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November 17, 2003

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

FILED

NOV 17 2003

Missouri Public
Service Commission

Re: Case No. TO-2004-0207

Dear Judge Roberts:

Please find enclosed for filing in the referenced matter the original and five copies of an Entry of Appearance; CLEC Coalition Response to SBC Missouri's and CenturyTel's Response to Commission Order Directing Filing; and Petition for Leave for Bill Magness to Appear on Behalf of AT&T Communications of the Southwest, Inc., AT&T Local Services on Behalf of TCG St. Louis, Inc. and TCG Kansas City, Inc., Birch Telecom of Missouri, Inc. and Z-Tel Communications, Inc.

Would you please bring this filing to the attention of the appropriate Commission personnel.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

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By:

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Enclosure

cc: Office of Public Counsel
General Counsel's Office
Rebecca DeCook
Bill Magness
All parties of record

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BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED

NOV 17 2003

Missouri Public
Service Commission

IN THE MATTER OF A)
COMMISSION INQUIRY)
INTO THE POSSIBILITY OF)
IMPAIRMENT WITHOUT)
UNBUNDLED LOCAL CIRCUIT)
SWITCHING WHEN SERVING)
THE MASS MARKET)

Case No. TO-2004-0207

**CLEC COALITION RESPONSE TO SBC MISSOURI'S AND CENTURYTEL'S RESPONSE
TO COMMISSION ORDER DIRECTING FILING**

COME NOW AT&T Communications of the Southwest, Inc., AT&T Local Services on behalf of TCG St. Louis, Inc. and TCG Kansas City, Inc., Birch Telecom of Missouri, Inc., and Z-Tel Communications, Inc. ("CLEC Coalition") and file, pursuant to the Commission's Order Directing Filing, this response to SBC Missouri's and CenturyTel's November 10, 2003 filings responsive to the Commission's Order. The CLEC Coalition responds in this filing regarding Mass Market Switching issues.

1. The Commission took an important first step in efficiently processing the Mass Market Switching impairment case by requiring Missouri ILECs to identify where they intend to challenge the national finding of impairment in Missouri. It is incumbent on the ILECs to inform the industry where they plan to challenge impairment so that the scope of the proceeding may be determined.

2. In its filing, SBC stated its intention to challenge Mass Market Switching impairment in the following Metropolitan Statistical Areas ("MSAs"): St. Louis, Missouri-Illinois, Kansas City, Missouri-Kansas, and Springfield, Missouri. CenturyTel asserted it would also challenge the

impairment finding in the St. Louis MSA. Both SBC and CenturyTel (the “ILECs”) contend they will make their cases “by showing that the triggers identified in the TRO have been satisfied,” and that both do “not intend to present a potential deployment analysis.”¹

3. The ILECs also stated in their filings, however, that (as SBC put it) “to the extent a geographic market or DS0/DS1 cutoff different than that proposed by SBC Missouri is considered, SBC reserves the right to present evidence of non-impairment through a potential deployment analysis as permitted under applicable FCC rules.”² The ILECs also reserved their right to present a potential deployment case if the Commission implements what SBC characterizes as a “cooling off” period on subsequent TRO-related proceedings.³ The ILECs further reserved rights to add information, based on discovery and additional analysis, regarding the identity of other companies it asserts satisfy the mass market switching triggers.⁴ Finally, the ILECs added a generalized reservation asserting the right “to withdraw, revise or otherwise modify its positions consistent with the USTA Decision, the Triennial Review Order and/or other relevant government action.”⁵

4. The ILECs’ multi-layered reservations diminish much of the certainty that could have been achieved through this initial filing. Nevertheless, the identification of specific proposed markets and “trigger candidate” companies will assist the parties in planning for the mass market switching proceedings. The CLEC Coalition does not agree to waive the opportunity to request that the Commission consider alternatives to the geographic market or DS0/DS1 cutoff proposals offered by SBC. Both the geographic and DS0/DS1 cutoff aspects of “defining the market” (or, more accurately, defining the impairment zones in a state) require factual analysis that the CLEC Coalition cannot

¹ SBC Filing, at ¶ 8; CenturyTel Filing, at ¶ 6 (duplicate language in both pleadings).

² SBC Filing, at ¶ 8; CenturyTel Filing, at ¶ 6 (same language with “CenturyTel” substituted for “SBC Missouri”).

³ SBC Filing, at ¶ 8, n.5 (this reservation of rights is echoed by CenturyTel at ¶ 6, n.6 of its filing).

⁴ SBC Filing, at ¶¶ 8-9; CenturyTel Filing, at ¶ 6, n.5.

undertake until discovery responses have been received from SBC. Unlike SBC, the CLEC Coalition companies have not established a standardized position on these issues that will apply to any factual setting in any state.

5. The TRO calls on State Commissions to “define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market.”⁶ Each “market” must be defined “on a granular level” based on consideration of specific facts itemized in the TRO.⁷ The specific facts include the location of CLEC customers. SBC, as provider of wholesale UNE and resale services to CLECs, has the best information available aggregating the number of CLEC customers in its territory in Missouri.

6. The FCC also left to State commissions the factual determination of the appropriate “cut off” or “cross over” point between DS0 (mass market) and DS1 (enterprise market) customers. The TRO and FCC rule contemplate that the cut-off for multi-line DS0 voice customers should not be established without the introduction and consideration of record evidence regarding “the point where it makes economic sense for a multi-line customer to be served via a DS1 loop.”⁸ The “default” cutover referenced in the TRO, and endorsed by the ILECs, is not based on the type of analysis the FCC demands the states conduct in the 9-month impairment proceedings. The CLEC Coalition believes the evidence will show that the cutover is not properly established at the 3-line level when the evidence called for by the FCC is reviewed.

7. In the TRO framework, these market definition components play a critical part the

⁵ SBC Filing, note 1 CenturyTel Filing, note 1.

⁶ TRO ¶495.

⁷ *Id.* In defining markets, state commissions “must take into consideration the locations of customers actually being served (if any) by competitors, the variation in factors affecting competitors’ ability to serve each group of customers, and competitors’ ability to target and serve specific markets economically and efficiently using currently available technologies.”

assessment of whether there is impairment. The market definition is driven by factual determinations, and thus must be supported by record evidence. In addition, because the market definition components play such an important role in the Commission's consideration of impairment, no party should be expected to waive its rights to present evidence on these issues.

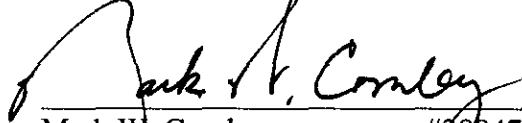
8. Given that the "market definition" issues will be contested -- and require factual evidence and determinations pursuant to the TRO -- the CLEC Coalition respectfully requests that the hearing of market definition not be "bifurcated" from the remainder of the contested issues, so that parties will have sufficient time to develop testimony on all the factual issues in the mass market switching proceeding. As the CLEC Coalition noted in an earlier filing, a hearing without sufficient opportunity for discovery and presentation of prefiled testimony also would not permit the parties to establish the necessary factual basis for market definition issues. This, in turn, could prevent the Commission from being able to fulfill its obligation to make the appropriate factual findings regarding market definition under the TRO.

9. The CLEC Coalition will be represented at the upcoming prehearing conference on October 18, 2003, and looks forward to further discussing matters related to the mass market switching proceeding at that time.

Respectfully submitted,

⁸ TRO ¶497.

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 17th day of November, 2003, to General Counsel's Office at *gencounsel@psc.state.mo.us*; Office of Public Counsel at *opcservice@ded.state.mo.us*; Paul G. Lane, SBC Missouri, at *paul.lane@sbc.com*, and via U.S. Mail, postage prepaid, to:

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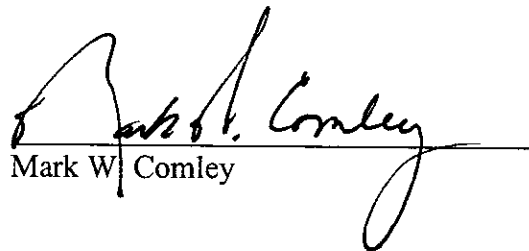
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