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July 23, 2003

Secretary  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, Missouri 65102

**FILED<sup>4</sup>**

**JUL 23 2003**

**Re: Case No. TK-2003-0535**

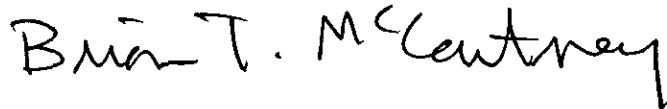
**Missouri Public  
Service Commission**

Dear Mr. Roberts:

Enclosed for filing, please find an original and eight copies of the STCG Response to Order Directing Filing.

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

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	)	Case No. TK-2003-0535
and Resale Agreement with ICG Telecom Group	)	

**STCG RESPONSE TO ORDER DIRECTING FILING**

COMES NOW the Small Telephone Company Group (STCG) and for its Response to the July 21, 2003 *Order Directing Filing*, states to the Missouri Public Service Commission (Commission) as follows:

**SUMMARY**

On June 4, 2003, Sprint filed its Application for Approval of its Interconnection Agreement (the Agreement) with ICG. Nearly seven (7) weeks later, on July 21, 2003, Sprint and ICG filed an "amendment" (the Amendment) that purports to make substantive changes to the Agreement. This effort to "amend" the flawed Agreement raises procedural questions, and it does not cure all of the problems that the STCG has identified with the Agreement.

**DISCUSSION**

**A. SPRINT'S NEW "AMENDMENT" IS NOT EFFECTIVE.**

1. Under Section 252(e)(4) of the Telecommunications Act of 1996 ("the Act"), the Commission must act to approve or reject the agreement within ninety (90) days of its submission. The Act makes no provision for the filing of "amendments" to Agreements after this 90-day clock has begun to run. In this case, Sprint is seeking to "amend" its Agreement after more than half of the Commission's time to review the

Agreement has passed. Sprint's "amendment" seeks to make a substantive change to the Agreement after the twenty-day window for intervention has closed and after more than half of the Commission's time frame for review has passed. It would set a bad precedent for the Commission to allow eleventh hour substantive changes to Agreements after the 90-day clock has started.

2. **The proper procedure would be for Sprint and ICG to seek Commission approval to dismiss their Application and re-file an "amended" agreement.** Sprint and ICG should jointly move to dismiss this case and then re-file their "amended" Agreement. See 4 CSR 240-2.116. This will allow the Commission and the Intervenors the full 90 days to review the Agreement. It would provide all parties with the opportunity to attempt to amicably resolve the remaining issues that still exist with the Agreement, as amended.

3. **Alternatively, the Commission should issue an order "re-starting" the 90-day clock.** Sprint's "amendment" to the Agreement is substantive, not clerical. Specifically, the "amendment" appears to be an effort to remove "toll" traffic from the definition of "transit" traffic. This major substantive "amendment" materially changes the nature of the Agreement, insofar as transit traffic is concerned, so the Commission should recognize it as a new Agreement. In other words, because the "amendment" substantially changes the nature of the Agreement, the Commission can treat Sprint's "amended" Agreement as an entirely new Agreement. Therefore, it would be within the Commission's power to simply re-start the 90-day clock and direct the parties to prepare an "amended" procedural schedule.

## **B. RESPONSE TO THE AMENDMENT**

4. Sprint's Amendment was filed on Monday, July 21, so the STCG's response will be limited, given the short period of time the STCG has had for review. That said, the STCG still has serious concerns about "transit" traffic in general and specific objections to the Agreement even if the Commission accepts Sprint's "amendment."

5. The STCG's Application and Opposition raised concerns that the Agreement is contrary to the public interest and discriminatory to third parties. Specifically, the STCG objected to provisions in the Agreement which would allow Sprint and ICG to "transit" local and toll traffic to the STCG member companies' exchanges.

6. **Toll Traffic.** Sprint's "amendment" purports to eliminate the transit of toll traffic to third parties such as the STCG from the Agreement. Instead, the "amended" Agreement will now treat such traffic as traditional interexchange (IXC) traffic. Based upon the limited review that the STCG has had time to conduct thus far, the amendment appears to address at least part of the STCG's concerns regarding the "transit" of interexchange toll traffic.

7. **Local Traffic.** Sprint's Amendment does not change the Agreement's provisions regarding local traffic. Although the Agreement "acknowledges" that there should be an arrangement between ICG and third parties for the exchange of local traffic, nothing in the Agreement requires ICG to establish such an agreement before "transiting" local traffic to the STCG member companies. Therefore, this provision provides far less protection than previous agreements approved by the Commission

which require CLECs and wireless carriers to enter into agreements with the STCG before sending traffic to STCG exchanges. And even that provision has not stopped the delivery of uncompensated and unidentified traffic to the STCG member companies. Thus, the Agreement is still contrary to the public interest in that it continues to encourage the delivery of uncompensated and unidentified local transit traffic over the facilities of Missouri's telecommunications carriers.

8. The Agreement also discriminates against third parties in that it allows two parties (Sprint and ICG) to establish terms and conditions for the use of a third parties' facilities and services, and it leaves third party LECs such as the STCG member companies without proper records or recourse for "transit" traffic. For example, ICG is entitled to records of traffic that Sprint transits to ICG. Specifically, Section 66.4.1 of the Agreement requires Sprint to provide SS7 information about transit traffic in order to facilitate billing functions. Section 66.4.2 requires Sprint to provide ICG with information on traffic originated by third parties. Section 66.4.3 requires Sprint to supply industry standard records. However, the Agreement does not require either Sprint or ICG to provide these records of the "transit" traffic they deliver to third parties.

9. Similarly, the Agreement provides that if Sprint fails to provide records or sufficient information to ICG about transit traffic that Sprint delivers to ICG, then ICG is entitled to "default bill" Sprint for any such uncompensated and unidentified traffic. Specifically, Section 66.3.1.2 provides that if Sprint fails to provide ICG with originating records, then ICG "shall default bill the transiting party for transited traffic which does not identify the originating party." However, the Agreement specifically exempts Sprint from any liability for "transit" traffic that Sprint delivers to third parties under the

Agreement. See §§ 9 and 10. Thus, the Agreement, as amended, continues to be contrary to the public interest and discriminatory to LECs that are not parties to the Agreement (such as the STCG member companies) because Sprint treats ICG differently (i.e. substantially better) than Sprint treats third party LECs, at least insofar as the transit of local traffic is concerned.

### **CONCLUSION**

WHEREFORE, the STCG respectfully requests that the Commission:

- (1) REJECT the eleventh hour "Amendment" filed in this case and direct Sprint and ICG to seek dismissal of their Application if they intend to make a substantive change to the Agreement after the 90-day clock has started; OR, IN THE ALTERNATIVE,
- (2) RESTART the 90-day clock in recognition that the Amendment makes a substantive change to the Agreement and thus creates a new Agreement for the Commission to review and direct the parties to file a revised procedural schedule. In any event the Commission should GRANT the STCG's request for hearing because the STCG has raised substantial concerns about whether the Agreement's "transiting" provisions, even with the Amendment, meet the standard provided by the Act.

Respectfully submitted,

By Brian T. McCartney

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Attorneys for the STCG

## 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 23<sup>rd</sup> day of July, 2003, to the following parties:

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

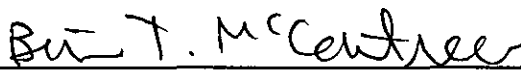
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