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January 7, 2000

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Suite 530
Jefferson City, MO 65101

FILED²
JAN 07 2000
Missouri Public
Service Commission

Re: In the Matter of the Mid-Missouri Group's Filing to Revise its Access Service
Tariff P.S.C. Mo. No. 2
Case No. TT-99-428

Dear Mr. Roberts:

Enclosed for filing are an original and fourteen (14) copies of a Reply Brief and Motion to Accept Late-File of Sprint Spectrum L.P. d/b/a Sprint PCS.

If you have any questions, please do not hesitate to contact me at (913) 345-7915.

Sincerely,

Linda K. Gardner
Linda K. Gardner *Denis Bergmeyer*

LKG:ket
Enclosures
cc: All Parties

FILED²

JAN 07 2000

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of Alma Telephone Company's)
Filing to Revise its Access Service Tariff,)
PSC Mo. No. 2)

Case No. TT-99-428, et al.

REPLY BRIEF OF SPRINT SPECTRUM L.P d/b/a SPRINT PCS

Ignoring the hyperbole and the attempts to re-argue prior cases¹, STCG and MMG's arguments come down to this: whether access charges or local reciprocal compensation rates are appropriate is not determined by whether the underlying call is toll or local but by whether there is a "direct interconnection" between the originating carrier and the terminating carrier. According to this argument, if there is no "direct interconnection" the call is subject to access charges *even if* it originates and terminates within the same local calling scope as defined by the FCC or this Commission, as appropriate.

This argument simply misses the point. For all intents and purposes, wireless carriers *do* have direct interconnection for the *termination* of traffic on the ILEC's network. While the ILECs have not made appropriate business arrangements for the routing of local traffic from their customers to Sprint PCS, Sprint PCS has purchased facilities from Southwestern Bell to the ILECs. These facilities are purchased on a per-minute of use basis, but none the less, the facilities have been purchased to connect Sprint PCS traffic to the ILECs. The only issue raised by this case is whether access

¹ Much of MMG's brief takes issue, directly or indirectly, with the Commission's decision in Case No. TT-97-524 allowing SWBT to alter its wireless interconnection tariff to one of a transiting service only. MMG argues that SWBT's rates pursuant to that order are wrong and that the CTUSR reports are insufficient to allow it to be compensated for terminating wireless traffic. However, little attempt has been made to use the CTUSR reports to seek appropriate compensation.

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charges can be assessed on this intra-MTA traffic. This is not a forum to resolve the ILEC's refusal to negotiate interconnection agreements with the wireless carriers or their justifications for having done so.²

The emphasis on the number of carriers involved, instead of the jurisdictional nature of the call, is simply incorrect when determining the compensation obligations of the parties. As Southwestern Bell Wireless states: "The FCC's determining factor on what charges apply—access charges or negotiated reciprocal compensation rates for transport and termination—is whether the traffic is local or long distance, not the number of carriers involved in completion of the call."³

In support of its position, MMG relies on narrow interpretations of certain words or phrases in the FCC Order without regard to overall context—and then only when it suits them.⁴ For example, while several parties cite to paragraph 1034 of the FCC's First Report and Order in CC Docket No. 96-98, MMG focuses on the FCC's use in that paragraph of a "three carrier" example for access charges and a "two carrier" description for reciprocal compensation. The FCC did not simply state, however, that two carriers require reciprocal compensation and three carriers require access. To the contrary, the FCC explained its rationale:

² As the record in this case amply demonstrates, Sprint PCS has repeatedly attempted to negotiate an agreement with the MMG companies. Sprint PCS takes serious exception to the MMG companies statement that Sprint PCS is without ethics, failed to offer to pay, is satisfied to accept a "free ride," is "misappropriating" MMG facilities without any attempt at payment. These statements are in direct contradiction with the evidence before the Commission and are simply an attempt to mask, through verbose posturing, the MMG companies' refusal to negotiate in good faith.

³ Initial Brief of Southwestern Bell Wireless, Inc., p. 5.

⁴ While STCG also argues that the rule requires a single LEC and a single CMRS provider within the MTA, it does suggest that the FCC's rules "leave real doubt" regarding the appropriate definition of traffic when a CMRS provider transits through a LEC to reach the terminating LEC. (Initial Brief of STCG, p.6).

We disagree with Frontier's contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers-- typically, the originating LEC, the IXC, and the terminating LEC-- collaborate to complete a **long-distance** call. As a general matter, in the access charge regime, the long distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a **local** call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.⁵

For wireless providers, a local call is traffic to and from a wireless network that originates and terminates within the same MTA. The wireless end-user does not pay the transiting carrier as it would an IXC for toll calls, but pays charges to the originating wireless carrier. The wireless originating carrier is attempting to compensate the terminating carrier for completing that call as required by the FCC—it merely seeks to pay the correct amount – reciprocal compensation.⁶

Defining a call as local or toll based upon the number of carriers involved produces nonsensical results. There are numerous examples of three or more carriers being involved in what clearly are local calls and two carriers being involved in what

⁵ First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Docket 96-98 ¶ 1034 (emphasis added). Hereinafter cited as "First Report and Order".

⁶ Both MMG and STCG assume that SWBT's function as a transiting carrier converts the arrangement into a "three carrier" arrangement similar to the IXC description in First Report and Order, ¶ 1034. However, even if they are correct that three carriers automatically converts a call to the access charge regime, purchasing transport does not necessarily add a third carrier subjecting the call to access. As Staff witness Clark states, "a carrier purchasing that [transport] unit for all intents and purposes, that's their network while using that [transport] unit." (T. 298) For example, Sprint PCS is merely using one of several technically feasible means to get to the small telephone company exchange through the purchase of SWBT's transit services. Sprint PCS is still responsible for this traffic. SWBT has not assumed the role of "carrier" similar to an IXC, but as a provider of an underlying service used by Sprint PCS.

clearly are toll calls.⁷ For example, MoKan Dial does not have direct physical connection with every LEC in the Kansas City MCA, yet calls originating and terminating within the MCA area are considered local calls, subject to bill and keep and not access charges.⁸ The fact that MoKan Dial uses an indirect connection to originate or terminate local call with the MCA (whether to wireline or wireless customers) does not convert the call to a long distance call subject to access charges. To the contrary, the Commission has established the MCA area as a local calling area and the FCC's rules establish reciprocal compensation as the appropriate intercompany compensation for local calling.

If, as MMG argues, the FCC's use of "a" carrier in this context is "a clear indication that reciprocal compensation is for instances where two, not three, carriers collaborate to complete a local call" access charges would be owed by MoKan Dial (and any other provider in the MCA area lacking direct physical connections with all other providers) on its MCA traffic.⁹

Whether intraMTA calls are passed directly from the wireless carrier to the terminating LEC or the wireless carrier chooses to employ the transport facilities of another carrier makes no difference. Neither the federal Telecommunication Act of 1934, as amended,¹⁰ nor the FCC's rules, provide any basis for a LEC to avoid its

⁷ For example, a call from Warrensburg, MO to Sedalia, MO placed from a Sprint Missouri, Inc. toll customer is a long distance call originating on Sprint Missouri, Inc.'s network, terminating on Southwestern Bell Telephone's network, with no intervening carrier. No party disputes that access charges apply in this instance despite the fact that only two carriers collaborate to complete that call and not three.

⁸ (T. 139-141)

⁹ Initial Post Hearing Brief of Alma, MoKan Dial, Mid-Missouri, Choctaw, Chariton Valley, Peace Valley, (Mid-MO Group), p. 5.

¹⁰ Hereinafter, "Telecom Act".

obligation to interconnect on reciprocal terms with a wireless provider on the basis that the requested interconnection is indirect.

47 C.F.R. §20.11(b)(1), 20.11(b)(2) and 51.701(e) explain that the reciprocal compensation obligation is triggered for a LEC whenever a wireless provider terminates local traffic that originates on the LEC's facilities, and vice-versa. In particular, 47 C.F.R. §20.11 specifies that a LEC must provide the type of interconnection reasonably requested by a wireless provider, so long as the interconnection is technically feasible and economically reasonable, and that both parties must comply with principles of mutual compensation. These rules disregard any intermediate transportation of traffic that may or may not occur. The obligation is defined simply by where the local traffic originates and terminates.

These rules track the statutory provisions that added that obligation. 47 U.S.C. §251(a) imposes a duty on all telecommunications carriers to interconnect "*directly or indirectly*" with other carriers. As the FCC explained, "telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) *either directly or indirectly* based upon their most efficient technical and economic choices."¹¹ Thus, the FCC recognized that indirect interconnection can be an efficient technical and economic choice in certain circumstances such as those present here.

The obligation for reciprocal compensation is also not avoided by the claim that there is no return traffic involved—i.e. the landline to wireless traffic is toll traffic to the end-user carried by an IXC. Whether the members of STCG and MMG made the business decision to terminate the intraMTA landline to wireless call through an IXC or

not, fails to change the character of the traffic. The traffic is local traffic subject to local reciprocal compensations because it originates and terminates within the same MTA. The decision of the MMG and STCG members to not complete these calls themselves may shift whom the wireless carrier receives the payment from but not the underlying nature of the call. As Sprint PCS witness Propst stated repeatedly, if the originating LEC has a business arrangement with another carrier to complete that call and to compensate the terminating wireless carrier, that arrangement will be accommodated in the negotiations so that there is no double recovery.¹²

To hold otherwise will allow the LEC's business choices to dictate the compensation instead of the nature of the call.¹³ Under this argument, all the LEC need do to continue to receive access rates and to avoid reciprocal compensation rates is to allow another carrier to handle the landline to wireless intraMTA call. However, that is not the law. Rather, it is the nature of the call that dictates compensation. As stated, intraMTA traffic to and from a CMRS network is local traffic subject to local reciprocal compensation. This status is not changed merely because of the small ILEC's business decision.

As stated in the Initial Briefs of several parties, wireless originated traffic that terminates to MMG exchanges within the same MTA is local traffic subject to local reciprocal compensation rates and not access rates. Sprint PCS has never denied its

¹¹ First Report and Order, ¶ 997 (emphasis added).

¹² (T. at 330, 332-334, 338-339) See also (T. at 435-436)

¹³ Or even, as MMG and STCG argue, the nature of the interconnection (direct or indirect connection). MMG simply opines that if a wireless carrier directly connected to the small ILEC, the small ILEC might then create reciprocal traffic. (Initial Post Hearing Brief of Alma, et. al., p. 14) However, nothing compels it. If the MMG and STCG argument is adopted, *even if* the wireless carrier incurred the expense of a

obligation to compensate MMG companies for the use of their facilities for the termination of intraMTA wireless originated traffic terminating to the MMG. Sprint PCS has actively and repeatedly sought to negotiate with MMG companies appropriate compensation arrangements that comply with FCC mandates. These efforts have been rejected. The failure of MMG to receive compensation is not due to the indirect connection, or the CTUSR reporting system, or the "incentives" of the wireless carriers. To the contrary, the failure is caused by MMG's complete unwillingness to negotiate appropriate compensation arrangements in favor of the unreasonable and unlawful insistence on compensation at its access rates. The proposed tariff simply perpetuates this insistence and will, at best, encourage MMG to delay and drag out any negotiation for other compensation.

The proposed tariff must be rejected.

Respectfully Submitted,
SPRINT SPECTRUM L.P. d/b/a SPRINT PCS

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CERTIFICATE OF SERVICE

direct connection, the small ILEC might still route the return calls through an IXC, thereby, avoiding its obligation for reciprocal compensation.

I hereby certify that a copy of the foregoing Reply Brief of Sprint Spectrum L.P. d/b/a Sprint PCS was delivered, via facsimile and US mail, to all counsel of record this 7th day of January, 2000.
