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November 24, 2003

FILED²

NOV 24 2003

Missouri Public
Service Commission

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

Re: Case No. TO-2004-0207

Dear Judge Roberts:

Please find enclosed for filing in the referenced matter the original and five copies of the CLEC Parties' Statement of Support for Procedural Schedule Alternative Number Two (Single Hearing for Mass Market Switching Issues).

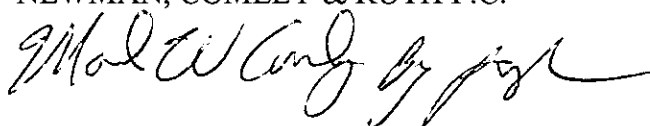
Service of the enclosed pleading is being effected by electronic mail to those parties whose representatives shared email addresses at the pre-hearing conference on November 18, 2003. All other parties on the service list will receive by regular mail a copy of this letter without the pleading. However, recipients of just the letter are welcome to request a copy of the pleading from this office and it will be sent immediately.

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

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:



Mark W. Comley
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MWC:ab

Enclosure

cc: Office of Public Counsel
General Counsel's Office
Rebecca DeCook
Bill Magness
Counsel and parties of record as described herein

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED²
NOV 24 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 PARTIES' STATEMENT OF SUPPORT FOR
PROCEDURAL SCHEDULE ALTERNATIVE NUMBER TWO
(SINGLE HEARING FOR MASS MARKET SWITCHING ISSUES)**

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., Sage Telecom, Inc., and Z-Tel Communications, Inc. and file this pleading in support of Procedural Alternative No. 2 set forth in Commission Staff's "Response to Order Directing It To Submit A Proposed Procedural Schedule" (the "Staff Response") in the above-referenced docket.

1. At the Prehearing Conference in this matter on November 18, 2003, the parties agreed to dates for two alternative procedural schedules, as well as to various matters related to service of pleadings and the discovery process. As the Staff Response notes, the only remaining disagreement relates to whether the mass market local switching issues in this docket should be heard together in one hearing, or in a multi-phase hearing process. The parties agreed that loop/transport issues should be heard separately from switching issues, and under either procedural alternative presented by the parties those issues will be heard separately. The geographic definition

and DS0 cross-over issues that would be the subject of a separate phase in the multi-phase approach are relevant only to mass market switching, not to the loop/transport impairment cases.

2. The multi-phase approach was designated “Alternative One” in the Staff Response, while the single hearing approach was designated “Alternative Two.” The Alternative Two schedule is set forth in ¶ 7 of the Staff Response. The CLEC Parties urge the Commission to adopt the approach set forth in Alternative Two for two reasons.

3. First, Alternative Two is the most efficient way of deploying the limited resources of the Commission and the parties during the 9-month period in which Triennial Review cases are to be decided. Alternative Two requires two major hearings by the Commission (one for local switching issues, another for loop/transport issues). The structure of the TRO, and the issues and parties involved, make this a natural division of issues for hearing. Alternative Two recognizes this natural division, and requires the minimum number of hearings to accomplish the Commission’s mission regarding local switching and loop/transport issues.

4. By contrast, the multi-phase alternative requires an additional hearing, as well as an additional set of direct and rebuttal testimony that must be filed before the first hearing. The multi-phase approach also requires the Commission to make an early decision on the first phase issues in order for the remainder of the case to proceed. The first phase decision, per the multi-phase proposed schedule, must be issued within 11 business days of the close of the hearing, and would need to be prepared without the benefit of post-hearing briefs.

5. A schedule requiring such a rush to an initial judgment would be appropriate if the issues demanded it. In the local switching case, they do not. In fact, only one State has established a

separate phase of hearings to consider geographic market and cross-over issues.¹ State Commissions' unwillingness to separate these issues for hearing (in spite of advocacy for such an approach by some parties) is strong evidence that such a bifurcation is unnecessary to the efficient processing of the switching proceedings. A review of the issues to be decided in the local switching proceeding² shows that the geographic market and DS0 loop crossover issues are just two among several interrelated issues to be decided by the Commission, and that they do not merit separate, expedited treatment by the Commission.

6. The geographic definition and cross-over issues can be handled efficiently in one phase due in large measure to the Commission's foresight in requiring Missouri ILECs to identify the areas of the state in which they will challenge the FCC's impairment finding. SBC and CenturyTel have challenged impairment in the Kansas City, St. Louis, and Springfield MSAs. CLECs have indicated their intention to counter the ILEC challenges in each of those areas. CLECs have taken differing positions on the appropriate geographic impairment zone (e.g., MCI advocates an analysis based on wire centers; Allegiance urges the Commission to consider existing rate zones as the basis

¹ The CLEC Parties understand that only Ohio has scheduled a stand-alone phase of hearings for geographic market and cross-over issues. In the SBC Southwest region, no State is taking such an approach. The Kansas and Oklahoma Commissions have opted for one-phase hearings on all local switching issues. The Texas Public Utility Commission has set a two-phase schedule, but the second phase is reserved only for potential deployment and possible UNE-P rolling access issues that may arise after the completion of the FCC's trigger analysis. In Texas, geographic markets, the cross-over point, and the substantive trigger analysis will all be considered together.

² The issues to be determined in the local switching proceeding are summarized in paragraph 4 of the Staff Response. The issues include "defining particular geographic markets, defining the appropriate multi-line DS0 customer cross-over between the mass market and enterprise markets, determining whether FCC-defined triggers to measure existing switch deployment are met or whether non-impairment exists under a potential deployment analysis and, if necessary, approval of the incumbent LEC batch hot cut process."

for the geographic market).³ Parties will ask the Commission to consider different levels of granularity in establishing the geographic market, but all will be focused on the general geographic areas already identified by the ILECs. Thus, there is no reason the market definition issues cannot be considered concurrently with the parties' differing assertions about whether triggers are met or whether a case can be made for potential deployment in the areas challenged by the ILECs.

7. Moreover, it would be wise for the Commission to consider the geographic market issues within the larger context of all the evidence related to switching impairment. For example, if the Commission's initial determination of the geographic scope of the impairment zones ultimately is at odds with the broader evidence regarding the actual state of competition in Missouri (evidence that would not be in the record until the following phase), the Commission should have the opportunity to revisit its initial market definition findings. Since the evidence on the state of competition is a clear focus of the "triggers" inquiry, it would be more sensible for that evidence to be considered concurrently with the geographic definition issue. In that way, the Commission can take advantage of any evidence that affects its decisions, rather than artificially limiting certain types of evidence to one switching phase or another.⁴

8. The second reason for choosing a single phase approach to local switching is that it better addresses the significant resource constraints associated with participation in multi-state Triennial Review proceedings. The proposed multi-phase approach demands that the parties immediately conduct discovery on geographic definition and cross-over issues and incur the expense

³ The CLEC Parties, as noted in previous filings, believe it is necessary to review certain baseline discovery information (particularly regarding the location of customers in Missouri) before stating a position on the geographic market question.

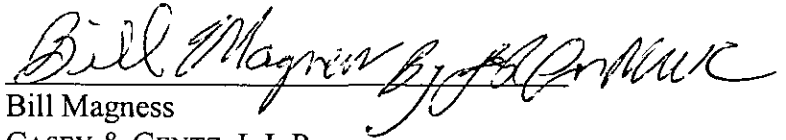
of preparing two rounds of pre-filed testimony by mid-January. After a hearing in January, the parties would again conduct discovery and file additional rounds of direct, rebuttal, and surrebuttal testimony. The single phase alternative permits parties a more reasonable, albeit still quite limited, amount of time to analyze discovery responses and prepare testimony for hearing.

9. For companies whose business demand they participate in numerous state proceedings (where the fundamentals of their business plans are at stake), and particularly for smaller CLECs without large regulatory staff and budgets, the added burden of two separate hearings and the attendant testimony filings are extremely burdensome. A single hearing covering all the issues at once would substantially reduce the time and expense associated with the hearing process, while not taking away from the Commission's ability to fully consider the evidence. The CLEC Parties understand that the TRO-related cases are difficult for all involved, but strongly urge that such burdens not be multiplied when it is not absolutely necessary.

WHEREFORE, 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., Sage Telecom, Inc. and Z-Tel Communications, Inc. respectfully request that the Commission adopt the procedural schedule "Alternative Two" described in ¶ 7 of the Staff's November 21, 2003 "Response To Order Directing It To Submit A Proposed Procedural Schedule."

⁴ Notably, no party contends otherwise in the loop/transport context, where there is consensus that all the interrelated issues should be considered in a single hearing phase.

Respectfully submitted,

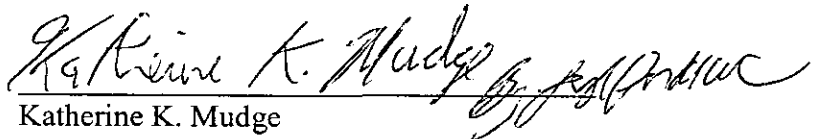


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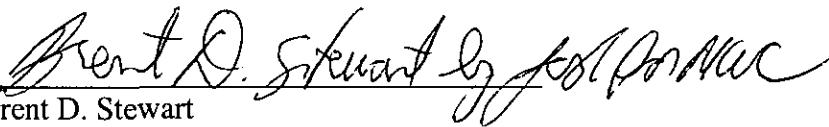


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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 24th 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, lwdority@sprintmail.com; jfischerpc@aol.com; clumley@cohgs.com; stephen.morris@mci.com; bcobb@covad.com; ckeith@nuvox.com; bmagness@phonelaw.com; vkirk@phonelaw.com; rmulvany@birch.com; Lisa.C.CreightonHendricks@mail.sprint.com; nathan.williams@psc.mo.gov; stewart499@aol.com; kmudge@reglaw.com; mike.dandino@ded.mo.gov; myoung0654@aol.com; wds@wdspc.com; David.Woodsmall@xspedius.com; wcourter@mcleodusa.com; charles.gerkin@algx.com; jlr@greensfelder.com; sks@greensfelder.com



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