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Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Investigation of the       )  
State of Competition in the Exchanges of       )  
Sprint Missouri Inc.                                )

IO-2003-0281

**SPRINT MISSOURI, INC.'S RESPONSE TO**  
**FIDELITY COMMUNICATION SERVICES I, INC'S**  
**SUGGESTIONS IN OPPOSITION TO SPRINT MISSOURI, INC.'S**  
**MOTION FOR A PROTECTIVE ORDER**

Comes Now Sprint Missouri, Inc. ("Sprint") and hereby responds to Fidelity Communication Services I, Inc.'s (Fidelity's) Motion in Opposition to Sprint's requests for a protective order as follows:

Sprint is surprised by Fidelity's opposition to Sprint's requested modification to the standard protective order. The modification sought by Sprint has uniformly been supported to by Competitive Local Exchange Carriers (CLECs). Further, despite Fidelity's claim that Sprint has been satisfied with the protective order, the facts prove otherwise. As stated in Sprint's Initial Brief in Case No. TR-2001-065:

The Standard Protective Order issued by the Commission in this docket and in all other Commission dockets should be modified. The testimony regarding this issue rang loud and clear. Preventing in-house cost experts from viewing costing information of other companies leads to the development of an incomplete record and a substantial waste of time and resources for all parties...

Mr. Farrar further commented that he has testified in cost proceedings all over the country. He has never been prevented from obtaining the cost information of other parties as long as he signed the non-disclosure agreement. Like the other states, Missouri should protect cost information from disclosure, but there is no reason to prevent in-house cost experts from seeing other parties' information. While Sprint does not advocate the disclosure of sensitive cost material to persons other than those

necessary to participate in a case, an outside consultant could violate the terms of a protective order just as easily as in-house expert. Sprint sees no reason for the Commission to continue this artificial distinction between in-house experts and outside consultants....

The standard protective order should be modified. There is sufficient protection in the standard protective order to prevent disclosure of proprietary costing information. Persons signing the Protective Order pledge not to “disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.” Accordingly, there is no need to prevent in-house experts from seeing the highly confidential material. Each person who sees it pledges not to disclose it or use it for purposes other than for the conduct of the case.

Fidelity participated in Case No. TR-2001-065 and was provided a copy of Sprint’s Brief. Therefore, as with many of its arguments, Fidelity is wrong that Sprint has been satisfied with the standard protective order.

As has been repeatedly argued by Sprint and others, the standard protective order violates fundamental due process as it deprives a party of the ability to examine information necessary to prosecute or defend claims. Under Missouri law, administrative tribunals that conduct hearings, such as the Missouri Public Service Commission, must conduct hearings in a manner consistent with the fundamental due process rights granted in the state and federal constitution. *Brawley & Flowers, Inc. v. Gunter*, 934 S.W 2d 557 (Mo. App 1996). Due process is provided by affording parties a reasonable opportunity to be heard at a meaningful time in a meaningful manner. *Id.* “It **requires** that a litigant have knowledge of the claims of his or her opponent, have a full opportunity to be heard, and to defend, enforce and protect his or her rights.” *Id.* (Emphasis Added) In this case, the relevant statute provides that the Commission must investigate Sprint’s services to

determine if any of them are subject to effective competition. The Commission has already determined that it will be Sprint's burden in this case to establish effective competition. Therefore, Sprint is entitled to a full opportunity to be heard through effective use of information necessary to make its case – competitive information possessed by other parties to this case. To allow the parties with the necessary information to limit its use so that Sprint's testifying experts, who are also employees, can not make use of it, denies Sprint of its fundamental right to be heard.

Fidelity attempts to suggest that such a severe limitation as the one provided in the Commission's standard protective order is standard under the Missouri Rules of Civil procedure. This is not true. In fact, if the Commission reads the case cited by Fidelity, it will reveal that they deal primarily with the *public access* to documents, not the parties to the case and that there is a **presumption that information should be made available without limitation**. See *e.g. In re Adobe Systems, Inc. Securities Litigation*, 141 F.R.D. 155, 158 (N.D. Cal. 1992). Further, the presumption is rebutted only after the party resisting disclosure makes a specific demonstration that harm will result if disclosure is made. *Miles v. Boeing Co.*, 154 F.R.D. 112, 114 (E.D. Pa. 1994). None of the information requested by Sprint will be made public as alleged by Fidelity. Further, the disclosure within Sprint will be extremely limited – only to employees that will be assisting in the case, who have no retail responsibility and who sign non-disclosure statements. Therefore, there will be no harm.

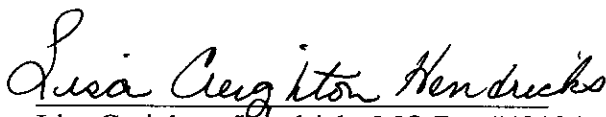
Fidelity also cites to several cases that allegedly support its argument that this Commission can grant the most restrictive limitations of relevant information without violating due process. However, none of these cases support Fidelity's position. In

*Hartman Jr. v. Remington Arms Company, Inc.*, the plaintiff's counsel, the counsel's employees and consulting and testifying experts were entitled to access to the most competitive sensitive information. That is nothing different than what Sprint is requesting – that employees assisting the attorney, as well as testifying experts be afforded access to all relevant information. Further, in *Brown Bag Software v. Symantec Corp.*, cited by Fidelity, access to a competitor's trade secrets was denied to in-house counsel because he was the **sole legal advisor** for the company and **was involved in competitive decision making**. The terms of the Protective Order proposed by Sprint guarantee that such access would not be provided.

Sprint's proposed protective order is consistent with all applicable requirements, even those put forth by Fidelity. Therefore, Sprint requests that the Commission enter the Protective Order attached to its Motion for a Protective Order.

Respectfully submitted,

Sprint Missouri, Inc. (Sprint)



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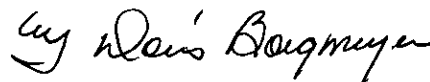
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### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served on each of the following parties by first-class/electronic/facsimile mail, this 20 day of March, 2003.

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