BEFORE THE PUBLIC SERVICE COMMISSION
FOR THE STATE OF MISSOURI

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

**REPLY BRIEF OF NEXTLINK MISSOURI, INC.**

NEXTLINK Missouri Inc. ("NEXTLINK") hereby submits its reply brief in the above matter.

## I. CLECs ARE CURRENTLY AUTHORIZED TO PARTICIPATE IN THE MCA PLAN.

Despite SWBT's recitation in its Initial Brief to the contrary, CLECs are currently included in the MCA Plan. SWBT's claims that CLECs are not authorized to participate in the MCA Plan is nothing more than a red herring used to divert this Commission's attention away from the fact that SWBT has engaged in unlawful and discriminatory practices in an attempt to swash competition. In fact, SWBT's witness, Tom Hughes, contradicts the assertions set out in SWBT's Initial Brief. Hughes admits that CLECs who utilize resale or UNE-P as a service delivery method or who utilize ILEC designated MCA NXXs ported numbers to serve customers may participate in the MCA Plan. (Tr. 999-1001).

However, SWBT treats facilities-based CLECs differently. Facilities-based CLECs who utilize their own NXXs are not authorized to participate in the MCA Plan, according to SWBT witness Hughes. (Tr. 1000-01). Interestingly, it is facilities-based CLECs which pose the greatest threat to ILECs with respect to lost profits and loss of market share. In an attempt to insulate itself from competitive losses, SWBT will recognize a facilities-based CLEC as an MCA Plan participant

only if the CLEC signs an MOU agreeing to pay SWBT 2.6 cents per minute, as Intermedia did. (Tr. 964-967, 1013).

SWBT fails to recognize that it is not the MCA Plan gatekeeper. The Commission has authorized CLEC participation through the certification process, the approval of tariff offerings, and through interconnection agreement arbitrations and/or approval of interconnection agreements. The Commission must re-affirm that CLECs may participate in the MCA Plan.

## II. THE PLAN PARAMETERS: THE PARTIES AGREE THE MCA GEOGRAPHIC FOOTPRINT SHOULD BE RETAINED AND EXPANDED; OUTBOUND CALLING SCOPES SHOULD BE PERMITTED.

The parties agree that the geographic footprint set out in the MCA Order should be retained. Additionally, the parties agree that expanded toll-free outbound calling should not be restricted (Hughes, Tr. 1023-25); provided however, that LECs are not required to provide the return call feature in areas which exceed the original MCA footprint and that, in this expanded area, intercompany compensation is governed by applicable access tariffs. SWBT is currently providing an expanded calling scope through its product, Local Plus. (Hughes, Tr. 1023).

## THE RECIPROCAL COMPENSATION PROVISIONS OF INTERCONNECTION AGREEMENTS SHOULD GOVERN THE INTERCOMPANY COMPENSATION BETWEEN COMPETING CARRIERS.

The parties agree that intercompany compensation between adjoining LECs should remain bill and keep, as is currently the practice. At issue is intercompany compensation (1) between interconnected carriers competing in the same local exchange areas.

The Commission has arbitrated and approved the reciprocal compensation provisions of the interconnection agreements which govern the intercompany compensation between interconnected carriers. The Commission would be remiss in issuing an Order in this case which purports to alter

the terms of existing interconnection agreements or which mandates terms of future interconnection agreements. (See **The Commission's Issues** below).

### THE PARTIES AGREE THAT THE USE OF SEGREGATED MCA NXXs IS NECESSARY.

Despite the numbering conservation issues, the parties agree that use of segregated NXXs is a necessary and integral part of the MCA Plan.

### SUBJECT TO STATUTORY SAFEGUARDS AND THE PSC'S OVERSIGHT RESPONSIBILITY, ALL LECs SHOULD ENJOY PRICING FLEXIBILITY.

To mandate pricing in a competitive environment is antithetical to the Federal Telecommunications Act of 1996. The parties, including SWBT (Hughes, Tr. 1020-23; 1024), agree that pricing flexibility is available to all MCA participants, including ILECs under the current statutory scheme. At issue is whether SWBT and other ILECs should have compete pricing flexibility despite the statutory safeguards under which they operate. The current statutory scheme allows all LECs, including SWBT, to adjust the price of its MCA service; deregulation is not warranted.

## III. THE EVIDENCE IS INSUFFICIENT TO WARRANT THIS COMMISSION IMPOSING RESTRICTIONS ON THE MCA PLAN.

There is insufficient evidence to impose restrictions on the MCA Plan. Based on the record before this Commission, any such restrictions would be arbitrary and capricious and would likely violate the Telecommunications Act of 1996.

## IV. EACH MCA PARTICIPANT SHOULD IDENTIFY AND NOTIFY OTHER PLAN PARTICIPANTS OF ITS MCA NXXs.

In order for the MCA to operate effectively, each participating carrier needs to identify its MCA NXX codes for the other participating carriers. At issue is whether notification should be handled by self-certification, a third party administrator, or via the LERG. The simplest and least costly method would be by self-certification through verified affidavits. Non-verified notification amongst the ILECs has worked heretofore, and is appropriate and adequate going forward.

## V. THE COMPENSATION IN THE PROPOSED MOU IS INAPPROPRIATE.

The compensation in the MOU is inappropriate and unlawful. It is an attempt by SWBT to recover its competitive losses. The illustration in SWBT's Initial Brief used to justify the MOU fails. SWBT contends that calls from the mandatory zone to non-MCA SWBT customers and to CLEC customers are treated the same, toll applies. SWBT uses this to justify the MOU charge. What SWBT fails to point out is that if an optional tier non-MCA customer located in an independent LEC exchange becomes an MCA subscriber, SWBT would lose the toll revenue from its mandatory zone customer without any compensation from the independent LEC. Independent LECs need not sign an MOU for their MCA subscribers to receive toll free calling. This disparity in requiring 2.6 cents intercompany compensation from CLECs but not from independent LECs amplifies the true nature the charge. It is a competitive loss surcharge and should be prohibited.

## VI. IT IS PREMATURE TO MODIFY THE MCA PLAN.

All parties agree that it is premature to modify the MCA Plan.

## VII. SINCE IT IS PREMATURE TO MODIFY THE MCA PLAN, IT IS PREMATURE TO ADDRESS WHETHER ILECS ARE ENTITLED TO REVENUE NEUTRALITY UNDER A MODIFIED PLAN.

It is premature to address whether ILECs are entitled to revenue neutrality under a modified plan. However, if they are entitled to revenue neutrality, the revenue replacement should not be borne by the CLECs via the MOU or otherwise.

## VII. WHETHER MCA TRAFFIC SHOULD BE TRACKED AND RECORDED DEPENDS ON THE INTERCOMPANY COMPENSATION ARRANGEMENT.

Under bill and keep arrangements, MCA traffic should not be tracked and recorded; under reciprocal compensation arrangements, the interconnection agreement should govern whether MCA traffic is tracked and recorded.

## VIII. THE COMMISSION'S ISSUES

A. Does the Commission have the authority to override the existing reciprocal compensation arrangements in existing interconnection agreements. If not, does the Commission have authority to direct in future interconnection agreements that intercompany compensation with regard to MCA service shall be by bill and keep, and not other types of reciprocal compensation.

The Commission's power to approve or disapprove interconnection agreements is set out in the Act. Section 252 of the Act provides in part:

> (e) APPROVAL BY STATE COMMISSION
>
> (1) APPROVAL REQUIRED.--Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A state commission to which an agreement is submitted to shall approve or reject the agreement, with written findings as to any deficiencies.
>
> (2) GROUNDS FOR REJECTION.--The State Commission may only reject -

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

If the Commission fails to act within the prescribed time for the approval process, the interconnection agreement is deemed approved. §252(4) If any party is aggrieved by The Act, judicial review is before the Federal district court. §252(6). The system of State commission interconnection agreement approval outlined by the Act is one of limited jurisdiction. Nothing in the Act can be cited as authority for retained or continuing jurisdiction over approved interconnection agreements so as to justify a reopening of the case at some times subsequent to agreement approval for purposes of further refinements. Accordingly, the Commission lacks authority to override the reciprocal compensation arrangements contained in existing approved interconnection agreements.

With respect to interconnection agreements brought to the Commission in the future and how the Commission might address MCA services and intercompany compensation arrangements, the Act, and the rules promulgated thereto, provide that in connection with **arbitrated** agreements bill and keep arrangements can be considered as acceptable terms and conditions for the mutual reciprocal recovery of transport and termination costs if the traffic is roughly balanced.

§252(d)(2)(B) There is no similar provision for negotiated agreements. Ostensibly, the Commission is restricted to the grounds for rejection listed in §252(e)(2) for negotiated agreements, and the parties' agreed to reciprocal compensation provision would be tested against those grounds. Thus, NEXTLINK submits that the Commission could not require that future interconnection agreements, whether arbitrated or negotiated, include bill and keep provisions for MCA services.

B. Does the Commission have the authority to direct the CLECs to enter interconnection agreements with independent LECs.

The interconnection agreement is defined and regulated by federal law. It has no counterpart in Missouri state law. The federal statute in which the interconnection agreement originates provides that it is the duty of telecommunications carriers to interconnect with the facilities and equipment of other telecommunications carriers ; §252(a)(1); but the right to compel an interconnection is not directly given to the State commission or the federal commission. Under the Act, the obligation for an incumbent LEC to interconnect commences with the request of a competing carrier. If that request is made, and the incumbent LEC refuses to negotiate, or has issues which need arbitration, the Commission has limited power to command the parties to interconnect. The Act sets out how the agreement for interconnection can be approved. Pursuant to the Act, the Commission does not have the authority to mandate an interconnection between the CLECs and the independent LECs.

C. Does the Commission have authority to direct incumbent LECs to block CLEC traffic that transits its facilities absent proof that the CLEC has an interconnection agreement with the terminating carrier?

Section 392.200.6 RSMo. 1994 provides:

> Every telecommunications company operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telecommunications company with whose facilities a connection may have been made.

An order of the Commission directing a telephone company to block the local traffic of another telecommunications company would be repugnant to this statute. Therefore, the Commission lacks the authority to order the blocking of CLEC traffic. Further, such an order would constitute a barrier to entry in direct violation of the Act. Moreover, it would be contrary to public policy since the end user consumer would be the entity ultimately punished.

## IX. PROPOSED REPORT AND ORDER

NEXTLINK reviewed the Findings of Fact, Conclusions of Law and Order proposed by Gabriel Communications of Missouri, Inc., and in lieu of filing its own separate proposal, NEXTLINK concurs in the Report and Order proposed by Gabriel.

Respectfully submitted,

By: _____

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, on this 17th day of July, 2000, to:

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