BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

REPORT AND ORDER

Issue Date: September 7, 2000

Effective Date: September 19, 2000

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

TABLE OF CONTENTS

APPEARANCES

Paul G. Lane, General Attorney-Missouri, and **Mimi B. MacDonald**, Attorney, Southwestern Bell Telephone Company, One Bell Center, Room 3520, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Paul S. DeFord, Lathrop & Gage, 2345 Grand Boulevard, Suite 2500, Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

Linda K. Gardner, Senior Attorney, Sprint Corporation, 5454 West 110th Street, Overland Park, Kansas 66211, for Sprint Missouri, Inc.; Sprint Communications Company L.P.; and Sprint Spectrum L.P. d/b/a Sprint PCS.

Mark W. Comley, Newman, Comley & Ruth, 601 Monroe Street, Suite 301, Jefferson City, Missouri 65101, for NEXTLINK Missouri, Inc.

Mary Ann (Garr) Young, William D. Steinmeier, P.C., 2031 Tower Drive, Post Office Box 104595, Jefferson City, Missouri 65110-4595,

and

Bradley R. Kruse, Associate General Counsel, McLeodUSA Telecommunications Services, Inc., 6400 C Street, SW, Post Office Box 3177, Cedar Rapids, Iowa 52406-3177, for McLeodUSA Telecommunications Services, Inc.

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

and

Scott Sapperstein, Attorney at Law, Intermedia Communications, Inc., 3625 Queen Palm Drive, Tampa, Florida 33619, for Intermedia Communications Inc.

James M. Fischer, and **Larry W. Dority**, Fischer & Dority, P.C., 101 Madison Street, Suite 400, Jefferson City, Missouri 65101, for GTE Midwest Incorporated.

W.R. England, III, and **Brian T. McCartney**, Brydon, Swearengen & England P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson city, Missouri 65102-0456, for: ALLTEL Missouri, Inc.; Cass County Telephone Company; Citizens Telephone Company of Higginsville, Missouri, Inc.; Grand River Mutual Telephone Corporation; Green Hills Telephone Corporation; Lathrop Telephone Company; and Orchard Farm Telephone Company.

Craig S. Johnson, Andereck, Evans, Milne, Peace & Johnson, L.L.C., 305 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102, for: Alma Telephone Company, Chariton Valley Telephone Corporation Mid-Missouri Telephone Company, Northeast/Modern Missouri Rural Telephone Company, Peace Valley Telephone Company, Inc., Choctaw Telephone Company; and MoKan Dial, Inc. (the Missouri Independent Telephone Group, formerly known as the Mid-Missouri Group of Local Exchange Companies).

Carl J. Lumley, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105, for: MCI WorldCom Communications, Inc.; MCImetro Access Transmission Services, Inc.; MCI WorldCom Network Services, Inc. (f/k/a MCI Telecommunications Corporation); BroadSpan Communications, Inc., d/b/a Primary Network Communications; and Gabriel Communications of Missouri, Inc.

Peter Mirakian III, Spencer, Fane, Britt & Browne, LLP, 1000 Walnut Street, Suite 1400, Kansas City, Missouri 64016-2140, for Birch Telecom of Missouri, Inc.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Marc D. Poston, Senior Counsel, and **Julie A. Kardis**, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Nancy Dippell, Senior.**

REPORT AND ORDER

Procedural History

On March 9, 1998, MoKan Dial, Inc. (MoKan), and Choctaw Telephone Company (Choctaw) jointly filed an application to determine certain aspects surrounding continued provisioning of Metropolitan Calling Area (MCA) service (Case No. TO-98-379). On April 22, 1999, the Staff of the Missouri Public Service Commission (Staff) filed a Motion to Open Docket and Set Technical Conference. In that Motion, Staff requested the Missouri Public Service Commission (Commission) to establish a case for the purpose of investigating "certain aspects surrounding the provisioning of metropolitan calling area service after the passage and implementation of the Telecommunications Act of 1996." Staff also requested the Commission to close Case No. TO-98-379 and make all parties to that case automatic parties to a newly created investigation docket. Staff recommended that the Commission set a date for a technical conference to be held in July or August so that the parties could continue discussions on 14 specific issues that the Staff set forth in its motion.

On May 26, 1999, the Commission issued an Order Establishing Case, Directing Notice, and Adding Parties. The Commission specified that the case was established for the purpose of investigating the continued provisioning of MCA Service after the passage of the Telecommunications Act of 1996 (the Act). The Commission directed the Records Department of the Commission to send notice to all interexchange carriers and local exchange

telecommunications companies. The Commission determined that the petitioners and intervenors to Case No. TO-98-379 would be made parties to the case without the need for intervention. The Commission identified those parties as: Choctaw Telephone Company; MoKan Dial, Inc.; Southwestern Bell Telephone Company (SWBT); Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Green Hills Telephone Company, Lathrop Telephone Company, and Orchard Farm Telephone Company;[1] Sprint Missouri, Inc., d/b/a Sprint, and Sprint Spectrum, L.P., d/b/a Sprint PCS;[2] AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., AT&T Wireless Services, Inc., and TCG Kansas City, Inc;[3] and Gabriel Communications, Inc. (Gabriel). The Commission also granted the requests for participation without intervention of MCI Telecommunications Corporation and MCImetro Access Transmission Service, L.L.C., which were filed on May 24, 1999. The Commission directed any other party wishing to intervene or to participate without intervention to file an application to do so no later than June 25, 1999. Finally, the Commission set a technical conference for July 20-21, 1999, at 9:00 a.m.

---

[1] This group is collectively referred to as "Cass."

[2] Sprint Missouri, Inc., d/b/a Sprint, Sprint Spectrum, L.P., and Sprint Communications Company, L.P., are collectively referred to as "Sprint."

[3] This group is collectively referred to as "AT&T."

Subsequently, Sprint Communications Company, L.P.; BroadSpan Communications, Inc., d/b/a Primary Network Communications (Primary); ALLTEL Missouri, Inc. (ALLTEL)[4]; GTE Midwest Incorporated and GTE Communications Corporation (GTE); Alma Telephone Company, Chariton Valley Telephone Corporation, Mid-Missouri Telephone Company, Northeast/Modern Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.;[5] Grand River Mutual Telephone Corporation (Grand River);[6] and Birch Telecom of Missouri, Inc. (Birch), filed timely applications to intervene. On July 12, 1999, the Commission granted intervention to each of these parties.

On August 20, 1999, the Commission issued an Order Directing Filings. In that order, the Commission noted that the parties met on July 20, 1999, and held a technical conference in order to develop a tentative list of the issues for this case. The Commission also noted that Staff filed a Status Report indicating that the parties agreed to postpone the second day of the technical conference until August 24, 1999. The Commission ordered Staff to file a status report regarding the progress of the August 24, 1999, technical conference no later than September 6, 1999. The Commission also ordered the parties to file a proposed procedural schedule no later than September 6, 1999.

On September 7, 1999, the Staff filed a Status Report and Proposed Procedural Schedule. On October 8, 1999, AT&T, ALLTEL, Grand River, Sprint, Staff, the Office of the Public Counsel (Public Counsel), Gabriel, and Birch filed a Non-Unanimous Stipulation and Agreement. The Stipulation and Agreement did not provide for the settlement of the actual issues in

---

[4] ALLTEL is also a member of the group referred to herein as "Cass."

[5] This group, along with Choctaw Telephone Company and MoKan Dial, Inc., was collectively referred to as the Mid-Missouri Group, and are now known as the Missouri Independent Telephone Group.

[6] Grand River is also a member of the group referred to herein as "Cass."

dispute; rather, it provided for an interim measure that would permit competitive local exchange carriers (CLECs) to join in the MCA service pending the Commission's final decision.

On October 12, 1999, the Mid-Missouri Group filed a Partial Opposition to Non-Unanimous Stipulation and a Request for Hearing. On October 18, 1999, SWBT filed a Request for Hearing. On November 1, 1999, AT&T filed a Motion for Expedited Hearing.

On November 30, 1999, the Commission issued its Order Rejecting Non-Unanimous Stipulation and Agreement, Granting Intervention, and Establishing Procedural Schedule. In that order, the Commission granted Intermedia Communications, Inc.'s (Intermedia) Application to Intervene Out of Time, rejected the non-unanimous stipulation, and adopted a procedural schedule.

On December 28, 1999, McLeodUSA Telecommunications Services, Inc. (McLeod), filed an Application to Intervene and Request to Accept Out of Time. On December 29, 1999, the Commission received a Notice of Group Name Change indicating the Mid-Missouri Group had changed its name to Missouri Independent Telephone Group.[7] On January 5, 2000, Nextlink Missouri, Inc. (Nextlink) filed an Application to Intervene Out of Time. Also on January 5, 2000, SWBT filed a Motion for Protective Order. On January 6, 2000, the Commission held a prehearing conference in this matter. That same day, January 6, 2000, MCI WorldCom Network Services, Inc., f/k/a MCI Telecommunications Corporation, and MCImetro Access Transmission Services, L.L.C., filed a motion requesting that the Commission allow a substitution of parties, making the proper participant in this case MCI WorldCom Communications, Inc.

[7] The Missouri Independent Telephone Group's Notice of Group Name Change did not include Peace Valley Telephone Company.

On January 27, 2000, the Commission issued an order granting the applications of McLeod and Nextlink to intervene out of time. The Commission also granted SWBT's Motion for Protective Order and recognized the group name change of the Mid-Missouri Group to the Missouri Independent Telephone Group (MITG).

On February 1, 2000, interested parties filed Direct Testimony pursuant to the procedural schedule that had been adopted in this case.

On February 29, 2000, the Commission issued an Order Scheduling Local Public Hearings. In that order, the Commission ordered five public hearings to be held: one in Springfield, Missouri; two in the St. Louis, Missouri, metropolitan area; and two in the Kansas City, Missouri, metropolitan area. These public hearings proceeded as scheduled.

On March 1, 2000, interested parties filed Rebuttal Testimony and on March 28, 2000, interested parties filed Surrebuttal Testimony pursuant to the procedural schedule.

On April 11, 2000, Staff filed a List of Issues. On April 21, 2000, Staff filed a Proposed Order of Witnesses and Order of Cross-Examination. That same day, April 21, 2000, Staff filed a Motion for Leave to File Supplemental Direct Testimony. On April 25, 2000, interested parties filed Statements of Position.

On May 4, 2000, the Commission issued an Order Granting Leave to File Supplemental Direct Testimony and Granting Motion to Compel. In that Order, the Commission granted Staff leave to file the Supplemental Direct Testimony of William L. Voight and the Supplemental Direct Testimony of Amonia L. Moore. The Commission ordered any interested party to file Supplemental Surrebuttal Testimony to the Supplemental Direct Testimony of William L. Voight and the Supplemental Direct Testimony of Amonia L. Moore no later than May 11, 2000.

On May 9, 2000, the Commission issued its Order Granting Motions to Accept Testimony Out of Time and Substituting Parties. In that order, the Commission substituted MCI WorldCom Communications, Inc. (MCI), for MCI WorldCom Network Services, Inc., f/k/a MCI Telecommunications Corporation, as a participant without intervention in this proceeding. The Commission also granted the motions to accept testimony out-of-time of McLeod and Cass.

On May 11, 2000, interested parties filed Supplemental Surrebuttal.

An evidentiary hearing was held from May 15-19, 2000, at the Commission's offices in Jefferson City, Missouri. Interested parties were represented at the hearing. Thereafter, interested parties filed Initial Briefs, Reply Briefs, and Proposed Findings of Fact and Conclusions of Law.

Late-Filed Exhibits

At the hearing, Exhibit No. 51 was reserved for AT&T to file portions of the language regarding compensation mechanisms in its interconnection agreement with GTE. Exhibit No. 53HC was reserved for McLeod to file the number of access lines it provides in the State of Missouri. Exhibit No. 57 was reserved for Gabriel to file a copy of its "Millennium" tariff. Exhibit No. 71 was reserved for Cass to file a copy of Section 37 of the interconnection agreement between SWBT and McLeod as approved in Commission Case No. TO-2000-26. No objections to those exhibits were filed and Exhibit Nos. 51, 53HC, 57,and 71 are received into the record.

Exhibit No. 67HC[8] was reserved for Staff to file corrected direct and supplemental direct testimony of Amonia L. Moore. On June 5, 2000,

[8] When this exhibit was first received the Regulatory Law Judge inadvertently marked it as Exhibit No. 72HC; however, a Notice of Correction was issued on June 9, 2000 correcting that error.

SWBT filed a response to Exhibit No. 67HC indicating that not all of the testimony of Amonia L. Moore had been corrected, but that only select portions were updated. SWBT stated that it did "not object to the changes because they do not appear to affect a significant issue in this matter. SWBT does object, however, to selective updating of material shown to be incorrect at the hearing." No other responses or objections to Exhibit No. 67HC were received.

It is unclear from SWBT's Response whether it truly objects to Exhibit No. 67HC coming into this record or not. SWBT does request in its prayer for relief that the Commission consider its arguments when evaluating the information supplied in the exhibit. Ms. Moore made corrections to her prefiled testimony during the evidentiary hearing. Staff then asked at the close of the hearing to be allowed to file as a late-filed exhibit those corrections. Because the parties will not have had an opportunity to cross-examine Ms. Moore with regard to Exhibit No. 67HC, and because SWBT admits that the corrections to the testimony of Amonia L. Moore do not significantly affect the pending issues in this case, the Commission will exclude Exhibit No. 67HC from the evidence. The exhibit will, however, be preserved in the record as an offer of proof. The Commission will treat SWBT's responses as an objection and will sustain the objection.

Pending Motions

Motion to Strike

On July 10, 2000, Cass filed a Motion to Strike the last three sentences of the first full paragraph on page ten of the Initial Brief of Intermedia and Attachment I to Intermedia's Initial Brief. Cass averred that Attachment I was not included in any of Intermedia's prefiled testimony nor was it ever introduced into evidence at hearing.

On July 14, 2000, Intermedia filed its response. Intermedia argued that its statements in its brief and its Attachment I was offered in response to a question from Vice Chair Drainer during the evidentiary hearing. Intermedia stated that it did not offer the Attachment for its substantive content.

On July 19, 2000, Cass filed a reply to Intermedia's response. In that reply, Cass stated that the third full sentence on page 28 of Intermedia's Reply Brief should also be stricken because it contains facts which are not in evidence. Intermedia responded on July 28, 2000, to Cass's additional motion to strike.

The Commission rules provide: "No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the Commission." 4 CSR 240-2.130(8). The questions which Vice Chair Drainer asked all of the parties to brief were related only to the legal issues. Although Intermedia states that the information was not submitted as substantive evidence, if it is accepted, that is the only purpose that it can serve. Therefore, the Commission will sustain Cass's motion and strike portions of Intermedia's Initial Brief.

For the same reasons, the Commission will strike portions of Intermedia's Reply Brief. However, not all of the sentence in the reply brief that Cass cites is supplemental evidence. Therefore, the Commission will strike only the words "as early as 1997" as ordered below.

Motion to Establish Case

On June 6, 2000, Public Counsel filed a motion to establish a case to consider modification to MCA service. Public Counsel stated that as a result of the public hearings and media coverage of this case, telephone customers outside of the MCA have requested that the MCA be expanded.

Public Counsel stated that it has received correspondence from over 250 businesses and customers in the City of Lexington and inquiries from the Innsbrook community in Warren County requesting expansion of the MCA. Public Counsel also stated that it received electronic mail messages from telephone customers in the City of Greenwood and from the Ozark County Commission regarding MCA rates.

Staff also proposed potential changes to the MCA service that were referred to as MCA-2[9]. Staff responded to Public Counsel's motion on June 16, 2000. Staff states that it is premature to open a new case to explore changes to the MCA until the Commission enters a final decision in this case and it becomes more clear what issues may or may not need to be resolved. Staff recommended that if the Commission opened a new case it should give the parties specific direction as to the scope of that proceeding.

As the issues in this case became established, it was clear to the Commission that the foremost issues were the ability of the CLECs to provide the MCA service and the intercompany compensation. There was insufficient evidence presented to determine if calling scope modifications were needed.

The Commission will establish an Industry Task Force to investigate issues related to price and the effects of an expanded MCA on pricing. Because the Commission intends to investigate the MCA service further, and because the issues being decided in this case may have an impact on MCA service, the Commission finds that it is premature to open a new case to examine the consumer pricing and calling scope issues. Therefore, Public Counsel's motion will be denied.

[9] MCA-2 in the context of this case is discussed further below.

Discussion

The Issues:

In compliance with the Commission order establishing a procedural schedule, Staff submitted a list of issues for determination by the Commission. Each party also filed a statement indicating its position with respect to those issues. The issues formulated by the parties as presented by Staff and the general position of the parties at the close of the evidentiary hearing were as follows:

a. **Are competitive local exchange carriers (CLECs) currently included in the MCA plan, and, if not, should CLECs be permitted/required to participate in the MCA plan?**

All parties agree that CLECs should be able to participate in the MCA service on a going-forward basis. The incumbent local exchange carriers (ILECs) contend that CLECs are not currently participating. The CLECs, Staff and Public Counsel contend that the ILECs are unlawfully interfering with CLEC participation in the MCA and that the Commission must stop such interference immediately to restore the full operation and benefits of the service.

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

Most of the ILECs generally contend that if CLECs offer MCA service, it must be on exactly the same terms and conditions as the ILECs offer it. The other parties generally contend that CLECs should continue to have the flexibility afforded them as competitive carriers. There does not appear to be a real dispute regarding calling scopes, with all parties agreeing that CLECs should offer the same calling scope for MCA service as the ILECs and that CLECs should also be able to offer additional outbound

toll-free calling in conjunction with MCA service, but under a different service name, as the ILECs already do. The other issues are discussed below.

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

A few parties seek restrictions on the use of MCA service for calling wireless carriers and internet service providers. The other parties oppose any new restrictions.

d. What pricing flexibility should ILECs and/or CLECs have under the MCA plan?

Staff, Public Counsel, the CLECs, and several other parties contend that CLECs should have pricing flexibility as competitive companies. Public Counsel suggests that current ILEC MCA prices should serve as a cap. The others contend such a cap is not permitted, but the ILEC prices will serve as such a cap for all practical purposes. Most of the ILECs assert that the CLECs should only have the same flexibility as the ILECs.

e. How should MCA codes be administered?

Nearly all parties agree that separate NXX codes are still required for the provision of MCA service. Staff would like to avoid the continued use of separate NXX codes. Some parties advocate a verified notification procedure for identifying MCA NXX codes, others advocate use of the Local Exchange Routing Guide (LERG) tables, and others seek third party code administration.

f. What is the appropriate intercompany compensation between LECs providing MCA services?

Staff and the CLECs propose that intercompany compensation between carriers operating in adjoining areas should continue to be handled on a bill-and-keep basis, and that reciprocal compensation should continue to be used between carriers competing against each other in the same service

areas. Other parties propose to override interconnection agreements and use bill-and-keep arrangements for all MCA traffic.

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

SWBT is the only party that defends the proposed Memorandum of Understanding (MOU) compensation. Other parties that take a position oppose SWBT's proposal as an unlawful surcharge upon delivery of local dialing parity and a competitive loss recovery device.

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

All parties agree that MCA service should be retained. Some parties propose commencement of another proceeding to investigate future modifications to the service.

i. 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?

Several ILECs indicate that revenue neutrality would be appropriate if the service were to be modified in the future. Only SWBT claims any revenue neutrality is required in this case, and it proposes the MOU surcharge be used. Other parties that take a position assert there is no need to address revenue neutrality in this case and oppose the surcharge, as indicated above.

j. Should MCA traffic be tracked and reported, and if so, how?

The small ILECs express concern about their ability to identify MCA traffic being delivered to them. The other parties generally contend that there is no need to track MCA traffic being delivered to the ILECs because it is delivered on a bill-and-keep basis.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the

following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The telephone companies serving the Kansas City, St. Louis, and Springfield metropolitan areas have been pressured by their customers to provide flat-rate, expanded local calling plans. For over 25 years, the Commission and the telecommunications industry have responded to economic development and public interest concerns by developing, implementing, and refining expanded calling plans.

In the mid-1970s, the Commission adopted an Extended Area Service (EAS) plan in order to recognize the calling patterns of Missouri customers. Specifically, the Commission recognized that school districts, places of employment, medical facilities, places of worship, and shopping facilities often crossed exchange boundaries. The Commission observed that the calling patterns of businesses also crossed exchange boundaries. Accordingly, the Commission implemented the EAS plan in order to meet the economic development and public interest needs of Missouri customers.

The Commission revisited Missouri's calling scope issues about ten years later, and it withdrew the prior EAS rule and ordered the industry to implement an experimental Extended Measured Service (EMS) plan.[10] A new case was opened to investigate the experimental EMS, and it was in this case that the Commission ordered Community Optional Service

[10] *See* In the Matter of the Investigation into All Issues Concerning the Provision of Extended Area Service (EAS) in the State of Missouri under Commission Rule 4 CSR 240-30.030, Case No. TO-86-8, *Report and Order*, Mar. 20, 1987.

(COS).[11] The industry also proposed and attempted to implement an Extended Local Calling Scope (ELCS) program.[12]

In 1991, the Commission continued to address Missouri calling scope issues by initiating a task force representing various communities, state agencies, and company officials. This task force developed a report, and in 1992 the Commission held hearings in Case No. TO-92-306. On December 23, 1992, the Commission issued its Report and Order that revised the COS and established the Metropolitan Calling Area (MCA) service and the Outstate Calling Area (OCA) service.[13]

In the Report and Order in Case No. TO-92-306, the Commission defined the calling scope of the MCA service. The Commission structured the MCAs in tiers radiating out from the centers of St. Louis, Kansas City, and Springfield. In St. Louis and Kansas City, there are six tiers, the Center tier and MCA tiers 1-5. In Springfield, there are three tiers, the Center tier and MCA tiers 1 and 2. In St. Louis and Kansas City, the Center tier, MCA-1 and MCA-2 comprise the metropolitan exchange. In Springfield, the Center tier and MCA-1 comprise the Springfield metropolitan exchange. Unlike the metropolitan exchanges in St. Louis, Kansas City, and Springfield, the optional MCA tiers 3, 4, and 5 in St. Louis and Kansas City, and the optional tier 2 in Springfield, are actually composed of several individual exchanges within each MCA tier.

The Commission ordered MCA Service to be a mandatory service offering in MCA-Central, MCA-1, and MCA-2 in St. Louis and Kansas City, as

---

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

[12] *Id.*

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

well as MCA-Central and MCA-1 in Springfield. The Commission determined in these exchanges, MCA service would replace basic local service, except for those customers who choose local measured service where that service is available. 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 St. Louis and Kansas City, as well as MCA-2 in Springfield. Additionally, the Commission mandated the rates to be charged for MCA service.

The Commission recognized MCA as a local service offering, while COS and OCA were classified as toll offerings. The form of intercompany compensation was also differentiated. MCA was provided under a bill-and-keep compensation arrangement where each carrier billed its own end-user customers rather than creating billing records and billing other carriers for interexchange traffic. (COS and OCA, on the other hand, were recognized as toll services and were therefore access-based compensation plans.)

Since its implementation, MCA service has met the public interest, and customer complaints about calling scopes have been greatly reduced. In 1996, however, federal and state telecommunications legislation greatly changed the landscape of the telecommunications industry in Missouri. This legislation allowed for competition in the local telecommunications services market, and the entrance of new telecommunications providers led to confusion about the availability of MCA service. On July 16, 1998, two small ILECs filed a motion to clarify the situation. The Commission opened Case No. TO-98-379 for this purpose.[14]

---

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

On April 22, 1999, the Commission's Staff filed a motion requesting an investigation of the provisioning of metropolitan calling area service after the passage and implementation of the Telecommunications Act of 1996, 47 U.S.C. 151, *et seq.* In response, the Commission opened the present case.

The evidence in this case indicates that the MCA service ordered by the Commission in Case No. TO-92-306 is still in the public interest. The evidence also indicates that Missouri telephone customers in the three major metropolitan areas desire MCA service and find it a valuable feature. No party has proposed eliminating MCA service.

CLEC Participation in MCA Service.

MCA service was established before the entry of CLECs into Missouri. It was not until Congress passed the Telecommunications Act of 1996 (the Act) that the "competitive" part of "competitive local exchange carrier" came into existence. Whether or not the CLECs could or could not have participated in the MCA in the past, although defined by the parties as an issue in this case, is not a proper issue for this case. This case was established to determine the status of the MCA service from this point forward and therefore any damages sustained by what the CLECs allege was illegal action by the ILECs is more properly raised in a complaint case.

The evidence indicates that the participation of CLECs in MCA service will serve the public interest just as the provision of MCA service by the ILECs has served the public interest since 1992. The public policy considerations and needs addressed by this Commission in Case No. TO-92-306 still exist today, and it is in the public interest to issue an Order that will clarify and facilitate the expeditious participation of CLECs. As explained more fully below, the Commission finds that CLECs should be allowed to participate in MCA service on a voluntary basis under the same

terms and conditions that were ordered by the Commission for the Incumbent Local Exchange Carriers (ILECs) in Case No. TO-92-306 with the exception of pricing.

Geographic Calling Scope.

When MCA service was established, the calling scopes and the cost of transporting services from those exchanges were carefully examined based on the existing networks and revenue streams that they replaced. The evidence presented shows that the MCA service's present calling scope is reasonable and continues to serve the public interest.

Nothing in this order will prohibit CLECs from offering their own expanded calling plans in addition to the existing MCA service, and the evidence shows that the CLECs are willing to pay the appropriate access charges for expanded calling that exceeds the boundaries of the MCA. For example, Gabriel acknowledges that it must pay terminating access charges to ILECs in adjoining areas for any toll-free calling outside the scope of the MCA. Similarly, Sprint recognizes that if CLEC calling scopes differ from the present MCA calling scope, then other LECs should not be required to treat their outbound calls as local calls for any area larger than the Commission-defined MCA. Public Counsel commented that no CLEC or ILEC should be required to accept a call under any expanded calling plans as a non-toll call if it is a toll call under the MCA service.

In order to prevent any confusion within the telecommunications industry, the Commission will clarify that any expanded calling to areas outside the scope of the present MCA is subject to the appropriate terminating access charges. This is true if either a CLEC or an ILEC chooses to expand the local calling scope for its customers beyond the current bounds of the MCA.

To prevent any confusion for Missouri's telephone customers in the metropolitan areas, the Commission finds that any plans with calling scopes that differ from the present MCA calling scopes should not be called "Metropolitan Calling Area" or "MCA" service.

Intercompany Compensation.

In Case No. TO-92-306, the Commission ordered that intercompany compensation for MCA traffic be handled on a bill-and-keep basis. Under the bill-and-keep method, carriers do not reimburse each another for traffic within the MCA. Rather, carriers bill their own end-user customers for MCA service and keep these MCA revenues. Intercompany compensation currently exists as bill-and-keep between ILECs. Between ILECs and CLECs, intercompany compensation is currently subject to the terms of interconnection agreements.

Abandoning MCA service's current bill-and-keep intercompany compensation method in favor of usage-based reciprocal compensation agreements could introduce upward pressure on rates for MCA service because the cost of providing the service could increase. This could ultimately threaten the viability of the MCA service.

The Commission prescribed MCA rates as part of an overall plan to maintain revenue neutrality among the LECs that it required to provide MCA service. Specifically, the amount of lost toll that the LECs would experience once the MCA service was implemented was included in the revenue-neutrality calculations. The market has changed with the implementation of the Act. However, only general evidence regarding pricing was offered in this case, because this was not the time and place for those decisions to be made.

The imposition of a transiting charge on MCA traffic will also produce upward pressure on rates for MCA service because the cost of

provisioning the service will increase. This will also threaten the viability of MCA service.

MCA service has used a bill-and-keep method since its outset, and bill-and-keep is a competitively neutral method of intercompany compensation that will help ensure the continued provision of MCA service. Therefore, the Commission finds that the bill-and-keep method of intercompany compensation is best suited to preserve MCA service, and the use of bill-and-keep intercompany compensation is necessary to ensure the continued quality of telecommunications services in Missouri.

No showing of a traffic imbalance between carriers has been made in this case that would preclude the Commission from ordering that MCA service continue to be provisioned on a bill-and-keep basis. None of the CLECs have presented any evidence of a traffic imbalance even though intercompany compensation has been an issue in this case from its outset.

The Commission finds that bill-and-keep intercompany compensation is the most appropriate form of intercompany compensation for MCA service at this time.

MCA NXX Codes.

NXX codes are the first three digits of a seven-digit local telephone number. The NXX code specifies the carrier and the central office that serve that number. NXX codes are used by the current MCA service to distinguish between MCA customers and non-MCA customers. This arrangement requires a single carrier to acquire two NXX codes to serve customers in a single exchange. NXX codes are issued in blocks of 10,000. NXX codes are a limited resource and conservation measures are warranted.

Although MCA service uses a greater number of NXX codes than other services, at this time the public interest in preserving a popular and successful expanded calling plan justifies the use of the extra codes.

NXX code depletion associated with MCA service may also be mitigated by the advent of 1000-block number pooling. The use of dedicated MCA NXXs remains the only reasonable method of providing MCA service and, while the Commission is cognizant of the concerns regarding number exhaustion, the continued utilization of this method will not put the industry in a jeopardy situation.

Currently, the LERG tables are used by the local exchange carriers (LECs) to determine which NXX codes are MCA service codes. The Commission further finds that the LERG is an appropriate mechanism to identify the MCA NXX codes. However, the parties will be asked to address this issue in the context of an appropriate long-term solution, as a subject to be considered by the Industry Task Force. CLECs and ILECs shall be required to use segregated NXXs for MCA service as explicitly set forth in the original MCA order in Case No. TO-92-306.

In addition, each certificated LEC within the MCA shall send a letter to each other certificated LEC in the MCA in which the LEC is operating. The letter shall specifically identify the LEC's NXX codes that are MCA service codes and which codes are for optional MCA service. The Commission will also order new LECs and any LEC adding a new NXX for MCA service to notify each certificated LEC within the MCA of the addition of that code as ordered below.

Pricing of MCA Service.

MCA service is a Commission-mandated service that has not been cost based and ILECs have been required to offer the service at set rates as established in Case No. TO-92-306. The current MCA rates were based upon distance from the central tiers.

CLECS are already certificated to provide MCA service and do not need further authority. Some CLECs also have approved tariffs to provide

MCA service some of which are at rates below ILEC rates and may be in conjunction with additional outbound toll-free calling or other services. Consumer benefits would diminish if companies were forced to provide the MCA service at the exact price as its competitors.

The goal of creating a competitive local exchange service market, as envisioned by the Act, generates the need to allow CLECs flexibility in their service offerings. This is a necessary incentive for customers if they are to switch to a competitor's service.

Restricting CLECs from pricing MCA service downward would contradict the purposes of opening local markets to competitive entry and be contrary to the public interest. There is also no reason to require CLECs which are charging lower rates for MCA service to increase those rates. Because MCA service comprises the vast majority of local traffic in the metropolitan areas, without competitive pricing and competitive outbound calling scopes, consumers would receive no benefits from local competition. Also, in the mandatory zones where MCA is basic local service, without pricing flexibility, there would be no basic local price competition. Furthermore, any pricing flexibility permitted under MCA service must apply equally to all participating companies to ensure competitive neutrality.

The Commission finds that it is reasonable, necessary, and in the public interest to allow downward pricing flexibility for CLECs participating in the MCA Service.

The Commission also finds that it is in the public interest to allow ILECs to exercise the full pricing flexibility that they are statutorily entitled to have. The Commission determines that ILECs are allowed to change their MCA service charges in response to competition brought on by flexible pricing of MCA service by CLECs, subject to statutes and other safeguards against predatory pricing. For price cap companies,

that means that pricing flexibility subject to maximum allowable prices under Section 392.245, RSMo. For rate-of-return companies, that means pricing flexibility subject to total earning limitations under Sections 392.220-240, RSMo.

However, while the Commission finds that both the ILECs and the CLECs should be given flexibility to set rates lower than the rates set out in Case No. TO-92-306, the evidence also suggested that it would be reasonable, necessary and in the public interest to place a cap on those rates to protect consumers from price increases. The rates set in 1992 were found to be just and reasonable and were not based on cost to the carriers; thus, those rates are still a just and reasonable cap on the price of MCA service to consumers.

MCA Service Restrictions.

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

So long as the existing bill-and-keep intercompany compensation method is maintained, MCA subscribers may use MCA service for purposes of accessing the Internet.

Tracking and Recording of MCA Traffic.

The evidence indicates that very few of the CLECs are tracking, recording, and reporting their traffic to the small ILECs. If CLECs choose to participate in the Commission's MCA service, then the CLECs must create the necessary records that will allow Missouri's small ILECs to distinguish between MCA and non-MCA traffic sent by the CLEC to the small ILEC. Most of the CLECs concede that they will be responsible for paying terminating

access charges on non-MCA traffic, yet the small ILECs have no way to bill for this traffic if the CLECs do not track the traffic and create the appropriate records. Therefore, CLECs must: (1) separately track and record MCA and non-MCA traffic, and (2) send reports to the small ILECs for all non-MCA traffic. Alternatively, the CLECs may choose to separately trunk their MCA traffic. Either of these alternatives will help to assure that Missouri's small ILECs are compensated for traffic that CLECs send to the small ILECs' non-MCA customers.

Memorandum of Understanding.

An additional issue that was included in the issues identified for this proceeding is the dispute of Intermedia and SWBT regarding their MOU. Intermedia executed the MOU on December 3, 1999.

Intermedia is a competitive facilities-based local telecommunications company authorized by the Commission to provide basic local telecommunications service within the Company's approved service territory within the State of Missouri. Intermedia received Commission approval of its first interconnection agreement with SWBT in Case No. TO-97-260 by order issued on March 7, 1997, and Commission approval of its second interconnection agreement with SWBT, which was an adoption of the SWBT/AT&T arbitrated agreement, in Case No. TO-2000-364 by order issued on January 25, 2000. Intermedia received its conditional certificate of service authority to provide facilities-based basic local telecommunications service in Case No. TA-97-264 by order issued on September 10, 1997. Intermedia's certificate was made fully effective when the Commission approved Intermedia's Missouri Local Telecommunications Tariff, P.S.C. Mo. No. 3, effective December 12, 1997.

The evidence reflects that in the spring of 1999, Intermedia was offering toll-free expanded local calling service to its customers in and

around the St. Louis metropolitan area, including exchanges located in the MCA-3 and MCA-4 tiers. Intermedia's switch translations and rate center configurations in use at that time allowed calls to and from Intermedia's NXX codes to be completed and rated as local calls just as if Intermedia's customers were SWBT MCA service customers.

On or about April 19, 1999, SWBT notified Intermedia that it had erroneously translated Intermedia's NXX codes and that it would begin re-translating Intermedia's NXX codes from local to toll the following week. Re-translation of Intermedia's NXX codes would have eliminated the toll-free return calling feature for Intermedia's MCA customers. At Intermedia's request, on April 26, 1999, SWBT agreed to postpone its switch re-translation of Intermedia's NXX codes to allow the parties time to negotiate a resolution to the matter.

Intermedia and SWBT continued their negotiations through the following summer and fall. In September 1999, SWBT began re-translating Intermedia's NXX codes. SWBT subsequently reversed its September switch re-translations but on or about October 26, 1999, SWBT again notified Intermedia that it would begin re-translating Intermedia's NXX codes from local to toll starting November 5, 1999. On December 3, 1999, Intermedia executed the MOU. Since signing the MOU, Intermedia's customers have continued to receive the MCA service toll-free return calling feature and all calling features of MCA service.

On December 22, 1999, Intermedia filed a revision to its existing tariff which mirrored the customer rates, terms and conditions found in SWBT's MCA tariff for service in the St. Louis area. The Commission approved Intermedia's tariff changes effective January 22, 2000.

The Commission concludes that the MOU is a modification of the interconnection agreement between those parties. The MOU was not approved by the Commission pursuant to Section 252 of the Act or pursuant to the

orders of the Commission. Because the MOU was not properly approved, the Commission determines that the agreement is unlawful. Furthermore, it is not necessary for the Commission to determine whether the compensation sought in the MOU is appropriate because the Commission has determined the appropriate pricing for MCA service and the method for intercompany compensation, as set out above.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

State Law.

Under the provisions of Section 386.250, RSMo Supp. 1999, the Commission has jurisdiction and supervisory powers over telecommunications companies that operate in the state of Missouri. Section 392.240, RSMo 1994, grants the Commission authority over the rates and charges that are charged or collected by telecommunications companies operating in Missouri. Under Section 392.470, RSMo 1994, the Commission has the authority to impose conditions that it deems reasonable and necessary upon any carrier providing telecommunications service if such conditions are in the public interest. Under Section 392.361, RSMo 1994, the Commission has the authority to require competitive telecommunications companies to comply with any conditions reasonably made necessary to protect the public interest.

Pricing flexibility for price cap companies is subject to maximum allowable prices under Section 392.245, RSMo Supp 1999. Pricing flexibility for rate-of-return companies is subject to the total earning limitations under Sections 392.220-240, RSMO Supp 1999.

On December 23, 1992, the Commission ordered the implementation of the MCA service 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. For the three MCAs, the Commission explicitly defined the terms and conditions that would apply to MCA service. The Commission retains continuing jurisdiction to review the MCA service.

Federal Law.

Section 253(b) of the Act authorizes the Commission to impose, on a competitively neutral basis, requirements necessary to preserve and advance the public welfare, ensure continued quality of telecommunications services, and safeguard the rights of consumers. Section 251(d)(3)(A) of the Act allows the Commission to enforce any regulation, order, or policy that establishes access and interconnection obligations of local exchange carriers. Section 252(e)(3) of the Act allows the Commission to establish or enforce other requirements of state law in its review of interconnection agreements.

The Commission has found that the existing MCA service continues to meet the expanded calling scope needs and desires of many customers in Missouri's three major metropolitan areas. There has been unanimous agreement among the parties that MCA service should continue. The Commission has found that MCA service is in the public interest and the rates are just and reasonable. The Commission concludes that allowing CLECs to participate in the MCA on a voluntary basis is in the public interest so long as CLECs participate under the same terms and conditions as ordered by the Commission in Case No. TO-92-306 with the exception of pricing flexibility.

The fact that the MCA service was created before the passage of the federal Telecommunications Act of 1996 should not serve as an impediment to CLEC participation in the MCA service, nor should it serve as

a rationale to undermine the uniformity of terms and conditions which are critical to the service's continued viability.

The Commission's Authority over Interconnection Agreements.

Some parties have raised the issue of the Commission's authority over existing and future interconnection agreements. Because CLECs will be allowed to voluntarily participate in MCA service under the terms and conditions as ordered by the Commission, it is not necessary to address the terms of existing or future interconnection agreements. Those CLECs that wish to offer MCA service must do so under the same terms and conditions as ordered by the Commission in Case No. TO-92-306 and in this current case with regard to pricing flexibility and notice of NXX codes. Specifically, CLECs that choose to offer MCA service must offer the same geographic calling scope, with prices no more than those set in Case No. TO-92-306, and under the same bill-and-keep intercompany compensation method.

Two regulated utilities cannot contract around an order from the Commission, and the terms of a private agreement cannot override the terms of a preexisting, Commission-mandated calling plan. Under Section 392.240, RSMo 1994, the Commission has authority over the rates and charges that are charged or collected by telecommunications companies operating in Missouri. Moreover, a Commission order will supercede the terms of a contract agreement between two telephone companies as to the service rates they charge each other. Oak Grove Home Telephone Co. v. Round Prairie Telephone Co., 209 S.W. 552, 553[4] (Mo. Ct. App. 1919).

Bill-and-Keep Intercompany Compensation.

Sections 51.705 and 51.713 of the Act allow the Commission to order that intercompany compensation for MCA service continue on a bill-and-keep basis. However, some parties have questioned the authority of the

Commission to issue such an order. These arguments confuse the elements of the FCC's rule and the burden on the parties. The FCC explains:

> ***States may, however, apply a general presumption that traffic between carriers is balanced and is likely to remain so. In that case, a party asserting imbalanced traffic arrangements must prove to the state commission that such imbalance exists.*** Under such a presumption, ***bill-and-keep arrangements would be justified unless a carrier seeking to rebut this presumption satisfies its burden of proof.*** We also find that states that have adopted bill-and-keep arrangements prior to the date this order becomes effective, either in arbitration or rulemaking proceedings, may retain such arrangements, unless a party proves to the state commission that traffic is not roughly balanced.

First Report and Order, CC Docket Nos. 96-98, 95-185, para. 1113 (emphasis added). Therefore, this Commission may presume that traffic is balanced and is likely to remain so. None of the CLECs in this case have presented evidence to the contrary. Thus, no showing has been made in this case that would prevent the Commission from ordering that MCA traffic continue to be exchanged on a bill-and-keep basis.

Requiring all telecommunications providers to use the same bill-and-keep intercompany compensation mechanism is a competitively neutral requirement that will ensure the continued provision of MCA service. Preserving the present MCA service will help to ensure the continued quality of telecommunications services and safeguard the rights of consumers. Therefore, the Missouri Commission has the authority to order that all CLECs that choose to participate in MCA service must use the same bill-and-keep intercompany compensation mechanism that is used by the ILECs today.

Memorandum of Understanding.

Section 252 of the Act requires all interconnection agreements between incumbent local exchange carriers and CLECs be submitted to the

Commission for approval. SWBT's MOU with Intermedia constitutes an interconnection agreement under Section 252 of the Act because it involves "the transmission and routing of telephone exchange service and exchange access" under Section 251(c)(2)(a) of the Act and because it purports to modify the intercompany compensation arrangements for the exchange of local traffic specified in the Commission-approved SWBT/Intermedia interconnection agreement. As a matter of state law, the Commission's order issued in Case No. TO-97-260 required the parties to submit any amendments or modifications to their existing interconnection agreements to the Commission for approval. The MOU by its terms purports to modify the terms of the parties' existing interconnection agreement and is therefore also an amendment to the parties' existing agreement. The failure of the parties to submit the MOU is a direct violation of a prior Commission order and is therefore unlawful under Section 386.570, RSMo 1994. The Commission concludes that the MOU between SWBT and Intermedia is unlawful since it was not submitted to the Commission for approval under applicable federal and state law.

IT IS THEREFORE ORDERED:

1. That the Motion to Establish Case to Consider Modifications to the PSC's Metropolitan Calling Area Plan is denied.

2. That the objection of Southwestern Bell Telephone Company to Exhibit No. 67HC is sustained.

3. That Exhibit Nos. 51, 53HC, 57, and 71 are received into the record.

4. That the motion to strike portions of the Initial Brief of Intervenor Intermedia Communications, Inc., filed by Cass County Telephone Company, et al., on July 10, 2000, is granted.

5. That the three sentences beginning "Shortly after the hearing" and ending "the issue in this proceeding", including footnote 2 on page 10 and Attachment I of the Initial Brief of Intervenor Intermedia Communications, Inc., are stricken.

6. That the motion to strike portions of the Reply Brief of Intervenor Intermedia Communications, Inc., filed by Cass County Telephone Company, et al., on July 19, 2000, is granted in part as specified in Ordered Paragraph 7.

7. That the words "as early as 1997" in the last sentence of Section V., page 28 of the Reply of Intervenor Intermedia Communications, Inc., are stricken.

8. That all other pending motions and applications, not specifically ruled upon herein, are denied.

9. That any telecommunications company which has been granted a certificate of service authority to provide basic local telecommunications service by the Commission may continue to provide Metropolitan Calling Area service pursuant to such certificate and tariffs approved thereunder, including by resale of incumbent LEC services or by means of its own facilities (including leased facilities such as unbundled elements), or may file tariffs offering such service for approval, and any telecommunications company which is granted such a certificate in the future may likewise provide such service pursuant to such certificate and tariffs approved thereunder.

10. That any telecommunications company that is providing Metropolitan Calling Area service shall offer the full calling scope prescribed in Case No. TO-92-306, without regard to the identity of the called party's local service provider. Any company may offer additional toll-free outbound calling or other services in conjunction with Metropolitan Calling Area service, but in any such offering the company shall

not identify any calling scope other than that prescribed in Case No. TO-92-306 as "Metropolitan Calling Area" or "MCA" service.

11. That each certificated local exchange carrier providing Metropolitan Calling Area service shall send a letter within 10 days of the effective date of this Report and Order to each other certificated local exchange carrier in the same Metropolitan Calling Area, and shall send a copy of that letter to the Office of the Public Counsel and the Staff of the Missouri Public Service Commission, and shall file a copy of that letter in this case. The letter shall: (1) identify the NXX codes being used; (2) confirm that such NXX codes are associated with rate centers within the exchanges comprising the Metropolitan Calling Areas as established in Case No. TO-92-306; (3) confirm that numbers within the designated NXX code(s) are being assigned to customers purchasing the calling scope prescribed in Case No. TO-92-306, either independently or in conjunction with other services and calling scopes; and (4) provide contact information (address, telephone, fax, e-mail) so that other companies may provide it with copies of their notifications. Companies reselling MCA service or providing MCA service in conjunction with ported numbers of former subscribers to another company's MCA service may rely upon the notifications of the other companies regarding the involved NXX codes. All other companies shall accept such notices from other companies as true for all purposes including administration of their MCA calling scopes unless otherwise ordered by the Commission and shall provide MCA service to their customers in accordance therewith.

12. That the Staff of the Missouri Public Service Commission shall aide the carriers in identifying which carriers are certificated in each Metropolitan Calling Area.

13. That with the exception of the notice ordered above, the Metropolitan Calling Area NXX codes shall be identified using the Local Exchange Routing Guide.

14. That each telecommunication company offering Metropolitan Calling Area service shall charge rates for such service which are no greater than the rates set forth in TO-92-306, by filing those rates in tariffs approved by the Commission. That each telecommunications company offering Metropolitan Calling Area service may propose changes in such rates by filing revised tariffs for review and approval under the statutes applicable to that company and its proposed tariff revision.

15. That all the telecommunications companies providing Metropolitan Calling Area service shall exchange that traffic on a bill-and-keep basis as ordered in Case No. TO-92-306.

16. That the Memorandum of Understanding between Southwestern Bell Telephone Company and Intermedia Communications, Inc., is unlawful.

17. That no telecommunications company shall charge any other telecommunications company any amount for the origination or termination of Metropolitan Calling Area traffic being exchanged by the companies.

18. That the Commission will, as a separate matter, establish an Industry Task Force to examine pricing, the expansion of the Metropolitan Calling Areas, and the other issues described herein.

19. That the competitive local exchange carriers shall separately track and record Metropolitan Calling Area traffic and send reports to the small incumbent local exchange carriers for all non-MCA traffic. Alternatively, the competitive local exchange carriers may choose to separately trunk their Metropolitan Calling Area traffic.

20. That this Report and Order shall become effective on September 19, 2000.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Schemenauer, and Simmons, CC., concur;
Murray, C., dissents, with dissenting opinion attached;
certify compliance with the provisions of Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 7th day of September, 2000.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

While I agree with the majority that the existing MCA service should be continued and that CLECs should be allowed to participate, I must dissent from the Report and Order herein because I think the CLECs who choose to participate in MCA service should be ordered to do so under the same terms and conditions that were ordered by the Commission for the ILECs in Case No. TO-92-306. The majority chooses to apply the same terms and conditions, *with the exception of pricing*.

MCA service is a Commission-mandated service that has not been cost based and ILECs have been required to offer the service at set rates as established in Case No. TO-92-306. The current MCA rates were based upon distance from the central tiers. Although the service is offered over the toll network, access rates are not imposed because retail rates would not support the access fees.

CLECs are free to develop and price their own expanded calling plans above and beyond the MCA plan. Also, as Office of Public Counsel witness Barbara Meisenheimer pointed out, the CLECs would be free to bundle other services with MCA which would allow them to provide competitive offerings, even if the price for MCA service were fixed. Allowing CLECs to have pricing flexibility for MCA service while requiring ILECs to conform to Commission-mandated

rates will provide CLECs with a regulatory-imposed competitive advantage, and it may endanger the viability of the MCA plan.

The finding of the majority that "it is reasonable, necessary, and in the public interest to allow downward pricing flexibility for CLECs participating in the MCA service" is particularly puzzling in light of the finding that the "Commission will establish an Industry Task Force to investigate issues related to price and the effects of an expanded MCA on pricing." The majority stated that there was insufficient evidence in this case about calling scope modification for the Commission to make any determinations regarding those issues. At the same time the majority made a significant determination about the pricing issues, while admittedly needing to establish an Industry Task Force to investigate those issues.

The rates for MCA service ordered in Case No. TO-92-306 continue to be just and reasonable. If a CLEC opts to provide MCA service, then it should be required to offer MCA service under the same rates that were ordered by the Commission in Case No. TO-92-306. Uniform prices for MCA service would ensure that neither CLECs nor ILECs obtain a financial or competitive advantage. Thus, uniform prices would level the competitive playing field between competing providers of local exchange service without jeopardizing the continued existence of the MCA plan. Uniform prices would eliminate the possibility of predatory pricing by large CLECs.

Therefore, I respectfully dissent.

Respectfully submitted,

Connie Murray

Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 7th day of September, 2000.