Sprint

Linda K. Gardner
Senior Attorney

Sprint Corporation
5454 West 110th Street
Overland Park, KS 66211
Voice 913 345 7915
Fax 913 345 7568
linda.gardner@mail.sprint.com

July 17, 2000

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Suite 530
Jefferson City, MO 65101

Re: In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996
Case No. TO-99-483

Dear Mr. Roberts:

Enclosed for filing are an original and eight (8) copies of the Reply Brief of Sprint Communications Company L.P., Sprint Missouri, Inc. and Sprint Spectrum L.P. d/b/a Sprint PCS.

If you have any questions, please do not hesitate to contact me at (913) 345-7915.

Sincerely,

Linda K. Gardner

LKG:ket
Enclosures

cc: All Parties

172

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service after the passage and Implementation of the Telecommunications Act of 1996.	))))))	Case No. TO-99-483

REPLY BRIEF OF
SPRINT COMMUNICATIONS COMPANY L.P.,
SPRINT MISSOURI, INC., AND SPRINT SPECTRUM L.P. d/b/a SPRINT PCS

When reading the Initial Briefs of the parties, it is easy to get overwhelmed in the seemingly endless list of "issues", albeit unnecessary ones, the parties raise in this case. For example, some parties raise again the issue of signaling protocols (FGC/FGD), the adequacy of calling records and the need for separate trunking for MCA and/or non-compensable traffic.[1] These are not new issues nor are they fully developed issues in this record. Instead, they are tangential issues to this case that should continue to be addressed in Case No. TO-99-593. The parties are collaboratively working in that case to assess whether there *is* a problem and to explore possible solutions if one is identified. Those issues should continue to be addressed within that context.

Other parties wish to take what warrants a complete case unto itself in other states and reduce it to a side issue in this case. For example, SWBT urges the

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[1] See e.g., Missouri Independent Telephone Group's Initial Brief, p. 4. The issue of "blocking" CLEC traffic until there are interconnection agreements in place with 3rd party ILECs is also unnecessary to resolve based upon the evidence presented in this case. The only concrete evidence of indirect CLEC traffic volumes is that during a three-month period, Nextlink originated one, 80-second call that terminated in the Orchard Farm exchange to an MCA customer. (T. 862, 866) As Ms. Pomponio indicated, clearly a de minimus amount. (Id.) If it is more substantial than that, the parties will find out in Case No. TO-99-593. Moreover, if the bulk of the intercompany compensation is Bill & Keep as many parties favor, the

Commission to rule that a customer may call an ISP via MCA service but there should be no terminating local reciprocal compensation applied to ISP bound calls.[2] According to SWBT, ISP calls are interstate calls despite the local dialing pattern and not properly subject to local reciprocal compensation.[3] Sprint disagrees. In fact, there are numerous states that have concluded precisely the opposite of what SWBT seeks and have subjected ISP bound traffic to local reciprocal compensation under an interconnection agreement.[4] Regardless, SWBT is raising the issue unnecessarily.

If, as many parties urge, the Commission establishes a presumption in favor of bill and keep (B&K) compensation[5] in the absence of an interconnection agreement to the contrary, SWBT's doomsday compensation concern is diminished. In those cases where parties have an approved interconnection agreement, whether or not it provides for compensation is a matter of interpretation and the Commission may address it on a case-by-case basis if the parties are in disagreement and choose to arbitrate or mediate the issue. There is simply no need to resolve it generically in this case, particularly given the scant record and argument development.

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ostensible reason to block the traffic (to ensure identification of the traffic for purposes of compensation) is eliminated.

[2] SWBT Initial Brief, p. 4.

[3] The FCC determined that ISP-bound traffic is jurisdictionally mixed and largely interstate. Nevertheless, the FCC specifically held that state commissions, or the parties via voluntary negotiation, were free to impose reciprocal compensation on this traffic. The FCC's decision that ISP-bound traffic is largely interstate was vacated in *Bell Atlantic Telephone Company v. FCC*, 206 F.3d 1 (D.C. Cir. March 24, 2000).

[4] Many states have addressed the issue of reciprocal compensation and ISP bound traffic either in generic cases devoted exclusively to that issue or within the context of arbitration.

[5] Under Bill & Keep (B&K) as it currently exists for MCA traffic and as is supported by Sprint, the originating carrier receives the end user revenue and makes no payment to either the terminating company or transiting company, if one is used. (T. 900-902) SWBT's request for payment for transiting traffic within the context of B&K is a new proposal raised for the first time from the witness stand. (T. 955) It does not appear in any prefiled testimony, consequently, parties did not have an opportunity to respond. (Id.) No departure from the existing understanding of B&K compensation method should be ordered unless and until the parties have an adequate opportunity to respond.

Whether it involves a subset of MCA traffic such as ISP bound traffic only, or a subset of local traffic such as MCA traffic in general, the Federal Telecommunication Act of 1996 and the FCC encourage negotiations between the parties for all terms, including intercompany compensation. In fact, arbitration is not even an option until the parties have negotiated in good faith for the prescribed period of time. Furthermore, the standard of review for a negotiated agreement is much more limited and not confined by the requirements of Section 251(b) and (c).[6]

Under 47 U.S.C. Section 252(e), once a negotiated agreement is submitted to the state commission, the commission may only reject an agreement if it discriminates against a telecommunications carrier not a party to the agreement or the implementation of such agreement is not consistent with the public interest, convenience and necessity. Once approved, there is nothing that allows the Commission to go back and alter the agreement as contemplated by the questions posed by Commissioner Drainer.[7] Fundamentally, Sprint agrees with AT&T and others: altering existing approved interconnection agreements is beyond the scope of the Commission's authority.[8] Moreover, as McLeod USA points out, to do so would "subvert the entire interconnection agreement process" by altering one provision without recognizing that the entire document represents the result of significant give and take and cannot be viewed in a vacuum.[9]

Neither does the Commission have the authority to universally mandate B&K exclusively for all future agreements without consideration of other options should the

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[6] 47 USC Section 252(a).
[7] (T. 489-490)
[8] See e.g. AT&T Initial Brief, p. 20; Gabriel Initial Brief, p. 25; Birch Telecom Initial Brief, p. 9.

parties either agree to a different form through negotiations or should a party successfully rebut the presumption of roughly balanced.[10]

Sprint supports the continued use of B&K generally for MCA traffic and is not opposed to the presumption of B&K for MCA traffic in the absence of an interconnection agreement to the contrary. In fact, any wholesale elimination of B&K in favor of usage based reciprocal compensation could result in upward pressure on MCA rates.[11] However, general support for B&K absent an agreement to the contrary for MCA traffic and support for mandatory B&K for all traffic without regard to the party's rights and ability to negotiate or rebut the "balanced traffic" presumption, is very different.

All available reciprocal compensation methods should be available to the parties to negotiate, including B&K, and the Commission should not arbitrarily reject an agreement without complete and specific consideration of the totality of the agreement and circumstances at the time. At this point, it is pure speculation that in each situation involving every party that all compensation methods besides B&K are against the public interest. But, that is the precise finding that would be needed if, as some parties urge, B&K is deemed the *only* acceptable compensation method for MCA traffic. Such a finding should be rejected.

While there is disagreement on the appropriate form of intercompany compensation, there is no disagreement regarding other aspects of this case. For example, no party appears to argue that CLECs should not be allowed to offer MCA

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[9] Initial Brief of McLeodUSA Telecommunications Services Inc., p. 19.
[10] See Gabriel Initial Brief, p. 25-27.
[11] Ex. 31, p.3.

service. However, parties depart widely in what that means and to what extent there are or should be limits on that offering. Many of the issues are already developed in the initial briefs of the parties and Sprint expects further development in many of the reply briefs. Consequently, Sprint will confine its discussion herein to the issue of price. Many parties argue that CLECs must price the service identically to the ILEC's rate or, at the very least, have the ILEC rate as the ceiling for the CLEC price. However, such restrictions are clearly at odds with the competitive classification of CLECs and the public interest.

As the brief of Gabriel points out, CLECs have uniformly been classified as competitive telecommunications companies offering competitive services.[12] Such a classification allows the CLEC pricing flexibility to price services higher or lower than the ILEC and to adjust rates very quickly, up or down.[13] As Staff witness Voight acknowledges, this pricing flexibility is afforded competitive companies for both basic and non-basic services, with the exception of switched access service and possibly alternative operator service provider type service.[14] In the mandatory zones, MCA service *is* basic local service and to limit pricing flexibility limits basic local service competition.[15] In the optional MCA tiers, artificially constraining the MCA "additive" impedes competition to the ultimate detriment of consumers.[16] If the CLEC's price gets too high, the customer will go elsewhere. The Commission should not artificially interfere with that choice.

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[12] Gabriel Initial Brief, p. 15.
[13] See Section 392.500 RSMo.
[14] (T. 224-225)
[15] Gabriel Initial Brief, p. 17. See generally Gabriel Initial Brief, pgs. 15-19.
[16] (Id.)

However, CLECs are not the only carriers that should be afforded pricing flexibility, particularly for non-basic services. Like Staff[17], Sprint supports pricing flexibility for both the CLEC and the ILEC. Price cap restrictions on large ILECs and single-issue ratemaking deterrents on smaller ILECs, not to mention the competitive pressure from CLECs, should restrict significant increases in customer prices.[18] This is particularly true for the non-basic service offered in the optional MCA tiers. If prices get too high, the customer could go to a competitor or to another service offering that better meets its calling and price needs. The competitive market has changed drastically since the creation of the MCA when it was much easier to mandate a service offering and a particular rate for monopoly providers. As Gabriel notes, the Commission recognized that MCA prices were subject to change from the inception and it would be "a substantial and detrimental step backward for the Commission to prohibit MCA price competition" now.[19]

Respectfully Submitted,

SPRINT MISSOURI, INC.
SPRINT COMMUNICATIONS COMPANY L.P.
SPRINT SPECTRUM L.P. D/B/A SPRINT PCS

Linda K. Gardner (wmc)

Linda K. Gardner MoBar#32224
5454 W. 110th Street
Overland Park, KS 66211
Tele. (913) 345-7915
Fax. (913) 345-7568
linda.gardner@mail.sprint.com

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[17] (T. 213)
[18] (Ex. 30, p. 7-8)
[19] Gabriel Initial Brief, p. 18.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Sprint Communications Company L.P., Sprint Missouri, Inc., and Sprint Spectrum L.P. d/b/a Sprint PCS was mailed or hand-delivered this 17th day of July 2000 to the following counsel of record in Case No. TO-99-483:

James Fischer
Larry Dority
101 West McCarty St.
Suite 215
Jefferson City, MO 65101

Marc Poston
Julie Kardis
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Brent Stewart
Stewart & Keevil LLC
1001 Cherry St., Suite 302
Columbia, MO 65201

Carl J. Lumley
Leland B. Curtis
Curtis, Oetting Heinz, Garrett & Soule, P.C.
130 S. Bemiston, Suite 200
St. Louis, MO 63105

Mike Dandino
Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102

Paul S. DeFord
Lathrop & Gage L.C.
2345 Grand Boulevard
Kansas City, MO 64108

Craig S. Johnson
Anereck, Evans, Milne, Peace & Johnson
305 East McCarty St., PO Box 1438
Jefferson City, MO 65102

W.R. England, III/Brian T. McCartney
Brydon, Swearengen & England, PC
PO Box 456
Jefferson City, MO 65102

Pete Mirakian
1000 Walnut St., Suite 1400
Kansas City, MO 64106-2140

Paul Lane
Mimi MacDonald
Southwestern Bell Telephone Company
One Bell Center, Room 3518
St. Louis, MO 63101

Mary Ann Young
2031 Tower Drive
PO Box 104595
Jefferson City, MO 65102-4395

Bradley R. Kruse
McLeodUSA Telecom
Services, Inc.
6400 C Street
PO Box 3177
Cedar Rapids, Iowa 52406-

Mark W. Comley
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
PO Box 537
Jefferson City, MO 65102-0537

W. Robert Conley