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July 7, 2003

Mr. Dale Hardy Roberts  
Secretary/Chief Administrative Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**FILED**<sup>2</sup>

JUL 07 2003

Missouri Public  
Service Commission

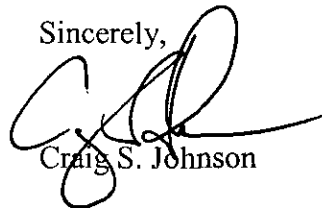
Re: Case No. TK-2003-0540

Dear Secretary Roberts:

Enclosed for filing please find an original and eight (8) copies of the MITG's Reply to Sprint's Response to Motions to Intervene Reply to Staff's Response to Motion to Intervene and Recommendation and Response to Sprint Request to Cancel Prehearing Conference in the above-referenced matter.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:sw

Enc.

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BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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

In the Matter of the Master Interconnection )  
and Resale Agreement by and between Sprint )  
Missouri, Inc., and Comm South Companies, )  
Inc. d/b/a Missouri Comm South, Inc., Pursuant )  
to Section 251 and 252 of the Telecommuni- )  
cations Act of 1996. )

Case No. TK-2003-0540

MITG

Reply to Sprint's Response to Motions to Intervene  
Reply to Staff's Response to Motion to Intervene and Recommendation  
and Response to Sprint Request to Cancel Prehearing Conference

For its Reply to Sprint's Response to Motions to Intervene, its Reply to Staff's Response to Motion to Intervene and Recommendation, and its Response to Sprint's Request to Cancel Prehearing Conference, the MITG sets forth the following:

1. This docket concerns a proposed interconnection agreement between and ILEC, Sprint Missouri, Inc., and a CLEC, Comm South Inc. Sprint and Comm South have submitted the proposed agreement for approval pursuant to 47 USC 252(e). 47 USC 252(e) requires Commission approval of this interconnection agreement.

2. 47 USC 252(e)(2)(A) specifies that the grounds upon which the Missouri Public Service can consider rejection of the interconnection agreement includes:

- (i) "the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement, or
- (ii) the implementation of such agreement, or portion is not consistent with the public interest, convenience, and necessity, ..."

3. The MITG applied to intervene in opposition to the proposed agreement on the first ground that certain “transit” and other provisions discriminate against non-party carriers, and on the second ground that such “transit” and other provisions are not in the public interest.

4. The questions of whether the provisions objected to discriminate against non-party carriers, or are not in the public interest, are questions of fact that this Commission must resolve. 47 USC 252(e). The FCC is empowered to review state commission determinations of discrimination and public interest. 47 USC 252(e)(6). In order for This Commission to provide a record of factual determination for FCC review, both findings of fact and a record of evidence upon which these facts are found will be required.

5. Obviously Sprint Mo Inc., and Comm South Inc., the parties to the proposed agreement, are entitled party status in this proceeding. Indeed, the Commission routinely orders the non-filing contractual party to the agreement to be made party to the proceeding. Carriers who have negotiated the agreement are entitled party status because they have negotiated the agreement, and implementation of the agreement will determine their reciprocal compensation rights and duties.

6. By federal statute, other carriers that believe an agreement discriminates against them, or is not in the public interest, have an interest in opposing the provisions objected to. In order for the interests of carriers that are not parties to the agreement itself to be adequately represented and protected, those carriers are conferred standing by 47 USC 252(e)(2) to be parties in this proceeding. It is noted that Staff is not directly conferred standing to be a party, but this Commission has routinely conferred standing on

Staff to review proposed agreements and submit recommendations regarding the approval, rejection, or modification of same. It is also noted that under routine Commission practice standards, an intervenor that has an interest in the subject matter that is different than that of the general public is entitled party status.

7. Neither Sprint, Comm South, nor Staff is capable or asserting or protecting the MITG interest in the subject matter of this proceeding. Neither Sprint, Comm South, nor Staff is subject to having its property rights and interests damaged or injured by approval of transit provisions in interconnection agreements. That Staff has concluded the agreement should be approved is of no material significance. It is only the Commission, not its Staff, which determines whether agreements should be approved.

Sprint has suggested the MITG be denied intervention because Sprint has requested approval of a “privately” negotiated agreement. Although the agreement may have been negotiated “privately” in that the MITG and MoKan were not given an opportunity to negotiate, the “private” negotiations are in fact not “private” to Sprint and Comm South. The agreement proposes to address transit traffic to carriers not party to the agreement. With respect to these carriers not party, the agreement contains provisions which are not “private” to Sprint and Comm South.

8. The MITG companies generally, and MoKan Dial specifically in this case, have the sole and exclusive right to negotiate the terms of reciprocal compensation contained in interconnection agreements for “local” traffic terminating to their exchanges. MoKan Dial is, by definition, the sole ILEC for purposes of reciprocal compensation for “local” traffic terminating to MoKan Dial’s exchanges. Although Sprint is an ILEC, it cannot negotiate a reciprocal compensation agreement for MoKan

Dial. Before any such reciprocal compensation arrangements can be implemented, the Missouri Commission must approve the "local" calling scope contained in the agreement, and must approve the terms and conditions for exchanging such "local" traffic.

9. The MITG companies generally, and MoKan Dial specifically in this case, are the sole parties whose approved and lawful access tariffs set forth the terms and conditions for non-local or interexchange traffic terminating to their exchanges. Although Sprint is a LEC with its own exchange access tariffs, those tariffs do not apply to traffic terminating to MoKan Dial exchanges.

10. Despite the fact that neither Sprint nor Comm South are authorized to negotiate or tariff the terms and conditions of traffic terminating to MoKan Dial, the agreement in dispute here purports to allow Sprint to "transit" traffic to areas served by other carriers such as MoKan Dial. The agreement purports to allow Sprint to "transit" both "local" traffic as well as intraLATA toll traffic destined to terminate in MoKan Dial's exchanges.

11. MoKan Dial has not negotiated or agreed to a local calling scope for traffic between it and Comm South. MoKan Dial has not negotiated or agreed to any local reciprocal compensation rates. MoKan Dial's access tariffs do not allow Sprint to deliver intraLATA toll traffic from Comm South without Sprint being responsible to pay for the traffic. MoKan Dial has not negotiated or agreed to any other arrangement for terminating access traffic different from its tariffs. A review of the proposed agreement will demonstrate that Sprint has negotiated many provisions designed to ensure the protections of its interests. There are no provisions in the agreement whatsoever

specifying how the “transit” traffic is to be handled with MoKan Dial, much less any of the same protections Sprint has negotiated for itself.

12. “Transit” traffic provisions should not be approved over the objection of an ILEC, as the effect would be to negotiate same on behalf of the absent ILEC, without authorization from the absent ILEC. This would lead to destruction of the absent ILEC’s preference to negotiate its own terms and conditions.<sup>1</sup>

13. The FCC has ruled that ILECs are not required to perform “transiting” functions at reciprocal compensation rates.<sup>2</sup> Therefore Sprint, as an ILEC, is not

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<sup>1</sup> The Kansas August 7, 2000 Arbitrator’s Order 5: Decision 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 Telecommunication Act of 1996, Docket No. 00-TCGT-571-ARB, at pages 25-26<sup>1</sup>, adopted SWBT’s position and made the following determinations:

“The Arbitrator agrees with SWBT that local exchange carriers have a duty to establish reciprocal compensation arrangements for the transport and termination of traffic. 47 U.S.C. § 251(b)(5). Consistent with that obligation, no other carrier should be authorized to interject itself into the interconnection arrangements of the local exchange carrier, without its agreement. There is no indication in the statute that transit services are considered. Clearly, parties may accept calls on a transiting basis, but SWBT has indicated its unwillingness to do so and has expressed a preference for negotiating its own agreement. SWBT’s last best offer is adopted.”

<sup>2</sup> “We reject AT&T’s proposal because it would require Verizon to provide transit service at TELRIC rates without limitation. While Verizon as an incumbent LEC is required to provide interconnection at forward-looking cost under the Commission’s rules implementing section 251(c)(2), the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty. In the absence of such precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at

16. Staff suggests that adding language to this agreement prohibiting traffic being transited to a small ILEC unless there is an agreement this will resolve MITG concerns. Unfortunately, history has shown that such blind faith in CMRS providers and CLECs is misplaced. The MITG believes that it has evidence demonstrating that similar language has already been used by this Commission in an Order, and in many approved interconnection agreements. The MITG believes it can prove that, despite years of experience with the language Staff proposes, the traffic has nonetheless terminated in the absence of any such agreement.

17. Staff suggests that a draft rule pertaining to enhanced record exchange, which has yet to be promulgated, commented upon, or adopted by the Commission, will resolve MITG concerns. The MITG believes that it will be able to prove Staff's proposed rule, even if adopted in time to be applied to the instant agreement, will not protect MITG interests with respect to "transit" traffic.

18. Sprint and Staff also mention the fact that MoKan Dial and Choctaw Telephone Company agreed to an amendment to their interconnection agreements with Sprint PCS specifying no transit traffic in the absence of an approved agreement. This is true, but not dispositive of the issues raised here for several reasons: One, no party intervened to oppose the "transit" provisions involving Sprint PCS, Choctaw, and MoKan. Second, neither MoKan nor Choctaw own or possess an access tandem. Neither MoKan nor Choctaw objected to the amendment proposed by Staff because they could envision no situation in which they would likely be "transiting" Sprint PCS

wireless traffic to any other carrier.<sup>3</sup> Third, as there was no carrier whose interests were adversely affected by the “transit” traffic language, no carrier applied to intervene to oppose the language of even the amendment..

19. Such is not the case here. Sprint Mo Inc.’s Warrensburg tandem serves MoKan Dial’s Freeman exchange. All traffic coming to Freeman over the “LEC to LEC” network comes through Sprint’s Warrensburg tandem. MoKan Dial is directly impacted by Sprint agreements proposing to “transit” traffic. MoKan Dial has applied to intervene to oppose approval of the “transit” provisions of Sprint’s agreement. As transit traffic can be “transited” between Sprint tandems and SWBT tandems—“inter-tandem”

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<sup>3</sup> This is not true of other MITG companies. Chariton Valley, Northeast Missouri Rural, and Mid-Missouri Telephone all own their own access tandems. In the industry the significance of an access tandem is that all carriers know that they are to send all traffic destined for exchanges subtending these access tandems to that access tandem. A carrier is either to orders its own trunks to the access tandem or contract with another carrier that has done so. Carriers ordering access trunks to the access tandem are responsible for all traffic terminated. The “transit” traffic concept is a violation of well established rules pertaining to access tandems. All “transit” traffic coming to CV, NE, and Mid-Mo is traffic that passes from SWBT’s McGee tandem to the tandems of CV, NE, and Mid-Mo on a SWBT “common trunk”, a violation of access tandem owner rights. In the event of an adverse decision in this case, these companies would then be just as justified in negotiating interconnection agreements containing similar “transit” traffic provisions as have been Sprint, SWBT, or CenturyTel. There would be no reason they could not send “transit” traffic from their access tandems back up the “LEC to LEC” network. Perhaps if SWBT, Sprint, and CenturyTel were on the receiving end of “transit” traffic, and they had a loss of call records, a loss of compensation, and a loss of ability to disconnect or block uncompensated traffic, they would not be so eager to negotiate “transit” traffic provisions.



transit traffic—it can be terminated to other MITG companies as well. This is the basis for the MITG intervention.

20. The foregoing establishes that the MITG, and specifically MoKan Dial, have a direct interest in opposing approval of the transit provisions of Sprint's proposed interconnection agreement. They should be granted intervention and allowed party status to have the opportunity to prove to the Commission that the transit provisions are discriminatory, and not in the public interest. A hearing should be scheduled to allow them the opportunity to do so, and to protect their property interests that they believe will be injured or taken if the proposed agreement is approved.

21. Unless the MITG, and MoKan Dial, are granted intervention and provided with an opportunity to prove, at hearing, grounds for rejection of the agreement, 47 USC 252(e) will be rendered toothless, and incapable of meaningful application to protect the interests of carriers that are not party to the agreement.

WHEREFORE, the MITG companies respectfully request that they be granted intervention, and that at the July 11, 2003 prehearing conference a procedural schedule be ordered culminating with evidentiary hearing in accordance within the timeframes for approval or rejection of interconnection agreements contained in 47 USC 252, and that the agreement provisions objected to be rejected.

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By 

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ATTORNEYS FOR MITG, MoKan Dial

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 7 day of July, 2003, to all attorneys of record in this proceeding.

