BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In Re: The Master Interconnection and Resale Agreement By and Between Sprint Missouri, Inc., and ICG Telecom Group, Inc. Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996	)))))	**Case No. TK-2003-0535**

RESPONSE OF SPRINT MISSOURI, INC. TO ORDER DIRECTING FILING AND OTHER PLEADINGS

Comes Now Sprint Missouri, Inc. ("Sprint") and hereby replies to the Commission's Order Directing Filing issued July 21, 2003, and to pleadings filed by the Missouri Independent Telephone Company Group ("MITCG") and the Small Telephone Company Group ("STCG") as follows:

Order Directing Filing:

In its Order Directing Filing, the Commission directed any party who desired to respond to the amendment filed by Sprint and ICG Telecom Group, Inc. ("ICG") to do so by July 23, 2003. Further, MITCG was ordered to identify the citations that support its statements made on pages 3 and 4 of its Brief Pertaining to Hearing which was filed July 18, 2003.

Revised Amendment No. 1:

The Revised Amendment No 1 to the Interconnection Agreement removes all issues raised by STG and MITCG from this case. First, the Revised Amendment removes any reference to the transit of toll. Therefore the agreement does not allow the transit of toll traffic. Further, under the revised amendment, no traffic will transit to non

party incumbent local exchange companies, such as intervenors, other than Metropolitan Calling Area ("MCA") traffic consistent with Commission rules and orders.

The amended agreement only allows the transit of local traffic between ICG and Sprint (with the exception of MCA traffic). Local traffic is defined in the agreement as "traffic (excluding CMRS traffic) that is originated and terminated within Sprint's local calling area, or mandatory expanded area service (EAS) area, as defined by the State commissions or, if not defined by State commissions, as defined in existing Sprint tariffs." *See* Section 1.49. As none of the individual STG or MITCG companies are within Sprint's local calling area, there will be **no** traffic under this agreement that will transit to the intervenors. Therefore, as there will be **no transit traffic**, toll or local, delivered to STG and MITCG under this agreement, there is no set of facts that MITCG and STG could present that would establish in anyway that the transit provisions of this interconnection agreement have any impact on them, much less a discriminatory or anti-public interest impact. Given this, the Commission should deny the interveners' request for hearing and expeditiously approve the interconnection agreement.

MITCG's Citations:

With respect to the citations requested from MITCG, Sprint anticipates that the Federal Communications Commission ("FCC") case relied on by MITCG is *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*[1] Contrary to any inferences the MITCG wishes the Commission to

[1] *See In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding*

draw, the FCC did not determined that ILECs have no duty to provide transit service under the Federal Telecommunications Act.[2] As stated in Sprint's motion opposing MITCG's intervention, that case was an arbitration decided by the Chief of the Wireline Competition Bureau, acting on delegated authority and standing in stead of the Virginia Commission. In that case, the Wireline Competition Bureau addressed the issue of whether Verizon must charge TELRIC-based rates for transit services. On this issue, the Wireline Competition Bureau "declined to determine for the fist time on delegated authority from the FCC, that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates."[3] The Wireline Competition Bureau, however, was careful not to undermine the CLEC's ability to obtain the UNEs that comprise transit service. In this regard, the Wireline Competition Bureau stated:

> We note, however, that Verizon has not argued that competitive LECs should be prevented from using UNEs to exchange transit traffic with third-party carriers. To avoid such a result, we remind the parties of the petitioners' rights to access UNEs independent of Verizon's terms for transit service. Furthermore, we caution Verizon not to apply its terms for transit service as a restriction on the petitioners' rights to access UNEs for the provision of telecommunications services, including local exchange service involving the exchange of traffic with third-party carriers.[4] (Emphasis supplied.)

The Verizon Order lists tandem switching and interoffice transport as examples of UNEs that can be ordered.[5] Competitors can, therefore, order a combination of necessary UNEs at TELRIC-based rates to achieve to the transit service. As such, this case cannot

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Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al., CC Docket No. 00-218; CC Docket No. 00-249; CC Docket No. 00-251, 2002 FCC LEXIS 3544, July 17, 2002 Released; Adopted July 17, 2002. (Hereinafter referred to as the "Verizon decision.").

2 *Id.*

3 *Verizon* at ¶ 117.

4 *Id* at ¶ 121.

5 *Id.*

stand for the argument that transit is not required under the Federal Telecommunications Act.

With respect to the Kansas Corporation Commission citation missing from MITCG's pleading, it is Sprint's belief that the case is *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to section 252 of the Telecommunications Act.*[6] The issue in that case was whether TCG could force SWBT to use its transit services even when SBC had the option of entering into agreements for direct connections with other carriers. The arbitrator ruled that TCG could not force SBC to use transit service if it could arrange for direct connection agreements. In this case, nothing in the agreement prevents MITCG or STG from entering into an agreement with ICG. Therefore, the Kansas case is not on point.

Response to MITC's and STG's pleadings Regarding Hearings:

In response to the pleadings filed by MITCG and STG arguing that a hearing is necessary to approve or reject an interconnection agreement under 47 U.S.C. 252 (e), Sprint notes that none of the cases cited by either MITCG or STG are cases in which a state commission approved or rejected a negotiated interconnection agreement. Instead, STG and MITCG have repeatedly cited to cases that were appeals from arbitrations or disputes that arose under approved agreements. Therefore, these cases are not helpful to the Commission.

As stated by Sprint, ICG and Staff, the Commission is not required to hold a hearing in approving or rejecting an agreement. Neither STG nor MITCG have cited to a statute that explicitly grants them a right to a hearing. Therefore, there is no statutory

[6] Docket No 00-TCGT-571-ARB, August 7, 2000 Arbitrator's Order.

right to a hearing. *Cade v. State*, 990 S.W. 2d 32, 37 (Mo. App 1999); *State ex rel Valentine v. Board of Police Commissioners*, 813 S.W. 2d 955, 957 (Mo.App. 1991); *Kopper Kettle Restaurants, Inc. v. City of St. Robert*, 439 S.W2d. 1, 4 (Mo. banc. 1969). Further, STG and MITCG have failed to establish that the interest they alleged to be violated is a protected interest encompassed within the scope of "life, liberty or property" under the Fourteenth Amendment. This is reinforced by the fact that the Revised Amendment No 1 removes any impact upon MITCG and STG. Therefore, there are no other bases upon which MITCG or STG can claim to be entitled to a hearing. *Jackson County, Missouri et al v. Public Service Commission* 532 S.W. 2d 20, 31 *(Mo. 1975) cert denied 429 U.S. 822 (1976)*. Therefore, no hearing is required.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served on each of the following parties by first-class electronic/facsimile mail, this 25 day of July, 2003.

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