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April 24, 2003

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Missouri Public Service Commission

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

**Re: Mid-Missouri Telephone Company's filing of a Proposed Wireless Terminating Tariff, PSC Mo. No. 3, Case No. IT-2003-0376, Tariff No. JI-2003-1667**

Dear Secretary:

Enclosed for filing please find an original and five (5) copies of Mid-Missouri Telephone Company's Suggestions in Opposition to Application to Intervene.

Thank you for seeing these filed.

Sincerely,

Craig S. Johnson

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Enc.
cc: Denise Day
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**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

| | | |
|---|---|---|
| **In the Matter of Mid-Missouri Telephone Company's filing of a Proposed Wireless Terminating Tariff, PSC Mo. No. 3.** | ) ) ) ) | **Case No. IT-2003-0376** **Tariff JI-2003-1667** |

**Suggestions in Opposition to Application to Intervene**

Mid-Missouri submits the following Suggestions in Opposition to the April 17, 2003 Application of Sprint Spectrum, L.P. d/b/a Sprint PCS (Sprint) to Intervene:

1. The proposed tariffs were filed on March 5, 2003, with proposed effective date of April 6, 2003. Notice of the tariff filing was contained in the Commission's Utility Tariff Filings showing a filing date of March 5, 2003. Sprint's Application, dated April 17, 2003 is out of time. Sprint's Application also fails to attempt to state good cause as required by 4 CSR 240-2.075(5).

2. The Commission by Order of April 3 suspended this tariff for further review within 60 days until June 5. Due to the lack of any formal opposition filed before the initially proposed effective date, that Order did not establish any procedural schedule. There is now inadequate time to develop a procedural schedule, pre-file testimony, conduct a hearing, and issue any Commission decision based upon a properly developed record.

3. The tariff at issue is substantially the same as those filed and approved in TT-2001-139, in which proceeding Sprint timely intervened, in which a contested case

hearing schedule was conducted, and in which proceeding the tariffs were approved by the Commission. Sprint tenders no reason for failing to timely intervene here.

4. The substantive difference between the tariff proposed here and those approved in TT-2001-139 is the inclusion of a default interMTA factor.

5. In its Application to Intervene Sprint states that the interMTA tariff factor should be rejected because it constitutes a "unilateral" determination of traffic jurisdiction in violation of the standards set by the FCC. Sprint specifically states that the FCC has ruled "that the location of the initial cell site when the call begins shall be used as the determinate of the geographic location of the customer". Sprint's comments do not justify intervention because, as This commission has previously determined, this tariff is not a reciprocal compensation arrangement to which such standards apply.

6. The FCC First Report and Order, paragraph 1044, stating that the initial cell cite location was to be used, was issued on August 6, 1996, over 6 years ago. The FCC reciprocal compensation rules containing the definition of the MTA as the local calling scope is found at 47 CFR 51.701(b)(2) were also first promulgated on August 6, 1996. The scope of the reciprocal compensation rules found in Subpart H of 47 CFR 51 constitute the standards for developing reciprocal compensation. Sprint has no reciprocal compensation arrangements with the Company.

7. Sprint has failed to ever include the FCC required initial cell cite location in any traffic report provided to the Company by Sprint, or by SWBT. In fact in recent negotiations Sprint resisted the Company's negotiations insisting that such information be provided, stating that it did not have the ability to provide the initial cell cite location.

Sprint should not be heard to rely on a requirement for initial cell cite location when Sprint has failed to develop the ability to provide such information for over 6 years.

8. Sprint opposes the tariff on the grounds that reciprocal compensation standards are allegedly violated by an interMTA factor being contained in the tariff. The tariff at issue is not a reciprocal compensation arrangement. This Commission so found in its February 8, 2001 Report and Order in TT-2001-139:

> "However, the record shows that at present there are no such agreements between the parties to this case. The Act does not state that reciprocal compensation is a necessary component of the tariffs of LECs or ILECs. Therefore, the Commission concludes that Section 251(b)(5) of the Act simply does not apply to the proposed tariffs herein at issue. for the same reason, the Commission concludes that the proposed tariffs are not unlawful under Section 251(B)(5) of the Act."

Sprint should not be heard to oppose the tariff on the ground it is inconsistent with reciprocal compensation principles. The Commission has found that the tariffs need not apply reciprocal compensation principles. As the Commission also held in that same Report and Order, if there are aspects of the tariff which Sprint does not like, it can take advantage of the reciprocal compensation principles of the Telecommunications Act of 1996 and compel a reciprocal compensation agreement.

9. Commission Orders approving changes in SWBT's Wireless Interconnection Tariff, and Commission Orders approving interconnection agreements to which Sprint was a party, all contained language prohibiting Sprint from sending traffic to the Company without an approved compensation agreement therefore. Sprint has failed to abide these Orders and the terms of its own agreements by sending traffic to the Company without an approved agreement therefore. Sprint should not be heard to complain about the terms of a tariff provision necessitated by Sprint's failure under the

Act, under Commission Order, and under approved agreements, to obtain an approved agreement prior to sending traffic destined to terminate to the Company. The Company has failed to obtain compensation from Sprint for over 5 years.

10. The terms of the tariff that have been approved in TT-2001-139, and that are also contained in the proposed tariff, Section E. 2, requires Sprint to provide individual call detail. Since the initial effective dates of such tariffs in February of 2001, Sprint has failed to provide such call detail.

11. The terms of the tariff that have been approved in TT-2001-139, and that are also contained in the proposed tariff, Section E. 3, provide that if Sprint is unable to provide the requisite billing record detail, it shall provide quarterly traffic study reports to utilize as a surrogate for the determination of interMTA and intraMTA traffic. Since the initial effective dates of such tariffs in February of 2001, Sprint has failed to provide such quarterly traffic studies.

12. As a consequence or Sprint's decisions (1) to send both interMTA and intraMTA traffic to SWBT destined for the Company, (2) to do so in the absence of authorization therefore, and (3) to not provide either call detail or traffic studies, the Company will not be provided with the billing information the tariff requires. This necessitates the use of some "default" interMTA factor to utilize for billing purposes, and is the reason this provision was included in the tariff.

13. All that Sprint need do if it disputes the factor is (1) provide call detail, or (2) provide traffic studies, or (3) negotiate or arbitrate a compensation agreement superseding applicability of the tariff. This is no more than the law provides, what

Commission Orders have directed, or what Sprint's own interconnection agreements state.

14. Continuing to delay the implementation of these tariffs, which would unify all small company tariffs, will also unduly prejudice the Company. After the conclusion of its last negotiations with Sprint in January of 2003, which did not result in any agreement, Sprint's traffic terminating to the Company has increased from 2000 MOU per month to 42,000 MOU per month, an increase of twenty-fold. Although requested to do so, Sprint has reported it cannot explain why the traffic increased so dramatically. Not only does Sprint have the inability to provide call detail, it apparently cannot track traffic it delivers to SWBT for termination to the Company. Nevertheless Sprint does continues to deliver the traffic without paying any compensation. Now the Company's peril has been dramatically increased. Approving the tariff will assure that in the future the Company has some authorization to collect for this traffic other than its access tariff.

WHEREFORE, on the basis of the foregoing, the Company requests that the Application of Sprint to Intervene and Oppose the tariff be denied.

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By _____
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ATTORNEYS FOR the COMPANY

**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~~ 24 day of Apr. 1, 2003, to all attorneys of record in this proceeding.

Craig S. Johnson MO Bar No. 28179