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November 5, 2003

FILED

NOV 05 2003

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Missouri Public
Service Commission

PHIL HAUCK (1924-1991)

Secretary of the Commission
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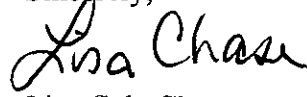
Re: Application to Intervene in Opposition to Agreement and Request for Hearing
Case No. TK-2004-0180

Dear Secretary:

Enclosed please find an original and eight (8) copies of the MITG's Application to Intervene in Opposition to Agreement and Request for Hearing.

Thank you for seeing this filed.

Sincerely,


Lisa Cole Chase

CSJ:lw

Enclosures

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

FILED²
NOV 05 2003

**In Re: The Commercial Mobile Radio Service (CMRS))
Interconnection Agreement Between SBC Missouri and)
Sprint Spectrum L.P. Under Sections 251 and 252 of) Case No. TK-2004-0180
the Telecommunications Act of 1996.)**

*Missouri Public
Service Commission*

**Application to Intervene in Opposition To Agreement, and
Request for Hearing**

COMES NOW the MITG¹, and hereby submit this Application for Intervention in Opposition to Approval of the proposed Agreement between Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS") and SBC Missouri ("SBC"). The MITG request that those provisions of the Agreement pertaining to "transit" of Sprint PCS originated traffic destined for carriers not party to the Agreement, such as the MITG companies, and its definitions of "local" traffic, and its provisions for recording and measuring such traffic, be disapproved, rejected, or removed from the Agreement, or, in the alternative, that the Agreement be rejected or not approved in its entirety.

In support of this Application, The MITG state as follows:

1. The MITG are ILECs. Under 47 USC 252(e)(2)(A) the MITG are telecommunications carriers against whom no interconnection agreement, or portion thereof, can discriminate against, or prejudice, unless that carrier is party to the agreement itself.
2. Alma and Choctaw are each end office companies being subtended by SWB's tandem, MoKan is an end office company subtended by Sprint and receives inter-tandem transited traffic from SBC's tandem. Chariton Valley, Mid-Missouri and

¹ The MITG consists of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., and Northeast Missouri Rural Telephone Company.

Northeast are each tandem companies receiving traffic on common trunk groups of SBC from SBC's tandems. Each MITG company is directly interested in and affected by provisions of the agreement whereby Sprint PCS and SBC propose to transit traffic from each other to the MITG companies.² Yet the MITG have not been a participant in the negotiation of the proposed agreement.

3. The agreement is prejudicial and discriminatory to MoKan and Choctaw, each of whom have their own interconnection agreements with Sprint PCS, in that, the definitions of "local" traffic in this agreement are not consistent with the Agreements between MoKan and Choctaw and Sprint PCS.

4. The agreement is prejudicial and discriminatory to Alma and Mid-Missouri Telephone, which currently have in place PSC approved wireless termination service tariffs. These tariffs require Sprint PCS to provide individual call record detail necessary to distinguish interMTA from intraMTA traffic, or if SBC's CTUSR is to be utilized, for Sprint PCS to provide quarterly traffic reports establishing interMTA and intraMTA traffic proportions. However the Agreement purports to allow a different measurement and recording mechanism for traffic transiting to Alma and Mid-Missouri, as well as a different definition of "local" traffic, which is inconsistent with their tariffs.

5. The Agreement would allow interMTA traffic to be delivered over the intraLATA toll network, in contradiction to the proposed Enhanced Record Exchange Rule that SBC, Sprint PCS, Staff, the MITG, and the rest of the Missouri industry has been working upon for over a year.

² See §§ 1.63, 3.2.4.1, 6.3.2.1 (This traffic [terminating intraLATA InterMTA] is routed over the local Interconnection Trunks within the LATA. Carrier can terminate Terminating IntraLATA InterMTA Traffic to Telco using local Interconnection Trunks, subject to the compensation method described in Section 6.3.2.2.)

6. The Agreement would not require adequate call information, recording, and transmission of call detail as would be required by the proposed proposed Enhanced Record Exchange Rule that SBC, Sprint PCS, Staff, the MITG, and the rest of the Missouri industry has been working upon for over a year.

7. Such “transit” provisions are discriminatory and prejudicial to the MITG in that, as non-parties they have been denied the ability to negotiate the same terms and conditions to protect their interests as SBC has enjoyed. In particular the MITG companies are precluded from recording their own terminating minutes of use for billing purposes, whereas the parties to the Agreement have reserved this right to themselves.

8. The inclusion of transit traffic provisions in this agreement between SBC and Sprint PCS 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 CMRS providers. As it has in the past, in contravention to prior Commission Orders, in contravention to prior interconnection agreements, and in contravention to Missouri wireless termination service tariffs, Sprint PCS traffic will be terminated to the MITG companies whether or not the terms of the instant agreement are complied with.

9. The MITG are ILECs and have an interest in ending the utilization of “transit” traffic provisions in interconnection agreements they are not party to.

10. As ILECs the MITG have the right to negotiate their own interconnection agreements with CMRS providers, which right is equal in dignity to that of SBC.

11. The past reasoning of SBC that it is obligated to “transit” traffic, has been rejected by the FCC.³ In fact, SBC has acknowledged that it has no federal obligation to transit traffic.⁴ 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. Neither SBC nor Sprint PCS are ILECs in the service territories of the MITG.

12. 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.

13. As a result of over 5 years of experience with such “transit” traffic provisions in SBC 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, and upon their customers:

³ 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, Memorandum Opinion and Order, CC Docket No. 00-218, para. 117 (rel. July 17, 2002).

⁴ SWBT has made the following statements to this Commission in BPS Telephone Company et al. Complaint v. Voicestream and Western Wireless, Case No. TC-2002-1077, *Southwestern Bell's Initial Brief*, filed Dec. 12, 2003:

1. “Southwestern Bell is not required by federal law or regulation to provide transit traffic.” *Id* p3.
2. “[T]he FCC has not imposed an obligation to carry transit traffic, particularly at TELRIC rates.” *Id.* p16.
3. “While existing interconnection agreements require Southwestern Bell to transit wireless traffic, there does not appear to be an obligation to do so under the Act after these agreements expire.” *Id.* p.16-17. SWBT has made similar statements to the FCC in In the Matter of Developing a Unified Inter-carrier Compensation Regime, CC Docket No. 01-92, *Comments of SWBT Communications, Inc.*, filed Oct. 18, 2002:
 1. “[N]either the Act nor its rules require third party carriers to provide indirect interconnection or transit services.” *Id.* p.1.
 2. “The duty to interconnect indirectly does not require any carrier to provide transit services to any other carrier.” *Id.* p. 3.

- a. CMRS traffic is placed on access facilities to the MITG without compliance with their access tariffs, and without compliance with their wireless termination service tariffs;
- b. the interexchange carrier responsible for the access facilities from the MITG, 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;⁵
- c. as a result the MITG have experienced unauthorized traffic termination, a failure of such traffic to be reported, quantified, identified, or compensated for;
- d. the loss of compensation for interexchange traffic terminating to the MITG 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.

14. 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 CMRS providers nor the transiting LECs such as SBC have bothered to enforce such provisions of these Orders or Agreements. When the MITG have attempted to bill for reported transited traffic, their bills have been dishonored by CMRS providers, on the ground that no agreement exists. The Commission has ordered that no traffic is to be terminated from CMRS providers to the MITG companies unless there is

⁵ The Agreement provides that the originating party is responsible for payment of transit traffic, and if a third party carrier makes a claim against SBC, SBC will advise both the carrier and third party that they need to resolve the matter between themselves. §3.2.4.2. However, when toll traffic is delivered to the MITG exchanges by SBC, SBC is the party responsible to compensate the MITG companies under their approved access tariffs.

an approved agreement with the MITG companies therefore. In Missouri the past 5 years' experience has demonstrated that SBC'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.

15. 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.

16. The Agreement defines "local" traffic as intraLATA traffic, not intraMTA traffic. Some MITG companies have "transit" traffic terminating on an intraLATA, interMTA basis, and the Agreement's definition of "local" CMRS traffic will operate to their detriment and discrimination in that it will impair their ability to obtain access compensation for interMTA traffic. The Agreement, in utilizing this definition of "local" traffic, is not in accordance with the acceptable methods of determining interMTA and intraMTA traffic volumes established by the Federal Communications Commission.

17. Such provisions are prejudicial and discriminatory in that they will allow the termination of toll traffic over a local connection in derogation to the access tariffs of the MITG which require such such traffic to be compensated by SWBT as the interexchange carrier responsible for the access facility the traffic is delivered over, without assigning SWBT the responsibility to pay for such traffic.

18. The following provisions or sections of the proposed agreement, either by their own terms, or in conjunction with other terms therein, give rise to this objection to transit traffic provisions: 1.35, 1.63, 3.2.4.1, 3.2.4.2, 3.3.3.1.2, 3.4.1, 5.4, 6.3.1.3, 6.3.2.1, 6.3.2.3.

19. As set forth above, 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.

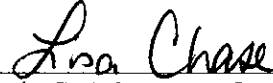
20. Copies of all filings in this docket should be directed to the MITG by serving:

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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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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 5th day of November, 2003, to:

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