

STATE OF MISSOURI)
)
COUNTY OF BOONE) SS

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Adoption of)
an Interconnection Agreement with)
Sprint Missouri, Inc., by Socket)
Telecom, LLC.) Cause No. CO-2005-0039

**RESPONSE OF SOCKET TELECOM, LLC TO
APPLICATION AND MOTION FOR REHEARING OF SPRINT MISSOURI**

COMES NOW Socket Telecom, LLC (“Socket”) and, pursuant to 4 CSR 240-2.080(15) and Commission Order issued herein, for its Response to the Application and Motion for Rehearing filed by Sprint Missouri, Inc. (“Sprint”) states to the Commission:

1. On August 4, 2004, Socket Telecom, LLC (“Socket”) filed a notice of Adoption of Interconnection Agreement with the Missouri Public Service Commission. Socket stated that it was adopting the interconnection agreement between Sprint and Level 3 Communications, Inc (“Sprint – Level 3 ICA”) approved by the Commission in Case No. TK-2004-0567. On August 6, 2004, the Commission issued an Order Directing Notice and Making Sprint Missouri, Inc. a party to the case. That order required any party that desired to request a hearing to do so no later than August 26, 2004. Neither Sprint nor anyone else filed a request for hearing. On September 3, 2004, Staff filed a memorandum recommending approval of the adoption by Socket of the Sprint - Level 3 ICA. Neither Sprint nor anyone else submitted any opposition. The Commission approved the adoption in an order dated September 14, 2004 with an effective date of September 24, 2004. On September 23, 2004, Sprint Missouri, Inc

filed its Application and Motion for Rehearing. On September 24, 2004 the Commission issued its Order Directing Filing instructing Socket and Staff to respond to Sprint by October 4, 2004.

2. Prior to filing its Notice of Adoption, Socket advised Sprint that it would be seeking to adopt the Sprint – Level 3 ICA. As part of the approval process, Sprint received notice of the adoption from both Socket and from the Commission. Sprint was made a party to the case and directed to request a hearing by August 26, 2004 if it desired to do so. In short, Sprint was provided with ample opportunity to request a hearing or at least advise the Commission and Socket of any opposition to the adoption. But Sprint instead elected to remain silent. Sprint provides no excuse for not timely requesting a hearing, stating only that it regrets not raising its opposition sooner. (Application and Motion for Hearing, pg. 5).

3. Based upon the Commission’s approval of the adoption, Socket has made business decisions and taken action. Shortly after the adoption was approved, Socket notified Sprint’s wholesale group of the approval and began the process of implementing the newly adopted ICA. Socket completed the various forms necessary to initiate the interconnection process under the agreement. Representatives of Socket and Sprint have met (and continue to meet) via conference calls to exchange and discuss trunk forecasts, identify points of interconnection, and discuss 911 implementation and other related issues under the new agreement. At the request of Sprint, Socket has spent money obtaining CLLI codes for message trunk points of interconnection for two exchanges where Sprint serves as the ILEC. Also at the request of Sprint, pursuant to the adopted

ICA Socket is purchasing and providing Sprint with a \$10,000 irrevocable letter of credit from a third-party financial institution.

4. Thus, rather than object to the adoption, Sprint recognized it and encouraged Socket to change its position and incur expense in reliance upon the adoption. Sprint did not express any concern about the adoption to Socket until the day it filed its Application and Motion for Rehearing.

5. The Commission's Order Recognizing Adoption of Interconnection Agreement referenced 47 CFR § 51.809(b) and noted that, "[a]n ILEC can deny an adoption if it proves that (1) the cost of providing a particular interconnection, service, or element to the requesting telecommunications carriers is greater than the cost of providing it to the telecommunications carrier that originally negotiated the agreement, or (2) the provision of the particular interconnection, service, or element to the requesting carrier is not technically feasible." But Sprint's Application and Motion for Rehearing does not assert that the cost of providing a particular interconnection, service, or element to Socket is greater than the cost of providing it to the carrier that originally negotiated the agreement nor does it assert that there is any provision in the interconnection agreement that is not technically feasible.

6. Instead, the sole basis for Sprint's Application and Motion for Rehearing is its reliance upon the FCC's Interim Rules that were released on August 20, 2004 and became effective on publication on September 13, 2004¹. Specifically, Sprint cites the FCC's statement that "competitive LECs may not opt into the contract provisions

¹ In the Matter of the Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, (Released August 20, 2004, Publication Date: September 13, 2004). ("Interim Rules" or "Interim Rule Order")

“frozen” in place by this interim approach. The fundamental thrust of the interim relief provided here is to maintain the *status quo* in certain respects without expanding unbundling beyond that which was in place on June 15, 2004. This aim would not be served by a requirement permitting **new carriers** to enter during the interim period” (emphasis added).² Contrary to Sprint's assertions, the FCC's Interim Rules and the Order promulgating them did not, in fact, preclude Socket as an **existing carrier** from adopting the Sprint - Level 3 ICA.³

7. In Case No. TK-2003-0010, Socket adopted an interconnection agreement between Sprint and Zephion Networks Communications, Inc (“Zephion”). That adoption was approved by the Commission on August 29, 2002. Because Socket previously had an approved interconnection agreement with Sprint, **Socket is not a new entrant** seeking interconnection rights for the first time. Instead, Socket has simply replaced an expired interconnection agreement pursuant to its ongoing interconnection rights. Adoption of the Sprint – Level 3 ICA did not represent an expansion of any party’s unbundling rights or obligations and is entirely consistent with the FCC’s stated goal of maintaining the status quo. Further, the FCC specifically stated in its Order that it was preserving the rights of CLECs under currently effective and under expired agreements. (Interim Rule Order, n. 57). The FCC said: "For purposes of evaluating carriers' obligations under this interim regime, we do not draw distinctions between obligations resulting from an interconnection agreement that was in effect on June 15, 2004 and obligations that were set forth in an expired agreement but that nonetheless still applied on June 15, 2004 (as a

² Ibid., para 23.

³ Additionally, Socket exercised its adoption rights under Section 252(i) before the Interim Rules took effect, and Sprint cites no authority for the proposition that such rules can be applied on an ex post facto basis.

result, for example, of a contractual provision rendering the agreement's provisions enforceable after expiration in the absence of some other event, such as execution of a new agreement)." (Id.).

8. The original term of the Sprint - Zephion interconnection agreement adopted by Socket Telecom expired on March 21, 2003, but Sprint has confirmed that Socket's rights under the agreement continued to the present, as discussed below. That agreement contained post-termination provisions to ensure that the interconnection relationship between the parties would not be disrupted in the event that a new agreement was not consummated prior to the term expiration date. Specifically, Section 4.1.3 of the adopted Sprint – Zephion Interconnection Agreement entitled Socket to take service pursuant to the entire terms and conditions of an existing interconnection agreement between Sprint and another CLEC for the remaining term of that other agreement after the expiration of the initial agreement. This is exactly the kind of post-termination rights that the FCC has expressly preserved in the Interim Rule Order.

9. As indicated above, Sprint itself has expressly recognized that Socket had continuing rights under the expired agreement. Most recently, on July 16, 2004, Socket received a letter from Sprint advising Socket that its interconnection agreement with Sprint had expired and that a new agreement was necessary. Sprint stated that if Socket submitted a request for a new agreement within 30 days, Sprint would "continue to provide service under the terms and conditions of the expired interconnection agreement during negotiations." A true and accurate copy of the letter is attached hereto.

10. Pursuant to the post-termination rights of the Sprint – Zephion agreement, Socket Telecom adopted the entire Sprint - Level 3 ICA. Socket did so within the 30 day

period established by Sprint in its July 16, 2004 letter. By adopting a complete agreement, Socket eliminated the need for the parties to conduct any negotiations. And as indicated, the FCC's Interim Rules allow CLECs to exercise such post-termination rights.

11. Moreover, Socket's adoption of the Sprint – Level 3 ICA is fully consistent with the intent of the FCC's Interim Rules, because it does not expand Sprint's unbundling obligations beyond those set forth in the Interconnection Agreement that Socket was operating under at the time the rules were issued and became effective. For example, both the Sprint – Zephion Interconnection Agreement and the Sprint – Level 3 ICA have nearly identical unbundling obligations. Both have provisions for unbundled local switching, extended, enhanced loops (EELs), enterprise loops, and dedicated inter-office transport. These are the network elements that are at the center of the debate regarding unbundling obligations and the subject of the FCC's Interim Rules. The primary difference between the Sprint – Zephion agreement and the Sprint – Level 3 ICA concerns the number of points of interconnection required within a LATA and the handling of traffic of traffic terminating to an information service provider. Neither of these items was addressed in the recent Triennial Review Process or in the FCC's Interim Rules. Accordingly, Sprint cannot credibly argue that the adoption of the Sprint – Level 3 ICA by Socket expanded Sprint's unbundling obligations with regard to Socket.

12. Based on the foregoing the Commission should conclude that: (1) There is no merit to Sprint's argument that the FCC's interim prohibition against new carriers adopting portions of existing agreements applies to existing carrier Socket's replacement of one agreement with another (which adoption was asserted before the FCC Interim

Rule Order took effect); and (2) in any event Sprint has failed to provide sufficient reason for the Commission to grant rehearing under Section 386.500 RSMo. in that nothing prevented Sprint from raising these issues before the Commission ruled in this matter and Sprint has further waived its objections by causing Socket to incur expenses implementing the new agreement.

WHEREFORE, Socket requests that the Commission deny Sprint's Application and Motion for Rehearing.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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STATE OF MISSOURI)
)
COUNTY OF BOONE) SS.

VERIFICATION

I, R. MATTHEW, KOHLY, first being duly sworn, state on my oath that I am over the age of twenty-one years, sound of mind, and an employee of Socket Telecom, LLC. I am authorized to act on behalf of Socket Telecom, LLC, regarding the foregoing document. I have read the foregoing document and I am informed and believe that the matters contained therein are true.



R. Matthew Kohly

On this 29 day of September, 2004, before me, a Notary Public, personally appeared R. Matthew Kohly, and being first duly sworn upon his oath stated that he is over twenty-one years, sound of mind and an employee of Socket Telecom, LLC, he signed the foregoing document as an employee of Socket Telecom, LLC, and the facts contained therein are true and correct according to the best of his information, knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above-written.



Notary Public

My Commission Expires: 1-4-06

SHERRY LANTZ
Notary Public - Notary Seal
State of Missouri
County of Boone
My Commission Expires January 4, 2006

Certificate of Service

A true and correct copy of the foregoing document was mailed this 29th day of September, 2004, by placing same in the U.S. Mail, postage paid to:

Office of Public Counsel
P.O. Box 2230
Jefferson City, Missouri 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Sprint Missouri, Inc.
Attention: Kenneth Schifman
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MS: KSOPHN0212-2A303
Overland Park, Kansas 66251

/s/ Carl J. Lumley
