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December 10, 1999

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Missouri Public
Service Commission

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

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 the Initial Brief 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 by Dana Bergmeyer
Linda K. Gardner

LKG:ket
Enclosures
cc: All Parties

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.

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

As the Commission has previously indicated, this case involves the single legal issue of whether incumbent local exchange telephone companies may amend their access tariffs to apply switched access rates to intra-MTA (intra- Major Trading Area) wireless-originated traffic that terminates in their exchange. Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint PCS) believes the answer is clearly no. The Federal Communications Commission (FCC) defines all wireless traffic originating and terminating within a single MTA to be local traffic. Local traffic is subject to reciprocal compensation based upon forward-looking economic costs, the FCC proxy rates, or a bill-and-keep arrangement. Access tariffs are inapplicable to local traffic. The access rates the Mid Missouri Group (MMG) ILECs wish to apply are not based on forward-looking economic costs, the FCC proxies or bill-and-keep and cannot be applied to intra-MTA traffic.

1. Is the tariff proposed by MMG lawful as applied to wireless or CLEC traffic?

Alma Telephone Company, MoKan Dial Telephone Company, Mid-Missouri Telephone Company, Choctaw Telephone Company, Chariton Valley Telephone Company, and Peace Valley Telephone Company (collectively known as MMG or applicants) propose the following addition to their access tariff:

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APPLICABLITY OF THIS TARIFF
The provisions of this tariff *apply to all traffic regardless of type or origin, transmitted to or from* the facilities of the Telephone Company, by an other carrier, *directly or indirectly*, until and unless superseded by an agreement *approved* pursuant to the provisions of 47 U.S.C. 252, as may be amended.[1]

Despite the very broad language, the tariff amendment is apparently intended to enable MMG to charge access rates to wireless carriers and CLECs that originate calls that ultimately terminate in a MMG exchange.[2] For CLEC originated toll traffic, the access tariff applies today and there is no need for the tariff revision.[3] Therefore, the only question concerning CLEC traffic involves MCA traffic for the only MMG companies involved in the MCA—Choctaw and MoKan Dial. However, the issue of whether CLECs are entitled to be part of the MCA and, if so, what compensation ought to apply is being addressed in Case No. TO-99-483 which is currently pending before the Commission with hearings scheduled in May 2000. There is no reason to resolve the CLEC issues within the context of this narrow case.

The only remaining issue for decision concerns the lawfulness of applying access charges to wireless originated traffic terminating to an MMG exchange.[4] Wireless originated traffic terminating to an MMG exchange may be inter-MTA traffic or intra-MTA traffic. The state of Missouri is divided into two MTAs: St. Louis and Kansas City. Inter-MTA traffic is not considered local traffic. Consequently, no party disputes the applicability of access charges to inter-MTA traffic. Therefore, the sole question in

[1] (emphasis supplied) (Exhibit 1, pg. 4) Exhibits will hereinafter be cited as "Ex."
[2] (Transcript at 94) Transcripts will hereinafter be cited as "T".
[3] (T. at 97-98)
[4] Although the tariff purports to apply the access tariff to all traffic transmitted *to or from* the facilities of the MMG companies, it is apparently not intended to charge access rates to the terminating wireless carrier for a call originating in an MMG exchange, terminating to a wireless carrier. (T. at 139)

this case is whether a tariff should be approved that applies access charges to intra-MTA (or local) wireless originated traffic terminating to an MMG exchange. The answer is clearly no.

Although the FCC generally left it to the state commissions to determine the geographic area considered *local* for purposes of applying reciprocal compensation under 47 U.S.C. 251(b)(5), the FCC asserted exclusive jurisdiction to define the local calling area for wireless traffic.[5] The FCC concluded that the largest FCC-authorized wireless license territory (i.e., MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) because it avoids creating artificial distinctions between CMRS providers.[6] This definition of local traffic as applied to wireless traffic is codified in 47 CFR §51.701(b)(2). "Accordingly, traffic to and from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), *rather than interstate and intrastate access charges.*"[7] Taken together, there is no doubt about the inapplicability of access charges to the termination of wireless originated traffic that originates and terminates within the same MTA and the tariff must be rejected.

Instead of applying unilaterally imposed, non-cost based access rates to intra-MTA traffic, the FCC obligates ILECs to establish reciprocal compensation

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[5] See the First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Docket 96-98 ¶1035-1036. Hereinafter cited as "First Report and Order".

[6] First Report and Order, ¶1036. *See also*, Summary of Currently Effective Commission Rules for Interconnection Requests by Providers of Commercial Mobile Radio Services, FCC 97-344, September 30, 1997.

[7] Id., (emphasis supplied)

arrangements for the exchange of local, intra-MTA traffic, at prescribed rates. As the FCC noted:

> Under section 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of "telecommunications". [Footnote omitted] Under section 3(43) "[t]he term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." [Footnote omitted] All CMRS providers offer telecommunications. Accordingly, *LECs are obligated, pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers*, including paging providers, for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation set forth in Section XI.B., below.[8]

Thus, each LEC is to "establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier," including wireless carriers.[9] This duty to establish reciprocal compensation runs to all LECs, including small incumbent LECs such as MMG companies.[10] And, that compensation arrangement must be "symmetrical" as well as reciprocal.[11] Furthermore, the ILEC's compensation rate must be set at the forward-looking economic costs of the offering (using a cost study pursuant to 47 CFR §§51.505 and 51.511), the FCC default proxies, or a bill-and-keep arrangement.[12]

The traffic exchanged between MMG and Sprint PCS falls squarely within the ambit of these provisions and not within an access compensation regime. There is no

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[8](emphasis supplied) First Report and Order, ¶1008
[9] 47 CFR §51.703
[10] First Report and Order, ¶1045
[11] 47 CFR §51.711. Symmetrical rates "are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same service." 47 CFR §51.711(a)(1).
[12] 47 CFR §51.705.

dispute that the traffic at issue originates and terminates within the same MTA. Consequently, it is local traffic subject to reciprocal compensation.

Sprint PCS has sought to establish reciprocal compensation arrangements with the MMG companies to cover this traffic. Sprint PCS witness Propst sent letters to each of the applicants in this case in the fall of 1997, seeking an agreement covering compensation and traffic exchange issues with MMG companies.[13] Those letters suggested a bill-and-keep arrangement permissible under FCC rule.[14] Peace Valley Telephone Company agreed to a bill-and-keep arrangement.[15] The remaining companies rejected the proposed bill-and-keep arrangement and suggested that Sprint PCS should enter into formal interconnection negotiations.[16]

On December 22, 1997 Sprint PCS witness Propst wrote the remaining applicants, acknowledged the rejection of its previously suggested bill-and-keep arrangement, and requested negotiations on a reciprocal compensation agreement as directed.[17] Only one company responded and that company indicated it was not required to enter into a reciprocal compensation arrangement unless there is direct connectivity.[18] Further attempts to negotiate were likewise rebuffed.

Despite these rejections from the majority of MMG companies, Sprint PCS has continued to enter into reciprocal compensation arrangements with willing carriers. In addition to Peace Valley Telephone Company's bill-and-keep arrangement, interconnection agreements were executed with New London Telephone Company,

[13] (Ex. 9, p. 1-2; Sch. J.P. 1)
[14] 47 CFR §51.705(3)
[15] (Ex. 9, p. 2; Sch. J.P. 2)
[16] (Id.; Sch. J.P. 3)

Orchard Farm Telephone Company, and Stoutland Telephone Company. [19] These agreements provide for cost-based, per minute of use compensation for transport and termination of local traffic.[20] Sprint PCS is willing to enter into similar agreements with the MMG companies if a bill-and-keep arrangement is not acceptable.[21] If an impasse is reached during negotiations about the appropriate cost-based local reciprocal compensation rate then arbitration may be pursued. With respect to Sprint PCS, the issue is not whether compensation is owed to the MMG companies for use of their facilities for termination of intra-MTA wireless originated traffic, but under what rates, terms and conditions. The only lawful and appropriate rates, terms and conditions are under reciprocal compensation arrangements for the exchange of local traffic consistent with FCC rules.

However, instead of establishing reciprocal compensation arrangements at the prescribed rates, as required by FCC rule, the MMG companies propose to "clarify" that their access tariffs apply until there is an "agreement approved pursuant to the provisions of 47 U.S.C. 252."[22] However, access rates are neither appropriate as discussed *supra* nor consistent with the pricing requirements of 47 CFR §51.705. As MMG witness Stowell admits, the access rates he is attempting to charge on intra-MTA traffic were set in 1988 at a level designed to replace the revenue previously received from the pool.[23] The rates were not filed based on a forward-looking economic cost

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[17] (Id. at p. 3; Sch. J.P.4-5)
[18] (Id. Sch. J.P.6)
[19] (Ex. 9, p. 4-5)
[20] (Id., Sch. J.P. 9, Appendix A)
[21] (Ex. 9, p.5; T. at 345)
[22] (Ex. 1, p. 4)
[23] (T. at 134-135)

study.[24] They are not based upon the FCC proxy rates found in 47 CFR §51.707. Nor are they used in a bill-and-keep arrangement. Access rates are simply not lawfully or appropriately applied to this traffic and the tariff must be rejected.

2. If lawful, should the tariff proposed by MMG be approved?

For all of the reasons cited *supra,* the proposed tariff is not lawful and should be rejected. Nevertheless, if the Commission finds that applying access charges to wireless originated intra-MTA traffic is permissible, the tariff should still be rejected. As cited, the access rates were set in 1988 as a revenue replacement mechanism based upon the prior pool draw. The rates are not based on forward-looking economic cost studies or set at the FCC proxy rates. If the access rates were set on forward-looking economic costs or based on the FCC proxy rates, the resulting rates would likely be far below the proposed terminating access rate.[25] Consequently, if the tariff is approved at the proposed access rates, there is no financial or economic incentive on the part of the MMG companies to negotiate the required agreement with wireless carriers. Instead, it would be to their financial advantage to either continue to refuse to negotiate an interconnection agreement covering this traffic, or, at the very least, to drag the approval process out as long as possible since access rates would be applied until an agreement otherwise is approved. Sprint PCS continues to be willing to negotiate an appropriate compensation arrangement. Approving the tariff would remove any incentive on the MMG companies to do so.

[24] (Id.)

Conclusion

The FCC rules and orders are very clear: 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. The proposed attempt to apply access rates to this traffic must be rejected. Instead, all LECs, including small ILECs such as the MMG companies, are required to enter into local reciprocal compensation arrangements for this traffic. That compensation must be based on forward-looking economic costs, the FCC default proxy rates, or a bill-and-keep arrangement. Sprint PCS has never denied its obligation to compensate MMG companies for the use of their facilities for the termination of intra-MTA wireless originated traffic terminating to the MMG. To the contrary, it has actively and repeatedly sought to negotiate with MMG companies appropriate compensation arrangements that comply with FCC mandates. These efforts have been rejected. The Commission should reject the MMG's attempt to skirt this obligation and apply unilateral, non-cost based access charges.

Respectfully Submitted,
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[25] (T. at 123)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Brief of Sprint Spectrum L.P. d/b/a Sprint PCS was mailed or hand-delivered to all counsel of record this 10th day of December, 1999.

Linda K. Lanche by Lois Baumeyer