

**BEFORE MISSOURI THE 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

**XO'S RESPONSE TO SBC'S RESPONSE TO ORDER DIRECTING FILING**

Comes Now XO Missouri, Inc. ("XO") pursuant to Commission order herein and 4 CSR 240-2.080(15) and for its Response to SBC Missouri's ("SBC's") Response to Order Directing Filing<sup>1</sup> respectfully states to the Commission as follows.

**I. Response to Impairment Issues**

XO respectfully offers the following responses to the impairment issues that the Commission identified in Paragraph 8 of its Order Creating Case and Establishing Initial Filing Deadlines:

- a.     The incumbent local exchange carrier's ("ILEC's") proposal for geographically defining the market;

XO takes no position on this issue at this time.

- b.     The ILEC's proposal for defining the appropriate DS0/DS1 cross-over between the mass market and the enterprise market;

XO takes no position on this issue at this time.

- c.     The geographic areas where the ILEC will be challenging impairment based on its response to Nos. 1 and 2;

XO takes no position on this issue at this time.

- d.     The competitor(s) that the ILEC asserts satisfies the impairment triggers for mass market switching in each geographic market;

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<sup>1</sup> To the extent CenturyTel's Response overlaps SBC's Response, XO's position is the same.

XO takes no position on this issue at this time. However, it would be inappropriate to include XO in such a list of competitors.

- e. The specific routes where the ILEC will be challenging the finding of impairment for dedicated transport;

SBC has failed to meet its burden for challenging the FCC's national impairment finding for dedicated transport for the routes that SBC identified in its November 12<sup>th</sup> filing.

Specifically, SBC alleges without proper evidentiary support or explanation that the FCC's triggers have been met in the specified routes. SBC's pleading is ambiguous as to the specific relief that it seeks (i.e. SBC has improperly lumped together different types of transport that are subject to different standards under the FCC's order). Therefore, XO respectfully urges the Commission to affirm the FCC's finding that CLECs are impaired without access to dedicated transport in Missouri.

- f. The identity of the competitor(s) that the ILEC asserts satisfies the impairment triggers for dedicated transport; and

SBC fails to provide proper evidentiary support to establish that competitors satisfy the FCC's impairment triggers in the specified routes. For example, SBC fails to identify carriers for the specified routes. (A general list of carriers that allegedly provide transport in Missouri is insufficient.) Further, it would not be appropriate to include XO in such a general list. Therefore, the FCC's national impairment finding for dedicated transport applies in Missouri.

- g. The specific customer locations where the ILEC will be challenging the finding of impairment for enterprise loops.

SBC has failed to meet its burden for challenging the FCC's national impairment finding for enterprise loops for the customer locations that SBC identified in its November 12<sup>th</sup> filing. Specifically, SBC alleges without proper evidentiary support that the FCC's triggers have been met in the specified customer locations. SBC's pleading is ambiguous as to the specific relief

that it seeks (i.e. SBC has improperly lumped together different types of loops that are subject to different standards under the FCC's order). Additionally, SBC fails to identify carriers for the specified locations. Therefore, XO respectfully urges the Commission to affirm the FCC's finding that CLECs are impaired without access to enterprise loops in Missouri.

## **II. Response to SBC's Batch Hot Cut Proposal**

XO takes no position on this issue at this time.

XO reserves the right to respond to any change in position presented by SBC under the various reservation of rights found throughout SBC's Response. Further, given the high-level perspective offered by the legal conclusions in SBC's Response, XO reserves the right to respond to any more specific arguments that may be presented.

CURTIS, OETTING, HEINZ,  
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/s/ Carl J. Lumley

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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 17th day of November, 2003, by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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