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November 24, 2003

FILED

NOV 24 2003

**Missouri Public
Service Commission**

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

Re: Application to Intervene in Opposition to Agreement, and Request for Hearing
Missouri Independent Telephone Company Group
Case No. CK-2004-0200

Dear Secretary:

Enclosed please find an original and eight (8) copies of the Application to Intervene in
Opposition to Agreement, and Request for Hearing Missouri Independent Telephone Company
Group.

Thank you for seeing this filed.

Sincerely,

Lisa Chase
Lisa Cole Chase

LCC:lw

Enclosures

CC: Michael Dandino
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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

NOV 24 2003

Missouri Public
Service Commission

In the Matter of the Application of ICG Telecom)
Group, Inc., for Approval of Amendments to Its)
M2A Interconnection Agreement with Southwestern)
Bell Telephone Company Pursuant to Section 252(e))
of the Telecommunications Act of 1996.)

Case No. CK-2004-0200

Application to Intervene in Opposition To Agreement, and
Request for Hearing
Missouri Independent Telephone Company Group

Comes now the Missouri Independent Telephone Company Group (MITG)¹, and submit this Application In Opposition to Approval of the proposed Agreement between ICG Telecom Group, Inc. ("ICG") and Southwestern Bell Telephone L.P. d/b/a SBC Missouri ("SBC"). The MITG request that those provisions of the Further Amendment to Amendment of the Agreement ("the Agreement") pertaining to "transit" of VNXX traffic be disapproved, rejected, or removed from the Agreement, or, in the alternative, that the Agreement be rejected or not approved in its entirety.

Such transit provisions are prejudicial in that they will allow the termination of CLEC originated toll over a local connection in derogation to the tariffs of the MITG companies requiring such traffic to be terminated by an interexchange carrier over an access facility subject to access tariffs. The Commission has ordered that no traffic is to be terminated from CLECs to the MITG companies unless there is an approved agreement with the MITG companies therefore. There is no such thing as "local" traffic between a CLEC and a MITG company unless it is contained in a Commission-approved agreement, of which there are none, or unless it is within the Kansas City MCA. Review

¹ Alma Communications Co., Chariton Valley Telephone Corp., Choctaw Telephone Co., Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Co.

of the Further Amendment to Amendment reflects that the parties have provisioned transit traffic (§ 4.1), and further provide for the treatment of virtual NXX traffic as local "for compensation purposes" (§4.2). In paragraph 4.3, the parties properly contemplate interLATA toll and IXC carried intraLATA toll traffic to be governed by switched access. However, it is unclear how the parties contemplate the treatment of VNXX traffic carried by SBC to the MITG - i.e. will VNXX traffic originated outside of the MCA with a virtual NXX to a rate center or routing point inside the MCA be delivered to carriers such as MoKan inside of the MCA as local calls? The treatment of VNXX transit traffic also has intercarrier compensation implications for the other carriers in the MITG.

In Missouri the past 5 years' experience has demonstrated that the large ILEC's efforts to include "transit" traffic provisions in interconnection agreements is contrary to the public interest, convenience, and necessity, particularly as applied to rural areas.

In support of this Application, the MITG states as follows:

1. The MITG Companies are ILECs. Under 47 USC 252(e)(2)(A) each of the MITG Companies is a telecommunications carrier against whom no interconnection agreement, or portion thereof, can discriminate against, or prejudice, unless that carrier is party to the agreement itself.

2. Alma, Choctaw and MoKan are each end office companies being subtended either directly or indirectly by SBC's tandem, and Chariton Valley, Mid-Missouri and Northeast are each tandem companies being subtended by SBC's McGee tandem. Each MITG company is directly interested in and affected by provisions of the agreement whereby ICG and SBC propose to "transit" traffic from each other to carriers

other than ICG or SBC. Yet the MITG companies have not been a participant in the negotiation of the proposed agreement.

3. The MITG companies are also ILECs and have an interest in ending the utilization of "transit" traffic provisions in interconnection agreements.

4. As ILECs each of the MITG companies have the right to negotiate their own interconnection agreements with CLECs providers, which right is equal in dignity to that of ICG and SBC.

5. By the inclusion of "transit" traffic provisions in the proposed agreement, ICG and SBC have negotiated for the delivery of traffic to the MITG companies without including the MITG in negotiations concerning the terms and conditions of delivery of such traffic.

6. The inclusion of "transit" traffic in an interconnection agreement is inappropriate, as interconnection agreements are to be utilized for the mutual exchange of traffic between the two local competitors that are parties to the agreement. The inclusion of "transit" traffic destined for carriers not party to the agreement is outside the lawful scope of interconnection agreements.

7. The past reasoning of larger ILECs such as SBC and ICG that, as ILECs, they are obligated to "transit" traffic, has recently been rejected by the FCC. ILECs have no obligation, and in fact no right, to include "transit" traffic provisions in interconnection agreements. Larger ILECs such as SBC are ILECs only in their certificated territory. SBC is not an ILEC in the service territories of the MITG companies. The only authority SBC has to operate in the service territory of the MITG companies is as an interexchange carrier.

8. The inclusion of transit traffic provisions in an agreement between a large ILEC such as SBC and a CLEC provider such as ICG has the effect of destroying the MITG's rights and preferences for negotiating the terms and conditions of their own interconnections and reciprocal compensation provisions with CLEC providers.

9. As a result of over 5 years of experience with such "transit" traffic provisions in large ILEC interconnection agreements, small ILECs such as the MITG have experienced the following which demonstrates the discriminatory and prejudicial impact of such transit traffic provisions on the MITG companies, and upon their customers:

a. local competition is not brought to rural areas by CLEC providers interconnecting with the MITG companies in the rural areas, thereby depriving rural consumers of the presence of competitive services and vendors. If CLECs are not willing to come to rural areas they should not be allowed to "transit" traffic to rural areas, particularly if the traffic is "transited" in violation of the tariffs of carriers that do serve rural areas, as well as in violation of prior Commission orders;

b. CLEC traffic is placed on access facilities to the MITG companies without compliance with MITG access tariffs;

c. the interexchange carrier responsible for the access facilities from the MITG companies, and responsible for traffic terminated over those facilities, attempts to use an interconnection agreement to avoid, supplant, or replace its responsibilities under the access tariffs;

d. as a result the MITG companies have experienced unauthorized traffic termination, a failure of such traffic to be reported, quantified, identified, or compensated for;

e. the loss of compensation for interexchange traffic terminating to the MITG companies damages their revenues, is inconsistent with their rate design, and will result in upward pressure on the rates of their own local end users, who are innocent of such wrongdoing and upon whom this pressure should not be visited.

10. In the past the Commission has approved such transit traffic provisions in tariffs and agreements with the direction that, prior to the termination of "transit" traffic that an agreement with the terminating LEC be obtained. This has not happened, as neither the CLECs nor the transiting ILECs such as SBC or ICG have bothered to enforce such provisions of these Orders or Agreements. In fact, when the MITG companies have attempted to bill for reported transited traffic, their bills have been dishonored by CLECS and CMRS providers, on the ground that no agreement exists.

11. The experience in Missouri with "transit" traffic has been a failure, causing the loss of millions of dollars in revenue to rural Missouri, and which for over five years has expended and taxed the Commission's resources by litigating the applicability of state tariffs to traffic transited to small rural ILECs without any agreement with those ILECs, which litigation remains ongoing.

12. SBC has had a poor track record of providing adequate records to third parties who terminate transited traffic. SBC has failed to record and report traffic of specific carriers for several months, failed to report the originating carrier of transited traffic, delivered CLEC toll traffic over the LEC-to-LEC 'local' network rather than the

IXC 'toll' network contrary to their agreements as understood by the CLECs, has failed to report the jurisdictional nature of the traffic delivered over their local network, and has refused to be responsible for the unidentified traffic it delivers to the MITG.

13. The Missouri Public Service Commission has authority under Section 252(e)(3) to establish and enforce "other requirements of State law in [the Commission's] review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The MITG requests the Commission enforce the provision's of their approved access tariff provisions when reviewing Interconnection Agreements containing transiting provisions, and further requests the Commission to establish requirements that parties to such interconnection agreements abide by any and all business records rules that may be adopted by the Commission, i.e. the enhanced record exchange rule currently under discussion and development in Case No. TX-2003-0301.

14. The interests of the MITG are different from that of the general public, and granting them intervention and hearing will aid the Commission in understanding the reasons the proposed agreement is not in the public interest.

15. The following provisions or sections of the proposed Further Amendment to Amendment of the Agreement, either by their own terms, or in conjunction with other terms therein, give rise to this objection to the transit of VNXX traffic: 4.1, 4.2, 4.3, 4.4, 4.5, 5.1, 5.2.

17. Copies of all filings in this docket should be directed to the MITG by serving:


Craig S. Johnson MO Bar #28179
Lisa Cole Chase, MO Bar #51502

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WHEREFORE, on the basis of the foregoing, the MITG request that they be allowed to intervene in opposition to the proposed agreement, that an evidentiary hearing be provided upon which the Commission can base its decision in these regards, and that the Commission reject the proposed agreement or the offending provisions of the agreement as set forth above.

**ANDERECK, EVANS, MILNE
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By:


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**ATTORNEYS FOR MISSOURI
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CERTIFICATE OF SERVICE


The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, U. S. Mail, postage pre-paid, this 24 day of November, 2003, to:

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