

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of a Commission Inquiry into	)	
the Possibility of Impairment without	)	Case No. TO-2004-0207
Unbundled Local Circuit Switching When	)	
Serving the Mass Market.	)	

**SUGGESTIONS IN SUPPORT OF RESUMPTION OF PROCEEDINGS**

Come Now Brooks Fiber Communications of Missouri, Inc., MCI WorldCom Communications, Inc., MCImetro Access Transmission Services, LLC, Intermedia Communications, Inc., Dieca Communications, Inc., d/b/a Covad Communications Company, NuVox Communications of Missouri, Inc., Big River Telephone Company, LLC, and Socket Telecom, LLC (herein "CLECs"), pursuant to Commission Order dated March 5, 2004, and for their Suggestions in Support of Resumption of Proceedings state to the Commission as follows:

1. CLECs urge for two reasons that the Commission resume and move forward with its Triennial Review Order ("TRO")<sup>1</sup> proceedings in accordance with a modified procedural schedule that accounts for the delay resulting from the Commission's temporary suspension of the proceeding:

a. First, the March 2, 2004, decision of the United States Court of Appeals for the District of Columbia Circuit<sup>2</sup> does not vacate the appealed provisions of the TRO but instead imposes a stay of the decision "until *no later than the later of* (1) the denial of any petition for rehearing or rehearing en banc or (2) *60 days from today's date* (emphasis added)."

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<sup>1</sup> *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147: Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, released August 21, 2003 (*Triennial Review Order*).

<sup>2</sup> *United States Telecom Association v. Federal Communications Commission*, No. 00-1012 (*USTA II*).

Until May 1, 2004, therefore, the TRO is the prevailing telecommunications law of the country, and state commissions are authorized to conduct their granular analyses on impairment.

b. Three commissioners of the Federal Communications Commission (FCC) have announced that they have asked the FCC's general counsel to pursue a stay of the DC Circuit's decision and to file an appeal to the Supreme Court. FCC personnel reiterated such intentions during recent NARUC meetings. That notwithstanding, the MCI companies *will seek* a stay of the *USTA II* ruling and will appeal to the United States Supreme Court. Other CLECs are considering similar action.

2. CLECs are confident that the DC Circuit Court's decision will be stayed and reversed. As a result, the Missouri TRO proceeding should move forward. When the court decision is reversed, Missouri will stand prepared with its analyses and rulings, and in the event the Federal Communications Commission requires any new or additional information from the states, the Commission will need only supplement the work already done.

3. The unbundling requirements of the Telecommunications Act of 1996 remain in place. The need for access to unbundled elements continues. This Commission will under any circumstances have to examine the issues which surround implementation of the TRO. Resumption of these proceedings will be beneficial to all concerned. Hot cut procedures can and should be improved. Access to necessary unbundled elements can and should be preserved.

WHEREFORE, CLECs urge the Commission to resume these proceedings, to direct the parties to submit new proposed schedule(s) by a date certain, and to grant such other and further relief as the Commission determines to be meet and proper.

Respectfully submitted,

Curtis, Oetting, Heinz,  
Garrett & O'Keefe, P.C.

/s/ Carl J. Lumley

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**Certificate of Service**

A true and correct copy of the foregoing was served as required by Commission Order in this case on this 11th day of March, 2004 by e-mail transmission.

/s/ Carl J. Lumley