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November 19, 2003

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

FILED

NOV 19 2003

**Missouri Public
Service Commission**

Re: Case No. TO-2004-0207

Dear Judge Roberts:

Please find enclosed for filing in the referenced matter the original and five copies of the Joint Response of Birch Telecom, Inc., Z-Tel Communications, Inc., Sage Telecom, Inc., and Covad Communications Company to Sprint's Motion to Modify Protective Order.


Service of the enclosed pleading is being effected by electronic mail to those parties whose representatives shared email addresses at the pre-hearing conference on November 18, 2003. All other parties on the service list will receive by regular mail a copy of this letter without the pleading. However, recipients of just the letter are welcome to request a copy of the pleading from this office and it will be sent immediately.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Office of Public Counsel
General Counsel's Office
Rebecca DeCook
Bill Magness
Counsel and current parties of record as described herein

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED

NOV 19 2003

IN THE MATTER OF A)
COMMISSION INQUIRY)
INTO THE POSSIBILITY OF)
IMPAIRMENT WITHOUT)
UNBUNDLED LOCAL CIRCUIT)
SWITCHING WHEN SERVING)
THE MASS MARKET)

**Missouri Public
Service Commission**

Case No. TO-2004-0207

**JOINT RESPONSE OF BIRCH TELECOM, INC., Z-TEL COMMUNICATIONS, INC., SAGE TELECOM,
INC., AND COVAD COMMUNICATIONS COMPANY
TO SPRINT'S MOTION TO MODIFY PROTECTIVE ORDER**

Come now Birch Telecom, Inc. ("Birch"), Z-Tel Communications, Inc. ("Z-Tel"), Sage Telecom, Inc. ("Sage"), and Covad Communications Company ("Covad") and jointly submit the following in response to Sprint Missouri, Inc.'s and Sprint Communications Company L.P.'s (Sprint) Motion to Modify Protective Order:

1. Sprint has urged the Commission to alter the Standard Protective Order issued in this matter so that it allows in-house experts the ability to review Highly Confidential material, something now prohibited.
2. Birch, Z-Tel, Sage and Covad are in general agreement with Sprint's suggestion of a modified protective order in this case, and in this respect invite the Commission to review Attachment B to Sprint's motion. Attachment B is a copy of the protective order entered by the Public Utility Commission of Texas ("the Texas Protective Order") in cases dealing with subject matter identical to that in the instant case.
3. Birch, Z-Tel, Sage and Covad respectfully urge the Commission to approve a small company exception for the Standard Protective Order in this case, identical or similar to the "Small Company" language that is found in Section 14(b) of the Texas Protective Order. This

language provides an exception for a "Small Company," defining that term as including a company with 2,000 or fewer employees. The "Small Company" language provides as follows:

Small Company. Notwithstanding anything to the contrary in this definition, Reviewing Party Representatives authorized to review Confidential Material on behalf of a Small Company shall be limited to the following: (i) Small Company's counsel or, if the Small Company is not represented by counsel, a member of the Small Company's senior management; (ii) its employees or witness(es); and (iii) independent consultants acting under the direction of the Small Company's counsel or senior management and directly engaged in this Proceeding. A Small Company's designated Small Company Reviewing Party Representatives **do not** include individuals primarily involved in the sale or marketing of the Small Company's products or services, unless the Producing Party, upon request, gives prior written authorization for a prohibited person(s) to review Confidential Material. If the Producing Party refuses to give such written authorization, the Reviewing Party may, for good cause shown, request an order from the Presiding Officer allowing a prohibited person(s) to review Confidential Material. The Producing Party shall be given the opportunity to respond to the Small Company's request before an order is issued.

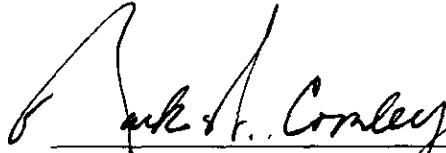
Birch, Z-Tel, Sage, and Covad request that this language, together with the definition of "Small Company" be included in the Protective Order in this proceeding.

4. This language appropriately allows representatives of smaller companies, such as the Birch, Z-Tel, Sage and Covad, to review key documentation in this case as long as the representatives are not primarily involved in marketing activities. The language strikes a fair balance, by allowing representatives of small companies that "wear many hats" to meaningfully participate in this proceeding while preventing marketing personnel from reviewing competitively sensitive documents. Indeed, if internal personnel with the companies are foreclosed from reviewing key documents in this proceeding, the companies will be unable to present a full case and develop a complete record.

WHEREFORE, Birch, Z-Tel, Sage, and Covad respectfully urge the Commission to modify the protective order to include a "small company" exception substantially similar to the one cited above.

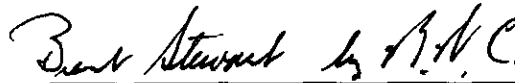


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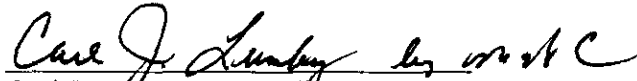
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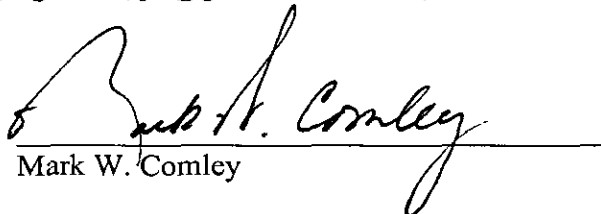
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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 19th day of November, 2003, to General Counsel's Office at gencounsel@psc.state.mo.us; Office of Public Counsel at opcservice@ded.state.mo.us; Paul G. Lane, SBC Missouri, at paul.lane@sbc.com, lwdority@sprintmail.com; jfischerpc@aol.com; clumley@cohgs.com; stephen.morris@mci.com; bcobb@covad.com; ckeith@nuvox.com; bmagness@phonelaw.com; vkirk@phonelaw.com; rmulvany@birch.com; lisa.c.creightonhendricks@email.sprint.com; nathan.williams@psc.mo.gov; stewart499@aol.com; kmudge@reglaw.com; mike.dandino@ded.mo.gov; myoung0654@aol.com; wds@wdspc.com; David.Woodsmall@xspedius.com; wcourter@mcleodusa.com; charles.gerkin@algx.com; jlr@greensfelder.com; sks@greensfelder.com



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