

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Second Investigation)
Into the State of Competition in the) TO-2005-0035
Exchanges of Southwestern Bell Telephone,)
L.P., d/b/a SBC Missouri.)

CLEC RESPONSE

COME NOW MCImetro Access Transmission Services, LLC (including as successor by merger to Intermedia Communications, Inc.),¹ and MCI WorldCom Communications, Inc. (MCI), NuVox Communications of Missouri, Inc. (NuVox), XO Communications Services, Inc. (XO)(successor by merger to XO Missouri, Inc. and Allegiance Telecom),² Big River Telephone Company, LLC (Big River), and Socket Telecom, LLC (Socket)(herein collectively "CLECs"), and for their Response to pleadings filed by SBC Missouri, Staff and Public Counsel pursuant to Order Directing Filings dated May 23, 2005, state to the Commission:

1. As indicated in CLECs' Brief, when the Commission examines the record, it can only conclude that SBC does not yet face effective competition for any additional services in any additional exchanges. Moreover, as CLECs have counseled, given the significance of the regulatory changes requested by SBC, the Commission should proceed with caution. SBC has the burden of proof and persuasion.³ Absent substantial evidence of effective competition, the Commission should deny SBC's request. The regulatory restraints on SBC are already very limited and the Commission should be exceedingly reluctant to relinquish its last bit of control over SBC's ability to totally drive out as yet still emerging competition and harm the public.

¹ See Case No. TM-2005-0129.

² See Case No. LO-2005-0027.

2. SBC Missouri disagrees with CLECs, Staff takes a middle ground, and Public Counsel agrees with CLECs. While CLECs are confident in their position, the prospect of SB 237 taking effect on August 28, 2005 makes it unnecessary for the Commission to expend further resources in considering and resolving this matter. Assuming that SB 237 takes effect, subject to resolution of any challenges it would set a new set of standards for the Commission to examine when considering whether to lift price caps. SBC Missouri has informed the Commission that it intends to immediately file a new proceeding when the new legislation takes effect. Accordingly, it would seem most prudent for the Commission simply to await such imminent actions rather than devote any additional time and resources towards the resolution of the controversial issues presented in this case.

4. All parties appear to agree that this case will become moot upon the effective date of SB 237. Further, any action herein prior to that effective date would no doubt engender litigation, which itself would presumably become moot to some extent in the event similar relief were to be granted under the new version of the statute. Such confusion and duplication of efforts can be prevented by the Commission simply suspending this matter.

³ Ex 49, Report and Order, Case No. TO-2001-467, p. 9.

CURTIS, 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 upon the parties identified on the attached service list on this 27th day of May, 2005, either by e-mail or by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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