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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 AT&T's Response to SBC Missouri's and CenturyTel's Response to Commission Order Directing Filing - Loop and Transport issues.

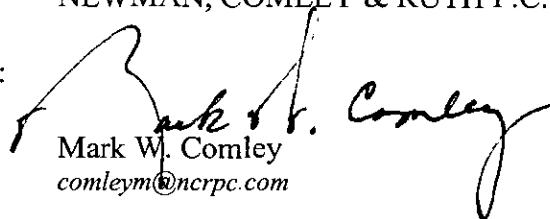
Would you please bring this filing to the attention of the appropriate Commission personnel.

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

Very truly yours,

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Enclosure

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Rebecca B. DeCook
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All parties of record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED

NOV 17 2003

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

Missouri Public
Service Commission

Case No. TO-2004-0207

**AT&T'S RESPONSE TO SBC MISSOURI'S AND CENTURYTEL'S RESPONSE
TO COMMISSION ORDER DIRECTING FILING – LOOP AND TRANSPORT ISSUES**

AT&T Communications of the Southwest, Inc., AT&T Local Services on behalf of TCG St. Louis, Inc. and TCG Kansas City, Inc. (collectively "AT&T") submit this response to SBC Missouri's and CenturyTel's initial filings¹ in the above-styled proceeding with respect to dedicated transport and enterprise loop issues.

1. AT&T expects it will contest these ILECs' assertions of non-impairment, but at this early stage cannot take definitive positions on particular routes and customer locations because of the lack of detail provided by the ILECs in their initial filings and the potential need for discovery. AT&T will concentrate its comments here on matters of the scope and structure for this proceeding. Importantly, the Commission's November 5, 2003 Order Creating Case and Establishing Initial Filing Deadlines required ILECs to identify the "specific routes" where they "will be challenging the finding of impairment for dedicated transport," the "identify of the competitor(s)" that they assert satisfy the impairment triggers defined by the FCC, and the "specific customer locations" where the ILECs will challenge the finding of impairment for enterprise loops. Review of SBC and

¹ SBC Missouri's Response to Order Directing Filing (Nov. 10, 2003) ("SBC Filing"); CenturyTel's Response to Order Directing Filing (Nov. 12, 2003) ("CenturyTel Filing").

CenturyTel's initial filings reveals that they have failed to meet these requirements in certain respects. Further, both the contents and the omissions of the ILECs' initial filings underscore the difficulty of managing these proceedings and underscore the importance of establishing clear and firm limits on any additional opportunity that may be provided for the ILECs to supplement their identification of routes and locations under challenge, and for specifying the basis on which the ILEC will seek to challenge the finding of impairment for each of those routes and customer locations.

Dedicated Transport

2. SBC's summary description of the triggers adopted by the FCC for evaluating dedicated transport on a route-specific basis oversimplifies the required inquiries. Showing that three or more competing carriers have "placed facilities" along a route, SBC Filing at ¶ 10, would not satisfy the self-provisioning trigger. The trigger analysis requires, *inter alia*, a determination that each of the self-provisioned facilities is "operationally ready" to provide transport over the route (TRO ¶ 406) and that the competitors are unaffiliated with the ILEC and with one another. (TRO ¶ 400). Similarly, a mere showing that two or more carriers "offer transport" to other carriers on the subject route, SBC Filing at ¶ 10, would not satisfy the wholesale trigger. Again there must be a finding that the competitive providers are "operationally ready" to provide the particular capacity transport on a wholesale basis along the specific route, that they are willing to provide it, and that they make this particular wholesale transport service "widely available." TRO ¶ 414.

3. The point here is not to exhaustively debate all the specific elements of the triggers. Rather, it is to emphasize that, for each specific transport route placed under challenge, this proceeding will require resolution of several specific fact issues, depending (and multiplying) on whether the ILEC is challenging the route under the self-provisioning trigger, the wholesale trigger, the potential

deployment test, or a combination (and recognizing that the TRO provides CLECs the opportunity to show entry barriers that would warrant a petition to the FCC to maintain the unbundling obligation for a route where a trigger has been met; TRO ¶ 336). The ILECs' initial filings can be reviewed against that context. SBC's initial filing identifies 136 routes (SBC end office to SBC end office combinations) for which it intends to challenge impairment. SBC Filing ¶ 11, Ex. B. Yet SBC also asserts the right to supplement this list based on discovery or further analysis. *Id.* at ¶ 12. CenturyTel identified 3 transport routes for which it will seek a finding of non-impairment, CenturyTel Filing ¶ 8, Ex. B, but also asserts the right to supplement. *Id.* at ¶ 3. Neither SBC nor CenturyTel has identified the particular type of transport for which it will challenge the impairment finding on each route (DS1, DS3, dark fiber). Neither has stated the basis on which its claim of non-impairment is based for any individual route (self-provisioning trigger, wholesale trigger, or potential deployment). In contrast to mass market switching, SBC has not disclaimed its intent to assert potential deployment claims for dedicated transport. Further, while SBC identified a group of 10 carriers (8 in St. Louis and 6 in Kansas City) that it intends to rely on to demonstrate satisfaction of self-provisioning or wholesale triggers, SBC Filing at ¶ 13, Ex. B-HC, it did not associate individual competing carriers with any specific transport route. And this list, too, is subject to supplementation, according to SBC. *Id.* at ¶ 13.

4. In short, with the ILECs' initial filings, what is known is that the dedicated transport proceeding will be large in scope, with well over one hundred individual transport routes at issue and the prospect of at least a "mini-trial" for each route. What is unknown are the issues that will have to be decided for each route, and how many additional routes the ILECs may seek to bring into the proceeding. The implication is clear – to manage the conduct of this proceeding within the 9-month schedule prescribed by the FCC, while affording due process to all interested parties, the time to define

the routes that will be the subject of this proceeding, and for the ILECs to identify the basis and theories on which they will challenge the finding of impairment for each route, must quickly come to a close.

Enterprise Loops

5. For loops, too, SBC's summary omits detail regarding the issues to be decided here. For example, SBC characterizes the wholesale facilities trigger as involving "two or more CLECs offering loop facilities to other providers." SBC Filing at ¶ 14. However, that very general statement encompasses several issues identified in the TRO. Actual application of the wholesale trigger will require findings that two or more unaffiliated alternative providers offer an "equivalent wholesale loop product" at a "comparable level of capacity, quality, and reliability," that each provider has "access to the entire multiunit customer premises," and that each offers the "specific type of high-capacity loop over their own facilities on a widely available wholesale basis to other carriers desiring to serve customers at that location." TRO ¶ 337. As with dedicated transport, applying the triggers and/or potential deployment analysis to each customer location for which the finding of impairment is challenged will require resolution of multiple discrete issues. Here, too, it will be important to bring the process of identifying customer locations, and the bases for claims of non-impairment, quickly to a close.

6. Both ILECs' initial filings fall short with respect to identifying customer locations. SBC lists 105 "enterprise customer locations" where it will challenge impairment. SBC Filing ¶ 15, Ex. C.² SBC associates these locations with 12 different serving wire centers. *Id.* However, SBC appears to state that it will seek a non-impairment determination more broadly, extending to every

² AT&T reserves the right to contest whether these addresses constitute "customer locations," as that term is used in the TRO, following an opportunity for discovery and further analysis.

enterprise customer location within these 12 serving wire centers. SBC Filing ¶ 15. The 105 locations that SBC has identified form only an unspecified fraction of the locations served within these wire centers.

7. AT&T takes exception to SBC's assertion that it will challenge impairment at unidentified customer locations within identified serving wire centers. If SBC's assertion is intended merely to state that it reserves the right to supplement the 105 locations it has identified on Exhibit C, then the only questions raised are whether the Commission intends to permit such supplementation in this initial proceeding and what deadline should be established for any permitted supplementation. If, however, SBC is asserting that it will challenge impairment with respect to enterprise loops for one or more serving wire centers *as a whole*, that assertion would fall outside of the impairment challenges permitted under the TRO. The FCC was very clear that the state reviews are to be *customer location-specific*. See, e.g., TRO ¶¶ 328 (state commission to consider whether federal triggers have been satisfied "for a specific type of high-capacity loop at a particular customer location"), 329 (FCC establishes two triggers to identify the "specific customer locations" where there may be no impairment for particular high-capacity loops and the ILEC unbundling obligation can be eliminated "at that customer location"), and 339 (states need only address "specific customer locations" for which there is relevant evidence in the proceeding that "the customer location" satisfies a trigger or the potential deployment analysis). The FCC plainly did not authorize a challenge to the impairment finding for enterprise loops on any basis broader than individual customer locations. An ILEC may not assert non-impairment for some area larger than a particular customer location, such as a wire center or group of wire centers. Both triggers, and the potential deployment analysis, are defined in terms of deployment of particular loop capacity to a particular customer location. None allow for drawing inferences from

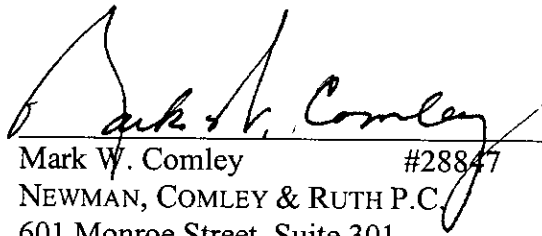
evidence about one particular location to unspecified locations within the vicinity about which no specific evidence has been adduced. Accordingly, the Commission should make clear that, if SBC is to be permitted to bring into this enterprise loop proceeding any customer locations beyond the 105 addresses listed in Exhibit C to its initial filing, it must specify the additional addresses within such period as the Commission sets for supplementation.

8. CenturyTel did not identify any customer locations in its filing. CenturyTel Filing ¶ 10. CenturyTel asserts the right to supplement. *Id.* For the same reasons discussed above, if supplementation is to be permitted, a deadline should be established that will leave reasonable and fair opportunity to develop the evidence relevant to the issues to be tried for each of those locations, recognizing that SBC already has placed more than one hundred customer addresses (without specification of what loop capacity levels will be challenged at each address) in issue here.

9. AT&T appreciates this opportunity to respond to the initial filings of the ILECs as they relate to dedicated transport and enterprise loops, and looks forward to further discussing these matters at the prehearing conference on November 18, 2003.

Respectfully submitted,

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