BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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**

SUGGESTIONS OF SPRINT MISSOURI, INC. AND ICG TELECOM GROUP, INC. OPPOSING REQUESTS FOR HEARING

COME NOW Sprint Missouri, Inc, d/b/a Sprint ("Sprint"), and ICG Telecom Group, Inc. ("ICG"), and as requested at the prehearing conference held in this matter on July 11, 2003, hereby provide their further Suggestions opposing the requests for hearing filed by the Missouri Independent Telephone Company Group ("MITCG"), and the Small Telephone Company Group ("STCG"), as follows:

1. Sprint and ICG have presented their Interconnection Agreement to the Commission for approval pursuant to Section 252(e) of the Telecommunications Act of 1996. The statute does not require the Commission to hold a hearing before making its decision. Moreover, in the event there is a "party aggrieved" by the Commission's decision, that party may bring an action in Federal district court for an examination of the agreement, not a review of the Commission's decision. Hence, the Commission does not need to develop a record for review by Federal court. These are the clear and express provisions of the statute. As held by the U.S. Court of Appeals in *US West Comm v. Jennings,* 304 F.3d 950, 958 (9th Cir. 2003), the Act charges "the federal courts to review the agreements for compliance with the Act, rather than for the correctness of the state commission's decisions."

2. Accordingly, the Commission is not required by law to hold a hearing in this matter. Hearings are not required before administrative agencies when hearings are instead afforded later in court. See, e.g., State v. Jensen, 381 S.W.2d 353, 358 (Mo. banc 1958).

3. Moreover, the Commission should not hold a hearing in this matter, because the requests for hearing only concern issues upon which the Commission cannot grant relief in this matter.

4. The Interconnection Agreement only serves to establish terms and conditions for covered activities and transactions between the signatory parties, Sprint and ICG. The Agreement does not purport to, and in any event cannot, serve to bind non-signatories such as the intervenors.[1] Moreover, the Agreement does not purport to restrict the ability of Sprint and/or ICG to negotiate and make any necessary arrangements with third parties such as the intervenors.

5. Intervenors base their assertions of purported violations of the limited review standards under Section 252(e)(2) not upon the terms and conditions of the Agreement (which do not impact them in any way), but rather upon a comparison of those terms and conditions to hypothetical extrinsic situations. They claim discrimination based on an assertion that they do not currently have similar contractual arrangements with Sprint or ICG. Yet they do not say, and indeed cannot say, that they are somehow precluded from negotiating similar arrangements, for there are no such restrictions. They claim contravention of the public interest, not based on the Agreement, but rather based upon postulations that Sprint and/or ICG might someday violate the express terms of the Agreement by sending them transit traffic without either complying with their access tariffs

[1] Sprint and ICG understand that the intervenors are associations rather than individual ILECS. However, for simplicity Sprint and ICG refer herein to the member ILECs as "intervenors."

or making alternative contractual arrangements. Intervenors' complaints have nothing to do with the contents of the Agreement. Rather, their complaints only concern their general dissatisfaction with activities of telecommunications companies other than Sprint and ICG, which they have expressed in numerous other cases.

6. The Commission cannot remedy intervenors' complaints in this case, because the intervenors will not be parties to the Agreement. Indeed, they made clear at the prehearing conference that they do not want to establish an agreement with Sprint or ICG. They simply want to apply their access tariffs. (Tr. 23). Moreover, they confirmed that they would not be limited by any provisions that might be added to the Agreement in an attempt to further address their concerns (beyond the amendment already added at Staff's request) and instead would seek to negotiate (or impose) their own terms and conditions on Sprint and ICG later. (Tr. 75).

7. Section 66.2.1 of the Agreement expressly acknowledges that Sprint and ICG do not have the right to unilaterally send traffic by means of the transiting provisions to ILECs such as the intervenors. Section 66.2.1 of the Agreement expressly acknowledges that separate arrangements are required with intervenors. The Commission cannot address those separate arrangements in this case regarding the Sprint/ICG Agreement, because those arrangements will be subject to either tariffs or separate agreements between intervenors and Sprint or ICG.

8. To the extent intervenors project that Sprint or ICG might violate the express terms of the Agreement, again the Commission cannot grant relief in this case. If intervenors perceive a violation in the future, then they will have the right to file a complaint, seek authority to block unauthorized traffic, and/or seek to obtain any compensation allegedly

owed to them. Further, the records issues that appear to be a part of Intervenors' allegations are under review in connection with the Commission's rulemaking activity in Case No. TX-2003-0301.

9. Intervenors seem to propose a process by which each bilateral interconnection agreement must somehow address not only the terms and conditions of arrangements between the two signatories, but also all arrangements between those two parties and each and every other member of the telecommunications industry. Of course, such a process could never work. Moreover, that is not the process created under the Telecommunications Act, which is instead based on bilateral agreements. It is perfectly appropriate for Sprint and ICG to make their arrangements, while acknowledging the need for additional arrangements with others. Each such bilateral agreement then works together with all the other agreements (and/or tariffs) to allow every company to provide services to its customers.

10. Intervenors also overstate their concerns, in seeking total elimination of the transit provisions of the Agreement. Tandem providers have an obligation to provide transit service to allow carriers to indirectly interconnect with each other under Section 251(a) of the Act. Transit service is essential to accommodate the efficient flow of traffic between third parties, such as CLECs and CMRS carriers operating within Sprint's service area. It is simply economically inefficient to require third parties to establish direct connections when the volumes of traffic exchanged is minimal. These provisions are also essential to the provision of MCA service, including bill-and-keep traffic that might go to or from customers of the intervenors. Such traffic cannot harm intervenors.

11. The Commission has routinely approved interconnection agreements for CLECs with similar language regarding transit traffic, both with Sprint and other ILECs. It

would be discriminatory to deny ICG and Sprint the right to have such provisions in their Interconnection Agreement. The Commission is already addressing the industry-wide record and reporting concerns expressed by intervenors in a rulemaking, which will apply equally to all carriers and not unlawfully single out Sprint and ICG in the arbitrary manner that intervenors propose. It is also worth noting that the Commission has previously declined to impose on the industry the business arrangements apparently still endorsed by intervenors, including in Case Nos. TO-99-593, TO-99-254. Further, the Commission has approved interconnection agreements with transit provisions despite intervenors raising the exact same arguments that are being raised in this case. *See* Case No TO-2001-455, *Order Denying Intervention, Approving Interconnection Agreement, and Closing Case*, September 3, 2001 (Features of an interconnection agreement that allow traffic to transit SWBT's network and be delivered to non-party LECs is not discriminatory).

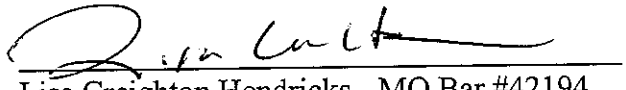
12. The Commission cannot grant relief herein to intervenors because: (1) there is nothing in the Agreement that harms them; (2) nothing can be added to the Agreement that will bind them; and (3) theoretical future violations cannot be remedied in advance. When no harm can be sustained and no relief can be granted, no hearing is required, necessary or appropriate. Whole treatises are devoted to discussions of such principles of due process, but suffice it to say here that a protected interest must be impaired and prejudice must be shown. See, e.g., In Re Jones, 431 S.W.2d 809, 819 (Mo. banc 1966); Laubinger v. Laubinger, 5 S.W.3d 166, 175 (Mo. App. 1999). Indeed, when a party fails to state a claim upon which relief may granted, there is no jurisdiction to hold hearings on their pleadings. See, e.g., Adkisson v. Director of Revenue, 891 S.W.2d 131, 132 (Mo. 1999).

13. The Commission should proceed to examine the agreement and make its decision without a hearing. Sprint, ICG and Staff all seek approval. No one has identified any legitimate basis for rejection. The Commission has previously approved similar agreements. See, e.g., Case No. TK-2003-0409. Nonetheless, should the Commission have concerns about any particular provision, it should identify such concerns to Sprint and ICG so that revisions can be discussed. Such an approach is consistent with the Staff's proposed rules in Case No. TX-2003-0565 and the provisions of the Agreement itself (see Sections 3.1 and 27.1). Likewise, Section 252(e)(2) allows the Commission to address portions of agreements, as well as agreements in their entirety. While the Commission cannot approve only part of an agreement, it can and should identify any specific area of concern. Having said that, in this case the Commission should approve the Agreement in its entirety without a hearing, as there is no basis to do otherwise.

WHEREFORE, For the reasons stated herein, the Commission should deny the requests for a hearing and approve the Interconnection Agreement.

Respectfully submitted,

Sprint Missouri, Inc. (Sprint)



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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 mail, electronic mail and/or facsimile transmission, this 18 day of July, 2003.

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