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Secretary of PSC
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED

SEP 26 2003

Re: Case No. IT-2004-0141

**Missouri Public
Service Commission**

Dear Secretary:

Enclosed please find an original and eight copies of the MITG's Application to Intervene in the above cited case.

Thank you for seeing this filed. If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Lisa Chase

Lisa Cole Chase

LCC:sw

Enc.

Cc: Michael Dandino
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**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

FILED

SEP 26 2003

Missouri Public
Service Commission

**In the Matter of the Spectra Communications)
Group, LLC d/b/a CenturyTel Proposed Revision)
To its PSC MO. No. 3 Long Distance Message) Case No. IT-2004-0141
Telecommunications Service Tariff to Introduce) Tariff No. JI-2004-0148
The Promotional Macon Expanded Calling Plan.)**

APPLICATION TO INTERVENE

COMES NOW the Missouri Independent Telephone Company Group (the "MITG"), Alma Communications Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company, and Chariton Valley Telecom Corporation, and hereby moves to intervene in this proceeding in opposition to the relief requested by Applicant, pursuant to Commission rule 4 CSR 240-2.075. In support of this Application, Chariton Valley states as follows:

1. The MITG companies are rural, small, local exchange companies classified as rural telephone companies under the Telecommunications Act of 1996. The MITG provide local, basic local, and exchange access services.

2. Chariton Valley Telecom (CVT) is a CLEC that is certificated to provide service in the Macon exchange.

3. The MITG and CVT seek to intervene in this proceeding because as rural telephone companies interested in assuring competitive toll services are truly competitive without constituting geographical rate deaveraging, and as a CLEC offering services in the Macon exchange, they are situated to be directly impacted by any determination with respect to Spectra's Application to waive subsection 392.200.4(1) RSMo 2000 in order to

provide its promotional optional toll calling plan limited solely to Applicants' customers in the Macon exchange.

4. More specifically, the MITG and CVT object to Spectra's Application and proposed tariff offering as it would violate both state and federal laws prohibiting geographic rate deaveraging, it would violate the provisions of 392.200.4(1) RSMo prohibiting a service from being defined differently based upon the Macon geographical area, it is improper and contrary to law and the public interest to allow Applicant to offer this proposed tariff in the context of a promotional tariff offering when there is at present no local competition existing in the Macon exchange, it would be inappropriate and contrary to the public interest in the absence of local competition for such a promotional offering to allow Applicant to bind its customers to service from Applicant for a period of one year or more, and as the competitive services the Applicant states it intends to meet with its proposed tariff are expanded local calling services, it is inappropriate and contrary to the public interest to do so with this promotional toll calling plan, as this plan, despite the representations of Applicant, are not consistent with the Commission and Office of Public Counsel's expressions of interest in the provision of expanded *local* calling plans. Furthermore, although Spectra seeks relief from subsection 392.200.4(1), the MITG and CVT also note that the proposed tariff is in violation of § 392.200.2 RSMO (Spectra's proposed tariff applies a special rate by which it charges some customers more or less for a service than it charges other customers for the same service under the same or substantially the same circumstances), and § 392.200.3 (Spectra's proposed tariff gives a rate preference to customers based upon location, i.e. the Macon exchange).

5. The MITG and CVT are subject to the regulatory supervision of the Missouri Public Service Commission pursuant to § 386.250 RSMo. and Chapter 392 RSMo.

6. Copies of all filings in this docket should be directed to the MITG and CVT by serving:

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7. Spectra filed an Application for relief from subsection 392.200.4(1) on September 17, 2003 to provide a promotional optional local calling plan in the Macon exchange. This promotional plan is only available to business and residential customers located in Macon who subscribe to the Company's basic local exchange service and provides such subscribers with intraLATA calling at specified rates if they commit to keep the plan for a minimum of 12 months.

8. Subsection 392.200.4(1) provides:

No telecommunications company may define a telecommunications service as a different telecommunications service based on the geographic area or other market segmentation within which such telecommunications company makes application and files a tariff or tariffs which propose relief from this subsection. Any such tariff shall be subject to the provisions of section 392.220 and 392.230 and in any hearing thereon the burden shall be on the telecommunications company to show, by clear and convincing

evidence, that the definition of such service based on the geographic area or other market within which such service is offered is reasonably necessary to promote the public interest and the purposes and policies of this chapter.

9. Spectra states in its Application that it provides interexchange telecommunications services in Missouri, and basic local telecommunications services in 107 rural exchanges in Missouri. (Application at ¶2) It is incumbent upon Spectra to provide clear and convincing evidence that limiting its promotional plan to the Macon exchange, rather than making the plan equally available to all of its subscribers in its service area, is reasonably necessary to promote the public interest and the purposes and policies of this chapter. MITG and CVT do not believe Spectra can make such a showing.

10. Spectra states that it has introduced its promotional optional calling plan in Macon as a competitive response to the “highly competitive interexchange telecommunications marketplace.” The FCC has stated that competition alone is an insufficient basis for IXCs to make their offerings only to certain geographic areas as opposed to their entire service area.

11. Under 47 USC §254(g), the FCC is charged with adopting rules to require IXC rates to rural and high cost subscribers to be no higher than the rates the IXC charges its urban subscribers. The rates must also be no higher than the rates charged to its subscriber in any other state. The FCC promulgated rule 47 CFR 64.1801 Geographic rate averaging and rate integration, which provides:

(a) The rates charged by providers of interexchange telecommunications services to subscribers in rural and high-cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.

(b) A provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each U.S. state at rates no higher than the rates charged to its subscribers in any other state.

12. In the FCC *Report and Order* adopting this rule, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Docket No. 96-61 (released Aug. 7, 1996), the FCC made the following findings:

¶9. “As required under the 1996 Act, our rule will apply to all providers of interexchange telecommunications services and to all interexchange “telecommunications services,” as defined in the Act.” ...

¶24. We do not believe that permitting carriers to depart from geographic rate averaging to the extent necessary to offer contract tariffs, Tariff 12 offerings, optional call plans, temporary promotions, and private line services in accordance with our current policy will subject rural and high-cost area customers to unjust or unreasonable, or unjustly or unreasonably discriminatory, rates because: (1) we will continue to require carriers to make these services generally available under our current rules (e.g., contract tariffs and Tariff offerings must be available to similarly situated customers) regardless of their geographic location, and (2) the only ‘geographically-specified’ discounts that carriers may offer are temporary promotions. Thus, except for temporary

promotions and private line services, interexchange telecommunications service offerings will be available on the same terms throughout a carrier's service area.

...

¶ 30. We will therefore permit carriers, as part of temporary promotions not available throughout a carrier's service area, to offer discounted promotional rates for no more than 90 days. ...

¶ 38. We are not persuaded that we should establish an exception to our general rate averaging rule based on the existence of competing regional carriers that may be able to offer lower rates for interexchange services because of lower access charges or other costs. ...

¶ 39. Commenters have failed to justify this exception under Section 10 because they have based their claims entirely on generalized assertions of the alleged need for a competitive exception to geographic averaging requirements. ... Accordingly, we conclude that commenters have not justified forbearance to create a competitive exception to geographic rate averaging. We note that Congress knew at the time the 1996 Act was passed that all IXC's were nondominant and we find that Congress would not have required us to adopt rules to implement geographic rate averaging if it had intended us to abandon this policy with respect to all IXC's so soon after enactment. ...

¶ 40. We are also not persuaded that we should forbear for smaller carriers serving high-cost areas on the grounds that they might have difficulty competing against nationwide carriers. These carriers have provided only conclusory allegations of harm and have not shown that they will be unable to

compete with larger carriers in a rate-averaged environment, much less that they have satisfied all three of the requirements set forth in Section 10 for exercise of our forbearance authority. ...

¶46 We conclude that Congress did not intend in Section 254(g) to eliminate state authority over intrastate rates. To the contrary, we conclude that Congress intended the states to play an active role in enforcing Section 254(g) with respect to intrastate geographic rate averaging. States have a role in ensuring that rates for intrastate interexchange calls offered to rural and high-cost customer are no higher than those paid by urban customers. ... Further, we find, as proposed in the NPRM, that states are free to establish intrastate rates, as long as they are not inconsistent with the rules we adopt in this proceeding. We will not, however, permit states to establish special rate zones within states because we believe that would result in geographically deaveraged rates in violation of Section 254(g).

13. The promotional optional calling plan proposed by Spectra violates the FCC's Order and Rules in the following respects:

(1) the plan is not provided throughout Spectra's interexchange service area, it is available only in Macon, and thus violates the prohibition on geographically deaveraged rates;

(2) the promotional offering is not limited to the 90 day period permitted by the FCC. As stated under paragraph 30, IXC's are permitted "to offer discounted **promotional rates for no more than 90 days**. Under Spectra's proposed tariff, the promotional plan itself is offered for more than 90 days, and

15. Spectra suggests that its promotional optional calling plan is also a response to the interest expressed by this Commission and the Office of Public Counsel for expanded rural calling. However, the interest that has been expressed is with respect to expanded *local* calling scopes. That is not what Spectra's promotional optional calling plan under its interexchange tariff is providing.

16. The MITG provides basic local telecommunications services in Missouri. CVT hopes to do the same, but currently has been denied the ability to do so despite having obtained MoPSC certification, having obtained approval of an interconnection agreement with Spectra, having obtained approval of local service tariffs, and having obtained NPA/NXXs resident in the Local Exchange Routing Guide. SWBT has refused to recognize and execute CVT's NPA/NXXs unless CVT enters into a traffic termination agreement with CVT. Even though SWBT does not require the same of Spectra, CVT cannot effectively compete without the ability of its customers to receive intraLATA toll calls. Until CVT is allowed to compete, completely, there is no competition confronting Spectra justifying any such promotional toll tariff offering that is requested here.

17. As set forth above, the interests of the MITG and CVT are different from that of the general public, and the Application, if granted, will directly and adversely affect the interests of the MITG and CVT.

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By:



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ATTORNEYS FOR MITG and CVT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, U. S. Mail, postage pre-paid, this 26th day of September, 2003, to:

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