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July 17, 2000

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**FILED<sup>3</sup>**

JUL 17 2000

Missouri Public  
Service Commission

**RE: TO-99-483**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **REPLY BRIEF OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION** and proposed **FINDINGS OF FACT AND CONCLUSIONS OF LAW**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

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MP/jb  
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cc: Counsel of Record

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

**FILED<sup>3</sup>**  
JUL 17 2000

Missouri Public  
Service Commission

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

**REPLY BRIEF OF THE STAFF OF THE  
MISSOURI PUBLIC SERVICE COMMISSION**

The Staff of the Missouri Public Service Commission ("Staff") submits this Reply Brief to respond to the Initial Briefs filed on June 30, 2000 in the above captioned cause. Specifically, the Staff's Reply Brief responds to the Initial Brief filed by Southwestern Bell Telephone Company ("SWBT").

**I.       Current MCA rates for optional tiers were not set to recover "lost toll revenue" as suggested by SWBT.**

The current MCA rates for the optional tiers were not set to compensate SWBT for "lost toll revenue" as suggested by SWBT. SWBT claims, in its Initial Brief, "if a SWBT optional MCA subscriber disconnects service with SWBT and migrates to a CLEC, SWBT loses compensation for the toll-free return calling from the metropolitan exchanges." (SWBT Initial Brief, p. 22). This statement is false. The Commission should not be misled by this attempt to insulate SWBT from competitive losses.

SWBT argues "the revenue associated with out-going calling from the metropolitan exchange to the optional tiers was offset by the MCA additive paid by the optional MCA subscribers." (SWBT Initial Brief, p. 23). This claim should be disregarded since it is

unsupported by the record. The weight of the evidence before the Commission proves that the optional tier rates were *not* set to compensate SWBT for the return-calling feature. In the evidentiary hearing, SWBT witness Craig Unruh was cross-examined to determine the grounds for SWBT's assertion. SWBT could do nothing more than offer references to the original MCA case (Case No. TO-92-306)<sup>1</sup> and assert that the Commission "inherently" set optional tier rates to cover metropolitan toll for the return call feature. (Unruh, Tr. 1053-1054). However, the evidence in Case No. TO-92-306, some of which was marked as evidence in the present case, makes it clear that the optional tier rates for MCA service were not set to recover toll lost on the return-calling feature. That evidence is as follows:

**a. SWBT acknowledges in its Reply Brief in Case No. TO-92-306, that MCA rates are not set to recover lost toll.**

On November 30, 1992, SWBT filed a Reply Brief in TO-92-306. (Ex. 61). In its brief, SWBT addressed the classification of MCA as a local service and stated:

The only significance of local versus toll from a policy perspective, as opposed to intercompany compensation, is whether or not the service is designed to meet a need which is so basic that a company should be permitted to price the service residually, and recover any difference in revenue requirement or cost elsewhere. MCA is just such a service. Perhaps it is the very fact that MCA is residually priced, rather than priced to produce a return, which is at the heart of the small LECs' desire to have someone else meet their customers' expanded calling needs and also pick up the tab. (Ex. 61, pp. 22-23).

This argument represents the true method in which MCA rates were set, including the optional tier rates. In the above excerpt, SWBT acknowledges that MCA rates were priced residually, with recovery of "any difference in revenue requirement or cost elsewhere." A service is residually priced if its price is set so that revenues from the service equal all costs not covered by

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<sup>1</sup> In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges, Case No. TO-92-306.

revenues from all other services offered by the company once their prices are set. This means that MCA service was not priced to recover the cost of the service, including lost toll revenues. Rather, MCA rates were priced residually to keep the rate low, with recovery of the cost of the service accomplished "elsewhere."

SWBT ignores its previous position on the pricing of MCA service when it now argues that it should be compensated whenever it loses a customer to a competitor in the optional tiers. If SWBT were allowed compensation from its competitor for this loss, it would result in an anticompetitive environment in the metropolitan areas. Any situation where an incumbent telephone company is allowed compensation for losing customers to competitors is harmful in many ways. For one, it is anticompetitive because it requires competitors to "buy" customers from the incumbent. Additionally, it lessens the incentives for the incumbent to reduce rates and improve services in response to the offerings of competitors.

**b. SWBT filed a tariff revision to increase directory service rates to offset MCA losses.**

The second item of evidence from Case No. TO-92-306 that refutes SWBT's claim is a letter, dated May 6, 1993, from SWBT to the Executive Secretary of the Commission. The letter is a tariff revision to "provide revenue recovery from losses associated with the implementation" of MCA. The letter seeks to revise SWBT's tariffs to recover MCA losses as follows:

These increases are intended to recover the net revenue loss that Southwestern Bell will experience as a result of the June through December 1993 implementation of COS, OCA Service and MCA Service. (Ex. 62).

It is clear from this tariff filing that SWBT's recovery of losses associated with implementing MCA Service was provided through rate increases in other services. Accordingly, SWBT should not be allowed to increase its recovery of a cost that is already being recovered.

**c. SWBT acknowledges that MCA rates are nonremunerative.**

Nonremunerative rates are rates that are *not* set to compensate for a loss or setback. In a letter from SWBT to a Mr. Jack C. Stewart, dated November 18, 1993, SWBT concedes that MCA rates were not set to compensate SWBT for any revenue losses. (Ex. 63). This letter is further reason for the Commission to dismiss SWBT's attempt to collect compensation for competitive losses.

The above three evidentiary items prove that SWBT recognized that the rates for MCA service were set residually, and were not calculated to compensate SWBT for toll revenues lost from the metropolitan areas. Surely the Commission would have made such a distinction clear in its Order in Case No. TO-92-306. SWBT itself admitted that, in the Commission's Order, the Commission did not indicate that optional tier rates were set to recover toll lost on the return-calling feature. (Unruh, Tr. 1054). Instead, SWBT relies on an argument that attempts to incorporate a new interpretation of the Commission's Order – an interpretation that was not held by either the Commission or by SWBT when the Commission issued the Order that established MCA service.

Furthermore, it is misleading for SWBT to state that the "MCA Plan includes two aspects" such as the ability to make outgoing calls and the ability to receive incoming calls. (SWBT Initial Brief, p. 61). This is a true statement, but irrelevant. All telephone service (such as basic local service) has these two aspects – the MCA is no different. Staff's MCA-2 assures that no call that is local today would be a toll call under MCA-2.

**II. SWBT's CLEC estimates are unsupported.**

In its Initial Brief, SWBT argues that Staff's CLEC local exchange access line estimates are understated since several CLECs were not included in Staff's figures. (SWBT Initial Brief, p.

17). However, the estimate calculated by SWBT is unsupported by any recognized method of calculating line counts. (Ex. 3, Voight Surrebuttal, pp. 26-29). In fact, SWBT's method of calculating line counts was rejected by the United States Department of Justice when it stated, "SWB appears to have substantially over-estimated the number of lines serviced by facilities-based carriers, about which it has no direct evidence." (Ex. 3, Voight Surrebuttal, pp. 26-27). Regardless, the figures offered by Staff witness Amonia Moore indicate that CLEC penetration in the metropolitan areas is low. Even if the 225,000 access lines argued by SWBT is accurate, it would indicate that competition in the metropolitan exchanges accounts for 6% of access lines instead of 3%. Whether CLECs represent 3% or 6%, it is clear that true competition is not being realized in the St. Louis, Kansas City, or Springfield areas.

**III. CLECs and ILECs should both participate in an MCA Plan that no longer segregates NXX Codes between MCA Codes and Non-MCA Codes.**

SWBT argues that CLEC participation in the MCA Plan would create a competitive advantage if the CLECs do not use segregated MCA Codes. (SWBT Initial Brief, p. 40). However, this entire argument is based upon the assumption that only ILECs would segregate NXX Codes while the CLECs would report all codes as MCA. Under the Staff's proposal, SWBT's worries are unfounded since both CLECs *and* ILECs would recognize all NXX Codes of each other as MCA Codes.

**IV. The inefficient use of NXX Codes should not be ignored.**

The Staff is concerned about inefficient use of NXX Codes inherent to the current MCA Plan. Accordingly, the Commission should insure an efficient use of this limited resource. In SWBT's attempt to keep NXX Codes segregated, it disregards this concern in order to promote

its own interests.<sup>2</sup> This argument also ignores the customer confusion and difficulties associated with segregating NXX Codes. (Ex. 3, Voight Surrebuttal, p. 21-22). Staff's MCA-2 is not designed to address current area code exhaust problems, but is the only proposal made by any party in this case to mitigate the future consequences of segregated MCA NXX codes.

Incorporating MCA NXX code segregation in a competitive local exchange marketplace will necessitate, on a going forward basis, the likelihood that a minimum of two (2) additional area codes would be required in Missouri. Given that MCA service occurs in three (3) distinct geographic areas of Missouri, it is likely than more than two (2) additional area codes would be required. Such inefficiencies could be improved upon by requiring all incumbent local exchange carriers to treat all NXX codes of competitors in the metropolitan areas as MCA NXX codes and vice versa. (Ex. 1, Voight Direct, p. 22; Ex. 3, Voight Surrebuttal, p. 5).

SWBT's reliance on thousand-block number pooling (SWBT Initial Brief, p. 48) is of no consequence to the inefficient use of MCA NXX codes as no dates have been established as to when such trials could begin. In addition, such number conservation methods do not include smaller companies (Voight, Tr. 101; Ex. 3, Voight Surrebuttal, p. 24). Number pooling in 1,000 blocks does not eliminate the wasteful use of numbers that occurs through segregation, especially when a segregated MCA Plan assigns 2,000 numbers to a carrier which may only serve a handful of customers.

#### **V. The 2.6¢ MOU is anticompetitive.**

In its Initial Brief, SWBT argues that the compensation sought in the MOU is appropriate. Not only is this compensation *inappropriate*, but the proposed MOU was *not* filed with the Commission, contrary to the contention of SWBT. SWBT's statement that the MOU

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<sup>2</sup> In its Initial Brief at pages 47-48, SWBT argues that since CLEC entry will already "increase the need for NXX Codes and will result in the need for additional area codes," that the Commission should not

was filed is unsupported. SWBT is currently charging Intermedia, under the MOU, without Commission approval of the agreement as required under Section 252(e) of the Telecommunications Act of 1996. SWBT argues that the terms of the Act do not apply to the MOU “because it concerns charges SWBT makes to its own customers.” (SWBT Initial Brief, p. 56). However, this is a misconception of an agreement that defines the terms of compensation between SWBT and Intermedia, rather than charges between SWBT and its customer.<sup>3</sup> SWBT attempts to distort the appearance of this compensation to circumvent the requirement that it seek interconnection agreement approval pursuant to the Act. The type of call covered under the MOU meets the definition of interconnection under the Act,<sup>4</sup> triggering the requirement to have the terms of the agreement approved by the Commission. If SWBT were allowed to unilaterally prevent Intermedia or any other CLEC from offering MCA service in Missouri, it would circumvent the protections created under the Act that require ILECs to interconnect. Just because the terms of what constitutes local service in Missouri’s metropolitan areas is different than other areas due to the MCA Plan, this is no reason to allow an ILEC to take advantage of CLECs and evade its interconnection agreement obligations. If SWBT is allowed compensation for every customer that leaves SWBT in search of a better service and a better rate, the longer it will be before Missourians are able to benefit from competition.

When per-minute compensation is being paid on a flat rate service, such as the 2.6¢ MOU charge, the result will be an inequitable arrangement in which SWBT is grossly

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take steps to control this inevitable problem.

<sup>3</sup> The MOU states in Section 2(b) that “Intermedia agrees to pay SWBT at the rate of \$0.026 per minute of use, as measured on a per call basis, consistent with the billing Terms and Conditions in the Missouri Interconnection Agreement...” (See Ex. 1, Voight Direct, Schedule 6-2).

<sup>4</sup> An ILEC’s obligations under Section 251 (c)(2)(A) require the ILEC to interconnect its facilities with the CLEC’s facilities “for the transmission and routing of telephone exchange service and exchange access.” The traffic subject to the MOU meets this definition, and is therefore a term of interconnection that needs to be approved by the State Commission pursuant to Section 252.



overcompensated. (Ex. 3, Voight Surrebuttal, p. 46). Cass County witness Ken Matzdorf echoed Staff's concerns with per-minute compensation in response to a question asked by Chair Lumpe. Mr. Matzdorf discussed the problems of charging per-minute compensation on a flat rate service:

...the issue always is if you're trying to have a flat-rate service that you're paying the compensation on a per minute use basis, it usually kills it, or you have to have a very expensive [service] and you're kind of playing a game with the units. So it creates a lot of problems in that regard, and you usually end up with higher prices for less service. (Tr. 1195-1196).

In order for CLECs to have the ability to offer MCA service at competitive rates, the 2.6¢ per minute compensation to SWBT (which holds roughly a 97% market share) should not be allowed. Otherwise, SWBT's control of the market will continue to grow while the CLECs will have to charge higher prices to recover the improper compensation of the MOU.

It is imperative to recognize mandatory MCA service as what it is: basic local telephone service as defined in Section 386.020 RSMo. It is equally imperative to recognize that optional MCA service is not a toll service. As a part of basic local service and as a residually priced *non-toll service*, it is incongruous for SWBT to be expected to receive payment (in the form of 2.6 cents per minute or any other form of payment) when a customer switches its basic local and/or non-toll telephone service from SWBT to a competitor.

As previously stated, the rates for optional tier subscribers were priced residually with no regard to revenue requirements or costs associated with providing MCA service. SWBT's continual argument for "loss of toll" associated with the "return call feature" should be dismissed by the Commission as nothing more than a thinly disguised attempt to compensate it for its competitive losses. SWBT does not receive a competitive loss subsidy when a basic local service

customer in say, for example, Joplin, Missouri switches to a competitor and it should not receive any such subsidy when metropolitan basic local service customers switch to a competitor.

Rates for optional tier MCA subscribers were set based on the airline mileage from the outer tiers to the central zone. (Voight, Tr. 151). The compensation mechanism for the exchange of optional tier and mandatory MCA traffic between SWBT and competitors has already been established by the Commission in Case No. TO-97-40 (Ex. 1, Voight Direct, p. 41) and SWBT's insistence on being compensated 2.6 cents per minute is "untenable", a direct violation of the Commission's order that optional MCA traffic be "local termination", and any such agreement to the contrary (such as the Intermedia/SWBT MOU) should have been submitted to the Commission pursuant to 47 U.S.C. Section 252.

In summary, MCA is not a toll service, has never been a toll service, and SWBT should not expect to be compensated for "lost toll revenues" nor access charges associated with "lost toll revenues" when customers switch to a non-SWBT MCA competitive MCA provider. The MOU charge is illegal since it was never approved and unacceptable since it does not promote the goals of competition. For these reasons, the Commission should ignore SWBT's attempts to have this charge apply to all CLECs offering MCA service.

**VI. Staff does not support mandating ILECs to provide MCA service without a similar mandate to CLECs.**

SWBT's Initial Brief states "Staff proposed that CLECs should have the option of providing MCA-2 service" (SWBT Initial Brief, p. 62). Although Staff is not advocating MCA-2 at this time, the Staff did not make such a claim and a check on the citation reference reveals that SWBT has misquoted Mr. Voight. Mr. Voight did say that at the time of writing direct testimony he was "unsure" whether to recommend making optional MCA service mandatory for competitors because MCA is an optional service that is not a part of basic local service as

defined by statute. What SWBT does not mention is Staff's explanation where Mr. Voight states that he was not aware of any CLEC that was not already providing MCA service. In any case, "CLECs should be required to open up all ILEC MCA codes just as ILECs should be required to open up all CLEC codes." (Ex. 3, Voight Surrebuttal, pp. 5, 17). Staff is asking the same treatment for both ILECs and CLECs in that an MCA mandate should include both ILECs and CLECs (Voight, Tr. 129). However, the Commission is under no obligation, legal or otherwise, to treat competitors and incumbents alike for all aspects of MCA service if necessary to create a competitive environment. SWBT continues to insist that competitors and incumbents should be treated alike in all regards. (SWBT Initial Brief, p. 62). This overlooks the statutory framework which clearly distinguishes between competitors and monopoly ILECs such as SWBT who still control 97% of the market almost 5 years after Congress implemented local exchange competition. "The statutes themselves establish certain requirements on incumbents not required of competitors." (Ex. 3, Voight Surrebuttal, p.18).

## **VII. CLECs should have flexibility.**

SWBT assert that CLECs should abide by the same MCA terms and conditions as incumbents (SWBT Initial Brief, p. 32). SWBT insists that the Commission maintain a single "status quo." This is misleading since there is not a single status quo among providers of MCA service. The Commission should reject such contentions as, pursuant to Commission-approved tariffs, Missouri consumers are already benefiting from the flexible pricing and expanded calling scope of competitors. This is due to the fact that the expanded calling consumers of CLECs are not confronted with the confusing and inefficient practices of incumbents whom restrict MCA outbound calling scopes to include only MCA subscribers (i.e., the outbound calling scope of

some competitors allows callers to call all customers in the entire metropolitan area – not just those who happen to subscribe to MCA service).

The Commission should consider the following bullet points when making its decision on the level of flexibility that should be afforded CLECs, keeping in mind that CLECs *are* currently providing MCA service:

- Mandating that competitors charge the same price as incumbents for MCA service would necessitate notices of rate increases to end-users representing over 65,000 CLEC access lines (Voight, Tr. 203). This should be avoided.
- Consumer benefits would diminish if competitors were forced to provide the exact MCA service as competitors (Voight, Tr. 207)
- There are currently two “status quos” for MCA service – one for ILEC/ILEC and another for CLEC/ILEC. (Voight, Tr. 208). Eliminating either one would be disruptive to consumers. The only status quo that should be disrupted is the call screening engaged in by SWBT which is the most disruptive status quo occurring to consumers. The Commission should not follow SWBT’s attempt to ignore the existence of the existing CLEC/ILEC MCA service by requiring CLECs to charge the same price and observe the same confusing calling scopes as ILECs.
- Maintaining the current calling scope flexibility to CLECs does not translate to allowing CLECs to avoid paying switched access on calls to/from exchanges not a part of the existing MCA. (Voight, Tr. 107, 209)
- CLECs, in general, have to be able to differentiate their offering from that which the subscriber already takes. Such differentiation includes price and calling scope (Voight, Tr. 211).

- CLECs are *already* allowing customers to call all customers in the MCA – not just MCA subscribers (Voight, Tr. 212).
- Pursuant to Section 392.361 RSMo, ILECs can have complete pricing flexibility just as that allowed CLECs so maintaining the “ILEC/ILEC “status quo” is not necessary. (Voight, Tr. 110).

#### **VIII. SWBT should be required to print MCA NXX codes in its directories.**

SWBT argues that MCA information should not be included in its directories. However, the Public Hearings held in this case demonstrated that there is customer confusion as to which NXX’s are MCA NXXs. MCA NXXs are no longer included in SWBT’s directory (Voight, Tr. 197) and such confusion will only become greater with competitive NXX codes. Such inclusion was common practice at the onset of the MCA and SWBT should be ordered to resume the practice.

#### **IX. SWBT continues to confuse calling scopes with exchange boundaries.**

SWBT discusses the Staff’s proposed MCA-2 and raises concerns under Section 392.200.9 RSMo, which provides that exchange boundaries cannot be modified without the consent of the ILEC. (SWBT Initial Brief, p. 62). Although Mr. Voight explained in his Surrebuttal Testimony that exchange boundaries and calling scopes are not the same, SWBT continues to misunderstand the law on this matter. (Ex. 3, Voight Surrebuttal, p. 17). SWBT’s citation on Section 392.200.9 RSMo is simply not relevant to MCA-2, as MCA-2 does not propose to change exchange boundaries. SWBT is simply ignoring the simple fact that a local calling scope can (and frequently does) encompass more than one telephone exchange. (Ex. 1, Voight Direct, p. 33, fn. 21). The Commission should discount SWBT’s flawed legal analysis as a reason for not implementing or further exploring the merits of MCA-2.

**X. Segregating non-compensatory (such as MCA) from compensatory (such as toll) traffic does not involve issues associated with segregating Feature Group C and Feature Group D.**

Segregating non-compensatory (such as MCA) from compensatory (such as toll) traffic does not involve issues associated with segregating Feature Group C and Feature Group D as discussed by SWBT in its Initial Brief. (SWBT Initial Brief, p. 73). This argument is misleading. Mr. Voight testified that these issues are not the same, and the Commission should not be confused by arguments to the contrary. (Voight, Tr. 139, 154).

**XI. Conclusion**

The Staff respectfully requests that the Commission look at the level of competition in Missouri's metropolitan areas. With roughly 97% of the access lines controlled by the incumbent, it is imperative that the Commission's decision in this proceeding further local exchange competition by following the recommendations presented by the Staff in this case.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 17th day of July 2000.

  
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**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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Public Service Commission of the State of Missouri ("Commission") having considered the record and briefs makes these Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. The Metropolitan Calling Area ("MCA") Plan is an expanded calling scope plan mandated by the Commission in Case No. TO-92-306, designed to address the calling patterns of local exchange customers in Missouri's growing metropolitan areas of Kansas City, St. Louis, and Springfield.

2. The Commission established the current case to consider whether the implementation of the Telecommunications Act of 1996 necessitated changes to the current MCA Plan.

3. MCA service is an essential basic local service in Missouri's metropolitan areas of Kansas City, St. Louis, and Springfield. As such, it should be made available by both incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") to all basic local exchange customers in those areas.



4. NXX Codes are the first three digits of a seven-digit local telephone number. The NXX Code specifies the company and the central office that serve that number. NXX Codes are used by the current MCA Plan to distinguish between MCA customers and non-MCA customers. This arrangement requires a single company 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.

5. Segregation of NXX Codes as MCA and non-MCA is a wasteful use of a limited resource. Accordingly, ILECs are required to recognize *all* NXX codes assigned to CLECs in the metropolitan areas as MCA NXXs. Conversely, CLECs are required to recognize all NXX codes assigned to ILECs in the metropolitan areas as MCA NXXs. To accomplish the desegregation of NXX codes, carriers are required to program their central office switch translations to recognize NXX codes as discussed above. (This does not constitute implementation of the MCA-2 proposal since that would require ILECs to recognize NXX Codes of all ILECs).

6. Intercompany compensation currently exists as "bill and keep" between ILECs. As between ILECs and CLECs, intercompany compensation is subject to the terms of interconnection agreements.

7. Intercompany compensation for carriers participating in the MCA Plan remains "bill and keep" for ILECs. Intercompany compensation between ILECs and CLECs is subject to the terms of the interconnection agreements between the carriers. Where the parties have not entered into an interconnection agreement, intercompany compensation will be bill and keep.

8. Southwestern Bell Telephone Company ("SWBT") and Intermedia Communications, Inc. ("Intermedia") entered into a Memorandum of Understanding ("MOU")

that established a compensation mechanism in which Intermedia pays SWBT 2.6¢ per minute for calls from SWBT to an MCA customer of Intermedia. The MOU was not approved by the Commission pursuant to Section 252 of the Telecommunications Act of 1996.

9. The important goal of creating a competitive local exchange service market, as envisioned by the Telecommunications Act of 1996, 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.

10. The current MCA rates were established in Case No. TO-92-306 and were based upon distance from the central tiers. The current MCA rates were *not* set so that the rates in the optional tiers would compensate the carriers for lost toll revenues from the inner tiers.

11. CLECs participating in the MCA Plan are allowed flexible pricing of MCA service. ILECs are allowed to change their MCA service charges in response to competition brought on by flexible pricing of MCA service by CLECs.

12. Revenue neutrality is not allowed for ILECs due to CLEC participation in the MCA Plan. However, revenue neutrality is proper on a company-specific basis, due to modifications to the MCA Plan.

### **CONCLUSIONS OF LAW**

1. The intercompany compensation sought in the MOU between SWBT and Intermedia should have been brought to the Commission for approval pursuant to Section 252 of the Telecommunications Act of 1996. Accordingly, the interconnection agreement between SWBT and Intermedia should govern the intercompany compensation between the parties and not the MOU provisions. Furthermore, SWBT is not entitled to compensation from *any* CLEC when a customer in the optional tiers switches service from SWBT to a CLEC.

2. For rate-of-return carriers, revenue neutrality is appropriate to increase rates pursuant to Commission ordered rate-design. For price-cap carriers, increased rates shall be made pursuant to Section 392.245 RSMo. (1999 Supp.).

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Revised: July 17, 2000**

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