

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of an Investigation for the	)	
Purpose of Clarifying and Determining Certain	)	
Aspects Surrounding the Provisioning of	)	Case No. TO-99-483
Metropolitan Calling Area Service After the	)	
Passage and Implementation of the	)	
Telecommunications Act of 1996.	)	

**INITIAL BRIEF  
  
OF  
  
GTE MIDWEST INCORPORATED**

James M. Fischer  
Larry W. Dority  
Fischer & Dority, P.C.  
101 West McCarty St., Suite 215  
Jefferson City, MO 65101

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**Introduction.**

The history and evolution of expanded local calling plans in Missouri, and the creation of Metropolitan Calling Area Service ("MCA") in particular<sup>1</sup>, are detailed in the prefiled testimony and opening statements of the parties to this proceeding, and underscore the tremendous amount of time and effort expended to provide the benefits now available to MCA customers. The caption of this case denotes the investigative purpose of "Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Area Service After the Passage and Implementation of the Telecommunications Act of 1996." GTE Midwest Incorporated ("GTE") respectfully submits that the evidence in this proceeding supports the Commission's utilization of a bifurcated approach in achieving this purpose: (1) the issuance of an Order in this case that will clarify and facilitate the expeditious participation of Competitive Local Exchange Carriers ("CLECs") in the MCA Plan under the same terms and conditions as those imposed on Incumbent Local Exchange Carriers ("ILECs"); and (2) the creation of an Industry Task Force to study the propriety and impacts of proposals and suggested changes regarding the MCA Plan and its continued viability in the future.

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<sup>1</sup>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.

The positions of GTE in this proceeding are set forth in the testimony of GTE Witness Dave Evans (Ex. Nos. 39 & 40, Tr. 1122-1185), and were enumerated in the Opening Statement of counsel as follows:

- GTE Midwest Incorporated supports the retention of the MCA Plan. The public policy considerations and needs addressed by this Commission in TO-92-306 still exist today.
- CLECS should be allowed to participate pursuant to the same criteria including rates, terms and conditions. Accordingly, if, as a result of this proceeding, the Commission decides that CLECs should be allowed to price MCA offerings at rates different than those prescribed, then the same allowances must be made for the ILECs.
- Bill and keep is still the appropriate compensation methodology for MCA traffic.
- The geographic footprint must stay the same. If CLECs are granted expanded outbound calling, as some request, then it may be via a plan under some other new name, but it won't be MCA. In TO-92-306, the Commission created MCA with distinct characteristics that defined geographic scope, price and intercarrier compensation.
- For those of us who have been involved with this issue for many years, the acronyms and parameters have continued to evolve; whether it be EAS, EMS, COS or MCA, each plan had distinct and well-defined parameters. Simply put, if those parameters are changed, we should not label such service MCA. (Tr. 48-49).

While the other ILECs in this proceeding generally support the above positions, it is interesting to note that comments contained in the Opening Statements of many of the other parties also call for expeditious inclusion of the CLECs in the provisioning of the current MCA service.

*AT&T*: "In the end, it's simply about whether incumbent LECs will be required to provide MCA service to their customers in such a way that CLECs can provide true MCA service to their customers." (emphasis added) (Tr. 21).

*Birch*: "Birch Telecom also believes this is a very simple case – or at least a simple issue. . . . The question is, in light of a Commission mandated and imposed

metropolitan calling area plan, is it right for all LECs, whether ILECs or CLECs, to be able to participate in that plan on the same basis?" (emphasis supplied) (Tr. 25).

*Gabriel*: "Our focus is on the immediate future. We're looking for a solution to the current problems with MCA. We're asking the Commission to restore the full scope and benefits of the MCA plan to all consumers." (Tr. 26).

*Sprint*: "If we want to review or refine the plan, that's fine, we'll participate. But let's take care of the problem today in getting CLECs in and not delay that." (Tr. 48).

*Staff*: "Furthermore, it's important that both ILECs and CLECs not only provide MCA service, but that they do so on terms and conditions that do not place either one at a competitive disadvantage." (Tr. 50).

*Public Counsel*: "The Public Counsel asks this Commission in conducting this regulatory procedure that it first do no harm to consumers. . . . We just want to have the CLECs getting immediate entry into the MCA and give them equal footing with Southwestern Bell in offering this service without a lot of tinkering with the compensation system and calling scope and rates. We think that the customers should have this available, and we're concerned what would happen if the tinkering starts. But the first thing is to let the CLECs provide the service. (Tr. 55-56).

However, the Office of Public Counsel's admonition against "tinkering" readily comes into play when one scrutinizes the CLEC use of such terms as "true," "same" or "equal" in the context of provisioning MCA service.

(Mr. Dority) Q. On page 2 of your direct testimony you indicate that the priority of this docket should be to ensure that CLECs are allowed to compete on equal terms with the other ILECs operating in the MCA areas providing MCA coverage. Do you still characterize that as that's what AT&T's belief is that the focus of this docket should be?

(Mr. Kohly) A. That is true. I think we disagree on what constitutes equal terms with other LECs, but yes, our priority in this docket is to allow us to provide MCA service to our customers.

Q. So equal is in the eyes of the beholder. Is that what you're telling me?

A. Yes. (Tr. 410).

The “caveats” suggested by some of the CLECs – variances in geographic scope, intercompany compensation and price – go to the very foundations of the MCA Plan. As GTE’s witness, Mr. Evans, points out: “. . . if we begin tinkering with MCA too much we destroy it, and I have concern for the several thousand customers I’ve got who enjoy MCA today. I’m not in the market to take that away from them.” (Tr. 1147).

**The Commission Order Explicitly Authorizing CLEC Participation in the MCA Plan Under the Same Terms and Conditions as the ILECs.**

The record in this proceeding clearly supports the issuance of a Commission order explicitly authorizing CLEC participation in the MCA Plan under the same terms and conditions as the ILECs. The testimony of the Chief Utility Economist with the Office of the Public Counsel, Barbara Meisenheimer, captures the “simple” nature of the Order required to facilitate CLEC participation in the MCA Plan.

(Ms. MacDonald) Q. And just to make sure I understand your position, is it your position that uniformity of MCA service would increase competition because new entrants could automatically ensure that their customers who subscribe to MCA service would remain having the same service as they had when they were with an incumbent local exchange carrier?

(Ms. Meisenheimer) A. Yes. That would be a potential benefit.

Q. And one of the benefits of having all LECs, both ILECs and CLECs, abiding by all of the terms and conditions of the MCA plan as adopted in TO-92-306 is that it would ensure long-term viability of the MCA plan; is that correct?

A. Yes. (Tr. 299-300).

(Mr. Kruse) Q. Ms. Meisenheimer, is it your testimony that you believe customers in Missouri would be better served if CLECs were allowed into the MCA markets under the condition that they offer the exact same prices, exact same geographic scope and bill and keep arrangements exactly the same as with ILECs?

A. Yes. (Tr. 287-288).

Testifying that this approach will provide for expeditious entry into the MCA Plan for the CLECs, Ms. Meisenheimer notes:

“It’s our position that CLECs have a choice of whether MCA, as it exists, a plan between carriers and approved by the Commission, is something that they would like to participate in. And if they do, they do it by the same rules. And if they choose not it, then they’re free to, under the terms of the designated interconnection agreements, provide an MCA-like service.

We’re not trying to prohibit them from providing their own plan, we’re not trying to mandate them to provide this plan. We’re trying to accommodate their rapid entry.” (Tr. 313).

#### **Geographic Calling Scope or “MCA Footprint.”**

The geographic calling scope or “MCA footprint” is an integral part of the MCA Plan that customers understand and clearly must be retained if MCA is to remain viable. (Tr. 196, 488, 742, 1149, 1183). If carriers want to add exchanges for outbound calling, they are free to do so – but it cannot be considered MCA (Tr. 56, 209, 422, 487-488, 1149).

#### **Bill and Keep Intercompany Compensation.**

To be consistent with the Order in Case No. TO-92-306, all parties must comply with and participate in the current bill and keep compensation mechanism in place today, including CLECs who wish to participate in the MCA. (Ex. 39, p. 3; Tr. 114, 118, 354, 510, 893-894, 987, 1126, 1135).

### **Use of Segregated NXXs for MCA Service.**

As most of the parties to this proceeding agree<sup>2</sup>, the use of dedicated MCA NXXs is currently the only reasonable method of providing MCA service. (Tr. 398-399, 617, 699, 769-770, 853). While there certainly are concerns regarding number exhaustion, Staff Witness Voight indicated that continued utilization of this method would not put the industry in a jeopardy situation. (Tr. 194). Regarding the appropriate mechanism to identify the MCA NXX codes, carriers could verify their codes to a central repository, thereby creating a baseline data set; some parties support using the Local Exchange Routing Guide ("LERG"); and a long-term solution could be addressed by the proposed Industry Task Force. (Tr. 1150).

### **Pricing.**

To conform to the same terms and conditions of the MCA Plan, thereby sustaining its viability, all carriers must adhere to the rates for MCA service as set out in Case No. TO-92-306. (Ex.39, p.2). Responding to questions from Chair Lumpe, GTE Witness Evans explained that "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." (Tr. 1138). Witness Kenneth Matzdorff, at pages 1195-1201 of the Transcript, sets forth his analysis as to why he thinks that allowing flexibility in pricing will destroy the MCA Plan. One approach to this critical issue, as set forth in a hypothetical question to Mr. Matzdorff by Vice Chair Drainer, may be to leave the prices for MCA service set at their current level and, while the parties are collecting

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<sup>2</sup>Staff Witness Voight proposes that the Commission "order ILECs to recognize CLEC codes, NXX codes, as MCA codes and vice versa." (Tr. 106). However, while the current MCA Plan is clearly a two-way calling plan, Mr. Voight's proposal would transform the MCA into a one-way calling plan. (Tr. 108, 179).

information over a set period of time to determine if pricing flexibility is appropriate, allow carriers to "bundle" other services or vary elements as long as the don't call it or market it as "MCA." (Tr. 1209).

However, if the Commission decides that CLECs should be allowed to price their MCA offering at a rate that differs from that ordered by the Commission, then the same allowances should and must be made for the ILECs participating in the MCA areas. To do otherwise, would disrupt the competitive neutrality. (Ex. 39, pp. 2-3).

#### **The Creation of an Industry Task Force.**

The record developed in this proceeding supports the concept of a Commission-created "Industry Task Force" to study the propriety and impacts of proposals and suggested changes regarding the MCA Plan, and its continued viability in the future. First raised as a possible vehicle to examine the Commission Staff's "MCA-2 Proposal,"<sup>3</sup> GTE respectfully submits that the creation of such a task force is appropriate, and GTE will welcome the opportunity to actively participate in such a process.

#### **Legal Issues to be Briefed by the Parties.**

GTE respectfully submits that it will address the two (2) legal issues posed by Vice Chair Drainer to be briefed by the parties (Tr. 489-490; 1145-1146), in its Reply Brief and Proposed Findings of Fact and Conclusions of Law.

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<sup>3</sup>Staff Witness Voight testified that at this point in time, Staff is not able to make a recommendation to the Commission to adopt the MCA-2 proposal. (Tr. 105-106).



Paul G. Lane  
Leo J. Bub  
Anthony K. Conroy  
Mimi B. MacDonald  
Southwestern Bell Telephone Company  
One Bell Center, Room 3518  
St. Louis MO 63101

Colleen M. Dale  
Broadspan Communications Inc.  
409 Cedar Lane  
Columbia MO 65201-6509

Bradley R. Kruse  
McLeodUSA Telecommunications Services Inc.  
6400 C Street, SW PO Box 3177  
Cedar Rapids IA 52406-3177

Mark W. Comley  
Newman Comley & Ruth PC  
P.O. Box 537  
Jefferson City MO 65102-0537

Mary Ann Young  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City MO 65102-4395

Carol Pomponio  
Nextlink Missouri Inc.  
2020 Waterport Center Drive  
Maryland Heights MO 64146