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June 19, 2003

Mr. Dale Hardy Roberts  
Secretary/Chief Administrative Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**FILED**<sup>3</sup>

JUN 19 2003

Missouri Public  
Service Commission

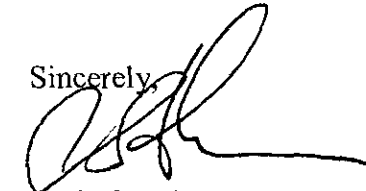
Re: Case No. TK-2003-0535

Dear Secretary Roberts:

Enclosed for filing please find an original and eight (8) copies of the Application to Intervene in Opposition To Agreement, and Request for Hearing of the Missouri Independent Telephone Company Group in the above-referenced matter.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:sw

Enc.

cc: Dan Joyce, General Counsel  
Mike Dandino, Office of Public Counsel  
Lisa Creighton Hendricks, Sprint Mo Inc.  
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FILED<sup>3</sup>

JUN 19 2003

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

Missouri Public  
Service Commission

In the Matter of the Master Interconnection )  
and Resale Agreement by and between Sprint )  
Missouri, Inc., and ICG Telecom Group, Inc. )  
Pursuant to Section 251 and 252 of the )  
Telecommunications Act of 1996. )

Case No. TK-2003-0535

Application to Intervene in Opposition To Agreement, and  
Request for Hearing  
Missouri Independent Telephone Company Group

Comes now MoKan Dial, Inc., and the other members of the Missouri Independent Telephone Company Group (MITG)<sup>1</sup>, and submit this Application In Opposition to Approval of the proposed Agreement between Sprint Mo Inc. and ICG. The MITG request that those provisions of the Agreement pertaining to "transit" traffic be disapproved, rejected, or removed from the Agreement, or, in the alternative, that the Agreement be rejected or not approved in its entirety.

Such "transit" provisions are discriminatory to the MITG companies in that, as non-parties they have been denied the ability to negotiate the same terms and conditions to protect their interests as Sprint has enjoyed.

Such transit provisions are prejudicial in that they will allow the termination of CLEC originated toll over a local connection in derogation to the tariffs of the MITG companies requiring such traffic is terminated by an interexchange carrier over an access facility subjection to access tariffs. The Commission has ordered that no traffic is to terminated from CLECs to the MITG companies unless there is an approved agreement with the MITG companies therefore. There is no such thing as "local" traffic between a

CLEC and a MITG company unless it is contained in a Commission-approved agreement, of which there are none. In Missouri the past 5 years' experience has demonstrated that the large ILEC'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.

In support of this Application, the MITG states as follows:

1. The MITG Companies are ILECs. Under 47 USC 252(e)(2)(A) each of the MITG Companies is a telecommunications carrier against whom no interconnection agreement, or portion thereof, can discriminate against, or prejudice, unless that carrier is party to the agreement itself.

2. MoKan Dial Inc. is an end office company subtending Sprint's Warrensburg tandem, and is directly interested in and affected by provisions of the agreement whereby Sprint proposes to "transit" traffic from ICG to carriers other than Sprint. Yet MoKan Dial is not a party to this proposed agreement, ICG has not requested interconnection or agreement with MoKan Dial, and MoKan Dial has not been a participant in the negotiation of the proposed agreement.

3. The MITG companies are also ILECs and have an interest in ending the utilization of "transit" traffic provisions in interconnection agreements.

4. As ILECs each of the MITG companies have the right to negotiate their own interconnection agreements with CLECs and CMRS providers, which right is equal in dignity to that of Sprint Mo. Inc.

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<sup>1</sup> Alma Communications Co., Chariton Valley Telephone Corp., Choctaw Telephone Co., Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Co.

5. By the inclusion of “transit” traffic provisions in the proposed agreement, Sprint has negotiated for the delivery of traffic to MoKan Dial without including MoKan Dial in negotiations concerning the terms and conditions of delivery of such traffic.

6. 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.

7. The past reasoning of larger ILECs such as Sprint that, as ILECs, they are obligated to “transit” traffic, has recently been rejected by the FCC. ILECs have no obligation, and in fact no right, to include “transit” traffic provisions in interconnection agreements. Larger ILEC such as Sprint are ILECs only in their certificated territory. Sprint is not an ILEC in MoKan Dial’s service territory. The only authority Sprint has to operate in the service territory of MoKan Dial is as an interexchange carrier. There is no separate status or authority of Sprint as a “transit” carrier.

8. The inclusion of transit traffic provisions in an agreement between a large ILEC such as Sprint and a CLEC or CMRS provider such as ICG has the effect of destroying MoKan Dial’s right and preference for negotiating the terms and conditions of its own interconnections and reciprocal compensation provisions with CLECs or CMRS providers.

9. As a result of over 5 years of experience with such “transit” traffic provisions in large ILEC 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 companies, and upon their customers:

a. local competition is not brought to rural areas by CLECs and CMRS providers interconnecting with the MITG companies in the rural areas, thereby depriving rural consumers of the presence of competitive services and vendors. If CLECs are not willing to come to rural areas they should not be allowed to “transit” traffic to rural areas, particularly if the traffic is “transited” in violation of the tariffs of carriers that do serve rural areas, as well as in violation of prior Commission orders;

b. CLEC and CMRS traffic is placed on access facilities to the MITG companies without compliance with MITG access tariffs;

c. the interexchange carrier responsible for the access facilities from the MITG companies, 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;

d. as a result the MITG companies have experienced unauthorized traffic termination, a failure of such traffic to be reported, quantified, identified, or compensated for;

e. the loss of compensation for interexchange traffic terminating to the MITG companies 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.

10. 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 CLECs, the CMRS providers, nor the transiting ILECs such as Sprint have bothered to enforce such provisions of these Orders or Agreements. In fact, when the MITG companies have attempted to bill for reported transited traffic, their bills have been dishonored by ICG, and other carriers, on the ground that no agreement exists.

11. 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.

12. Sprint in particular has been inconsistent with respect to “transit” traffic. Initially Sprint reported transit traffic and paid terminating compensation therefore. Then Sprint changed its practice and stopped reporting and stopped paying for transit traffic. Later Sprint began reporting such transit traffic to the terminating ILECs, but not paying for it. Subsequently Sprint again has resumed its prior failure to report such traffic. Sprint has failed to notify terminating ILECs in advance of these changes, but has left it to them to discover.

13. The interests of MoKan and 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.

14. 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: 1.5, 1.20, 1.65, 1.83, 1.84, 1.85, 37.3.2, 37.4, 37.4.1, 49.1, 49.2.1.2, 49.2.3, 49.2.4, 49.3.1, 51.1, 52.4.3.2, 60.1, 60.4.2, 61.1.2, 65.3.1, and 66.

16. 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, MoKan and 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**

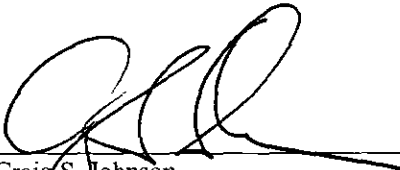
The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, U. S. Mail, postage pre-paid, this 19 day of June, 2003, to:

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