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December 12, 2002

Secretary of the Commission  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
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Via Federal Express  
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FILED

DEC 13 2002

Re: Case No. TR-2001-65

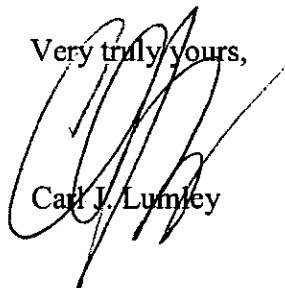
Missouri Public  
Service Commission

Dear Secretary of the Commission:

Enclosed please find for filing with the Commission an original and nine (9) copies of Post Hearing Brief of MCI WorldCom Communications, Inc., MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Missouri, Inc. Upon your receipt, please file stamp the extra copies received and return to the undersigned in the enclosed, self-addressed, stamped envelope. If you have any questions, please do not hesitate to contact us.

A true and correct copy of this letter only has been forwarded to all unrepresented parties. Any such unrepresented party may request a copy of the aforesaid Post Hearing Brief by contacting Debbie Neumann at (314) 725-8788.

Very truly yours,



Carl J. Lumley

CJL:dn

Enclosures

cc. Represented Parties of Record (W/Enclosures)

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED

DEC 13 2002

Missouri Public  
Service Commission

In the Matter of an Investigation of the )  
Actual Costs Incurred in Providing )  
Exchange Access Service and the Access )  
Rates to be Charged by Competitive Local )  
Exchange Telecommunications Companies )  
In the State of Missouri )

Case No. TR-2001-65

**POST HEARING BRIEF OF MCI WORLDCOM COMMUNICATIONS, INC.**  
**MCImetro ACCESS TRANSMISSION SERVICES, LLC and BROOKS FIBER**  
**COMMUNICATIONS OF MISSOURI, INC.**

COME NOW MCI WorldCom Communications, Inc., MCImetro Access Transmission Services, LLC, and Brooks Fiber Communications of Missouri, Inc., (collectively, "WCOM") who submit this post-hearing brief and respectfully state the following:

WCOM will address the issues in the following order: (I) issue list; (II) AT&T's ten questions, as noted in the Commission's Order Adopting Procedural Schedule; (III) Commission authority to enlarge calling scopes; (IV) where the Commission should go from here; and finally, (V) the protective order dispute.

-I-

**ISSUE LIST**

**(1) What is the appropriate cost methodology (i.e. TSLRIC, LRIC, embedded, stand alone, etc.) to be used in determining the cost of switched access?**

The cost of switched access service should be calculated on a long run incremental basis. Parties ranging from Southwestern Bell, Sprint, AT&T, and MCI agree that the cost of access should be determined incrementally and not on a fully

distributed, stand alone or embedded basis. The reason is very clear: Providing switched access causes no additional expense to the local provider vis a vis the local loop.

The Commission should reject proposals (advanced by Public Counsel and the rural ILECs) that switched access should be determined by a model or formula that allocates loop costs in addition to calculating the switching and transport functions of switched access. Relying on an embedded or similar costing approach that includes the local loop would not provide the Commission with the true incremental economic cost of switched access.

On a broader note, relying on embedded studies (actually, relying on any study other than a forward-looking incremental cost study) would mask the problem that the Commission should address; namely, that switched access charges in Missouri are among the highest in the country. According to Commission Staff witness Johnson, the average interstate access rate for large ILECs in Missouri is 0.0127 cents per minute compared to an average intrastate access rate of 0.0830 cents per minute. Stated differently, large ILEC interstate access rates in Missouri are about 15% of the Missouri intrastate rates. The small ILEC interstate access rates are about 0.0349 cents per minute versus a Missouri intrastate access rate of 0.0976 cents per minute. In other words, small ILEC interstate access rates are about 36% of the intrastate rates. [Johnson Direct, Schedule 5, Pg 1 of 13] The comparison to other states is equally telling. Commission Staff witness Johnson stated that the average intrastate switched access rate for states other than Missouri is 0.0240 cents per minute, compared to a Missouri average rate of 0.0830 cents per minute for large ILECs. [Johnson Direct, Schedule 6, Page 3 of 18] This comparison is based on the large ILEC average in Missouri versus large ILECs in these other states.

**(2) Should the cost methodology (i.e. TSLRIC, LRIC, embedded, stand alone, etc.) for determining switched access costs be uniform and consistent for all Missouri LECs?**

Yes. The Commission should not use different standards for different companies. Using one type of cost methodology for all carriers would provide the Commission with a “consistent set of cost data which can meaningfully be compared across carriers.” [Johnson Direct, Page 32] The cost results of a particular carrier would to a certain extent be preordained if the Commission were to use different types of cost methods for different carriers. [See Johnson Direct, Page 32-33]

**(3) Should loop costs be included in the determination of the cost of switched access, and if so, at what level?**

No. The cost of the loop has no bearing on calculating the incremental cost of switched access. The loop costs remain the same whether or not the end user makes toll calls. [Tr. 655, 668, 685-86, 719-20] The Commission should not include the cost of the local loop in calculating the incremental, economic cost of switched access. Including the cost of the loop may cause pricing distortions because the cost “floor” upon which the Commission bases its pricing decision would be higher if loop costs were included.

**(4) What are the appropriate assumptions and/or the appropriate values for the following inputs:**

MCI is not in a position to state a specific position on these inputs. As a general matter, the assumptions and/or values should be consistent with determining the forward-looking economic cost of switched access and not based on historical, backward-looking monopoly inputs.

**(5) Is the current capping mechanism for intrastate CLEC access rates appropriate and in the public interest?**

The current capping mechanism is in the public interest for those CLECs that are providing local service via resale or UNE-P. The cap is also in the public interest for facilities-based CLECs, subject to the exceptions noted in Item 6 below.

**(6) Are there circumstances where a CLEC should not be bound by the cap on switched access rates?**

Yes. The cap on CLEC access rates should not apply if a facilities-based CLEC shows the Commission that its switched access costs are greater than the switched access costs of the incumbent LEC in whose territory the CLEC operates. MCI also agrees with AT&T witness Kohly that the cap should not apply in those instances where “an ILEC reduces access rates and receives offsetting receipts from the Missouri Universal Service Fund or offsetting revenues from some other mechanism that is not available to the CLECs.” [Kohly Surrebuttal, Page 20]

**(7) What, if any, course of action can or should the Commission take with respect to switched access rates as a result of this case?**

MCI addresses this issue in Part IV of the brief.

**AT&T QUESTIONS**

**(1) Does the Commission have jurisdiction to direct an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, to reduce its switched access rates?**

It is unlikely that the Commission has jurisdiction to order a price-cap regulated company to reduce its access charges. The Commission addressed this issue in the context of a complaint filed by MCI and others in 1997, seeking to lower Southwestern Bell Telephone Company’s (“SWBT”) access charges. SWBT responded to MCI’s petition by electing to be price-cap regulated pursuant to Section 392.245 RSMo. The Commission granted SWBT’s request to be price cap regulated and dismissed MCI’s complaint. The Circuit Court upheld the Commission’s actions.

Section 392.245.7 of the price cap statute states that a “company regulated under this section shall not be subject to regulation under subsection 1 of section 392.240. Subsection 1 of Section 392.240 reads as follows:

Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon a complaint, that the rates, charges, tolls or rentals demanded, exacted, charged or collected by any telecommunications company for the transmission of messages or communications, or for the rental or use of any telecommunications facilities or that the rules, regulations or practices of any telecommunications company affecting such rates, charges, rentals or service are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of law, or that the maximum rates, charges or rentals chargeable by any such telecommunications company are insufficient to yield reasonable compensation for the service rendered, the commission shall with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, charges and rentals to be thereafter observed and in force as the maximum to be

charged, demanded, exacted or collected for the performance or rendering of the service specified and shall fix the same by order to be served upon all telecommunications companies by which such rates, charges and rentals are thereafter to be observed, and thereafter no increase in any rate, charge or rental so fixed shall be made without the consent of the commission.

This dilemma—the Commission being fully aware that intrastate switched access rates are some of the highest in the United States and, at least with respect to the large ILECs (who carry the majority of switched access minutes), with no or limited means to remedy the situation—no doubt prompted the exchange between Commissioner Gaw and Commission Staff witness Johnson to suggest that the Commission may need a legislative fix in order to address this problem. [Tr. 250-51]

**(2) Does the Commission have the jurisdiction to direct an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, to restructure its switched access rates?**

A Commission-ordered restructuring of access rates presents a closer call than a Commission-ordered reduction of access rates. The overarching purpose of Section 392.240.1 is whether the regulated utility is either over-earning or under-earning. A Commission-ordered rate rebalancing would not place the ILEC’s earnings at risk because rebalancing, by definition, would be revenue neutral.

**(3) May an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, voluntarily reduce its switched access rates?**

Yes. There are no explicit prohibitions against lowering switched access rates. The Commission should be aware of the limits in Section 392.245.1 when examining any

rate reductions. That section, noted below, grants the Commission the authority to ensure that rates—even rates of price-cap regulated companies—are just and reasonable.

**(4) May an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, voluntarily restructure its switched access rates?**

Yes, there appears to be no prohibition in the statute limiting an ILEC from voluntarily restructuring its switched access rates. The Commission, however, must abide by the limits contained in Section 392.245.1, which states:

The commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation. As used in this chapter, "price cap regulation" shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, which maximum allowable prices shall not be subject to increase except as otherwise provided in this section.

The Commission may approve a rate rebalancing proposal of a price-cap regulated ILEC, subject to the limit that the rates proposed be “just, reasonable and lawful.” For example, AT&T witness Kohly suggested eliminating the CCL rate in the access tariff and replace it with a charge on the end users’ bills. The net effect of replacing the CCL rate with an end user charge would be twofold: It would be revenue neutral to the ILEC. Secondly, the means of recovering the expenses covered by the CCL would be consistent with economic theory and the nature of the costs to be recovered by the CCL. The CCL rate is designed to recover fixed, local loop costs of the ILEC; however, the CCL rate is currently recovered on a usage sensitive—*i.e.* a per minute of use—basis.

The price cap statute speaks in terms of maximum allowable prices for ILECs. With respect to large ILECs, the statute prescribes that the maximum allowable rate for



exchange access shall not be changed prior to January 1, 2000. Section 392.245.4(1) RSMo. The statute also details how a large ILEC may unilaterally *increase* its exchange access rates; however, the statute is silent with respect to the Commission approving any rate rebalancing or restructuring, as opposed to approving a mere rate increase as prescribed in the statute.

**(5) Does the Commission have the jurisdiction to direct an ILEC that is regulated under rate of return regulation to reduce its switched access rates without conducting a full rate case?**

The Commission has authority to require a revenue-neutral reduction of ILEC access charges that is offset by increases in other rates, without conducting a full rate case, under its general authority to assure that rates are just and reasonable.

**(6) Does the Commission have the jurisdiction to direct an ILEC that is regulated under rate of return regulation to restructure its switched access rates without conducting a full rate case?**

The Commission has authority to direct an ILEC to restructure its switched access rates on a revenue neutral basis, without conducting a full rate case, under its general authority to assure that rates are just and reasonable.

**(7) May an ILEC that is regulated under rate of return regulation voluntarily reduce its switched access rates without filing a full rate case?**

ILECs may reduce their switched access rates at any time without filing a full rate case, provided they do not violate prohibitions against anti-competitive below-cost

pricing and otherwise assure the Commission that the resulting rates are just and reasonable.

**(8) May an ILEC that is regulated under rate of return regulation voluntarily restructure its switched access rates without filing a full rate case?**

ILECs may restructure switched access rates without filing a full rate case, subject to Commission review and determination that the restructured rates are just and reasonable (and do not result in an overall revenue increase).

**(9) Does the Commission have jurisdiction to direct a CLEC to reduce its switched access rates?**

In general, the Commission does not have authority to direct competitive companies to reduce their rates. However, because the Commission placed a condition upon CLEC certificates of service authority regarding switched access rates, the Commission would have authority to direct a reduction in an instance where a CLEC is shown to have violated the condition (including in circumstances which the Commission has ordered an ILEC reduction).

**(10) Does the Commission have jurisdiction to direct a CLEC to restructure its switched access rates?**

No, the Commission does not have authority to direct competitive companies to restructure their rates.

-III-

**CALLING SCOPES**

The Commission may not on its own change telephone exchange boundaries. The power granted to the Commission in Section 392.200.7:

The commission shall have power to provide the limits within which telecommunications messages shall be delivered without extra charge.

is tempered by the restrictions in Section 392.200.9:

This act [Referring to SB 507] shall not be construed to prohibit the commission, upon determining that it is in the public interest, from altering local exchange boundaries, provided that the incumbent local exchange telecommunications company or companies serving each exchange for which the boundaries are altered provide notice to the commission that the companies approve the alteration of exchange boundaries.

Reading these two sections together, the Commission may not order local boundary changes resulting in an expanded local calling area unless the ILECs approve the changes.

Commission authority over basic local calling scopes is described in the definition, Section 386.020(4).

-IV-

**WHERE TO GO FROM HERE**

As a threshold matter, the Commission should determine whether it has jurisdiction to address access rates for price cap regulated ILECs. This is key to any meaningful switched access charge reform because the price cap regulated ILECs carry

the majority of the switched access traffic in Missouri. If the Commission concludes it has no jurisdiction to require switched access charge reductions, it should work with the Legislature to have Section 392.245 amended. If the Missouri Legislature grants the Commission the power to order switched access charge reductions, the Commission should immediately open a case to address how best to effect these reductions.

Secondly, the Commission should eliminate the CCL component of switched access as recommended by AT&T witness Kohly. The Commission likely has the authority to order this type of rate rebalancing. Eliminating the CCL from switched access rates would be an important first step towards reducing access rates. As a practical matter, the Commission should open a new proceeding inasmuch as the style of the current case is not truly descriptive of the nature and scope of what the Commission has examined and addressed.

Finally, as a general rule, the Commission should clearly state its goals and objectives as access charge reform moves forward. This suggestion is made for the benefit of the industry as well as the regulator—the Commission.

-v-

### **PROTECTIVE ORDER**

It is very telling, but not surprising, that with the notable exception of Southwestern Bell, no other party is adamant about maintaining the status quo: the two-tiered protective order currently used by the Commission. [Compare Tr. 275-76 (Johnson); Tr. 424-25 (Dunkel); Tr. 716-17 (Farrar); Tr. 829-30, 837-40 (Larsen) *with* Tr. 584-85 (Unruh); Tr. 664-65 (Barch)] The reason is also very telling: ILECs in general

and Southwestern Bell in particular has the advantage because its costs—and its cost studies—are usually at issue. The Commission Staff raised this in *Staff's Reply to Southwestern Bell Telephone Company Regarding the Adoption of a Modified Protective Order and Motion for Expedited Consideration* (May 23, 2002), pg. 2.

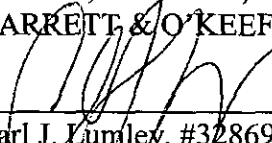
Most companies in the telecommunications industry do not have the resources to employ outside experts to review material designated as “HC” by the Commission. In fact, it is widely accepted that the RBOCs are by far the strongest companies in telecommunications today. This is particularly ironic, because the parties with the burden of employing outside experts to examine RBOC cost studies are typically much weaker financially.

Missouri should adopt a standard protective order such as the one used by the Texas Commission. Neither Texas, nor the other Southwestern Bell states, has a two-tiered protective order that operates to limit the use of in-house cost experts. On a broader note, AT&T states that Missouri is the *only* state where its in-house experts are unable to review cost study information and results. *Motion for Reconsideration of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc, and TCG Kansas City, Inc.*, Page 4 (July 18, 2002)

Updating the Commission’s standard protective order is very important if the Commission wants truly meaningful participation by parties other than the ILECs in proceedings where confidential information is at issue. It truly rings hollow for Southwestern Bell to argue that its data should be afforded greater protection in Missouri when that same type of data is available for review everywhere else.

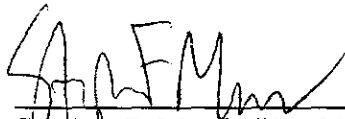
Respectfully submitted,

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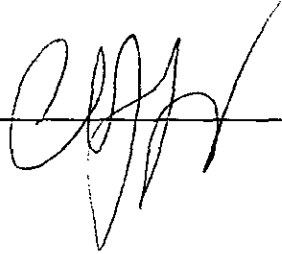
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**Certificate of Service**

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 12 day of December, 2002, by placing same in the U.S. Mail, postage paid.



A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be the initials 'CJH'.

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Quick-Tel Communications, Inc.  
P.O. Box 196  
456 W. Rock Island  
Boyd, TX 76023

Quinteleco, Inc.  
1 Blue Hill Plaza  
Pearl River, NY 10965

Reitz Rentals, Inc.  
d/b/a SouthWest TeleConnect  
P.O. Box 200606  
Austin, TX 78720-0606

Ren-Tel Communications, Inc.  
1732 Highway 113 N.  
Carrollton, GA 30117

Simply Local Services, Inc.  
225 Apollo Drive  
Fenton, MO 63026

Snappy Phone of Texas, Inc.  
d/b/a Snappy Phone  
P.O. Box 29620  
6901 W. 70<sup>th</sup> Street  
Shreveport, LA 71129

Sprint Communications Co., L.P.  
8140 Ward Parkway, 5E  
Kansas City, MO 64114

Sterling International Funding, Inc.  
d/b/a Reconex  
P.O. Box 40  
Hubbard, OR 97032-0040

Suretel, Inc.  
5 N. McCormick  
Oklahoma City, OK 73127

TCG Kansas City, Inc.  
Teleport Communications Group  
Two Teleport Drive, Suite 30  
Staten Island, NY 10311

TCG St. Louis, Inc.  
Teleport Communications Group  
Two Teleport Drive, Suite 300  
Staten Island, NY 10311

Teligent, Inc.  
8065 Leesburg Pike, Suite 400  
Vienna, VA 22182

Tel-Link, LLC  
1001 Third Ave. West, Suite 354  
Bradenton, FL 34205

Tin Can Communications Co., LLC  
1063 Wirt Rd., Suite 202  
Houston, TX 77005

TransStar Communications, LLC  
P.O. Box 2999  
Harlingen, TX 78551

United State Telecommunications, Inc.  
d/b/a Tel Com Plus  
13902 N. Dale Mabry, Suite 212  
Tampa, FL 33618

Universal Telephone  
2405 E. Pawnee, Suite 10  
Wichita, KS 67211

USLD Communications, Inc.  
4250 N. Fairfax Dr., Suite 12W002  
Arlington, VA 22203

US Teleco., Inc.  
d/b/a 1-800-Reconex  
P.O. Box 40  
2500 Industrial Av.  
Hubbard, OR 97032

Winstar Wireless, Inc.  
1615 L. Street, N.W., Suite 1250  
Washington, D.C. 20036

Worknet Communications, Inc.  
7777 Bonhomme Ave., Suite 2000  
St. Louis, MO 63105

2<sup>nd</sup> Century Communications, Inc.  
7702 Woodland Center  
Tampa, FL 33614

Advanced Telecom Group, Inc.  
110 Stony Point Road, 2<sup>nd</sup> Floor  
Santa Rosa, CA 95401

American Fiber Network, Inc.  
9401 Indian Creek Parkway, Suite 140  
Overland Park, KS 66210

Atlas Communications, Ltd.  
482 Norristown Rd., Suite 200  
Blue Bell, PA 19422

Basicphone, Inc.  
3512 Mockingbird, Suite D  
Orange, TX 77630

BellSouth BSE, Inc.  
32 Perimeter Center East  
Atlanta, GA 30346

Bluestar Networks, Inc.  
801 Crescent Drive, #600  
Franklin, TN 37064

Broadband Office Communications  
P.O. Box 37  
Falls Church, Va 22042

CapRock Telecommunications Corp.  
15601 N. Dallas Pkwy, Suite 700  
Addison, TX 75001

CAT Communications International  
4142 Melrose Ave. N.W., Suite 25  
Roanoke, VA 24107

CCCMO, Inc.  
d/b/a Connect!  
124 W. Capitol, Suite 350  
Little Rock, AR 72203

C.C.O. Telecom, Inc.  
7265 N. Oak Trafficway  
Gladstone, MO 64118

Compass Telecommunications, Inc.  
7001 Scottsdale Road, Suite 2000  
Scottsdale, AZ 85250

Connectsouth Communications of  
Missouri, Inc.  
4815 W. Braker Ln., Suite 502  
Austin, TX 78759-5618

Convergent Communications Services,  
Inc.  
400 Inverness Dr. South, Suite 400  
Englewood, CO 80112

Cox Missouri Telecom, LLC  
231 E. 4<sup>th</sup> Street  
P.O. Box 696  
Cathage, MO 64836

Cypress Communications Operating Co.  
15 Piedmont Center, Suite 100  
Atlanta, GA 30305

Dial & Save of Missouri, Inc.  
8750 N. Central Expressway, Suite 1500  
Dallas, TX 75231

Digital Teleport, Inc.  
8112 Maryland Ave., 4<sup>th</sup> Floor  
St. Louis, MO 63105

Eagle Communications of Missouri, Inc.  
60 E. 56<sup>th</sup> Street  
New York, NY 10022

Everest Connections Corporation  
5555 Winghaven Blvd.  
O'Fallon, MO 63366

Fairpoint Communications Solutions  
Corp.  
6324 Fairview Rd., Suite 400  
Charlotte, NC 28210

GE Capital Communications Services  
d/b/a GE Exchange  
6540 Powers Ferry Road  
Atlanta, GA 30339

GTE Communications Corp.  
6665 N. MacArthur  
Irving, TX 75038

JATO Operating Corporation  
1099 18<sup>th</sup> Street, Suite 2200  
Denver, CO 80202

RSL Com USA  
49 W. 37<sup>th</sup> Street, FL 13  
New York, NY 10018-0178

Digital Broadcast Network Corporation  
424 S. Woods Mill Road, Suite 350  
Chesterfield, MO 63017

dPi- Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234

Essential.com, Inc.  
Three Burlington Woods Drive, 4<sup>th</sup> Fl.  
Burlington, MA 01803

Excel Telecommunications Systems,  
8750 N. Central Expressway, Suite 2000  
Dallas, TX 75231

Focal Communications Corp. of  
Missouri  
200 N. LaSalle Street, Suite 800  
Chicago, IL 60601

Group Long Distance, Inc.  
400 E. Atlantic Blvd.  
Pompano Beach, FL 33060-6200

HJN Telecom, Inc.  
3235 Satellite Blvd., Bldg., 400,  
Suite 300  
Duluth, GA 30096

Kansas City Fiber Network, LP  
111 Main Street, Suite 300  
Kansas City, MO 64105

Local Line America, Inc.  
P.O. Box 4551  
Akron, OH 44310

Maxcess, Inc.  
100 W. Lucerne Plaza, Suite 200  
Orlando, FL 32801

Metro Connection  
d/b/a Transamerican Telephone  
209 E. University  
Danton, TX 76201

Onfiber Carrier Services, Inc.  
11921 N. MO PAC Expwy, Ste. 100  
Austin, TX 78759

Pathnet, Inc.  
11720 Sunrise Valley Dr.  
Reston, VA 20191

Prism Missouri Operations, Inc.  
1500 K St. N.W. Ste. 450  
Washington, D.C. 20005-1272

Supra Telecommunications &  
Information Systems, Inc.  
2620 S.W. 27<sup>th</sup> Ave.  
Miami, FL 33133

TLC Next Generation International  
Holdings, LLC  
911 Washington, Suite 625  
St. Louis, MO 63101

Universal Access, Inc.  
100 N. Riverside Plaza, Suite 2200  
Chicago, IL 60606

Assistant Vice President, Regulatory  
Affairs  
U.S. Telepacific Corp.  
d/b/a TelePacific Communications  
515 S. Flower St. 47<sup>th</sup> Floor  
Los Angeles, CA 90071

Vectris Telecom, Inc.  
5000 Plaza on the Lake, #325  
Austin, TX 778741

Z-Tel Communications, Inc.  
601 S. Harbour Island Blvd., Suite 220  
Tampa, FL 33602