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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 20th day of January, 1998.

In the Matter of the Application of Sprint)
Communications Company L.P. for a Certificate)
of Service Authority to Provide Basic Local) **Case No. TA-97-269**
Telecommunications Service and Local Exchange)
Telecommunications Service.)
)

**ORDER DENYING INTERVENTION AND CONSOLIDATION,
AND SETTING STIPULATION HEARING**

Sprint Communications Company L.P. (Sprint) filed an application on January 14, 1997, for certificates of service authority to provide basic local and local exchange telecommunications service in all exchanges currently served by United Telephone Company of Missouri d/b/a Sprint (Sprint Missouri).¹ The Missouri Public Service Commission (Commission) issued an Order and Notice, directing interested parties to file applications to intervene no later than April 9. MCI Telecommunications Corporation (MCI) filed a timely application to intervene, but withdrew its request on March 13. A Stipulation and Agreement was filed on August 1, and Suggestions in Support of the Stipulation and Agreement were filed on November 10.

On November 13 MCI filed another application to intervene. MCI indicates that although it withdrew its previous application for

¹ United Telephone Company of Missouri d/b/a Sprint changed its name to Sprint Missouri, Inc. in Case No. TO-98-107. The Commission issued its order approving the change on November 4, 1997.

intervention, it again seeks intervention because of a change in corporate policy. MCI states that it seeks intervention because this application may affect its interests as a purchaser of access services, as well as its interests as a provider of intrastate long distance services. MCI further states that it opposes this application.

Sprint filed a response on November 17. Sprint notes that MCI's current application to intervene is identical to its first application, except that MCI now states that it opposes Sprint's application. Sprint submits that "a change in corporate policy" does not rise to the level of good cause under 4 CSR 240-2.075. Sprint further submits that MCI's application is untimely and unfair, and that granting intervention at this stage would only serve to delay Sprint's application. Further, Sprint notes that the provisions of the Stipulation regarding access rates are no different than the provisions contained in stipulations in other cases involving basic local and local exchange certificate applications.

On December 19 MCI filed a motion to consolidate this case with Case No. TA-98-152, in which GTE Communications Corporation (GTE Comm) seeks a basic local certificate to provide service in the territory of its sister company, GTE Midwest Incorporated (GTE). MCI argues that allowing the affiliates of incumbent local exchange companies (ILECs) to compete in the territory of the ILECs will allow the ILECs to circumvent the Telecommunications Act of 1996 and the obligations it imposes on ILECs, since incumbent network facilities could be transferred to the affiliates in order to avoid providing them to new entrants. MCI also contends that the affiliates could keep competitors out of the resale market by selling at a price that merely covers their costs. MCI further complains that the ILECs will have no incentive to lower prices, since those customers likely

to seek a competing carrier could be targeted by the affiliates, while the rates for remaining customers stay the same or increase.

In addition, MCI asserts that the affiliates will use the ILECs' name and logo without the ILECs charging affiliates for the right to do so, which will cause customer confusion and create a competitive advantage. Finally, MCI claims that the safeguards contained in the Stipulation are not adequate to protect against the shifting of new services and opportunities to the affiliates, since the restrictions are limited to situations in which the ILECs supply the facilities, and do not consider that, but for the presence of the affiliates, the ILECs would build new facilities and offer new services. MCI seeks consolidation of Case Nos. TA-97-267 and TA-98-152 because the issue of whether a company should be allowed a certificate to provide basic local service in the territory of its affiliated ILEC is the same in both cases.

The Staff of the Commission (Staff) filed a response to MCI's motion to consolidate on December 30. Staff states that MCI's motion raises concerns which are addressed in the Stipulation filed in this case, and that consolidation of Case No. TA-97-269 with Case No. TA-98-152 will only unduly delay the approval of Sprint's application in Case No. TA-97-269. Also on December 30, Sprint and Sprint Missouri filed a joint motion for an extension of time in which to respond to MCI's motion to consolidate. The joint motion indicates that Sprint did not receive service of MCI's motion to consolidate until late afternoon on December 23, and Sprint Missouri has never been served with a copy of MCI's motion. The movants state that they have not had ample time to formulate a response to MCI's motion to consolidate because of the lateness or lack of service of that document, and because of abbreviated mail delivery and lack of office

personnel as a result of the holidays. Movants requested a one-week extension of time, until January 5, 1998.

Sprint and Sprint Missouri filed responses to MCI's motion to consolidate on January 5. Sprint notes that the majority of MCI's concerns have to do with Sprint Missouri's status as an ILEC, and Sprint's affiliation with that ILEC. Sprint states that the Stipulation contains provisions which explicitly guard against any attempt by Sprint Missouri to avoid its obligations under the Telecommunications Act of 1996 or to favor its affiliate, and Sprint Missouri specifically became a party to this proceeding so that it would be bound by the Stipulation.

Sprint Missouri repeats many of the same statements contained in Sprint's response. In addition, Sprint Missouri specifically references certain provisions in the Stipulation which are intended to safeguard against the potential abuses which MCI alleges. For example, Sprint Missouri notes that Sprint is specifically prohibited from offering local services or functionalities based on United's services or functionalities that United does not offer on a retail basis to its end-user customers. Sprint Missouri also points out that Staff, in its Suggestions in Support, states that this provision is intended to prevent the enticing or luring of customers to Sprint by limiting the market offerings of United.

The Commission has considered MCI's application to intervene and its motion to consolidate, along with the responses to these motions, and finds that the application to intervene and motion to consolidate should be denied. MCI's application for intervention has been filed almost seven months after the intervention deadline. MCI previously requested intervention but voluntarily chose to withdraw that request. There are no new facts not known to MCI at the time of its original request. Unlike

Case No. TA-98-152, which is an ongoing case, the parties to Case No. TA-97-269 may be prejudiced by the reopening of what is, as among the parties, a settled case. The Commission finds that MCI has not demonstrated good cause under 4 CSR 240-2.075(4)(D) why it should be granted intervention out of time.

The Commission has considered the concerns mentioned in MCI's motion to consolidate. The Stipulation in Case No. TA-97-269 contains specific safeguards concerning the affiliate relationship between Sprint and Sprint Missouri. Both Sprint and Sprint Missouri signed the Stipulation and agreed to be bound by it. There is a case currently open, Case No. TO-96-328, to address the need for an affiliate transactions rule for telecommunications companies. Further, pursuant to Section 392.460, RSMo 1994, ILECs cannot abandon the provision of basic local or basic interexchange service without Commission approval, and pursuant to Section 392.300, RSMo 1994, ILECs cannot transfer their assets without Commission approval. Concerns about the use of names and logos could have been raised in Sprint Missouri's two name change cases.² Moreover, it is Sprint Missouri as the ILEC which has chosen to use the name and logo of its affiliate, and not vice versa.

The Commission will schedule a hearing for the presentation of the Stipulation to the Commission. Because this case involves a company seeking a certificate to provide basic local service in the territory of its affiliated ILEC, it is essentially a case of first impression. The Commission finds that it would be appropriate to set a hearing so that the

² In addition to the name change case referenced in footnote 1, United Telephone Company of Missouri adopted the use of the fictitious name "Sprint" in Case No. TO-97-53. The Commission issued its order approving the change on September 20, 1996.

parties can explain how the safeguards contained in the Stipulation are expected to work, and can respond to Commission questions.

IT IS THEREFORE ORDERED:

1. That the joint motion for extension of time filed by Sprint Communications Company L.P. and Sprint Missouri, Inc. (f/k/a United Telephone Company of Missouri d/b/a Sprint) is granted.

2. That the application to intervene filed by MCI Telecommunications Corporation on November 13, 1997 is denied.

3. That the motion to consolidate filed by MCI Telecommunications Corporation on December 19, 1997 is denied.

4. That a hearing will be held for the presentation of the Stipulation to the Commission on February 6, 1998, at 9:00 a.m., in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Any persons with needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline - 1-800-392-4211, or TDD Hotline - 1-800-829-7541.

5. That this order shall become effective on January 20, 1998.

BY THE COMMISSION



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Lumpe, Ch., Crumpton, Drainer
and Murray, CC., concur.

Bensavage, Regulatory Law Judge

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JAN 20 1998

**COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION**