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March 17, 2003

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102-0360

FILED³

MAR 17 2003

Re: Case No. IO-2003-0281
Sprint Missouri, Inc.

**Missouri Public
Service Commission**

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and eight (8) copies of ExOp of Missouri, Inc.'s *Response To Sprint Missouri, Inc.'s Motion For Protective Order, Staff's Response Thereto, and Fidelity Communication Services I, Inc.'s Response Thereto*.

Copies of the filing have on this date been mailed or hand-delivered to counsel for all parties of record. Thank you.

Sincerely,


Brent Stewart

CBS/bt

Enclosure

cc: Counsel for all parties of record
Rachel Lipman Reiber

FILED³

MAR 17 2003

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of the Investigation of the State)
of Competition in the Exchanges of) Case No. IO-2003-0281
Sprint Missouri, Inc.)

RESPONSE TO SPRINT MISSOURI, INC.'S
MOTION FOR PROTECTIVE ORDER, STAFF'S
RESPONSE THERETO, AND FIDELITY COMMUNICATION
SERVICES I, INC.'S RESPONSE THERETO

COMES NOW ExOp of Missouri, Inc. d/b/a Unite "ExOp" by and through counsel and pursuant to 4 CSR 240-2.090(1) and 4 CSR 240-2.080(15), and for its Response To Sprint Missouri, Inc.'s Motion For Protective Order, Staff's Response Thereto, and Fidelity Communication Services I, Inc.'s Response Thereto, respectfully states as follows:

1. On March 10, 2003 local counsel for ExOp received via U.S. Mail a copy of Sprint Missouri, Inc.'s ("Sprint's") Motion For Protective Order. Sprint's Motion purportedly was filed and served on the other parties on March 5, 2003 although it was first received five days later by ExOp's local counsel and it apparently was not served at all on ExOp's in-house counsel, despite Sprint's counsel being aware that all discovery-related matters regarding ExOp were to be sent to ExOp's in-house counsel.

2. On March 17, 2003 ExOp's local counsel received by U.S. Mail Staff's Response in support of Sprint's Motion (dated March 14, 2003) and also Fidelity Communication Services I, Inc.'s ("Fidelity's") Suggestions in opposition to Sprint's Motion (also dated March 14, 2003).

3. 4 CSR 240-2.080(15) allows parties ten days to respond to any pleading filed by another party. ExOp believes that good cause exists to permit ExOp to respond in opposition

to Sprint's Motion at this time. First, while ExOp was aware that Sprint intended to file for a protective order, ExOp was not aware until March 10, 2003 that Sprint had requested that the Commission's *standard* protective order be significantly modified to permit disclosure of highly confidential information to Sprint's in-house personnel. Second, ExOp through no fault of its own was not aware of Sprint's specific request until some five days after it was filed, which in ExOp's particular case made it extremely difficult for ExOp's in-house counsel to discuss the matter with ExOp's local counsel and to then file a response within the ten-day period. Third, Sprint did not serve a copy of its Motion on ExOp's in-house counsel who had requested both verbally and in pleadings that all discovery-related matters involving this proceeding be sent directly to her. Finally, given the subsequent pleadings on March 14, 2003 by other parties, and the fact that the Commission's rules permit ten additional days for responses before the Commission issues a decision on Sprint's Motion, Sprint should not be harmed by permitting ExOp to respond to Sprint's Motion at this time. As such, the Commission should permit and consider ExOp's response. However, even if ExOp's response to Sprint's Motion is deemed untimely, ExOp nevertheless clearly is within the ten-day response time permitted to respond to Staff's and Fidelity's pleadings filed on March 14, 2003 and therefore is timely on that basis.

4. Without repeating the arguments already put forth, ExOp agrees with Fidelity that the Commission should reject Sprint's request for a modified protective order in this case and concurs with Fidelity's reasons therefore, Staff's apparent agreement with Sprint's proposal notwithstanding.

5. Sprint's desire to avoid additional costs are admittedly understandable. However,

the true burden of discovery here necessarily has been placed on those small competitive CLECs, such as ExOp, who were made parties to this proceeding without their consent (and upon Sprint's own request) and who must at minimum now seek to answer or object to Sprint's comprehensive discovery requests with very limited in-house resources. This is not a perhaps more typical situation where competing sides of a case are engaging in significant discovery of the other side; in fact, ExOp at least at this time anticipates very little discovery of its own to Sprint (if any) given the peculiar and specific subject matter of this proceeding. Accordingly, the Commission should avoid the temptation to simply assume a level playing field among the parties because granting Sprint's request in this case can only benefit Sprint and work to the competitive detriment of ExOp. As noted in Fidelity's March 14, 2003 pleading, the Commission in the past has rejected attempts to modify its standard protective order even in arguably more "discovery-balanced" situations. Sprint's request here is little more than an attempt by the third largest ILEC in the state to gain unfair competitive advantage over its smaller competitors with even fewer resources than Sprint itself. If ever the carefully balanced, competitively neutral approach struck by the Commission in its standard protective order is appropriate in any Commission proceeding, it is most clearly called for here.

6. The Commission's decision-making process and review in this case will not suffer should the Commission reject Sprint's request. Due to the provisions of Section 386.480 RSMo, other discovery by the Staff and the Office of the Public Counsel will be unaffected by *any* protective order issued; therefore, the evidentiary record before the Commission will not suffer should the Commission simply stand by its standard protective order and reject Sprint's request to change it.

WHEREFORE, for all the foregoing reasons ExOp of Missouri, Inc. d/b/a Unite respectfully requests that the Commission reject Sprint Missouri, Inc.'s Motion and issue the Commission's standard protective order for purposes of this proceeding.

Respectfully submitted,



Charles Brent Stewart, MoBar#34885

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LOCAL COUNSEL FOR
EXOP OF MISSOURI,
INC. d/b/a UNITE

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document has been sent to counsel for all parties of record in Case No. IO-2003-0281 by first class mail or by hand-delivery this 17th day of March, 2003.

