. Inaccuracies Concerning MCA Calling Scopes Which Are Set Forth In AT&T's Testimony

AT&T asserts that if an NXX code is not considered an "MCA Code", then the NXX code is considered to be outside the MCA subscriber's local calling scope. (See Ex. 11, AT&T, Kohly Direct, p. 6, lines 19-21; see also Ex. 36, SWBT, Unruh Rebuttal, p. 2). This is not entirely accurate because, for example, all customers (i.e. MCA subscribers and non-MCA subscribers) within MCA-3 are within the local calling scope of an optional MCA subscriber in Zone 3. (See Ex. 36, SWBT, Unruh, Rebuttal, p. 2). This means that customers served with non-MCA NXX codes can be within the local calling scope of optional MCA subscribers. Id. This includes calls not only to SWBT customers who do not subscribe to MCA service but to CLECs customers as well. Id.

AT&T also suggests that SWBT's MCA subscribers in the optional tiers are required to dial 1+ and pay toll rates to reach AT&T's customers in the optional tiers when AT&T serves those customers with its own NXX codes. (See Ex. 11, AT&T, Kohly Direct, p. 15; see also Ex. 36, SWBT, Unruh Rebuttal, p. 3). This, similarly, is not entirely accurate. (See Ex. 36, SWBT, Unruh Rebuttal, p. 3). Where the MCA calling scope for optional MCA subscribers includes the ability to call all customers on a local basis, then SWBT's optional MCA subscribers are permitted to call AT&T's customers on a local basis. Id. For example, all SWBT optional MCA subscribers in MCA-3, MCA-4, and MCA-5 can call AT&T's customers located in MCA-3 on a local basis. Id.

b. Inaccuracies Concerning MCA Calling Scopes Which Are Set Forth In Birch's Testimony

Birch claims that SWBT does not permit its customers to call CLEC customers within the optional MCA area without assessing toll charges. (See Ex. 15, Birch, Mulvany Rebuttal, p. 3; see also Ex. 38, SWBT, Unruh Surrebuttal, p. 7). This is not entirely accurate. (See Ex. 38, SWBT, Unruh Surrebuttal, p. 7). SWBT does permit toll-free calling from SWBT customers to CLEC customers where the CLEC customer is within the SWBT customer's local calling scope. Id. For example, SWBT MCA-5 subscribers can place toll-free calls to all CLEC customers located in the Principal zone, MCA-1, MCA-2, MCA-3, and MCA-4. Id.

Finally, Birch claims that SWBT does not allow CLEC customers within the optional MCA area to place toll-free calls within the MCA area. (See Ex. 15, Birch, Mulvany Rebuttal, pp. 3, 4, and 6). This claim is preposterous! Facility-based CLECs create their own local calling scopes pursuant to their approved tariffs. (See Ex. 38, SWBT, Unruh Surrebuttal, p. 8). SWBT neither can nor is preventing a facility-based CLEC from permitting its customers to make toll-free calls within the MCA. Id.

c. Inaccuracies Concerning MCA Calling Scopes Which Are Set Forth In McLeod's Testimony

McLeod contends that SWBT's MCA-5 subscriber incurs intraLATA charges for calls made to McLeod's customers in MCA-3. (See Ex. 17, McLeod, Wissenberg Direct, p. 7; see also Ex. 36, SWBT, Unruh Rebuttal, p. 3). This contention is inaccurate. (See Ex. 36, SWBT, Unruh Rebuttal, p. 3). It is a local call for SWBT's MCA-5 subscribers to call McLeod's customers located in MCA-3. Id.

McLeod also contends that ILEC customers in optional MCA areas cannot call CLEC customers in optional MCA areas without incurring a toll charge and without having to dial 1 +10 digits. (See Ex. 20, McLeod, Starkey Direct, p. 5; see also Ex. 36, SWBT, Unruh Rebuttal, p. 3). This is not entirely accurate. (See Ex. 36, SWBT, Unruh Rebuttal, p. 3). For example, SWBT's MCA-5 subscribers are able to call all CLEC customers located in the Principal Zone, MCA-1, MCA-2, MCA-3, and MCA-4, without incurring a toll charge and without dialing 1+ 10 digits. Id.

Additionally, McLeod contends that a call from a SWBT MCA-3 subscriber to another SWBT customer in MCA-5 will be treated as a local call by SWBT. (See Ex. 20, McLeod, Starkey Direct, p. 5; see also Ex. 36, SWBT, Unruh Rebuttal, pp. 3-4). This, too, is not entirely accurate. (See Ex. 36, SWBT, Unruh Rebuttal, p. 4). Pursuant to the MCA calling patterns ordered by the Commission, which are set forth in Section I(A)(2) above, a call from the SWBT MCA-3 subscriber would be a local call only if the customer in MCA-5 is also an MCA subscriber. Id. If the customer in MCA-5 is not an MCA subscriber, the call from SWBT's MCA-3 subscriber will be a toll call and the subscriber will be required to dial 1 +10 digits to reach the SWBT customer in tier 5. Id.

Next, McLeod contends that SWBT defines a local call differently depending on the carrier serving the customer to whom the call is placed. (See ex. 20, McLeod, Starkey Direct, p. 6). This is completely false. SWBT defines a local call pursuant to the MCA calling patterns that were defined in the Commission's MCA Order. (See Ex. 36, SWBT, Unruh Rebuttal, p. 4). Where the calling pattern defines the local calling scope to include all customers within a specific area, SWBT provides local calling to all customers, including CLEC customers within the specific area. Id. For example, a SWBT optional MCA-3 subscriber is permitted to call, on a local basis, all "customers" within MCA-3. Id. SWBT includes CLEC customers within this local calling scope. Id. It is the return calling aspect of MCA service that is dependent on the called party's status as an MCA subscriber. Id.

McLeod also contends that SWBT does not consider calls made by CLEC MCA subscribers to SWBT MCA subscribers as local calls. (See Ex. 16, McLeod, Oberschelp Direct, p. 5; see also Ex. 36, SWBT, Unruh Rebuttal, p. 5). This is not correct. (See, Ex. 36, SWBT, Unruh Rebuttal, p. 5). Facility-based CLECs define their own local calling scopes. Id. SWBT does not have the ability to define the calling scopes of facility-based CLECs. Id. The CLEC determines whether calls from CLEC customers to SWBT customers are local calls based on the CLEC's tariffs. Id. Thus, McLeod's contention that a call from a McLeod customer in MCA-3 to a SWBT MCA subscriber in MCA-5 is treated as an intraLATA toll call by SWBT is totally erroneous. (See Ex. 17, McLeod, Wissenberg Direct, p. 6; see also Ex. 36, SWBT, Unruh Rebuttal, p. 5). To the contrary, it is McLeod that determines whether that call from its own customer is treated as a local or toll call. (See Ex. 36, SWBT, Unruh Rebuttal, p. 5). SWBT is unable to treat the call as an intraLATA toll call because it does not control McLeod's calling

scopes. Id. SWBT, quite simply, has no control over the facility-based CLEC's calling scopes. Id. at 5-6.

Finally, McLeod suggests that SWBT is somehow screening ported numbers for the purpose of determining whether a call to a ported number should be local or toll. (See Ex. 17, McLeod, Wissenberg Direct, p. 5; see also Ex. 36, SWBT, Unruh Rebuttal, p. 6). This suggestion is factually inaccurate. (See Ex. 36, SWBT, Unruh Rebuttal, p. 6). SWBT does not screen ported numbers for the purpose of determining whether a call to a ported number should be local or toll. Id. The ported number retains the same inbound calling scope that it had prior to being ported. Id.

II. Issue 1: Are CLECs Currently Included In The MCA Plan, And, If Not, Should CLECs Be Permitted/Required To Participate In The MCA Plan?

A. It Is Clear That CLECs Were Neither Initially Included In The MCA Plan Nor Are They Currently Included In The MCA Plan

As previously discussed, when the Commission ordered the implementation of the MCA Plan in the MCA Order, the only companies ordered to provide MCA service were ILECs. (See Ex. 32, SWBT, Hughes Direct, p. 4). The ILECs that were ordered to provide MCA service provided service in their own territories and were not in competition for basic local service with each other. Id. Today, CLECs are competing, primarily within the serving areas of SWBT and other large incumbent local companies, for the same customers. Id. This creates a situation where there are competing and non-competing companies within the geography of the MCA, a situation that was not envisioned when the current plan was developed. Id. If the current environment had existed when the MCA was created in 1992, the parties may well have taken different positions and the provisions of MCA service and the interaction among the carriers as ordered by the Commission may very well have looked different. Id.

Although it is clear that CLECs were neither initially included in the MCA Plan, in that CLEC entry into the local exchange market was brought about by the passage of the federal Telecommunications Act of 1996, nor are they currently included in the MCA Plan, this Commission has the task of determining whether to permit CLECs to participate in the MCA Plan. (See Ex. 35, SWBT, Unruh Direct, p. 6; see also Ex. 34, Hughes Surrebuttal, p. 2). SWBT is not opposed to CLEC entry into the MCA Plan. (See Ex. 33, SWBT, Hughes Rebuttal, p. 3). However, if CLECs are to be permitted into the MCA Plan, the Commission must: (a) examine how the MCA Plan is to operate in a competitive environment; and (b) determine what changes must be made to accomplish CLEC entry in a manner that is fair to both the MCA customers and the companies providing the service. (See Ex. 32, SWBT, Hughes Direct, pp. 2 and 4; see also Ex. 33, SWBT, Hughes Rebuttal, pp. 2-3; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 2; see also Ex. 38, Unruh Surrebuttal, p. 8). In making that determination, the Commission should not permit CLECs to obtain a competitive advantage. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 2).

B. The Claims of Certain CLECs, That They Are Participants In The MCA Plan, Are Illogical, Unsubstantiated And Ludicrous

Some CLECs claim that the original MCA Plan contemplated CLEC participation. (See Ex. 33, SWBT, Hughes Rebuttal, p. 8). Claims that the Commission intended to include CLECs in the MCA Plan are illogical, unsubstantiated and ludicrous given the fact that: (1) resellers were initially excluded from the MCA Plan; (2) payphone providers both initially and today are excluded from the MCA Plan; and (3) CLECs did not exist. Id. Although these parties claim to be participants, ironically they claim that their participation under the terms and conditions mandated in the Commission's MCA Order is optional. Id.

Specifically, McLeod claims the Commission envisioned both ILEC and CLEC participation in its MCA Order. (See Ex. 17, McLeod, Wissenberg Direct, p. 8; see also Ex. 33, SWBT, Hughes Rebuttal, p. 8). McLeod admits that when the MCA Plan was adopted, it was not structured to accommodate multiple carriers in the same exchanges. (See Ex. 20, McLeod, Starkey Direct, pp. 7 and 15; see also Ex. 33, SWBT, Hughes Rebuttal, p. 8). Nevertheless, McLeod claims that the Commission should “clarify” that its MCA Order applies to both ILECs and CLECs. (See Ex. 20, McLeod, Starkey Direct, pp. 7 and 15; see also Ex. 33, SWBT, Hughes Rebuttal, p. 8).

Despite McLeod’s desire to participate in the Commission-mandated Plan, McLeod does not believe that the terms and conditions of the Commission’s MCA Order apply to it. (See Ex. 33, SWBT, Hughes Rebuttal, p. 8). For example, McLeod claims that calling areas offered by CLECs are “at their discretion” and CLECs must have “flexibility to charge prices different from those assessed by the ILECs.” (See Ex. 20, McLeod, Starkey Direct, pp. 14-15; see also Ex. 33, SWBT, Hughes Rebuttal, pp. 8-9).

Similarly, AT&T claims that all LECs operating within the MCA were required to participate when the plan was developed. (See Ex. 11, AT&T, Kohly Direct, p. 7; see also Ex. 33, SWBT, Hughes Rebuttal, p. 9). AT&T states that: “it is optional for CLECs to offer the service” and that the bill and keep inter-company compensation arrangement does not apply when an interconnection agreement is in place. (See Ex. 11, AT&T, Kohly Direct, pp. 28-29;

see also Ex. 33, SWBT, Hughes Rebuttal, p. 9). Further, AT&T and McLeod want the ability to offer different rates and calling scopes. (See Ex. 12, AT&T, Kohly Rebuttal, p. 13; see also Ex. 21, McLeod, Starkey Rebuttal; see also Ex. 34, SWBT Hughes Surrebuttal, p. 4). These examples clearly demonstrate that the CLECs are demanding the benefits of the MCA Plan (i.e. forcing SWBT to provide toll-free-return calling to SWBT's own customers) while refusing to accept any provisions that the CLECs consider less advantageous (e.g. calling scope requirements, bill and keep inter-company compensation, the use of dedicated NXX codes, and Commission-mandated pricing). (See Ex. 33, SWBT, Hughes Rebuttal, pp. 4 and 9. Id.

BroadSpan and Gabriel contend that the Commission has altered its mandated MCA Plan. (See Ex. 28, BroadSpan, Phillips Rebuttal, p. 3; see also Ex. 24, Gabriel, Cadieux Rebuttal, p. 7; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 3). The Commission, quite simply, has neither determined that CLECs should be treated as MCA Plan participants nor that CLECs can choose to alter the MCA Plan as each sees fit. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 3). SWBT is not aware of any certification proceeding in which MCA Plan participation was even discussed. Id. There is certainly nothing in any certification order that gives any CLEC the right to modify portions of the MCA Plan at the CLEC's option. Id.

Many of the tariffs which CLECs now claim served to modify the MCA Plan never even mention the MCA Plan. (T. 554, Birch, Mellon; T. 742, Gabriel, Cadieux) These CLECs apparently believe that both the Commission and all ILECs are deemed to have understood the

CLECs unstated intent to participate and modify the MCA Plan.⁶ Further, even where CLEC tariffs purported to offer MCA-like service, approval did not modify the MCA Plan. *Id.* The Commission's approval of a tariff offering an MCA-type service does not equate to a radical revision of the terms of the MCA Plan or of the ILECs' rights under that Plan. *Id.* Until the commencement of this proceeding, no hearing was conducted or notice given to the public or to the ILECs that the Commission was examining whether to change the terms and conditions of the MCA Plan. *Id.* Further, these approvals neither altered the existing MCA Plan nor required ILECs to modify their calling scopes. *Id.*

III. Issue 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 Scope; (b) Bill And Keep Inter-Company Compensation; (c) Use Of Segregated NXXs For MCA Service; And (d) Price?

If CLECs are either required or permitted to participate in the MCA Plan, they should be required to follow all of the parameters of the MCA Plan including but not limited to: (a) geographic scope; (b) bill and keep intercompany compensation; (c) use of segregated NXXs for MCA service; and (d) price. (See Ex. 32, SWBT, Hughes Direct pp. 11-12; see also Ex. 33, SWBT, Hughes Rebuttal, p. 4). These parameters are all integral to the operation of the MCA Plan. (See Ex. 32, SWBT, Hughes Direct, p. 12). If permitted to participate and to vary those

⁶ For example, in applications for certificates of service authority, neither TCG nor AT&T specifically requested permission or authority to provide MCA Service. (See T. 413, AT&T Kohly; see also Ex. 49). When the Commission issued its orders certifying AT&T and TCG as basic local service providers, the Commission did not reference MCA Service at all. (See T. 416, AT&T, Kohly). TCG's tariff, that was approved on December 23, 1999, does not discuss the obligation of SWBT or any other ILEC to provide toll-free return calling to TCG's optional MCA customers. (See T. 419, AT&T, Kohly). Finally, TCG's tariff does not state that bill and keep inter-company compensation will be used with regard to some ILECs, but reciprocal compensation will be used with regard to other ILECs. *Id.* Similarly, Gabriel admits that in applying for a certificate of service authority to provide basic local service, it did not list MCA as a service it was planning on providing. (See T. 730, Gabriel, Cadieux). When the Commission issued its certification order, it did not mention MCA service. (See T. 730, Gabriel, Cadieux; see also Ex. 55). When Gabriel filed its tariff, there is nothing in their tariff that denominated its service as MCA Service. (See T. 742-744, Gabriel, Cadieux). Additionally, although Intermedia claims that its initial tariff provided MCA Service, Intermedia's tariff did not comply with the geographic calling scope of the MCA Plan in that Intermedia assessed toll charges to all customers (even if they were MCA subscribers) in Tier 5. (See T. 554, Intermedia, Mellon). Further, Intermedia's initial tariff did not even refer to the MCA Plan. *Id.* Nextlink's tariff not only does not mention MCA Service, it omits numerous exchanges that are within the Commission's definition of the MCAs as set forth in the MCA Plan. (See T. 856, Nextlink, Pomponio). Further, Nextlink does not offer "MCA Service" at MCA-prescribed rates. (See T. 860, Nextlink, Pomponio).

internal components of the MCA Plan, the CLECs would obtain a competitive or financial advantage at ILECs' expense. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 4). SWBT will discuss why CLECs should be required to follow each of the parameters of the MCA Plan, below.

However, before doing so, SWBT notes that CLECs are quick to claim that SWBT is acting in an anti-competitive fashion. (See Ex. 34, SWBT Hughes Surrebuttal, p. 2). SWBT denies this and emphatically states that it is following all of the terms and conditions of the Commission's MCA Order. (See Ex. 33, SWBT, Hughes Rebuttal, p. 2). The CLECs' claims of anti-competitive behavior on the part of the CLECs are nothing more than a red herring to divert this Commission's attention away from the fact that it is the CLECs who want to obtain financial and competitive advantages. (See Ex. 34, SWBT, Hughes Surrebuttal, pp. 2 and 4). Specifically, the CLECs want to participate in the MCA Plan; however, the CLECs do not want to comply with any of the parameters of the MCA Plan. Id. As will be discussed below, the CLECs want to establish calling scopes broader than the MCA Plan and: (1) require SWBT and other ILECs to provide toll-free calling to the new calling scope; and (2) avoid payment of access charges on calls originating in the expanded calling scope. Id. Additionally, the CLECs either seek to avoid the Commission's mandate of bill and keep inter-company compensation, or worse, to elect either reciprocal compensation or bill and keep inter-company compensation based on whichever is more advantageous. Id. Further, CLECs want to avoid the use of dedicated NXX codes so that SWBT and the other ILECs cannot determine which calls are to MCA subscribers and which are not. Id. Finally, the CLECs want pricing flexibility or worse, pricing flexibility for themselves and Commission-mandated pricing for the ILECs. These

demands are unreasonable, as they would give CLECs a financial and competitive advantage.

Id.

If the Commission wants to permit CLECs to participate in the MCA Plan, it must be on equal terms. (See Ex. 32, Hughes Direct, p. 12). Thus, if one provider is confined by the mandates of the MCA Plan, then all providers should be subject to the same requirements. Id.

A. If CLECs Are Permitted To Participate In the MCA Plan And Offer “MCA Service” They Should Be Required To Follow The Geographic Calling Scope of The MCA Plan Which Is Set Forth In The Commission’s MCA Order

The Commission defined the calling scopes for the 3 MCAs in its MCA Order. (See Ex. 68, MCA Order, Attachment 4; see also Attachment 1 to SWBT’s Brief). This was previously addressed in Section I(A)(1) above. Quite simply, the calling scopes for “MCA Service” as set forth in the MCA Order are, by definition, the calling scopes for MCA Service. Thus, if CLECs are permitted to participate in the MCA Plan and require SWBT to provide toll-free return calling from SWBT’s own customers, then the CLECs should be required to follow the geographic calling scopes of the MCA Plan as set forth in the Commission’s MCA Order. (See Ex. 33, SWBT, Hughes Rebuttal, p. 12).

While SWBT believes that if CLECs offer “MCA Service”, they should be required to offer the geographic calling scopes set forth in the MCA Order, SWBT by no means is suggesting that either ILECs or CLECs be limited to providing only MCA service. (See Ex. 32, SWBT, Hughes Direct, p. 12; see also Ex. 33, SWBT, Hughes Rebuttal, p. 12; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 4; see also T. 970, SWBT, Hughes). SWBT adamantly supports the principle that each provider should have the ability to offer a calling plan that meets the needs of its customers. Id. The CLECs simply need to: (a) call any plan that has different

geographic calling scope something other than "MCA Service"⁷; and (b) pay access charges as appropriate; and (c) not seek toll-free calling from SWBT or other ILECs on such calls. SWBT has done just that by providing its local service offering, Local Plus®, which, by definition, has a geographic calling scope which is different than MCA Service.

Staff supports SWBT's position regarding expanded calling scopes. In questions from Vice-Chair Drainer, Staff witness Bill Voight testified as follows:

Q. But not as MCA, just – I guess that's what I want to be clear on. You weren't necessarily saying that it's the MCA calling scope being expanded, just they could have different calling scope plans.

A. Yes. No. We're not advocating moving the boundaries of MCA as we know it, moving those out or anything like that.

Q. Or forcing a company to have say, bill and keep from Columbia, Missouri to downtown St. Louis?

A. No. We're not advocating that. The concern, I think, that was expressed to me by counsel was if the competitors began expanding their calling scopes and calling it MCA, there may be some tendency – not saying that anyone would do this, but there may be some tendency to try to pass that off as MCA traffic wherever in actuality it should be switched access traffic. That was kind of a red flag, I think with some of the incumbents.

Q. An you agree with that?

A. Yeah. That could happen. It would be unethical to do that and undoubtedly violation of no telling what all, but that sort of thing could happen.

* * * * *

Q. But can they extend the boundaries out and use kind of the MCA trademark and demand the same type of compensation?

A. No. No. They can't do that.

(See T. 195-197, Staff, Voight).

⁷ AT&T has indicated that it would not oppose naming a calling plan that has a different geographic scope than the MCA Plan something other than MCA Service. (See T. 488, 546, AT&T, Kohly).

Although SWBT wants all LECs, ILECs, and CLECs, to be participants in the MCA Plan on equal terms, the CLECs do not want to comply with the geographic calling scope that is mandated in the MCA Order. For example, Gabriel suggests that CLECs be allowed to establish their own MCA calling scopes or be permitted: "to offer a local calling scope in an MCA that is at least as large as that offered by the incumbent LEC." (See Ex. 23, Gabriel, Cadieux Direct, p. 39). SWBT is concerned with this position if Gabriel is suggesting that CLECs should be allowed to create an "MCA" calling scope that is outside of the traditional MCA calling scope. (See Ex. 33, SWBT, Hughes Rebuttal, p. 15). If this is allowed, the CLEC is not participating in the MCA and the compensation for such calls should not be the same as those calls that originate and terminate in the current MCA Plan. Id. Further, the CLEC cannot unilaterally insert itself into the retail plan offered by SWBT by attempting to dictate the calling scope provided by SWBT to its customers. Id. CLECs should not be permitted to arbitrarily create two-way plans that force SWBT (and other LECs) to change calling scopes to honor the CLEC's two-way plan. Id. For example, it is unreasonable for a CLEC to create a LATA-wide-two-way calling plan that required SWBT to provide toll-free return calling on a LATA-wide basis for calls from all SWBT customers to the CLEC's customers in the LATA. Id.

Further, although AT&T agrees that SWBT should not be required to establish calling scopes for its customers based on the desires of AT&T, this does not appear to be consistent with AT&T's position in this case. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 6). AT&T stated that SWBT should treat all calls from its customers as MCA or local calls to AT&T's customers. Id. (See also Letter from AT&T to SWBT dated January 17, 2000, which is attached to Ex. 34, SWBT, Hughes Surrebuttal). This strongly suggests that AT&T is attempting to define the calling scopes offered by SWBT to its customers in the MCA Plan. (See Ex. 34, SWBT, Hughes

Surrebuttal, p. 6). While AT&T wishes to be free to establish its own outbound calling scopes, it actually seeks to control SWBT's outbound calling scopes. Id. AT&T could gain an advantage if it provided an expanded calling scope beyond the MCA boundaries. Id. SWBT would not know the called party's location and would apparently be required to provide toll-free return calling for calls beyond the MCA boundaries. Id. AT&T might also seek to avoid access on outbound calls originated by its customers from beyond the MCA boundary to customers within the MCA. Id. These financial and competitive advantages should not be permitted.

Finally, SWBT notes that certain CLECs claim that SWBT is attempting to control their outbound calling scopes. (See Ex. 14, Intermedia, Mellon Rebuttal, p. 9; see also Ex. 15, Birch, Mulvany Rebuttal, p. 2; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 7). Intermedia claims that: "[e]mployees of our customers could no longer call home" without incurring a toll charge. (See Ex. 14, Intermedia, Mellon Rebuttal, p. 9; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 7). If there is a toll charge associated with a call from Intermedia's customer, that is strictly Intermedia's choice. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 7). Similarly, Birch claims that: "SWBT does not allow the same CLEC customer within the optional MCA to place a call . . . without incurring long distance charges." (See Ex. 15, Birch, Mulvany Rebuttal, p. 3; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 7). Again, if the CLEC's customer incurs a toll charge, it is the CLEC, not SWBT that imposes that charge. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 7). SWBT does not have the ability to control the outbound calling scopes offered by a CLEC to its end user. Id. Any claim to the contrary is misinformed and erroneous. Id.

Thus, it is SWBT's position that if CLECs are permitted to participate in the MCA Plan, they should be required to follow the geographic calling scope of the MCA Plan which is set

forth in the Commission's MCA Order. A uniform geographic calling scope would ensure that AT&T, Gabriel, and other CLECs do not obtain a financial and/or competitive advantage.

During the hearing, AT&T admitted that if it defines an outbound calling scope that is larger than the Commission-approved footprint of MCA Service, it should not be permitted to have its customers place calls from that expanded area into the MCA and refuse to pay access charges on the basis that those are MCA calls. (See T. 422, AT&T, Kohly). Further, AT&T admitted that if it expands its outbound calling scope beyond the footprint of the Commission-approved MCA Plan, SWBT and the other ILECs should not be required to provide toll-free return calling to customers in that area. (See T. 422, 466, 470, 520, 528, AT&T, Kohly). Sprint similarly also conceded that if the outbound calling scope is beyond the footprint of the Commission-approved MCA Plan, access charges apply. (See T. 896, Sprint, Cowdry). As previously stated, if the Commission determines that CLECs should be permitted to participate in the MCA Plan, SWBT believes the Commission not only should require both of these conditions, but the Commission should also require the CLECs to call any plan that has different geographic calling scope something other than "MCA Service."

B. If CLECs Are Permitted To Participate In The MCA Plan, They Should Be Required To Follow The Bill And Keep Inter-Company Compensation Mandate Which Is Set Forth In The Commission's MCA Order

One of the terms and conditions of the MCA Plan is that inter-company compensation is on a bill and keep basis, meaning that neither carrier reimburses the other. (See Ex. 32, SWBT, Hughes Direct, p. 13). Bill and keep inter-company compensation is an integral part of the MCA Plan and was a feature designed to maintain revenue neutrality. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 9). If the Commission allows CLECs to participate in the MCA Plan, they must accept this integral term. Id.

Although SWBT will discuss bill and keep inter-company compensation in Section VII below, SWBT again notes that, with regard to bill and keep inter-company compensation, the CLECs want to obtain a competitive advantage. For example, Gabriel contends that bill and keep should not apply to ILECs and CLECs competing in the same territory. (See Ex. 24, Gabriel, Cadieux Rebuttal, pp. 38-38; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 10). It is ironic that Gabriel claims that the MCA Plan was automatically modified by the federal Telecommunications Act of 1996 and by certification to include CLECs, but that bill and keep inter-company compensation does not apply within the same territory because the MCA Plan did not contemplate competition between ILECs and CLECs. Id. Gabriel cannot have it both ways. Id. at 10-11. If CLECs were automatically included in the MCA Plan (a position SWBT does not accept), then all of the Commission-mandated terms and conditions of the MCA Plan apply. Id. at 11. Certainly, on a prospective basis, if CLECs are permitted into the MCA Plan, the bill and keep provision should apply. Id.

In addition to bill and keep inter-company compensation, it is SWBT's position that if the Commission determines that CLECs are permitted to participate in the MCA Plan, a transiting company, whoever that may be, is entitled to be compensated for transiting traffic that originates from one party, transits the transiting company's facilities, and terminates to a third-party. (See T. 931, 951, and 952-954, SWBT, Hughes). The reason for this position was explained by Tom Hughes during the hearing of this matter:

If you want to talk about bill and keep, one of the parts of bill and keep is that you're billing someone in order to keep it. If we're solely transiting, we're not billing anyone. So there is nothing to keep.

(See T. 953, SWBT, Hughes). The addition of transiting compensation is necessitated if the Commission determines that CLECs should be allowed to participate in the MCA Plan because

the amount of transiting traffic will increase and this was not, nor could have been, taken into account during the implementation of the MCA Plan. (See T. 993, SWBT, Hughes).

Thus, if CLECs are permitted to participate in the MCA Plan, they should be required to follow the bill and keep inter-company compensation mandate which is set forth in the Commission's MCA Order. Bill and keep inter-company compensation would ensure that neither ILECs nor CLECs obtain a financial and/or competitive advantage.

C. If CLECs Are Permitted To Participate In The MCA Plan, They Should Be Required To Follow The Dedicated NXX Code Mandate Which Is Set Forth In The Commission's MCA Order

Since part of the MCA local calling scope permits local calls to other MCA subscribers, the MCA subscribers must be identifiable so that locally dialed calls to these subscribers can be permitted. (See Ex. 35, SWBT, Unruh Direct, p. 12). The industry uses dedicated MCA NXXs to permits these calls to be dialed on a local basis. Id. If CLECs are permitted to participate in the MCA Plan, they should be required to segregate NPA-NXX codes so that the other providers will know how to determine whether the called party is an MCA Plan participant. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 7).

Although SWBT supports equal terms for all participants in the MCA Plan, the CLECs do not want to comply with the dedicated MCA NXX code mandate which is set forth in the Commission's MCA Order. For example, AT&T suggest that the use of dedicated MCA NXX codes is not necessary. (See Ex. 12, AT&T, Kohly Rebuttal, p. 16; see also Ex. 34, Hughes Surrebuttal, p. 7). AT&T (or any other CLEC) would obtain a competitive advantage if it did not use segregated NXXs. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 8). SWBT would not know whether the call was within the MCA calling scope or an expanded calling scope that AT&T decided to offer. Id. at 6. Even if AT&T were following the MCA calling scope, SWBT and

other providers would not know whether the called customer was an MCA Plan participant. Id. at pp. 6 and 8. AT&T could claim that all of its subscribers were MCA Plan participants, forcing all calls to be treated as local MCA calls. Id. at 8. It is the use of segregated NXXs that enables the toll-free, return calling aspect of MCA service to be provided. Id. If all of a CLEC's customers were to be treated as if they were MCA subscribers, whether they were actually MCA subscribers or not, this would make the CLEC's service unfairly superior to SWBT's MCA service because it would be treating the CLEC's non-MCA subscribers better than SWBT's non-MCA subscribers. Id.

Thus, if CLECs are permitted to participate in the MCA Plan, they should be required to follow the dedicated MCA NXX code mandate which is set forth in the Commission's MCA Order. The use of dedicated MCA NXX codes would ensure that neither ILECs nor CLECs would obtain a financial and/or competitive advantage.

D. If CLECs Are Permitted To Participate In The MCA Plan, They Should Be Required To Follow The Rates Which Are Set Forth In The Commission's MCA Order

If CLECs are permitted to participate in the MCA Plan, they should be subject to the same pricing requirements as are applicable to ILECs. (See Ex. 32, SWBT, Hughes Direct, p. 12). One way to accomplish this would be to have all LECs, ILECs and CLECs, charge the same for MCA Service. (See T. 100, Staff, Voight). Another way to accomplish this would be to give all LECs equal pricing flexibility by declaring MCA service to be a competitive service under Section 392.361, RSMo. (See T. 110-112, Staff, Voight). If the Commission later determined that competitive classification did not work out as anticipated under Section 392.361(7), the Commission has the authority to go back at a later date and re-impose regulation. (See T. 112,

Staff, Voight). When a service is declared competitive under this statute, then price can fluctuate as each company deems appropriate in response to market conditions. Id.

Although SWBT supports equal terms for all participants in the MCA Plan, some of the CLECs do not want to offer MCA Service at the rates set forth in the Commission's MCA Order. (See Ex. 11, AT&T Kohly Direct, p. 30; see also Ex. 28, BroadSpan, Phillips Rebuttal, p. 5; see also Ex. 23, Gabriel, Cadieux Direct, p. 35). Even worse, at least one CLEC wants pricing flexibility for CLECs and mandated pricing for ILECs. (See Birch's Position Statement, Issue 4). Vice-Chair Drainer hit the nail on the head when she indicated that pricing flexibility could lead to predatory pricing because large CLECs could offer MCA service at no charge. (See T. 515-516). Thus, CLECs' demands for pricing flexibility are unreasonable, as they would give CLECs a financial or competitive advantage.

If CLECs are permitted to participate in the MCA Plan, they should be required to offer MCA Service at the rates which are set forth in the Commission's MCA Order. Any pricing flexibility under the MCA Plan should apply equally to all participants. Uniform prices for MCA Service would ensure that neither ILECs nor CLECs would obtain a financial and/or competitive advantage.⁸

IV. Issue 3: Should There Be Any Restrictions On The MCA Plan (For Example, Resale, Payphones, Wireless, Internet Access, Etc.)?

Yes. The Commission previously determined that Interexchange Carriers ("IXCs") are not permitted to resell MCA service because if IXCs were allowed to do so, IXCs could avoid having to pay tariffed access charges. (See Ex. 68, MCA Order, p. 48). (See also Ex. 35,

⁸ SWBT notes that one problem with allowing CLECs to have pricing flexibility is that CLECs may price MCA Service at \$0. (See T. 531, AT&T, Kohly). Although CLECs believe that it is appropriate that they be allowed to offer MCA Service at no charge, CLECs are not willing to let ILECs and/or other CLECs resell that zero-priced MCA Service. (See T. 531-532, AT&T Kohly).

SWBT, Unruh Direct, p. 6). The Commission also previously determined that the resale of MCA service by CLECs is appropriate so long as each CLEC and its end-user customers abide by all of the same terms and conditions as the ILECs and their end-user customers. Id. Report and Order, In the Matter of the Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement under the Telecommunications Act of 1996 with Communications Cable-Laying Company, d/b/a Dial US, Case No. TO-96-440, September 6, 1996, p. 6. SWBT supports these decisions.

Finally, it is SWBT's position that although: (1) customers, who subscribe to MCA service, should be allowed to call Internet Service Providers ("ISPs") on a local basis; and (2) ISPs should be permitted to subscribe to MCA service, under no circumstances should terminating local reciprocal compensation apply to calls to ISPs. (See Ex. 33, SWBT, Hughes Rebuttal, p. 14; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 9). SWBT adamantly maintains that calls to ISPs are primarily interstate and international calls, not local, regardless of the dialing pattern that is used to reach the ISP. Id.

Treating these calls as local could have tremendous implications on market behavior and the resulting financial impacts on ILECs could be not only significant, but devastating as well. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 9-10). For example, assume CLECs are permitted into the MCA Plan but bill and keep inter-company compensation is not required. Id. A CLEC would have a strong incentive to service ISPs, rather than serving a broad customer base, just to garner local reciprocal compensation revenues. Id. Payments which an originating ILEC makes to the CLEC could far outstrip the revenues received from the ILEC's customers calling the ISP. Id. To illustrate this, assume an ILEC customer in MCA Tier 1 in St. Louis establishes a connection with an ISP MCA customer in Tier 3. Id. At the local reciprocal compensation rate

established in the AT&T arbitration, SWBT could pay up to \$106.73 per month just in local reciprocal compensation, while collecting only \$11.35 in revenue. Id. SWBT would have a net revenue loss without even considering internal costs at SWBT to provide local service. Id. Staff similarly voices this concern. (See T. 147, Staff, Voight). Thus, if CLECs are permitted to participate in the MCA Plan, it should be clear that no inter-company compensation charges apply to Internet bound traffic, even if bill and keep inter-company compensation is not adopted. (See Ex. 33, SWBT, Hughes Rebuttal, p. 14; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 9).

V. Issue 4: What Pricing Flexibility Should ILECs And/Or CLECs Have Under The MCA Plan?

As indicated in Section III(D) above, if CLECs are permitted to participate in the MCA Plan, they should be required to follow the rates which are set forth in the Commission's MCA Order. (See Ex. 32, SWBT, Hughes Direct, p. 12). At least one CLEC proposed that the Commission: (a) allow pricing flexibility for CLECs; and (b) require the mandated rate set forth in the Commission's MCA Order for ILECs. (See Birch's Position Statement, Issue 4). If the Commission were to do so, CLECs would obtain a regulatory-imposed competitive advantage. Thus, any pricing flexibility under the MCA Plan should apply equally to CLECs and ILECs.

VI. Issue 5: How Should MCA Codes Be Administered?

A. The Use Of Dedicated NXX Codes, As Can Be Identified By Each Carrier In The Local Exchange Routing Guide, Is The Only Reasonable Method Of Providing MCA Service

As previously discussed in Section III (B) above, since part of the MCA local calling scope permits local calls to other MCA subscribers, the MCA subscribers must be identifiable so local calls to these subscribers can be permitted. (See Ex. 35, SWBT, Unruh Direct, p. 12). The industry uses dedicated MCA NXXs to permit these calls to be dialed on a local basis. Id. The

use of dedicated NXX codes is currently the only reasonable method of providing MCA Service. Id. at 13.

If MCA Service continues to be provisioned through the use of specifically identifiable MCA NXX codes, then a mechanism should be in place to identify the MCA NXX codes. Id. This mechanism should be neutral, easy to use procedure, whereby all participants could identify the appropriate NXX codes. Id. SWBT supports using the Local Exchange Routing Guide (“LERG”). Id. The LERG is an industry report providing NPA/NXX information throughout the nation. Id. There is a field in the LERG report that can be used to identify MCA NXX codes. Id. SWBT is currently using this field to identify MCA NXXs. Id. Other providers could and should do likewise. Id.

B. Neither A Third Party Administrator Nor The Creation Of A New Database Should Not Be Considered Until Such Time As There Is Evidence That The Local Exchange Routing Guide Report Cannot Be Successfully Used To Identify MCA NXX Codes

Certain parties have suggested that the Commission appoint a third-party administrator to administer MCA NXX Codes. Specifically, Cass County expresses concern that using the LERG may not be feasible and it could be subject to abuse. (See Ex. 42, Cass County, Matzdorf Rebuttal, p. 5; see also Ex. 38, SWBT, Unruh Surrebuttal, p. 10). Cass County, therefore, suggests a neutral third-party would be appropriate to administer MCA NXX codes. Id. SWBT shares Cass County’s concern that the process could be abused. (See Ex. 38, SWBT, Unruh Surrebuttal, p. 10). However, SWBT questions whether a third-party would be able to stop any perceived abuse. Id. Conceivably a third-party would not have the authority to dictate to companies how they were going to use their NXX codes. Id. Moreover, SWBT is concerned about a neutral third-party administering MCA NXX codes as this may create an additional administrative burden. Id. Thus, since the industry already has a standard means of identifying

NXX codes, the LERG report, the LERG report can and should be utilized to identify MCA NXX codes. Id. at 10-11. Moreover, a third-party administrator should not be considered until such time as there is evidence that the LERG cannot be successfully used to identify MCA NXX codes.

McLeod proposes a highly administrative “solution” that calls for the creation of a new NXX database and the appointment of an NXX database administrator to develop and administer this database. (See McLeod, Starkey Rebuttal, pp. 10-11); see also SWBT, Unruh Surrebuttal, p. 11). McLeod states this will be a sizeable task and that it may be too large an obligation for the Commission Staff to handle. Id. SWBT believes that this would create a duplicative function that already resides in the LERG. (See Ex. 38, SWBT, Unruh Surrebuttal, p. 11). The Commission should recognize that someone would have to pay for creating and maintaining this duplicative database. Id. Thus, the Commission should neither create a new NXX database nor appoint an NXX database administrator until such time as there is evidence that the LERG cannot be successfully used to identify MCA NXX codes.

C. The Commission Should Refrain From Ordering Carriers To Notify Other MCA Participants About NXX Codes That Are To Be Treated As MCA NXX Codes Until Such Time As There Is Evidence That The Local Exchange Routing Guide Report Cannot Be Successfully Used To Identify MCA NXX Codes

AT&T suggests that carriers should be responsible for notifying other MCA participants about NPA-NXX codes that are to be treated as MCA NXX codes. (See Ex. 11, AT&T, Kohly Direct, p. 33; see also Ex. 36, SWBT, Unruh Rebuttal, p. 14). SWBT believes this method of notification would be impractical because it will be difficult to know whether carriers are “MCA participants” absent some centralized source for this information. Id. For example, if a new CLEC entered the market and was permitted to offer MCA service, the CLEC would not know what parties are providing MCA service. Id. SWBT, therefore, believes that the LERG can and

should be used to manage this process. Id. If there comes a time when there is evidence that the LERG report cannot successfully be used to identify MCA NXX codes, then the industry may need to create a centralized source of MCA NXX code information. (See Ex. 6, Office of the Public Counsel, Meisenheimer Direct, p. 6; see also Ex. 36, SWBT, Unruh Rebuttal, p. 14). If this time comes, SWBT agrees with Public Counsel that the Commission may be the logical source for this centralized information. (See Ex. 6, Office of the Public Counsel, Meisenheimer Direct, p. 7; see also Ex. 36, SWBT, Unruh Rebuttal, p. 14). However, such action is currently premature.

D. Although Assigning Segregated MCA NXX Codes Is Inefficient From An NXX Standpoint, The Commission Has Already Determined That The Benefits Of The MCA Plan Outweigh The Inefficient Use Of NXX Codes

Staff argues that the practice of assigning segregated MCA NXX Codes is inefficient from an NXX code assignment standpoint. (See Ex. 1, Staff, Voight Direct, p. 17; see also Ex. 36, SWBT, Unruh Rebuttal, p. 11). Staff argues that requiring CLECs to utilize dedicated MCA NXX codes would require the introduction of additional area codes. (See Ex. 1, Staff, Voight Direct, pp. 21-22; see also Ex. 36, Unruh Rebuttal, pp. 11-12).

There is a cost-benefit trade-off with MCA Service. (See Ex. 36, SWBT, Unruh Rebuttal, p. 12). In order to provide the benefits of the two-way nature of the service that customers enjoy, distinct NXX codes must be used. Id. MCA Service, therefore, results in a less efficient use of NXX codes. Id. However, the Commission already considered this argument and decided that the benefits of the MCA Plan outweigh the inefficient use of NXX codes. Id.

SWBT is mindful that the introduction of CLECs into the MCA Plan will accelerate the need for NXX codes. Id. However, even without CLEC entry in the MCA Plan, the mere existence of facility-based CLECs will greatly increase the need for NXX codes and will result

in the need for additional area codes. Id. For example, using the numbers presented in Staff's testimony, facility-based entry into the MCA areas will require CLECs to utilize 1,656 NXX codes (92 exchanges x 1 code for each exchange x 18 facility-based CLECs). Id. Moreover, Staff's argument assumes that 18 facilities-based CLECs plan to provide MCA service in all exchanges. Id. Depending on the outcome in this case and the individual business plans of each CLEC, the NXX code usage Staff projects may be an overestimation. Id. Additionally, SWBT notes that Staff's MCA-2 proposal does nothing to address the NXX situation in the 314 NPA which is the NPA in the St. Louis area that faces near-term exhaust. Id. Since the 314 NPA covers the mandatory MCA area, additional MCA NXX codes are not required to provide MCA service in the 314 NPA. Id. at 12-13.

Finally, in its Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104, March 31, 2000 ("Numbering Resource Optimization Order"), the FCC adopted thousands-block number pooling as a mandatory nationwide numbering resource optimization strategy. (See Numbering Resource Optimization Order, paragraph 122). Thousands-block numbering pooling involves breaking up the 10,000 numbers in an NXX into ten sequential blocks of 1,000 numbers each, and allocating each thousands-block to a different service provider, and possibly a different switch, within the same rate center. (See Numbering Resource Optimization Order, paragraph 118). All 10,000 numbers available in the NXX code are allocated within one rate center, but can be allocated to multiple service providers in thousand number blocks, instead of only to one particular service provider. Id. The FCC had to delay thousands-block number pooling on a national basis until a national pooling administrator is selected. (See Numbering Resource Optimization Order, paragraph 128). However, once implemented, number pooling has the potential to reduce the number of NXX codes that would

be needed to provision MCA service because every LEC will not require a unique NXX code in each exchange. (See Ex. 35, SWBT, Unruh Direct, p. 13). Rather, several LECs could potentially share the same NXX code within a given exchange. Id.

SWBT continues to support the industry's use of dedicated NXX codes to identify MCA subscribers so that calls to these subscribers can be dialed on a local basis. (See Ex. 35, SWBT, Unruh Direct, p. 12). Additionally, SWBT supports using the industry's LERG report to identify MCA NXX codes. Id. at 13.

VII. Issue 6: What Is The Appropriate Inter-Company Compensation Between LECs Providing MCA Service?

A. The Appropriate Inter-Company Compensation Between LECs Providing MCA Service Is Bill And Keep Inter-Company Compensation

As previously discussed in Section III(B) above, if CLECs are either permitted or required to participate in the MCA Plan, the appropriate inter-company compensation mechanism is bill and keep for all locally dialed calls within the MCA, meaning that neither carrier reimburses the other for traffic within the MCA. (See Ex. 32, SWBT, Hughes Direct, p. 13; see also Ex. 33, SWBT, Hughes Rebuttal, p. 13; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 9). This position is consistent with the current inter-company compensation arrangement between ILECs as required by the Commission in the establishment of the MCA Plan. (See Ex. 33, SWBT, Hughes Rebuttal, p. 13).

Bill and keep inter-company compensation will allow parties to compete on equal terms. Id. Further, it will ensure that no party will have an advantage by: (a) charging excessive terminating rates; or (b) by marketing to customers who generally only receive calls. Id. Bill and keep inter-company compensation has served the ILECs well since the inception of the MCA Plan and will, undoubtedly, work well in the future. Id.

SWBT notes that interconnection agreements typically call for local reciprocal compensation. (See Ex. 32, SWBT, Hughes Direct, p. 13). Reciprocal compensation is problematic because some LECs could pay more in reciprocal compensation than they receive in MCA revenues. (See T. 700, Birch, Mulvany). Interconnection agreements did not contemplate CLEC participation in the MCA Plan. Thus, modification of these agreements may be necessary. Id. However, as will be discussed in Section XII below, if the Commission permits CLECs to opt into the MCA Plan, then the Commission should condition participation upon modification of interconnection agreements to provide for bill and keep inter-company compensation on calls within the MCA Plan. Id. Modifications to the interconnection agreements can be filed to accomplish this result.

B. This Commission Should Not Allow CLECs To Choose Either Bill And Keep Inter-Company Compensation Or Local Reciprocal Compensation Under An Interconnection Agreement Because Such Choice Would Allow CLECs An Unfair Financial And Competitive Advantage

Sprint proposes to give CLECs the option to chose either bill and keep inter-company compensation or local reciprocal compensation under an interconnection agreement. (See Ex. 30, Sprint, Cowdry Direct, p. 4; see also Ex. 33, Hughes Rebuttal, p. 14). CLECs, quite simply, should not have choices that are not available to ILECs who participate in the MCA Plan. (See Ex. 33, SWBT, Hughes Rebuttal, pp. 13-14). If CLECs were allowed to choose either bill and keep inter-company compensation or local reciprocal compensation under an interconnection agreement, CLECs would gain an unfair financial and competitive advantage because each CLEC would choose whichever compensation mechanism was more advantageous to it, and, therefore, less advantageous for the ILEC involved.

For example, CLECs who either predominately service or plan to predominately service ISPs may claim the right to receive local reciprocal compensation. SWBT maintains that such

calls are not local under any Missouri Interconnection Agreements, but not all CLECs agree with SWBT's position. If, contrary to SWBT's view, such calls were considered local and subject to reciprocal compensation payments, the financial implications to ILECs could be devastating. Again, referring to the illustration in Section IV above, if an ILEC customer in MCA Tier 1 in St. Louis established a connection with an ISP MCA customer in Tier 3, at the local reciprocal compensation rate established in the AT&T arbitration, SWBT could pay up to \$106.73 per month just in local reciprocal compensation, while collecting only \$11.35 in revenue from the originating customer. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 10). SWBT would be in a substantial negative financial position even before considering the costs to provide local service to its customers.

Pricing flexibility for CLECs could destroy the long-term viability of the MCA Plan. This was explained during the hearing primarily in questions from Chair Lumpe. Chair Lumpe asked the following question and GTE witness, David Evans gave the following answer:

Q. In looking at any possible changes to MCA, should we be looking at the costs and whether there should be changes in additives or rates?

A. One of the -- one of the foundational principles of the existence of MCA is that the Commission in 1992 saw a need for some uniform offering of a local calling plan in these metropolitan areas, and the foundational mechanism that allowed that to occur is this ordered relationship between the parties.

If we were to begin looking at individual company offerings and the costs associated with those absent the ordered bill and keep arrangement, I'm quite sure that the rates would go up because of the fact that you would -- companies would begin paying compensation on all the traffic that is heretofore bill and keep.

If you're asking me should we be looking at the cost to implement a plan like Staff has proposed, we certainly have got to look at the changes that would occur based on that plan.

Certainly changing the plan would not be cost-free, but I think that's why the Commission should -- if you're interested in that plan, I think you should establish an industry group to take a look at all of those changes and then make the decision if it's to benefit the consumer and the industry or is it just frankly too expensive to do.

(See T. 1138-1139, GTE, Evans). In questions by Chair Lumpe of Cass County witness Ken Matzdorf, Mr. Matzdorf echoed Mr. Evan's concerns. Chair Lumpe asked the following question and Mr. Matzdorf gave the following answer:

- Q. Mr. Matzdorf, I think this is in your rebuttal. You refer to it as a mandated service, not cost-based. And my question is, should it be cost-based and should there be flexibility and would that drive these rates to cost?
- A. I think I have to echo Mr. Evan's comments to you that if it's driven to cost-based and we identify the elements in reciprocal compensation, there won't be anything to evaluate. The service will have to end.

I can give you some additional insight for my reasoning on that is in the early '80's I was a financial analyst for Contel Corporation, a predecessor of GTE, in the St. Charles -- St. Charles County predominately they had service in. And we had the same pressures that were kind of the precursor to some of the COS, COS-2 and MCA Services.

And we introduced a service I think we called Metropolitan Optional Service Plan, and we had a lot of the same issues here, bedroom community, citizens moving to that area from the metropolitan area. It was growing rapidly, and we had all the problems of red-lined communities because they didn't have metropolitan calling, those types of things.

When we introduced the service, and the issue always is if you're trying to have a flat-rate service that you're paying the compensation on a per minute use basis, it usually kills it, or you have to have a very expensive and you're kind of playing a game with the units. So it creates a lot of problems in that regard, and you usually end up with higher prices for less service.

And I can't recall the exact prices, but it was in excess of \$50, and we did it in 300-minute units simply because if you had someone that hit that very hard -- you've got to recognize this was before the advent of Internet, which has taken the average hold times way beyond what they were at the time.

A typical voice message is maybe four or five minutes for time. With Internet it's not usual to have it up for, if you don't have time lots on it, to have it up for the entire day. I've had situations where they had cut-overs in switches and went back and looked at it and someone had the Internet service up for five and a half days.

(See T. 1194-1196, Cass County, Matzdorf).

SWBT agrees with Cass County that MCA service provides the customer with an expanded calling scope that would be economically impossible to provide without the bill and keep intercompany compensation plan that is in effect today. (See Ex. 41, Cass County, Matzdorf Direct, p. 6). SWBT further agrees that the implementation of alternative inter-company compensation could make the cost of providing the service so high as to make the provision of the service infeasible. *Id.* at 8. Thus, if CLECs are permitted to participate in the MCA Plan, it should be clear that the appropriate inter-company compensation mechanism is bill and keep inter-company compensation on all calls originating or terminating within the geographic boundaries of the MCA. (See Ex. 33, SWBT, Hughes Rebuttal, p. 14; see also Ex. 34, SWBT, Hughes Surrebuttal, p. 9).

C. This Commission Should Not Mandate Bill And Keep Inter-Company Compensation For ILECs With Compensation For CLECs To Be Based On Interconnection Agreements

Staff proposes bill and keep inter-company compensation for ILECs with compensation based on interconnection agreements for CLECs. (See Ex. 1, Staff, Voight Direct, p. 48; see also Ex. 33, SWBT, Hughes Rebuttal, p. 13; see also T. 113, Staff, Voight). SWBT does not agree with this approach. (See Ex. 33, SWBT, Hughes Rebuttal, p. 13). If the Commission decides to permit CLECs to participate in the MCA Plan, CLECs should participate on the same basis as ILECs. *Id.* This should include moving to a bill and keep arrangement for locally dialed calls within the MCA. *Id.* CLECs should not have the ability to choose a different measure of

compensation while obtaining the benefits of the MCA Plan. Id. To the extent that Staff is concerned about revenue streams for ILECs if bill and keep is adopted, it appears unnecessary as most ILECs support bill and keep. (See Ex. 33, SWBT, Hughes Rebuttal, p. 14; see Ex. 8, MITG, Stowell Direct, p. 13; see Ex. 41, Cass County, Matzdorf Direct, p. 8).

Finally, SWBT notes that although Staff proposed bill and keep inter-company compensation for ILECs with compensation based on interconnection agreements for CLECs, Staff also stated that it is not opposed to mandatory MCA-wide bill and keep inter-company compensation. (See Ex. 1, Staff, Voight Direct, p. 49; see also T. 114, Staff, Voight).

VIII. Issue 7: Is The Compensation Sought In The Proposed MOU Appropriate?

A. The Proposed MOU

Calls from SWBT customers to Intermedia customers were originally treated as MCA calls (i.e. dialed on a local basis) because Intermedia's NPA NXXs were opened with an incorrect local calling scope. (See Ex. 33, SWBT, Hughes Rebuttal, p. 12). After SWBT uncovered this error, SWBT advised Intermedia that it would change its translations to be consistent with the treatment of other CLECs. Id. Following a lengthy six-month period of negotiation, during which Intermedia continued to receive the benefits not provided to other CLECs, SWBT reached an interim agreement ("the proposed MOU") with Intermedia Communications. (See Ex. 32, SWBT, Hughes Direct, p. 10). The Proposed MOU has been filed with the Commission. (See Ex. 32, SWBT, Hughes Direct, p. 10).

Following negotiations between the parties,⁹ Intermedia agreed to compensate SWBT at a rate of 2.6 cents per minute in return for SWBT permitting its own customers to call Intermedia's customers on a toll-free basis within SWBT's portion of the MCA.¹⁰ Id. This payment reflects compensation at a level equal to SWBT's originating access charges, which is the minimum amount SWBT would receive if the calls were treated as toll.¹¹

The MOU requires Intermedia to follow all terms and conditions of the MCA Plan. Id. It is to be modified, as appropriate, to be in compliance with the Commission's final decision in this case. Id.

Finally, SWBT is willing to reach similar agreements with other CLECs. Id. at 10-11. SWBT advised the CLECs of this position in an Accessible Letter (CLECM-99-100) sent on December 21, 1999. Id. at 11. (See also Accessible Letter, attached to Ex. 33, SWBT, Hughes Rebuttal).

⁹SWBT disagrees with Intermedia's characterization of negotiations. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 16). SWBT advised Intermedia in May, 1999, that calls from SWBT's customers to Intermedia's customers were treated as MCA calls because Intermedia's NPA NXXs were opened with an incorrect local calling scope. Id. SWBT and Intermedia negotiated to resolve this issue until November, 1999. Id. If Intermedia felt that SWBT's actions were inappropriate, Intermedia could have invoked the dispute resolution provisions of the agreement or raised the issue to the Commission. Id.

¹⁰ SWBT agrees that on a prospective basis, calls which originate and terminate within the Principal Zone should not be subject to this 2.6 cent per minute compensation. (See T. 1042-1043 and 1082-1084, SWBT, Unruh).

¹¹ SWBT would typically receive intraLATA toll revenue from its customers for calls from its metropolitan exchange customers to non-MCA subscribers in an optional MCA tier. (See Ex. 32, SWBT, Hughes Direct, p. 10). This toll charge would be substantially higher than the 2.6 cents per minute charge SWBT agreed to during negotiations with Intermedia. Id. SWBT agreed to lower the MOU rate to a compensation level reflective of access rates because while the rate is designed to provide SWBT with revenue recovery associated with lost toll, access could, in some cases, be the only compensation SWBT would receive. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 16). During the time period of these negotiations, intraLATA dialing parity was implemented in Missouri. Id. This change allows the end users to have a presubscribed carrier other than SWBT for intraLATA toll. Id. The selection of an intraLATA provider other than SWBT would lead to SWBT receiving originating intrastate access from that intraLATA provider rather than toll from the end user. Id. Thus, while SWBT would in most cases lose toll revenues on these calls, it agreed to a rate of compensation based on access charges that is significantly less than the intraLATA toll level. Id.

B. The Compensation Sought In The Proposed MOU Is Appropriate

The compensation sought in the proposed MOU is appropriate. To the extent that a CLEC seeks to have calls from SWBT customers to CLEC customers within the MCA be placed on a local basis, compensation is appropriate. These calls are toll calls and toll charges should apply; if SWBT is asked to provide the service to its customers without charge, then compensation by the CLEC is appropriate.

The treatment of certain calls within the MCA as local or toll is dependent on whether the called party is an MCA subscriber. Calls from the mandatory zone to the optional zones, for example, are local if the called party is an MCA subscriber and toll if the called party is not an MCA subscriber. Calls from SWBT customers to SWBT non-MCA subscribers and CLEC customers are treated the same -- in both cases toll charges are assessed. If a CLEC wishes to have SWBT provide toll-free return calling, it should pay just as optional MCA customers pay SWBT to obtain toll-free return calling. CLECs are not entitled to better treatment than SWBT provides its own customers on call to non-MCA customers.

C. SWBT Is Not Providing Preferential Treatment To Intermedia

Although McLeod alleges that SWBT is providing preferential treatment to one CLEC over another, i.e. Intermedia, this contention is erroneous. (See Ex. 17, McLeod, Wissenberg Direct, p. 9; see also Ex. 33, SWBT, Hughes Rebuttal, p. 10). SWBT provides all CLECs with the same opportunities. (See Ex. 33, SWBT, Hughes Rebuttal, p. 10). Specifically, while SWBT does not believe that the proposed MOU is subject to the Telecommunications Act of 1996 because it concerns the charges SWBT makes to its own customers and not to the terms of interconnection with CLECs, as previously stated, SWBT advised all CLECs that it was willing to reach similar agreements with other CLECs via an Accessible Letter CLECM-99-100 on

December 21, 1999. Id. (See also Ex. 33, Accessible Letter. attached to SWBT, Hughes Rebuttal). Therefore, SWBT is clearly not providing "preferential treatment" to one CLEC over another. Id.

- D. The Proposed MOU Does Not Violate The Commission's Order In TO-97-40 As That Order Addressed Inter-Company Compensation For Terminating Local Traffic Within The MCA, Not SWBT's Local Calling Scopes And/Or Rates SWBT Assesses Its Own Customers For Calls Within SWBT's Portion Of The MCA

Staff and AT&T contend that SWBT is currently in violation of the Commission's Arbitration Order in In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, TO-97-40, December 11, 1996 ("AT&T Arbitration Order"). This contention is meritless. (See Ex. 33, SWBT, Hughes Rebuttal, p. 17).

The inter-company compensation issues that are addressed in the AT&T Arbitration Order and the proposed MOU address two entirely different compensation issues. The AT&T Arbitration Order addresses the appropriate inter-company compensation with regard to calls which originate and terminate within SWBT's portion of the MCA. (See AT&T Arbitration Order, pp. 40-41; see also Ex. 33, SWBT, Hughes Rebuttal, p. 17-20; see also T. 439, AT&T, Kohly; see also T. 124, Staff, Voight). In such situations, the Commission determined that the appropriate inter-company compensation is local reciprocal compensation. Id. This terminating compensation is in fact paid on all calls pursuant to the terms of the Interconnection Agreement, including on calls subject to the Intermedia MOU. Further, the AT&T Arbitration Order did not address the charges AT&T would make to its own customers to originate calls or charges that SWBT would make to its own customers to originate calls. (See T. 440, AT&T, Kohly; see also

T. 124, Staff, Voight). In the Interconnection Agreement, the parties expressly agreed that notwithstanding the definition of local traffic for terminating compensation purposes, the agreement was not intended to and did not address the retail charges that each could make to its own customers. (See T. 440, AT&T, Kohly; see also Ex. 50, Sections 1.1 and 1.2).

The proposed MOU, on the other hand, addresses the appropriate inter-company compensation between Intermedia and SWBT for SWBT agreeing not to assess toll charges to its customers for calls that would otherwise be considered toll calls under SWBT's tariffs. (See Ex. 33, SWBT, Hughes Rebuttal, p. 20). In such situations, the parties determined that Intermedia would compensate SWBT 2.6 cents per minute. Id. SWBT does, however, pay Intermedia the local reciprocal compensation rate to terminate the call as is required by the terms of its Interconnection Agreement. SWBT has in the past and continues to provide Intermedia with the necessary records in order to permit Intermedia to bill SWBT the terminating compensation portion of local reciprocal compensation. (See Ex. 33, SWBT, Hughes Rebuttal, p. 20). It is clear that SWBT is not in violation of the AT&T Arbitration Order as that order simply did not address the issue of inter-company compensation for a LEC agreeing not to assess toll charges to its customers, for calls that would otherwise be considered toll calls under the LEC's tariffs, in exchange for monetary compensation from another LEC.

E. The Inter-Company Compensation Set Forth In The Proposed MOU Is Not An EAS Port Additive

Staff contends that it is SWBT's policy to charge an EAS port additive prior to letting competition into the MCA. (See Ex. 1, Staff, Voight Direct, p. 37; see also Ex. 33, SWBT, Hughes Rebuttal, p. 11; see also T. 129, Staff, Voight). This contention is incorrect, as Staff admitted at the hearing of this matter. (See T. 130, Staff, Voight). The EAS port additive was a charge that SWBT proposed during negotiations with AT&T that would provide SWBT

customers with toll-free calling to AT&T customers who ported their MCA telephone number. Id. at 11-12, and 19. The port additive was intended to apply when a number was ported, not when a call was made. Id. at 12.

After arbitration, the Commission determined that AT&T's proposal to reject SWBT's EAS port additive language should be adopted. In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Second Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Case No. TO-98-115, December 23, 1997, p. 25; see also Ex. 33, SWBT, Hughes Rebuttal, p. 18. The Commission also determined that AT&T's proposal to leave this issue unaddressed in the parties' final interconnection agreement should be approved. Id. In reaching this determination, the Commission stated: "[t]he Commission notes that its finding is based upon AT&T's lack of interest in the port additive at this time." Id.

The inter-company compensation set forth in the proposed MOU has nothing to do with porting a number. Rather, as previously explained, it is SWBT's practice to charge its customers applicable toll charges when calling non-MCA subscribers, which can be either CLEC or ILEC customers. (See Ex. 33, SWBT, Hughes Rebuttal, p. 11). In the proposed MOU, SWBT agreed not to assess otherwise applicable toll charges to its customers in return for Intermedia paying SWBT 2.6 cents per minute. Id. The inter-company compensation mechanism is not an EAS port additive. Thus, Staff's contention that it is SWBT's policy to charge an EAS port additive prior to letting competition into the MCA is factually incorrect. But, even if the Intermedia MOU were the same as an EAS Port Additive, the decision in the AT&T Arbitration would not preclude such an agreement between SWBT and Intermedia. The Commission did not reject the proposal on public policy grounds. It rejected it on the basis that AT&T was not interested in the

service (because AT&T knew that current technology would require SWBT to give the port additive service even if not permitted to charge for it).

IX. Issue 8: Should The MCA Plan Be Retained As Is, Modified (Such As Staff's MCA-2 Proposal) Or Eliminated?

A. The MCA Plan Should Be Retained As Is

SWBT believes the current design of the MCA Plan is in the public interest and should be retained as is. (See Ex. 32, SWBT, Hughes Direct, p. 13). This position is supported by the Office of Public Counsel who, in response to a question from Vice Chair Drainer, indicated that the end result of the public hearings was that the public did not want to lose MCA Service. (See T. 312-313, Office of the Public Counsel, Meisenheimer). The mandatory and optional provisions have worked well in the past and continue to work well as is evidenced by the very high subscription rate. Id. Further, as SWBT indicated in response to a question from Judge Dippel, SWBT believes customers like the two way nature of the Plan. (T. 1036, SWBT, Hughes).

B. It Is Premature To Modify The MCA Plan (Such As Staff's MCA-2 Proposal)

Staff currently proposes that the Commission postpone consideration of MCA-2 because Staff does not feel that it has the data to make a firm recommendation regarding the implementation of this plan. (See T. 84, 105-106, Staff, Voight). SWBT agrees that it is premature to modify the MCA Plan, including via Staff's MCA-2 proposal. However, before addressing the reasons why it is premature to modify the MCA Plan, SWBT will briefly discuss Staff's MCA-2 Proposal and the major differences between the MCA Plan and Staff's MCA-2 Proposal.

1. Staff's MCA-2 Proposal

Staff proposes to create a "new MCA Plan", dubbed MCA-2. (See Ex. 36, SWBT Unruh Rebuttal, p. 7). Specifically, MCA-2 collapses the current MCA tiers down to two tiers for each MCA. (See Ex. 1, Staff, Voight Direct, p. 59). The proposed tier 1 contains exchanges that today are considered mandatory MCA service areas and the proposed MCA tier 2 contains what today are considered optional MCA tiers. Id.

Under Staff's MCA-2 Proposal, callers in the proposed tier 1 would not have an MCA additive. Id. These callers would have a local calling scope which includes the entire MCA area (i.e. the proposed tiers 1 and 2). Unlike callers in proposed tier 1, proposed tier 2 would have an optional MCA additive. Id. However, like the subscribers in the proposed tier 1, subscribers in the new tier 2 would have a calling scope which includes the entire MCA area (i.e. the proposed tiers 1 and 2). Id. In other words, MCA-2 is a one way plan. (See T. 179, Staff, Voight). If you subscribe to it, you can call anywhere in the MCA. Id. Because it is a one-way plan, neither ILECs nor CLECs would have to use dedicated NXX codes to provide this service. Id. at 180.

2. The Major Difference Between The MCA Plan And Staff's Proposed MCA-2 Plan Is That MCA-2 Eliminates The Need To Purchase MCA Service To Receive Toll-Free Calls

As has been discussed throughout this Brief, the MCA Plan includes two aspects. (See Ex. 32, SWBT, Hughes Direct, p. 11). The first is the ability of the MCA subscriber to place outgoing calls to other MCA subscribers and to certain other customers on a toll-free basis. Id. The second aspect is the ability of the MCA subscriber to receive calls with no toll charge being assessed to the calling party regardless of whether the calling party is an MCA subscriber. Id.

MCA-2 would eliminate the second aspect of the MCA Plan because MCA -2 allows all MCA subscribers to call all customers in the MCA on a local basis. (See Ex. 36, SWBT, Unruh

Rebuttal, p. 7). Customers' purchase of MCA service would, therefore, not determine whether they could be called on a toll-free basis from other customers. Id. Customers may perceive this major difference as taking away a key component of MCA service. Id.

3. It Is Premature To Adopt Staff's MCA-2 Proposal Because There Are Too Many Unresolved Issues Involving This Proposed Modification

It is premature to adopt Staff's MCA-2 Proposal because there are too many unresolved issues involving this proposed modification. First, MCA-2 would change the local calling scopes of SWBT's customers in the mandatory MCA areas. (See Ex. 36, SWBT, Unruh Rebuttal, p. 8). Specifically, Staff's MCA-2 proposal specifies that callers in the proposed MCA tier 1 (the current Center zone, tier 1 and 2 in St. Louis and Kansas City and the current Center zone and tier 1 in Springfield) would have a local calling scope that includes all customers in the entire MCA area. (See Ex. 1, Staff, Voight Direct, p. 59; see also Ex. 36, SWBT, Unruh Rebuttal, p. 8). Section 392.200.9, R.S.Mo. Supp. 1998, provides that exchange boundaries cannot be changed without the approval of the ILEC. (See Ex. 36, SWBT, Unruh Rebuttal, pp. 8-9). Modification of SWBT's calling scope, such as in Staff's MCA-2 proposal, without SWBT's agreement, would violate Section 392.200.9, R.S.Mo. Supp. 1998.

Second, although the MCA Plan is a Commission-mandated service that all ILECs are required to provide, Staff proposed that CLECs should have the option of providing MCA-2 service. (See Ex. 1, Staff, Voight Direct, p. 60; see also Ex. 36, SWBT, Unruh Rebuttal, p. 9). It is SWBT's position that the Commission should not create a Commission-mandated service where only certain providers are required to provide the service. (See Ex. 36, SWBT, Unruh Rebuttal, p. 9). Rather, with companies operating in the competitive environment that exists today, all providers should be treated equally with respect to Commission-mandated plans. Id.

Third, there are unresolved issues related to how MCA-2 service would be priced. For example, would all optional subscribers pay one rate for MCA-2 Service? In response to a question from Chair Lumpe, Staff indicated that it does not have a position on how a rate design would be accomplished. (See T. 175, Staff, Voight). Establishing a uniform price for the optional MCA subscribers in Staff's MCA-2 proposal could significantly increase the prices that current MCA-3 subscribers pay. (See Ex. 38, SWBT, Unruh Surrebuttal, p. 9). Further, it would be difficult to explain such a price increase in light of what the MCA-3 customers would be getting in return. Id.

Fourth, if MCA-2 were implemented, all ILECs would be negatively impacted with regard to both monthly and annual revenue. (See T. 254, Staff, Moore). SWBT strongly believes that any change to the current MCA Plan would have to be done in a revenue-neutral fashion. (See Ex. 36, SWBT, Unruh Rebuttal, p. 7; see also Ex. 38, SWBT, Unruh Surrebuttal, p. 9). There are numerous unresolved issues related to revenue neutrality. Specifically, Staff suggests that there are three areas where ILECs would be financially impacted by the MCA-2 proposal: (1) toll revenue loss; (2) access revenue loss; and (3) access expense savings. (See Ex. 5, Staff, Moore Supplemental Direct, p. 3; see also Ex. 37, Unruh Supplemental Rebuttal, p. 2; see also T. 255, Staff, Moore). However, there are additional categories that could create additional financial impacts. (See Ex. 37, SWBT, Unruh Supplemental Rebuttal, p. 2).

SWBT strongly believes that since the MCA-2 proposal eliminates the return-calling feature of MCA service, customers would no longer need to purchase MCA service in order to receive toll-free calling from other MCA subscribers. (See Ex. 37, SWBT, Unruh Supplemental Rebuttal, p. 2). Id. There may be some current MCA subscribers who would not subscribe to MCA-2 service. Id. Thus, this potential revenue impact must also be considered. Id.

Additionally, there could be a financial impact based on an increase in access expense. (See Ex. 37, SWBT, Unruh Supplemental Rebuttal, p. 3). SWBT currently provides a service called Local Plus®, which provides unlimited LATA-wide calling at a flat rate. Id. In essence, the MCA-2 proposal is a mini-Local Plus® offering that would provide unlimited MCA-wide calling at a flat rate. Id. If MCA-2 were implemented, and depending on how MCA-2 was ultimately priced, SWBT could experience a migration from MCA service to Local Plus®. Id. This migration is especially likely for MCA-5 subscribers since MCA-5 service is currently priced higher than Local Plus®. Id. If existing MCA-5 subscribers migrate to Local Plus® then there would be an additional MCA revenue impact because Local Plus® is currently priced lower than MCA-5 service. Id. Moreover, a migration from MCA to Local Plus® would increase SWBT's terminating access expense because MCA calls are terminated on a bill-and-keep basis (i.e. no inter-company compensation with other ILECs) while Local Plus® calls are terminated on a full terminating access basis. Id. Absent a restructuring of prices under the MCA-2 Plan (especially MCA-5 prices), SWBT could experience a migration of MCA subscribers to Local Plus® which could decrease revenues and increase expenses.¹² Id. This probable migration is not reflected in Staff's data because Staff did not consider a change in MCA subscribership. Id. at 4. (See also T. 259, Staff, Moore).

Finally, if Staff's MCA-2 proposal were to be implemented, there would also be associated implementation costs. Id. at 5. SWBT has been unable to accurately assess the implementation costs for Staff's MCA-2 proposal because it does not have all of the factors that

¹² SWBT is not currently experiencing this migration to Local Plus®. (See Ex. 37, SWBT, Unruh Supplemental Rebuttal, p. 4; see also T. 1079, SWBT, Unruh). Customers apparently want to retain the current MCA service when they also purchase Local Plus® due to the return-calling feature of the current MCA Plan. Id. Specifically, if a customer discontinues MCA service when they purchase Local Plus®, then they lose the ability to be called on a local basis from other MCA subscribers. Id.

would weigh into this analysis. Id. at 6. For example, customer notification costs could differ significantly depending on how the customer notification process would work. Id. If customers were required to “positively” select MCA-2 service, then this could add a significant expense to the MCA-2 implementation cost because it could involve multiple rounds of direct mail and numerous telephone conversation to obtain the required “positive” responses. Id.

Thus, due to the numerous unresolved issues surrounding Staff’s Proposed MCA-2 Plan, it is premature to adopt this proposed modification. The MCA Plan, therefore, should be retained as is. (See Ex. 32, SWBT, Hughes Direct, p. 13).

X. Issue 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?

Yes. Revenue neutrality is required and appropriate if: (a) CLECs are permitted to participate in the MCA Plan; or (b) the MCA Plan is modified, as in Staff’s MCA-2 proposal.

A. SWBT Is Entitled To Revenue Neutrality If CLECs Are Permitted To Participate In The MCA Plan

Assuming that the Commission allows CLECs to participate in the MCA Plan on the same terms and conditions that apply to ILECs, SWBT believes that it is entitled to revenue neutrality for the loss of toll revenue associated with the return-calling aspect of the current MCA Plan. (See Ex. 33, SWBT, Hughes Rebuttal, p. 5). SWBT further believes that revenue neutrality can be achieved by assessing a 2.6 cent per minute charge for calls from SWBT’s MCA subscribers to CLECs’ MCA subscribers when those calls would otherwise be treated as toll calls. Id. at 6. This payment is based upon SWBT’s originating access charges, which would be the minimum revenue flowing to SWBT for a toll call. Id. SWBT is also willing to explore the possibility of establishing a cap on the originating revenues it receives from a CLEC

who requests such an arrangement so that CLECs do not pay more in compensation than they receive for providing service to their customers. Id. at 7.

B. SWBT's Recovery Of Revenue For The Loss Of Toll Associated With The Return Calling Aspect Of The Current MCA Plan Is Not Revenue Recovery For A Competitive Loss

When the Commission established rates for MCA service, the Commission assessed the loss of toll revenue from the mandatory area to the optional areas and vice versa. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 11). This is important because some of the parties erroneously state that SWBT is attempting to recover a competitive loss by establishing a revenue recovery mechanism. Despite the views of some of the parties (see Ex. 1, Staff, Voight Direct, pp. 44-45; see also Ex. 11, AT&T, Kohly Direct, p. 3; see also Ex. 23, Gabriel, Cadieux Direct, p. 18), SWBT's recovery of revenue for the loss of toll associated with the return calling aspect of the current MCA Plan is not revenue recovery for a competitive loss. (See Ex. 33, SWBT, Hughes Rebuttal, p. 6). To illustrate, SWBT does not seek compensation for the competitive losses it expects to incur when customers switch to CLEC-provided service, including but not limited to revenues from local service and vertical services. (See Ex. 38, SWBT, Unruh Surrebuttal, p. 2). SWBT expects to lose these revenues and SWBT does not seek compensation for these losses. Id. In this example, SWBT is no longer required to provide local or vertical services to the CLEC's customer. Id. at 3. The loss of revenue, therefore, corresponds with the elimination of the obligation to provide service to that customer. Id.

However, SWBT does seek compensation for revenues lost as a result of not assessing toll charges to its own customers. SWBT customers in the optional MCA zones may choose to receive service from a CLEC. If the departing customer is not an MCA subscriber, it is clearly inappropriate to expect SWBT to provide toll-free return calling to the CLEC's new customer. It

is equally inappropriate to require SWBT to provide toll-free return calling to a former MCA subscriber who chooses to receive service from a CLEC. The reason for that is that a portion of the price that optional MCA subscribers pay for MCA service pays for the return-calling feature of MCA service. Id. When optional MCA subscribers purchase MCA service they purchase both the ability to make local calls and the ability to receive local calls on a toll-free basis. Id. It is this ability to receive local calls that is the return-calling feature of MCA service. Id. To provide the return-calling feature of MCA service, the calling party must be provided toll-free calling to the optional MCA subscriber. Id. Since it is the optional MCA subscriber who is paying for the return-calling that allows other customers to call the subscriber on a local basis, the loss of this optional MCA subscriber eliminates the compensation SWBT receives for providing the return-calling feature of MCA service. Id. SWBT is not seeking compensation for a competitive loss, it is seeking compensation for a service (i.e. toll free calling) that it is continuing to provide. Id.

As an example, consider a customer, located in Ladue (which is within the MCA-1 portion of the St. Louis metropolitan exchange) who calls an optional MCA customer located in Chesterfield (which is an MCA-3 exchange). Id. at 4. Since the Chesterfield customer subscribes to SWBT's optional MCA service, SWBT's customer in Ladue is permitted to make a toll-free call to SWBT's Chesterfield MCA-3 subscriber (i.e. the return-calling feature of the MCA service). Id. Under the MCA Plan, the Chesterfield customer pays \$12.35 for optional MCA service. Id. The Chesterfield customer is paying for the ability to make toll-free calls to the Ladue customer and also for the ability for the Ladue customer (as well as all other mandatory zone customers) to make toll-free calls back to the Chesterfield customer (i.e. the return calling feature). Id. If the Chesterfield customer begins purchasing service from a CLEC, the compensation for the Ladue customer's ability to make toll-free calls to the Chesterfield

customer is lost. Id. In this example, SWBT is seeking compensation only for the toll-free return calling service it is continuing to provide. Id.

SWBT notes that this compensation issue is inherent in the design of the MCA Plan because the MCA Plan has a toll-free return calling function and because this toll-free return calling is paid for by only one party (i.e. the optional MCA subscriber). Id. at 5. The MCA Plan, quite simply, could have been designed where each party pays for his or her own toll-free calling. Id. For example, the MCA Plan could have been designed where the metropolitan exchange customer pays for toll-free calling to the optional tiers rather than the current design of the plan where the optional tier customer pays for this toll-free calling from customers in the metropolitan exchange. Id. In other words, in the example cited above, rather than charging the Chesterfield customer \$12.35 for calling to and receiving calls from the Ladue customer, the Chesterfield customer could have been charged \$6.18 for toll-free calling to the Ladue customer and the Ladue customer could have been charged \$6.17 for toll-free calling to the Chesterfield customer. Id. If the MCA Plan has been designed in this fashion, SWBT would not be requesting compensation when the Chesterfield customer received service from a CLEC. Id. at 6. The loss that SWBT would incur from losing the Chesterfield customer would be considered a competitive loss and SWBT would not expect compensation. Id. SWBT would still be receiving compensation from its Ladue customer for the Ladue customer's ability to make toll-free calls to the Chesterfield customer (i.e. the return-calling feature of MCA service). Id. In this case, there would be a match between the provision of a service and the receipt of compensation for providing the service. Id.

In summary, MCA optional rates were established to recover both outbound calling revenues and inbound or return toll calling revenues. (See Ex. 34, SWBT, Hughes Surrebuttal,

p. 12). When SWBT loses an optional MCA subscriber, it is no longer providing the service to the customer and SWBT is not seeking any recovery for the competitive loss of outbound calling revenues. Id. It is only the payment, which the optional MCA subscriber made to receive calls on a local basis that is at issue. Id. On those return calls, SWBT is willing to provide the service, but only if it is being compensated for it. Id. SWBT is not seeking compensation for a competitive loss; it is seeking compensation only where the CLEC want SWBT to provide a toll-free return calling service to SWBT's customer. Id. This is not compensation for a competitive loss; it is compensation for providing a service. Id.

C. SWBT Is Entitled To Revenue Neutrality If The MCA Plan Is Modified, As In Staff's MCA-2 Proposal

If the Staff's MCA-2 proposal were adopted, SWBT would be entitled to recover implementation costs as well as revenue neutrality for the revenue impacts of implementing the plan including such items as the loss of access and intraLATA toll revenues, and the loss of revenue for optional MCA subscribers who would no longer subscribe to the service because the Plan eliminates the return calling feature of MCA service. The details of an MCA-2 Plan must be determined and evaluated before a rate design for revenue neutrality can be proposed.

XI. Issue 10: Should MCA Traffic Be Tracked And Recorded, And If So, How?

Whether MCA traffic should be tracked and recorded depends on how this case is ultimately resolved. (See Ex. 35, SWBT, Unruh Direct, p. 12). How inter-company compensation is structured will determine how traffic should be tracked and/or reported. Id. SWBT's existing interconnection agreements include mutually agreed upon language which addresses tracking and reporting of traffic exchanged between SWBT and parties to the agreement. Id. Depending on the Commission's decisions in this case, there may be a need to change the process. Id.

XII. With Regard To Inter-Company Compensation. Does The Commission Have The Authority To Override Reciprocal Compensation Provisions Contained In Existing Interconnection Agreements? If No. Does The Commission Have The Authority To Require Bill And Keep Inter-Company Compensation In All Future Interconnection Agreements Between ILECs And CLECs. Thereby Prohibiting Reciprocal Compensation For MCA Service?

As previously stated in Section VII(A) above, interconnection agreements typically call for local reciprocal compensation between ILECs and CLECs. (See Ex. 32, SWBT, Hughes Direct, p. 13). Interconnection agreements did not contemplate CLEC participation in the MCA Plan. If the Commission determines that CLECs should either be permitted or required to participate in the MCA Plan, the Commission can and should condition participation upon modification of interconnection agreements to provide for bill and keep inter-company compensation on calls within the MCA Plan. Id.

Thus, SWBT does not believe that it is necessary to override reciprocal compensation provisions contained in existing interconnection agreements. If a CLEC wants to participate in the MCA Plan, it must agree to follow all of the parameters of the MCA Plan, including bill and keep inter-company compensation for all calls within the MCAs. This may require a CLEC to modify its existing interconnection agreements with ILEC(s). If a CLEC does not want to participate in the MCA Plan, then the provisions of its Interconnection Agreement with SWBT (and/or any other ILEC) would apply.

But CLECs who opt into the MCA must treat all calls within the MCA as bill and keep. CLECs must not be allowed to choose to participate in the MCA Plan on a customer by customer basis, as the CLECs would then have the ability to game the system by choosing between bill and keep and reciprocal compensation based on the calling pattern of each customer. Finally, with respect to future interconnection agreements between ILECs and CLECs, SWBT believes that the Commission has the authority to require bill and keep inter-company compensation.

XIII. Does The Commission Have The Authority To Direct CLECs To Negotiate Interconnection Agreements With Small ILECs? If A CLEC Has An Interconnection Agreement With A Large ILEC That Provides That The CLEC Must Have A Terminating Agreement With The Small ILEC Before Sending Calls To The Small ILEC's Network, Does The Commission Have The Authority To Order A Large ILEC To Block Calls Until The CLEC Provides The Large ILEC With Proof That It Has Such An Agreement?

SWBT believes that the Commission has the authority to direct CLECs to negotiate interconnection agreements with small ILECs. Further, as stated at the hearing of this matter, SWBT has the technical ability to block calls between local exchange companies until local exchange companies provide proof of interconnection agreements between the parties. (See T. 982-983, SWBT, Hughes). SWBT notes, however, such blockage would involve not only local calls between the two local exchange companies but would include interstate calls as well.

SWBT would only implement blocking upon an express order from this Commission which required it to do so. However, if such order were issued, SWBT would comply with all of the provisions of the Commission's Order. (See T. 984, SWBT, Hughes). Further, although SWBT believes that this Commission has authority over intrastate traffic between local exchange companies, the Commission should be cognizant that the Federal Communications Commission ("FCC") may have the authority to override any order which required a local exchange company to block traffic between two local exchange companies which had not reached an interconnection agreement. The FCC may have such authority based on its jurisdiction over: (a) interstate traffic; or (b) the implementation of the federal Telecommunications Act of 1996.

XIV. The Commission Should Not Require Information About The MCA Plan To Be Included In Directories. However, If The Commission Determines It Should Do So, It Should Require All Carriers That Have Codes Listed In The Directories To Contribute Financially To Implementation And Provision Of This Service.

Public Counsel argues that the Commission should require the information about the MCA Plan be included in directories. (See Ex. 6, Office of the Public Counsel, Meisenheimer Direct, p. 6). SWBT has several concerns about this proposal. At the outset, SWBT notes that the MCA Order does not require SWBT to place information about the MCA Plan in its directories. (See T. 197, Staff, Voight). Since directories are static documents, the MCA information can be out of date even before the directories are distributed to customers. (See Ex. 36, SWBT, Unruh Rebuttal, p. 14). SWBT has concerns about the Commission's authority to impose this requirement on directory providers, especially alternative providers. Id. SWBT also has concerns about further allegations of anti-competitive behavior. Id. If information about the MCA Plan is included in directories, CLECs might argue that the information about their own unique calling plans must be included as well. Id. If CLECs are permitted to establish their own "MCA plans" it may become difficult to identify these plans in the directories. Id. Finally, if the Commission were to determine that it is appropriate to place information about the MCA Plan in the directories, there may be a substantial cost in implementing and providing this service. (See T. 303, Office of the Public Counsel, Meisenheimer). Thus, if the Commission determines that it should be placed in the directories, the Commission should require all carriers that have codes listed in the directories to contribute financially to implementation and provision of this service. Id. at 304.

XV. The Commission Should Refrain From Ruling On Trunking Arrangements And Signaling Protocols Because These Issues Are Pending In TO-99-593. Further, The Commission Should Not Require MCA Traffic To Be Placed On Separate Trunk Groups Because This Commission Has Already Rejected This Proposal And No New Evidence Has Been Presented Which Would Require This Commission To Change Its Opinion.

MITG raises a concern over the manner in which SWBT is routing traffic between CLECs and the other ILECs. (See Ex. 9, MITG, Stowell Rebuttal, pp. 13-14). MITG contends that SWBT is using the “monopoly intraLATA toll network instead of the equal access network.” *Id.* SWBT believes that MITG is referring to the use of Feature Group C (“FG-C”) signaling rather than Feature Group D (“FG-D”) signaling. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 20; see also T. 943, SWBT, Hughes). FG-C signaling has been used for years to route traffic between LECs. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 20; see also T. 944, SWBT, Hughes). When SWBT transits a call on its network, FG-C signaling is used. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 20). This same signaling is used when an ILEC transits a call on its network to SWBT. *Id.* Calls, which are originated in the MCA area by CLEC customers, may also be carried over the network with FG-C signaling. *Id.* FG-D signaling, on the other hand, is used when traffic is routed between LECs and Interexchange Carriers. *Id.*

This Commission has previously examined the FG-C v. FG-D issue in TO-99-254. *Id.* This case concerned the termination of the Primary Toll Carrier Plan. *Id.* In its Report and Order issued on June 10, 1999, the Commission rejected the claim that the FG-D network should be used instead of FG-C for all intraLATA toll calls. *Id.* The Commission also established TO-99-593 to further investigate trunking arrangements and signaling protocols. *Id.* No action on this proposal should be taken in this case, given the pendency of TO-99-593. *Id.* (See also T. 346, Stowell, MITG).

MITG contends that MCA traffic should be placed on separate trunking groups. (See Ex. 9, MITG, Stowell Rebuttal, pp. 10-11). SWBT disagrees. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 21). A similar proposal was made in case number TO-99-254 concerning the PTC plan. Id. The Commission rejected the proposal because no hard evidence of the number of trunks or cost was presented. Id. (T. 345 Stowell, MITG). At the hearing of this matter, MITG admitted that it had not presented any evidence of the number of trunks that would be involved in segregating MCA traffic and/or the cost of doing so. (T. 346, Stowell, MITG). Thus, similar result should be reached here. Id.

Finally, MITG also claims that local compensation does not apply when more than two carriers are involved in carrying a call. (See Ex. 9, MITG, Stowell Rebuttal, pp. 16-17). The Commission has previously addressed this matter. (See Ex. 34, SWBT, Hughes Surrebuttal, p. 21). In its Report and Order issued on January 27, 2000, in Case No. TT-00-428 concerning a tariff proposal by members of MITG, the Commission rejected claims that local compensation is inapplicable when more than two carriers are involved. Id.

Conclusion

SWBT is not opposed to CLEC entry into the MCA Plan. However, if CLECs are either permitted and/or required to participate in the MCA Plan, they should be required to follow all of the parameters of the MCA Plan. Specifically, CLECs should be required to: (a) follow the geographic calling scope as defined in the MCA Order; (b) follow the bill and keep inter-company compensation mandate which is set forth in the Commission's MCA Order; (c) use segregated NXX codes to distinguish MCA subscribers' NXX codes from non-MCA customers' NXX codes; and (d) offer MCA Service to their customers at the rates which are mandated in the


Commission's MCA Order. CLECs should have pricing flexibility equal to that of the ILEC with whom they seek to compete.

Further, if CLECs are either permitted and/or required to participate in the MCA Plan, SWBT believes that it is entitled to revenue neutrality for the loss of toll revenue associated with the return-calling aspect of the current MCA Plan. SWBT believes that revenue neutrality can be achieved by assessing a 2.6 cent per minute charge for calls from SWBT's MCA subscribers to CLECs' MCA subscribers when those calls would otherwise be treated as toll calls. SWBT is willing to explore the possibility of establishing a cap on the originating revenue it receives from a CLEC who requests such an arrangement so that CLECs do not pay more in compensation than they receive for providing service to their customers.

Finally, if CLECs are either permitted and/or required to participate in the MCA Plan, a transiting company, whoever that may be, is entitled to be compensated for transiting traffic that originates from one party, transits the transiting company's facilities, and terminates to a third party.

Respectfully submitted.

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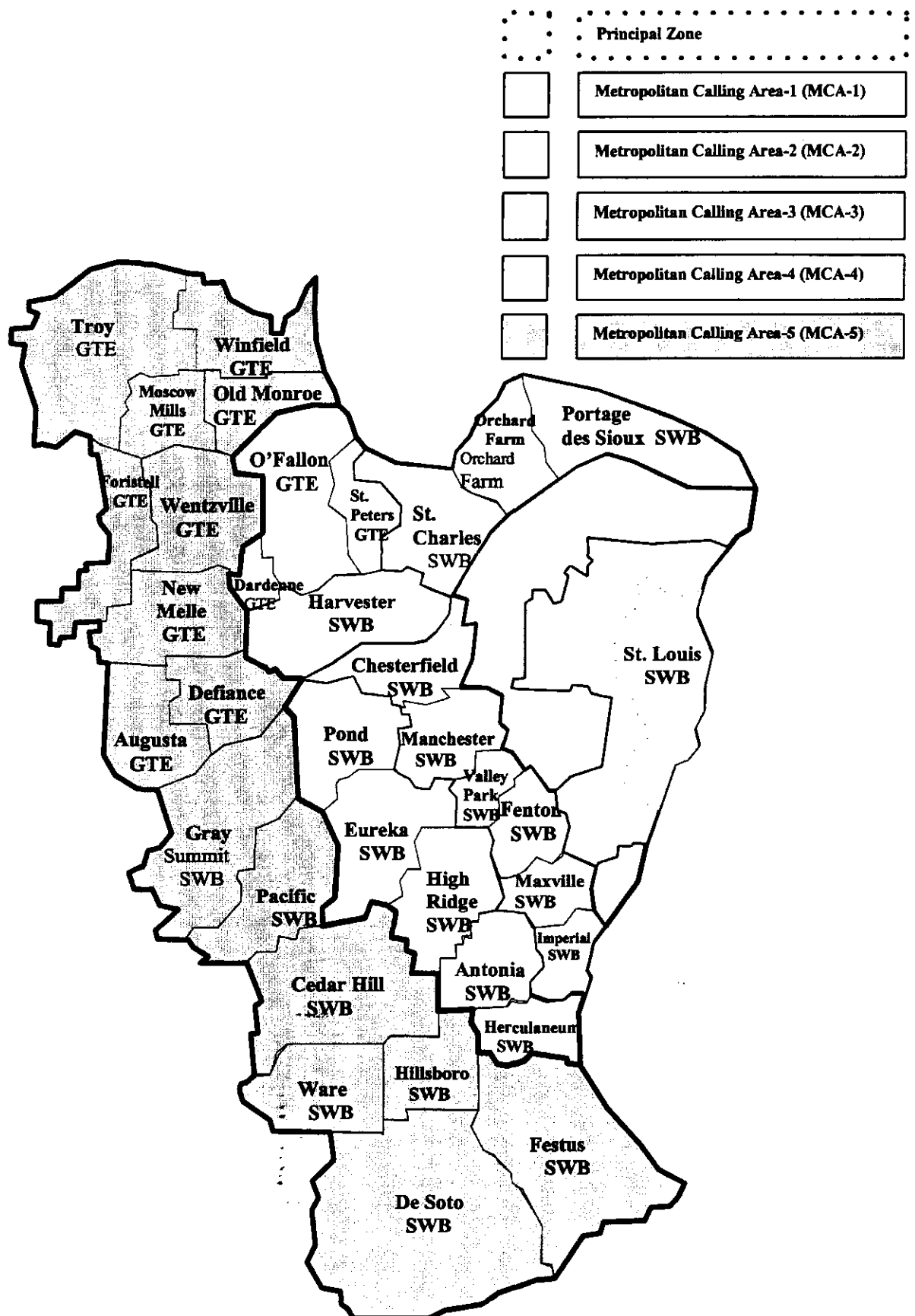
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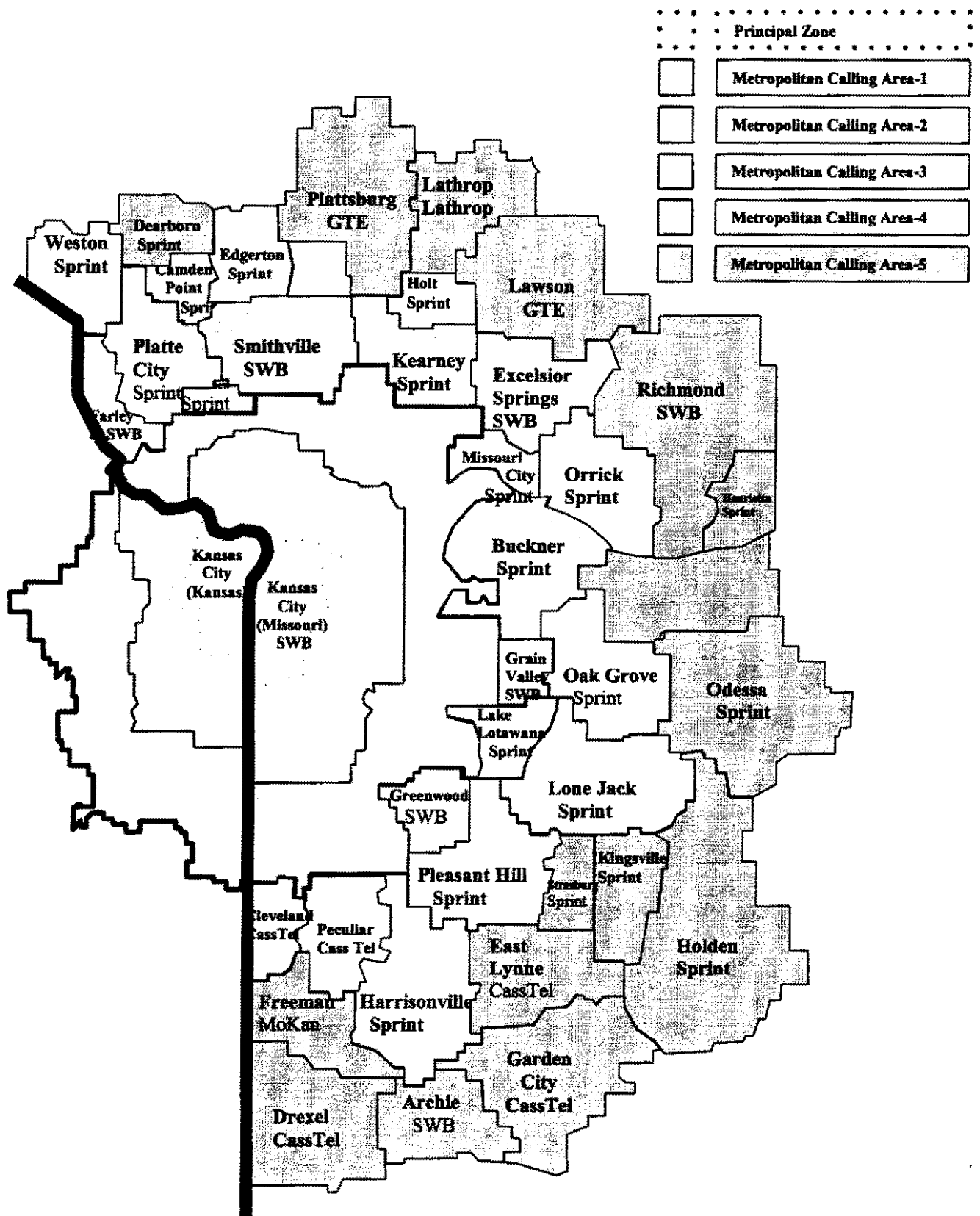
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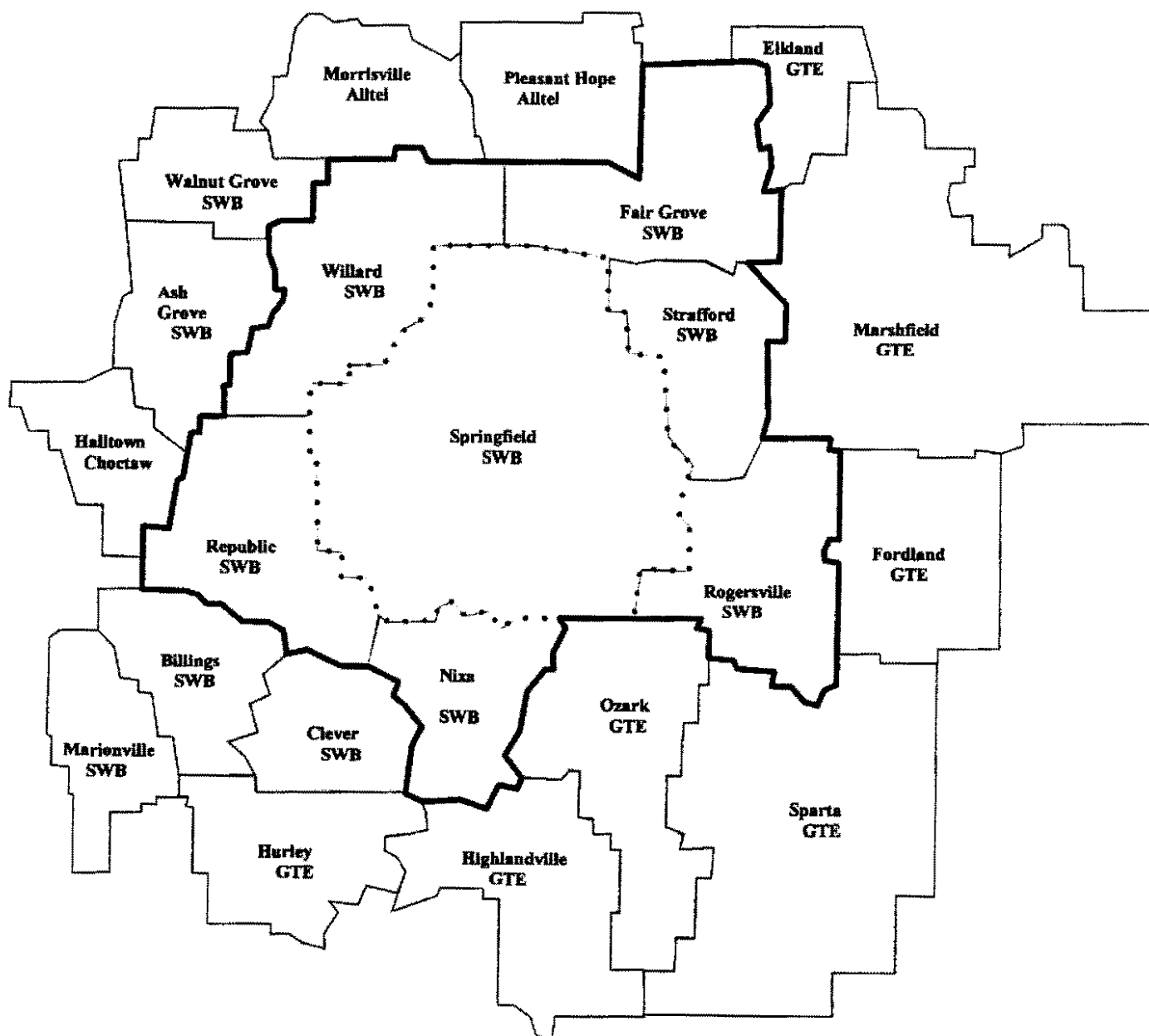
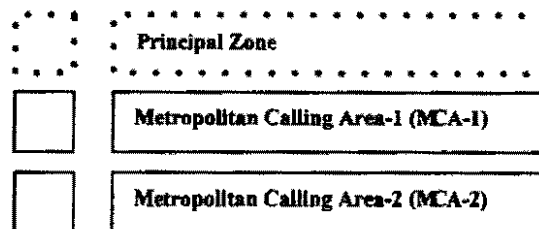
Missouri: St. Louis Metropolitan Calling Area (MCA) Telephone Exchanges



Missouri: Kansas City Metropolitan Calling Area (MCA) Telephone Exchanges



MISSOURI: Springfield Metropolitan Calling Area (MCA) Telephone Exchanges



CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on June 30, 2000.



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