BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In Re: The Traffic Termination Agreement By and Between Sprint Communications Company L.P and Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996	)))))))	**Case No. CK- 2004-0031**

RESPONSE OF SPRINT COMMUNICATIONS COMPANY L.P TO MOTIONS TO INTERVENE

COMES NOW Sprint Communications Company L.P. (hereinafter "Sprint"), and hereby responds to the motions to intervene and requests for hearing filed by the Missouri Independent Telephone Company Group ("MITCG"), and the Small Telephone Company Group ("STCG"), as follows:

INTRODUCTION

On July 11, 2003, Sprint filed an Application for Approval of a Traffic Termination Agreement between it and Southwestern Bell Telephone Company ("SWBT"). On July 30, 2003 and August 1, 2003, STCG and MITCG, respectively, filed motions to intervene. Both groups argue that the FCC has ruled that the provisions like those in the Sprint/SWBT agreement allowing traffic to be transited to the networks of members of these groups facilitating indirect interconnections are not required under the Federal Telecommunications Act of 1996 (the "Act"). Further, MITCG and STCG contend that allowing traffic to terminate to them through indirect interconnections discriminates against them. Finally, they argue that allowing traffic to transit to them is

inconsistent with the public interest because the agreements allegedly allow the parties to avoid paying third parties for traffic. These arguments are misplaced and should not defeat the approval of the Sprint/SWBT agreement. Further, these arguments are not sufficient to grant intervention or to grant a request for a hearing.

I. ILECS ARE OBLIGATED TO PROVIDE FOR INDIRECT INTERCONNECTION AND TRANSITING TRAFFIC

The Act and the Federal Communication Commission's ("FCC's") implementing rules, require telecommunications carriers to interconnect, either directly or indirectly with other carriers, and to transit traffic.[1] STCG and MITCG are incorrect when they suggest that federal law imposes no duty to facilitate or aid in the interconnection of two unrelated carriers. In this regard, Section 251(c)(2)(a) requires ILECs to, among other things, interconnect with requesting carriers for the transmission and routing of telephone exchange service and exchange access. The rules implementing this provision of the Act identify the tandem as one of the technically feasible points of interconnection within the incumbent LEC's network.[2] By definition, interconnection at a tandem switch provides access to the tandem switching functionality by connecting the requesting carrier with all the end offices subtending the tandem, including the end offices of third parties.

Contrary to any inferences the MITCG and STCG wish the Commission to draw, the FCC has not determined that ILECs have no duty to provide transit service.[3] In an arbitration decided by the **Wireline Competition Bureau**, acting on delegated authority and standing in stead of the Virginia Commission, the Wireline Competition Bureau

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1 *See* 47 U.S.C. § 251(a), 47 C.F.R. 51.100(a)(1).

2 47 C.F.R. § 51.305(a)(2)(iii)

3 *See In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.,* CC Docket No. 00-218; CC Docket No. 00-249; CC Docket No. 00-251, 2002 FCC LEXIS 3544, July 17, 2002 Released; Adopted July 17, 2002. (Hereinafter referred to as the "Verizon decision.")

addressed the issue of whether Verizon must charge TELRIC-based rates for transit services. On this issue, the Wireline Competition Bureau "declined to determine for the first time on delegated authority from the FCC, that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates."[4] The Wireline Competition Bureau, however, was careful not to undermine the CLEC's ability to obtain the UNEs that comprise transit service. In this regard, the Wireline Competition Bureau stated:

> We note, however, that Verizon has not argued that competitive LECs should be prevented from using UNEs to exchange transit traffic with third-party carriers. To avoid such a result, we remind the parties of the petitioners' rights to access UNEs independent of Verizon's terms for transit service. Furthermore, we caution Verizon not to apply its terms for transit service as a restriction on the petitioners' rights to access UNEs for the provision of telecommunications services, including local exchange service involving the exchange of traffic with third-party carriers.[5] (Emphasis supplied.)

The Verizon Order lists tandem switching and interoffice transport as examples of UNEs that can be ordered.[6] Competitors can, therefore, order a combination of these UNEs at TELRIC-based rates to achieve transit service. As such, the MITCG's and STCG's assertions that the FCC ruled that there is no federal obligation to transit traffic are not accurate.

Clearly, SWBT has an obligation under the Act to facilitate indirect interconnection and transit traffic.

II. THE INTERCONNECTION AGREEMENT DOES NOT DISCRIMINATE AGAINST MITG AND STG

In order for the interconnection agreement to discriminate against a carrier not a party to the agreement in violation of the section 252(e) of the Act, the agreement would

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4 *Verizon* at ¶ 117.
5 *Id* at ¶ 121.
6 *Id.*

have to treat a specific carrier different than all other similarly situated carriers. Further, in light of the overall purpose of the Federal Telecommunications Act, it is likely that Congress intended § 252(e) to forbid anticompetitive discrimination, *i.e.*, collusive discrimination or oligopolistic behavior among the incumbent and one or more incoming carriers. *MCI Telecomms Corp v. Illinois Bell Telephone Company,* 1999 US DIST LEXIS 11418. (N.D. Ill, June 22, 1999). Nowhere in any of the pleadings have either MITCG or STG identified any manner in which they are treated different than any other non-party, much less a manner that is anticompetitive. MITCG and STCG's allegations are solely focused on the difference between parties to the agreements and non-parties. As these groups are not similarly situated, there is no allegation of discrimination that would in any fashion provide grounds for the Commission to reject the termination agreement.

III. THE INTERCONNECTION AGREEMENT IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, OR NECESSITY

Both STCG and MITCG make repeated claims that the termination agreement is inconsistent with the public interest because it purportedly allows Sprint to transit traffic for termination to their members without compensation. However, the agreement does not affect the right of STCG or MITCG to receive compensation for traffic terminated in their members' respective service areas. First, as acknowledged by STCG, the Commission has held that these type of agreements do not impose terms on third-parties. (See Paragraph 16 of STCG's Motion to Intervene). Therefore, there is nothing the agreement can do to affect third parties' right to compensation. Further, the agreement expressly acknowledges that "the Parties agree to enter into their own agreement with Third Party Telecommunications Carriers prior to delivering traffic for transit to the

Third Party." Section 7.8. Therefore, the agreement specifically preserves any rights STCG or MITCG may have to compensation.

Finally, while STCG and MITCG repeatedly claim that the agreement allows the transit of toll traffic, no such transit is authorized under the termination agreement. As a matter of fact, the agreement provides for the *exact opposite*. Under Section 7.5, if toll traffic transits the tandem, *it will be treated as subject to Meet-Point Billing and fall under the access tariff*. Therefore, the traffic will not be transited under the termination agreement but transported under an access tariff. Meet-Point Billing arrangements produce standard 1101 records that are sent to both the transporting and terminating company, in compliance with applicable industry standards. The Meet-Point Billing arrangement occurs over feature group C and D protocols. Notably absent from STCG and MITCG's pleading is any allegation that Meet-Point Billing presents any issues. Instead, STCG and MITCG ignore the plain language of the agreement, specifically, the use of Meet-Point Billing and tariffs and assert that as the agreement mentions toll, it somehow allows toll to transit under the agreement. Intervenors are clearly wrong.

While Sprint is not in a position to deny that STCG and MITCG may receive traffic through indirect interconnections under other approved agreements within the State of Missouri upon which compensation is not received, Sprint is at a loss to understand how the provisions of this agreement uniquely defies public policy such that it should be rejected. STCG and MITCG have other cases in which this issue is being addressed by the Commission. These cases include Case No. TX-2003-0301 in which a rule governing records exchange is currently under development. Additionally, there is Case No TC-2002-057, a complaint case filed by MITCG against several wireless

providers. In that case, to the extent that the MITCG companies had applicable tariffs for traffic transited under an interconnection agreement, the amounts were paid. Further, the disagreement in that case was not whether the originating party was willing to compensate the terminating party on the remaining traffic not covered by a tariff. The disagreement was the rate of compensation for that traffic. Cleary, to the extent that STCG or MITCG have issues relating to the termination of traffic transited under a termination agreement, they retain the legal right to raise the issues and have raised them before this Commission. Rejecting an agreement voluntarily negotiated between two parties and consistent with the provisions of 251 and 252 of the Act is not the proper remedy.

IV. THE COMMISSION SHOULD NOT GRANT INTERVENTION AND SHOULD PROCEED TO RULE ON THE AGREEMENT WITHOUT A HEARING

In order to grant intervention, the Commission is required to find that the interveners (a) have an interest different than the general public which may be adversely affected or (b) granting intervention would serve the public interest. Neither condition is present in this case. First, as STCG admits, the agreement will not impose any terms on them. Second, as established above, STCG and MITCG retain all legal rights with respect to any traffic they terminate. Further, granting intervention will not serve the public interest as STCG and MITCG's stated intent is to merely attack provisions of an agreement that fulfills SWBT's federal obligation to offer transit service and has been repeatedly approved by the Commission in almost every interconnection agreement on file with the Commission. Therefore, the Commission should deny intervention.

CONCLUSION

For the reasons stated herein, the Commission should deny the motions to intervene, deny the request for a hearing and approve the interconnection agreement.

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 8th day of August, 2003.

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