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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Missouri Public
Service Commission

In the Matter of the Investigation of the)
State of Competition in the Exchanges of)
Sprint Missouri Inc.)

Case No. IO-2003-0281

SPRINT'S REPLY TO
NALA/PCA'S RESPONSE TO SPRINT'S MISSOURI, INC.'S
MOTION FOR JOINDER OF PARTIES

COMES NOW Sprint Missouri, Inc., (hereinafter "Sprint") and for its Reply to the NALA/PCA's Response to Sprint's Motion for Joinder of Parties states as follows:

1. The Missouri Public Service Commission ("Commission") opened this investigation on February 14, 2003 to investigate the status of competition in Sprint's exchanges. Subsection 392.245.5 RSMo 2000 states that the Commission "shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange provider ("ALEC" or "CLEC") has been certified to provide local exchange telecommunications service and shall determine, no later than five years following the first certification of an alternative local exchange telecommunication company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company."

2. This is the Commission's second investigation into the state of competition in the exchanges of a price-cap company. The Commission previously investigated the state of competition in SBC-Missouri's exchanges in Case No. TO-2001-467 (herein referred to as the "SBC Competition Case"). As part of the SBC Competition

Case, the Commission granted a request made by Staff to automatically join 75 CLECs as parties in the case¹ at the time the Case was opened.

3. Sprint's case differs from the SBC Competition Case in that the Commission did not automatically make all CLECs a party to the Sprint case upon opening its investigation. Given the enormous amount of resources required in the SBC Competition Case by the Commission, its Staff, the Office of Public Counsel, CLECs, and other parties involved as a result of making all CLECs parties to the case, Sprint proposed a more limited path. On February 11, 2003, Sprint filed a motion asking the Commission to merely provide notice of this Case to all the 75 carriers currently authorized to offer local services in Sprint's exchanges. In its Motion, Sprint also requested that only three particular CLECs, from which it intends to seek discovery, be added as parties to this case. The Commission granted Sprint's request in its February 14, Order noting that "Sprint's request is reasonable and may help to expedite discovery". The Commission also allowed a period of time for which any of the Notified CLECs could seek intervention.

4. To date, several parties have requested and received intervention into this case including AT&T, the WorldCom companies, and SBC Missouri. This is in addition to the three CLECs for which Sprint requested be made a party to the case: (1) Green Hills Telecommunications Services, Inc, ExOp of Missouri dba Unite, and (3) Fidelity Communications Service I, Inc.

5. On March 6, 2003, the National ALEC Association/Prepaid Communications Association (hereinafter "NALA/PCA") filed its Application to Intervene. As part of its Application, NALA/PCA stated that seven of its members have

¹ Order Establishing Case, Directing Notice, Joining Parties, and Granting Protective Order, Case No. TO-

basic local telecommunications service certificates issued by the Missouri Public Service Commission (PSC) Specifically, NALA/PCA noted the following members as being certificated: (1) 1-800-Reconex, Inc.; (2) CAT Communications International, Inc.; (3) DPI Teleconnect, LLC; (4) EZ Talk Communications, LLC; (5) Local LineAmerica, Inc.; (6) Metro Teleconnect Companies, Inc.; and (7) NOW Communications, Inc.

6. In its Application, NALA/PCA made the following statements:

- (a) that its members have “a direct and substantial interest in the outcome of the Commission’s investigation into whether effective competition exists in Sprint’s exchanges.”;
- (b) “NALA/PCA members have direct experience in dealing with Sprint, and believes that their participation in this case will be highly informative to the Commission...”;
- (c) “The experience and interest of NALA/PCA members in attempting to develop competitive basis local service in Sprint exchanges demonstrates NALA/PCA’s substantial interest in participating in the Commission’s review of the state of competition in Sprint’s exchanges.”;
- (d) NALA/PCA’s intervention would serve the public interest because its contributions to the record in this proceeding would help ensure that the Commission has relevant information concerning the level of competition in Sprint’s service area.” (emphasis added); and
- (e) The outcome of this proceeding will have significant effect on NALA/PCA’s members’ ability to compete in the provision of basic local telecommunications services in Missouri.

7. Sprint did not oppose the NALA/PCA's Application for Intervention nor has Sprint opposed the participation of any other party seeking intervention. Sprint did, however, file a Motion for Joinder of Parties on March 17, 2003. As part of its Motion, Sprint requested that the above mentioned seven NALA/PCA members doing business in Missouri as CLECs be individually made a party to the case. Given the reasons the NALA/PCA gave in its Application for Intervention, Sprint stated that it anticipated discovery would be required for all seven CLECs.

8. At the Pre-hearing Conference for this case held on March 21, 2003, counsel for NALA/PCA represented that she could not speak on behalf of the seven individual members of NALA/PCA and that Sprint should be required to serve the members individually to determine if they objected to Sprint's Motion for Joinder.

9. On March 21, the Commission provided Notice of Sprint's Motion to the seven CLECs and established a March 28, deadline for any company or person wishing to respond. On March 24, 2003, Sprint filed its Notice of Service of Sprint Missouri, Inc.'s Motion for Joinder of Parties stating that it had notified all seven of the aforementioned CLECs via email, fax and overnight mail on March 24, 2003.

10. Two parties have replied to Sprint's Motion for Joinder of Parties. NOW Communications requested it be removed from Sprint's Motion because: (1) it no longer is a member of NALA/PCA; and (2) it has no interest in this Case. Sprint is not opposed to NOW Communication's request to be removed from Sprint's Motion given that it is no longer a member of NALA/PCA.

11. NALA/PCA also responded to Sprint's Motion for Joinder arguing that Sprint's Motion should be denied. Sprint not only strongly opposes the NALA/PCA's request of the Commission to deny Sprint's Motion of Joinder of the remaining six

CLECS but also adamantly denies many of the unsubstantiated claims made by the NALA/PCA.

12. Sprint adamantly denies NALA/PCA's claim that its action is in retribution for NALA/PCA's intervention in this case. As stated above, Sprint has not opposed the participation of any party seeking intervention in this case, including the NALA/PCA's Application for Intervention. Furthermore, Sprint specifically requested the Commission provide Notice to all 75 CLECS and to allow for their participation, including those members of NALA/PCA named in the NALA/PCA application Sprint is seeking to expand the participation – not limited it.

13. Sprint also adamantly denies the NALA/PCA claim that it intends to conduct a "fishing expedition" to inundate the competitive carriers with costly discovery to punish them for their membership in NALA/PCA. NALA/PCA's claim is not only unsubstantiated it is absurd. In its Application for Intervention, the NALA/PCA clearly states that these six member CLECs have "direct experience in dealing with Sprint, and believes that their participation in this case will be highly informative to the Commission". NALA/PCA itself has also stated that it opposes the Commission finding that effective competition exists in Sprint exchanges and that its members plan to contribute to the record in this proceeding.

14. NALA/PCA maintains that there is no authority for the Commission to grant joinder of the members of NALA/PCA. This is wrong. First, there is no question that NALA/PCA members are within the Commission's jurisdiction. Pursuant to Section 386.250 RSMo, the Commission's jurisdiction extends to all telecommunications companies. Second, under Missouri law, administrative tribunals that conduct hearings, such as the Missouri Public Service Commission, must conduct hearings in a manner

consistent with the fundamental due process rights granted in the state and federal constitution. *Brawley & Flowers, Inc. v. Gunter*, 934 S.W 2d 557 (Mo. App 1996). Due process is provided by affording parties a reasonable opportunity to be heard at a meaningful time in a meaningful manner. *Id.* “It requires that a litigant have knowledge of the claims of his or her opponent, have a full opportunity to be heard, and to defend, enforce and protect his or her rights.” *Id.* (Emphasis Added). In this case, NALA/PCA claims that its members have information relevant to this case that the Commission will find informative. Therefore, due process requires that the Commission join the members so that Sprint can fully explore the alleged claims against it. Further, as Sprint is entitled to challenge the information provided by the members of NALA/PCA, NALA/PCA falls within person who should be joined under Supreme Court Rule 52.04 (2)(i). Finally, the Commission has previously granted joinder for ALECs such as the members of NALA/PCA who likely to possess relevant information in a similar case, *In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company*, Case No TO-2001-467.² Therefore, there is ample authority, statutory and otherwise, for the Commission to grant joinder.

15. Sprint is also very concerned with NALA/PCA’s attempt to distort the record with their claim that Sprint is merely trying to have a second “bite at the apple”. NALA/PCA claims that Sprint previously requested the Commission name all 75 carriers as party to the case and the Commission denied Sprint’s request. The NALA/PCA is simply wrong. The fact is, as the record clearly shows, that Sprint never requested that all 75 CLECs be made party to this case. Sprint simply requested that all parties be given Notice and that three specific CLECs actually be made parties to this case. The

² See Order issued March 13, 2002.

Commission granted Sprint's request but did not even address the intervention status of the remaining CLECs other than provide a notice period. Further, when this case was opened, Sprint was not aware that members of NALA/PCA, who according to NALA/PCA, do not operate in Sprint's territories³, had relevant information. Sprint only became aware of this when it read NALA/PCA's motion to intervene.

16. With the exception of Now Communications (NOW) who is no longer a member of NALA/PCA, no other CLEC objected to Sprint's request. Surprisingly, NALA/PCA claims it is bad faith for Sprint to not object to NOW's request to be removed from the motion for joinder because NALA/PCA inaccurately identified NOW as a member. NALA/PCA claims this demonstrates bad faith because NOW was the only company identified that actually operates in Sprint's territory. This argument does nothing to weaken the reason Sprint sought to join the members individually – to ensure that Sprint could seek discovery. What this argument does do is raise the question of whether NALA/PCA's actions may be in bad faith as it is allegedly going to "contribute" somehow to the record in this case, despite the fact that its members do not operate in Sprint's territory.

17. As noted above, the six CLECs were given notice by Sprint and by the Commission. The Commission's Order gave persons or companies until March 28, 2003 to respond to Sprint's request; however, none of the six CLECs did so. If the six individual CLECs were opposed to being made a direct party to this case, they have had ample notice and time to raise such an objection.

WHEREFORE, for the reasons stated above, Sprint respectfully requests the Commission reject the NALA/PCA's claims and approve Sprint's Motion to join the

³ See NALA/PCA's Reply to NOW Communications Response to Sprint's Motion for Joinder at

following six parties: (1) 1-800-Reconex, Inc.; (2) CAT Communications International, Inc.; (3) DPI Teleconnect, LLC; (4) EZ Talk Communications, LLC; (5) Local LineAmerica, Inc.; (6) Metro Teleconnect Companies, Inc.; and (6) to this case. Alternatively, Sprint has no option but to request the Commission join all 75 CLECs as parties to this case even though this will unnecessarily burden all parties involved.

Respectfully submitted,
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/electronic/facsimile mail, this 7 day of April, 2003.

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A handwritten signature in black ink, appearing to read "Lisa Creighton Hendricks", written over a horizontal line.

Lisa Creighton Hendricks