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July 7, 2003

Secretary  
Missouri Public Service Commission  
P. O. Box 360  
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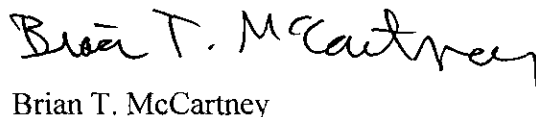
**Re: Case No. TK-2003-0540**

Dear Mr. Roberts:

Enclosed for filing on behalf of the Small Telephone Company Group, please find an original and eight copies of the STCG Reply to Sprint's Request to Cancel Prehearing Conference.

Please see that this filing is brought to the attention of the appropriate Commission personnel. Copies of the attached are being provided to parties of record. If you have any questions regarding this filing, please give me a call. I thank you in advance for your attention to and cooperation in this matter.

Sincerely,



Brian T. McCartney

BTM/da  
Enclosure  
cc: Parties of Record

**FILED<sup>2</sup>**  
JUL 07 2003  
Missouri Public  
Service Commission

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JUL 07 2003

Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Application of Sprint Missouri, Inc. d/b/a/ Sprint )  
for Approval of its Master Interconnection and Resale ) Case No. TK-2003-0540  
Agreement with Comm South Companies, Inc. )

**STCG REPLY TO SPRINT'S REQUEST TO CANCEL PREHEARING CONFERENCE**

COMES NOW the Small Telephone Company Group (STCG) and states to the  
Missouri Public Service Commission (Commission) as follows:

**SUMMARY**

The STCG filed a timely application to intervene and request for hearing. The standard of review under Section 252 of the Telecommunications Act of 1996 ("the Act") requires that negotiated agreements must be in the public interest and not discriminatory to third parties. The STCG member companies are third-party carriers that will be directly affected by Sprint's Agreement, but Sprint seeks to prevent the STCG from participating in this case. The STCG should be allowed to protect its interests and present evidence to the Commission demonstrating that Sprint's Agreement fails both prongs of the Act's two-part test.

The Commission should reject Sprint's bizarre procedural argument. Sprint recognizes that the STCG has applied to intervene and requested a hearing, but Sprint argues that the prehearing should be canceled because the Commission has not yet ruled on the STCG's pleading. Sprint's request to cancel hearing is simply an attempt to shield Sprint's discriminatory Agreement from thorough Commission review.

## DISCUSSION

1. Over thirty (30) small rural telephone companies have requested a hearing to determine whether Sprint's Agreement satisfies the standards established by the Act. The STCG's application to intervene in this case was timely filed, and the STCG has raised objections to the "transiting" provisions in the agreement that purport to allow Sprint to deliver both local and interexchange (i.e. long distance or "toll") competitive local exchange carrier (CLEC) traffic to STCG exchanges in violation of STCG tariffs and without providing billing records or compensation to the STCG companies for the use of their facilities and services.

2. On June 25, 2003, the Commission issued its *Order Directing Filing and Setting Prehearing Conference* which explained:

the Commission must act by September 3, 2003, and **an expedited procedural schedule must be developed**. To facilitate the development of such a schedule, a prehearing conference will be set.

The STCG recognizes the short time frame for Commission decisions under Section 252 of the Telecommunications Act of 1996 ("the Act"), and the STCG is ready and willing to comply with this strict timetable.

3. The Commission has regularly granted intervention to the STCG in cases involving the Commission's application of authority under the Act.<sup>1</sup>

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<sup>1</sup> See e.g. *In the Matter of ExOp of Missouri for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support pursuant to Section 254 of the Telecommunications Act of 1996*, Case No. TA-2001-251, *Order Granting Intervention*, issued Dec. 6, 2000.

4. **Standard of Review.** The standard of review for state Commission approval or rejection of agreements is quite clear under 252 of the Act. The Act establishes two grounds for the Commission to reject a negotiated agreement:

- (1) The agreement, or a portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or
- (2) The implementation of such an agreement is not consistent with the public interest, convenience, or necessity.

47 U.S.C. § 252(e)(2). The STCG member companies are third-party carriers that will be directly affected by Sprint's Agreement, and the STCG has requested a hearing to examine whether the Agreement's "transiting" provisions comply with the Act's standards. The STCG is best situated to present its position and protect its interests as a third-party carrier receiving the "transit" traffic that Sprint's Agreement purports to allow.

5. **Transit Traffic.** The problems associated with the Agreement's "transit" traffic are well documented. In fact, Staff recognizes that "transit" traffic creates a host of problems for third-party carriers:

In many instances involving wholesale business relationships in Missouri, an originating carrier's traffic transits the network of a large incumbent carrier before being delivered to a 3<sup>rd</sup> Party for termination. Although such transiting traffic can be placed to the terminating facilities of any carrier, the problem of transiting traffic has been especially noteworthy when such traffic was sent to small incumbent local exchange carriers. Such situations are said to involve an "indirect" business relationship, whereby traffic is transited to the small incumbent local exchange carrier for call termination via the facilities of a large incumbent local exchange carrier. **When customers of C-LECs or wireless carriers call customers of small carriers, a cost to terminate the call is incurred by the small carriers. However, with no direct business relationship with the originating carrier, terminating carriers often are provided only generalized information about such traffic, and**

are also unable to determine the proper jurisdiction of the traffic. Indeed, terminating carriers often do not even know to whom or where the bill should be sent.

\* \* \*

Because industry standard Category 11 billing records are not created for all LEC-to-LEC traffic (although Category 11 Records are created for some of the traffic), **no process exists which would allow small carriers to account for the proper jurisdiction of the traffic or, according to some small carriers, to account for the total quantity of traffic being terminated. Under the current process, many small carriers complain that when they "count" their terminating traffic minutes, the results indicate that billing records being provided by transiting carriers "don't add up" to the total amount of traffic being terminated.**<sup>2</sup>

Thus, the STCG's interest in this case is real, not hypothetical, and the "transit" provisions in Sprint's Agreement will directly and adversely affect the STCG member companies. The STCG should be allowed to present evidence demonstrating that "transit" traffic is: (1) not in the public interest; and (2) discriminatory to third-parties.

6. **Sprint's Catch-22.** Sprint recognizes that the STCG has applied to intervene and requested a hearing, but Sprint suggests that the prehearing should be canceled because the Commission has not yet ruled on the STCG's pleading. In essence, Sprint argues that because the STCG is not a party, it has no standing to request a hearing. Sprint's request to cancel hearing was filed only one day after Sprint's Response to the STCG's motion. It was proper for the Commission to schedule an early prehearing conference in this case because of the Act's strict timetable, and Sprint's request to cancel the prehearing conference is simply an attempt to deny the

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<sup>2</sup> *In the Matter of a Proposed Record Exchange Rule*, Case No. TX-2003-0301, Telecommunications Department Memorandum, June 2, 2003 (emphasis added).

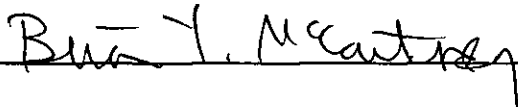
STCG the opportunity to intervene and present evidence that Sprint's Agreement is not in the public interest and is discriminatory to third parties. Indeed, the Commission's *Order Directing Notice* specifically provided for notice of the Agreement to be sent to "all interexchange and local exchange telecommunications companies" and provided a twenty-day period to request a hearing. If third party carriers cannot intervene and request a hearing, then the Commission's *Notice* was meaningless. The Commission should reject Sprint's bizarre procedural argument.

### CONCLUSION

WHEREFORE, the STCG respectfully requests that the Commission:

- (1) GRANT the STCG's Application to Intervene and Request for Hearing; and
- (2) DENY Sprint's Request to Cancel Pre-Hearing Conference.

Respectfully submitted,

By 

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 7<sup>th</sup> day of July, 2003, to the following parties:

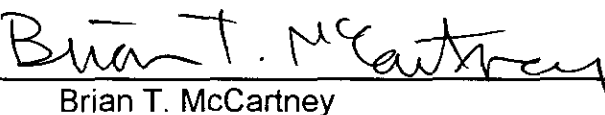
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