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**Director, Utility Services** 

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Missouri Public Service Commission

July 27, 2001



JUL 2 7 2001

Mr. Dale Hardy Roberts Secretary/Chief Regulatory Law Judge Missouri Public Service Commission P. O. Box 360 Jefferson City, MO 65102

Missouri Putero Service Commission

RE: Case No. TO-2001-467

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of STAFF'S MOTION TO COMPEL DISCOVERY AND FOR WAIVER.

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,

Wm K Hoas

William K. Haas Deputy General Counsel (573) 751-7510 (573) 751-9285 (Fax)

WKH:sw Enclosure cc: Counsel of Record

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

JUL 2 7 2001 Sarvice Com

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

public Imission

In the Matter of the Investigation of the ) State of Competition in the Exchanges of ) Southwestern Bell Telephone Company. )

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Case No. TO-2001-467

#### STAFF'S MOTION TO COMPEL DISCOVERY AND FOR WAIVER

COMES NOW the Staff of the Missouri Public Service Commission and for its motion states:

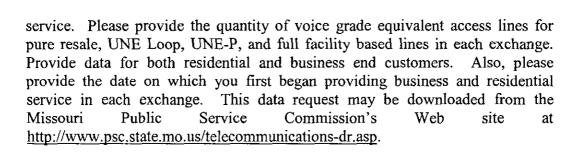
1. On March 13, 2001, the Missouri Public Service Commission issued an Order which established this case for the purpose of investigating the state of competition in Southwestern Bell Telephone Company (SWBT) exchanges in accordance with § 392.245 RSMo 2000. The Order also made parties of SWBT and seventy (70) alternative local exchange telecommunications companies (ALECs) without the need for intervention.

2. On June 28, 2001, the Commission issued an Order that adopted a procedural schedule that included direct testimony by SWBT on June 28, 2001, rebuttal testimony on August 9, 2001, and a hearing for September 24-28, 2001.

3. On June 13, 2001, the Staff simultaneously delivered Data Information Request (DR) No. 2501 to the seventy (70) ALECs made parties to this case. A copy of the data request is attached as Appendix A.

4. Staff DR No. 2501 asks:

Please use the attached form to supply the number of voice grade equivalent access lines in each SWBT Missouri exchange in which you offer local exchange



5. Commission Rule 4 CSR 240-2.090(2) provides, in part:

Parties may use data requests as a means for discovery. The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed by the parties to the data requests. If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient shall serve all of its objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests, unless otherwise ordered by the commission.

6. Only 18 of the ALECs have now satisfactorily responded to the data request.

7. Allegiance Telecom of Missouri (Allegiance) reported all lines as pure resale.

The Staff disagrees with Allegiance's explanation that it cannot distinguish between its customers receiving resold service and those receiving UNE-Loop service. When Allegiance submits an order to SWBT, it is required by SWBT to submit the order as a resold line or a UNE Loop.

8. XO Missouri, Inc. (XO), alone, objected to Staff DR No. 2501. XO objected that the data request was overbroad and burdensome. Following discussions with Staff, XO answered the data request.

9. Fifty-one other ALECs have failed to answer the data request. Those 51 companies are listed on Appendix B.

10. The information requested by Staff DR 2501 is relevant. Section 392.245.5 RSMo provides, in part:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange



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in which at least one alternative local exchange telecommunications company has been certified under section 392.455 and has provided basic local telecommunications service in that exchange for at least five years, unless the commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such service.

The number of access lines by exchange is relevant because the statute requires an exchange-by-exchange investigation. The breakdown between residential and business lines is relevant because the statute requires a service-by-service investigation. The breakdown between pure resale, UNE Loop, UNE-P, and full facility-based lines is relevant so that the Commission may determine the extent to which ALECs have utilized the various modes of market entry to penetrate SWBT's local exchange markets in Missouri. Finally, the date upon which an ALEC began service is relevant to the development and extent of competition in an exchange.

11. It is not burdensome for an ALEC to provide this information exchange-byexchange. The geographic area in which an ALEC offers service must follow the exchange boundaries of the incumbent local exchange company (here SWBT) and be no smaller than an exchange. See, § 392.455(3) RSMo 2000. Moreover, Section 392.450.2(1) RSMo requires ALECs to file and maintain tariffs with the Commission in the same manner and form as the Commission requires of the incumbent local exchange company (again, SWBT). These ALECs' tariffs state that they provide service within SWBT's exchanges. For example, Sheet 21 of 1-800-Reconex's basic local telecommunications tariff lists out the SWBT exchanges to describe its service areas. Central office codes (also known as NXXs or prefixes), the second three digits in a ten digit telephone number, are assigned to an exchange or to a rate center within an exchange. An ALEC can simply use the knowledge of its customers' NXXs to answer this data request, if it is not keeping records by exchange.

Following discussions with some ALECs, Staff learned that some ALECs were having difficulty sorting its customers by exchange. Although the Staff cannot accept that carriers do not

know in which exchanges their customers are located, in an effort to assist the ALECs, the Staff has posted on the Commission's Web site a listing of Missouri NPA NXXs which references all Missouri exchanges according to NPA NXX. Assuming, arguendo, that carriers do not know in which exchanges their customers are assigned, the Staff believes its listing of Missouri NPA NXXs can be utilized by ALECs to fully comply with Staff's Data Request No. 2501.

12. Commission Rule 4 CSR 240-2.090(8) provides:

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Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion; and

(B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

13. Commission Rule 4 CSR 240-2.015 provides that a rule in this Chapter 2 may be

waived by the Commission for good cause. Commission Rule 4 CSR 240-2.060(14) adds that an

application for a waiver from a commission rule shall contain information as follows:

- (A) Specific indication of the statute, rule or tariff from which the variance or waiver is sought;
- (B) The reasons for the proposed variance or waiver and a complete justification setting out the good cause for granting the variance or waiver; and
- (C) The name of any public utility affected by the variance or waiver.

14. The Staff requests a waiver of Commission Rule 4 CSR 240-2.090(8). The reasons for the proposed waiver and a complete justification setting out the good cause for the

waiver follow: Compliance with this rule would require Staff counsel to consult with opposing counsel for 52 ALECs. Forty-two of these ALECs are not represented by counsel in this proceeding. Compliance with this rule would then require the presiding officer to confer with Staff counsel and these opposing counsel. Furthermore, Data Request No. 2501 is not party-specific. It requests the same information in the same format from all 70 ALECs made parties to this case. A complete, as possible, tabulation of the extent of competition in SWBT's exchanges does not lend itself to the Staff conferring away some ALECs' duty to provide this information. A complete, as possible, tabulation of the extent of swBT's exchanges calls for a single ruling by the Commission compelling the remaining ALECs to answer Staff Data Request No. 2501. The ALECs named in Appendix B would be affected by the waiver.

WHEREFORE, the Staff requests the Commission to issue an order compelling the ALECs listed in Appendix B to fully answer Staff Data Request No. 2501, and granting a waiver of Commission Rule 4 CSR 240-2.090(8).

Respectfully submitted,

DANA K. JOYCE General Counsel

Wm K Hoas

William K. Haas Deputy General Counsel Missouri Bar No. 28701

Attorney for the Staff of the Missouri Public Service Commission P. O. Box 360 Jefferson City, MO 65102 (573) 751-7510 (Telephone) (573) 751-9285 (Fax) e-mail: whaas01@mail.state.mo.us

# **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 27<sup>th</sup> day of July 2001.

Wm K Hong





NO. 2501

#### DATA INFORMATION REQUEST Case No. TO-2001-467

Effective Competition in SWBT's Missouri Exchanges

REQUESTED FROM: All C-LECs with approved tariffs offering service in SWBT's Missouri service area as of March 1, 2001

DATE REQUESTED: June 13, 2001

**INFORMATION REQUESTED:** Please use the attached form to supply the number of voice grade equivalent access lines in each SWBT Missouri exchange in which you offer local exchange service. Please provide the quantity of voice grade equilavent access lines for pure resale, UNE Loop, UNE-P, and full facility based lines in each exchange. Provide data for both residential and business end user customers. Also, please provide the date on which you first began providing business and residential service in each exchange. This data request may be downloaded from the Missouri Public Service Commission's Web site at http://www.psc.state.mo.us/telecommunications-dr.asp.

REQUESTED BY: William Voight 573-751-4227 wvoight@mail.state.mo.us

#### INFORMATION PROVIDED

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. TO-2001-467 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the , , , office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to C-LEC and its employees, contractors, agents or others employed by or acting in its behalf.

Signed by:\_\_\_\_\_

Date Response Received:

Prepared by:

Appendix A

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BELL CITY										
BELTON										
BENTON										
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BISMARCK										
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BLOOMSDALE								· •		
BLUE SPG										
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BOWLNGGREN										
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CARROLLTON									-[		
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Exchange	Pure resale	UNE loop	UNE P	Full facilities based	Date first provided local exchange telecommunications service	Pure resale	UNE loop	UNE P	Full facilities based	Date first provided local exchange telecommunications service		
FAYETTE												
FENTON												
FERGUSON												
FISK												
FLAT RIVER				1								
FLORISSANT				1								
FRANKFORD												
FREDERCKTN								[		l		
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HOLCOMB												
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KNOBNOSTER		1		1							
LA MONTE											
LADUE	-					-					
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LEESSUMMIT											
LIBERTY											
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LINN											
LKOZKOSBCH	1										
LOCKWOOD											
LOUISIANA											
MACKSCREEK				1							
MALDEN				1							
MANCHESTER											
MARBLEHILL											
MARCELINE											
MARIONVL											
MARSHALL											
MARSTON											
MAXVILLE											
MEHLVILLE		1									
META											
MEXICO					<b>_</b>						
MOBERLY											

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Exchange	Pure	UNE loop	UNE	Full facilities based	Date first provided local exchange telecommunications service	Pure	UNE	UNÉ P	Full facilities based	Date first provided local exchange telecommunications service	
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NASHUA											
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			RESIDE			BUSINESS VOICE GRADE EQUIVALENT LINES					
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Exchange	Pure	UNE loop	UNE	Full facilities based	Date first provided local exchange telecommunications service	Pure resale	UNE loop	UNE P	Full facilities based	Date first provided local exchange telecommunications service	
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RISCO		·									
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VALLEYPARK								·	1		
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	RESIDENTIAL								BUSINESS					
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Exchange	Pure resale	UNE loop	UNE P	Full facilities based	Date first provided local exchange telecommunications service	Pure resale	UNE loop	UNE P	Full facilities based	Date first provided local exchange telecommunications service				
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WASHINGTON														
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WYATT														

#### MoPSC Staff Data Request Instructions

Instructions for completing the attached Local Competition Data Request Form.

### I.BACKGROUND

In accordance with Subsection 392.245.5 RSMo 2000, the Missouri Public Service Commission has established Case No. TO-2001-467 for the purpose of investigating "the state of competition in each exchange where an alternative local exchange telecommunications company (ALEC) has been certified to provide local exchange telecommunications service" in Missouri. Case No. TO-2001-467 involves competition only in exchanges served by Southwestern Bell Telephone Company (SWBT). Case No. TO-2001-467 does not involve an analysis of competition in Sprint or Verizon exchanges. It is expected that competition in Sprint and Verizon exchanges will be analyzed in future proceedings. Pursuant to its March 13, 2001 Order Establishing Case, Directing Notice, Joining Parties, and Granting Protective Order, all competitive local exchange carriers with approved tariffs offering service in SWBT's Missouri service area as of March 1, 2001 have been made parties to Case No. TO-2001-467 without the need for intervention.

#### **II. PURPOSE**

The purpose of this data request is to ascertain on an exchange specific basis, the number of voice-grade equivalent competitive access lines in service in each SWBT exchange in Missouri, and to determine the date that individual competitors first began to provide local exchange service in each SWBT exchange. Information is sought for residential and business voice-grade equivalent access lines. Information gained on a company-specific basis will be kept confidential. Staff is requesting all competitive local exchange carriers in Missouri to report the number of voice-grade equivalent access lines on an exchange-by-exchange basis. Staff is requesting line count data as of May 1, 2001.

#### III. DIFFERENCES IN STAFF'S DATA REQUEST AND FCC FORM 477

Some of the data sought by the Staff is consistent with information reported on FCC Form 477, although there are considerable differences. For example, Part II of FCC Form 477 contains a variance for companies providing fewer than 10,000 voice-grade equivalent lines. There are no variances for "small" carriers in the Staff's data request. All competitive local exchange carriers with MoPSC approved tariffs must respond to this data request, no matter how few customers are served. Another example of the difference in FCC Form 477 and the Staff's data request is that FCC Form 477 requests lines to be separated by 5-digit zip code. The Staff's data request requires lines be categorized only by exchange.

#### IV. HOW TO FILE A RESPONSE TO THIS DATA REQUEST

Please complete the electronic version of the form, which can be downloaded to your local drive from the Commission's website at the following address: http://www.psc.state.mo.us/telecommunications-dr.asp. Once completed, please e-mail the form to <u>dhake01@mail.state.mo.us</u> no later than July 5, 2001.

### V. WHO MUST RESPOND TO THIS DATA REQUEST?

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All providers of competitive basic local exchange telecommunications service in Missouri. Each company possessing an approved tariff must respond under the appropriate tariff name. If your company possesses multiple fictious names, a separate report is required for each fictious name.

#### VI. WHAT IS MEANT BY "VOICE TELEPHONE SERVICE?"

Voice telephone service means local exchange or exchange access services that allow end users to originate and terminate local telephone calls on the public switched telephone network, whether used by the end user for voice telephone calls or for other types of calls carried over the public switched network (for example, lines used for facsimile equipment).

#### VII. WHAT IS MEANT BY "VOICE-GRADE" EQUIVALENT LINES?

Providers are to report voice-grade equivalent lines. Count as one voice-grade equivalent line: traditional analog POTs lines, Centrex-CO extensions, and Centrex-CU trunks. Count lines based on how they are charged to the customer rather than how they are physically provisioned. For example, count Basic Rate Integrated (BRI) Services Digital Network (ISDN) lines as two voice-grade equivalent lines. Report 8 voice-grade equivalent lines if a customer buys 8 trunks that happen to be provisioned over a DS1 circuit. If a customer buys a DS1 circuit that is provided as channelized service, report 24 voice-grade equivalent lines, even if there is some indication that the customer is only using 8 of the derived lines. Thus, a voice-grade equivalent line is a line that directly connects an end user to a carrier and allows the end user to originate and terminate local telephone calls on the public switched network. Voice-grade equivalent lines include high capacity lines that are channelized to provide voice-grade service.

Note for competitive LECs providing local exchange service over hybrid fibercoaxial cable television systems: Count your records and report how many voice-grade equivalent lines are being billed for.

#### VIII. WHAT IS MEANT BY PURE RESALE VOICE GRADE EQUIVALENT LINES?

Pure resold lines are those lines provided pursuant to section 251(c)(4) of the Communications Act of 1934, as amended. Pure resold lines are those lines not owned or controlled by the telephone company billing the end user for the service. Pure resold lines are typically leased from an underlying carrier at a wholesale discount off the tariffed rate. The use of resold lines exclusively provides a means to offer service without owning or controlling any equipment. Pure resold lines are those lines provided under a general or local exchange tariff, but without benefit of an accompanying switched access tariff.

#### IX. WHAT IS MEANT BY UNE LOOP VOICE GRADE EQUIVALENT LINES?

UNE loop lines are those lines where the competitor provides switching for the line. UNE loops are obtained on a stand-alone basis and service is provided to the end user without combining other UNEs. Service provisioned over UNE loops requires the competitor to lease a loop from SWBT to connect to the competitor's own switch. UNE loop lines are provided under a general or local exchange tariff in combination with a switched access tariff.

#### X. WHAT IS MEANT BY UNE P VOICE GRADE EQUIVALENT LINES?

UNE Platform lines are those lines utilizing a combination of UNEs. Service provisioned over UNE P lines does not require the competitor to use its own switch, port, or loop. UNE P lines are provided under a general or local exchange tariff in combination with a switched access tariff.

XI. WHAT IS MEANT BY FULL FACILITY BASED VOICE GRADE EQUIVALENT LINES?

Full facility based lines are those lines owned or controlled exclusively by a competitive local exchange carrier and used to connect to an end user's premises. Count as your own such facilities, those facilities that you actually owned as well as facilities such as dark fiber that you obtained the right to use from other entities. Do not include, as full facilities based lines, lines provided over UNE loops that you obtained from another carrier. Full facility based lines are provided under a general or local exchange tariff in conjunction with a switched access tariff.

## **APPENDIX B**

1-800-Reconnex, Inc.

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2<sup>nd</sup> Century Communications, Inc.

AccuTel of Texas, Inc.

**Adelphia Business Solutions** 

Allegiance Telecom of Missouri<sup>1</sup>

American Communications Services of K.C., Inc.

BarTel Communications, Inc.

Birch Telecom of Missouri, Inc.

Brooks Fiber Communications of Missouri, Inc.

Buy-Tel Communications, Inc.

Camarato Distributing, Inc.

Central Missouri Telecommunications, Inc.

Cierra Network Systems, Inc.

The Cube

Delta Phones, Inc.

DMJ Communications, Inc.

Gabriel Communications of Missouri, Inc. (now NuVox)

**Global Crossing Local Services** 

Global Crossing Telemanagement, Inc.

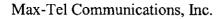
HJN Telecom, Inc.

LDD, Inc.

Logix Communications Corporation

Maxcom, Inc.

<sup>&</sup>lt;sup>1</sup> See paragraph 7 of Staff's Motion.



McLeodUSA

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MCImetro Access Transmission Services, LLC

MCI Worldcom Communications, Inc.

Missouri Telecom, Inc.

Mpower Communications Corp.

Net-Tel Communications Corporation

NOW Communications, Inc.

**Omniplex** Communications Group

The Pager Company

Phones for All

Primary Network Communications (a/k/a Broadspan Communications, Inc., now Mpower Communications Central Corp.)

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QCC, Inc.

**Quick-Tel Communications** 

Quintelco, Inc.

**Ren-Tel Communications** 

Simply Local Services, Inc.

Smoke Signal Communications

**Snappy Phone** 

Southwest Teleconnect

TCG Kansas City

TCG St. Louis

Teligent, Inc.

Tel-Link



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TransStar Communications

Universal Telephone

U.S. Telco, Inc.

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Winstar Wireless, Inc.

WorkNet Communications, Inc.



Service List for Case No. TO-2001-467 Revised: July 27, 2001 (SW)

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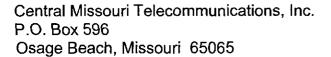
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