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FILED³

August 21, 2002

AUG 22 2002

Missouri Public
Service Commission

Secretary of the Commission
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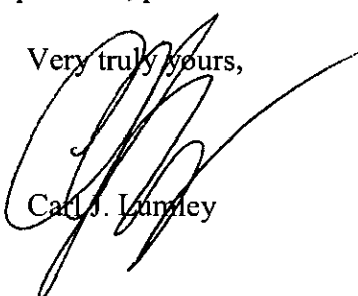
Via Federal Express
833736654044

Re: Case No.: XA-2002-1079

Dear Secretary of the Commission:

Enclosed please find for filing with your office an original and nine (9) copies of the ICG's Response to Fidelity's Motion to Compel. Upon your receipt, please file stamp the extra copy received and return to the undersigned in the enclosed, self-address, stamped envelope. If you have any questions, please contact me.

Very truly yours,


Carl J. Lumley

CJL:dn
Enclosures
cc. Parties of Record (W/Enclosure)

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

AUG 22 2002

In the Matter of the Application of)
 ICG Telecom Group, Inc.)
 to Expand Its Certificates of Service)
 Authority to include provision of Local)
 Exchange Telecommunications Service)
 Statewide and to Continue to Classify)
 the Company and)
 Its Services as Competitive.)

Missouri Public
Service Commission

Case No. XA-2002-1079

ICG'S RESPONSE TO FIDELITY'S MOTION TO COMPEL

COMES NOW ICG Telecom Group, Inc. (ICG) and for its Response to Fidelity's Motion to Compel states to the Commission:

1. On or about August 15, 2002, Fidelity filed its Motion to Compel regarding its Data Requests 3, 10, 11, and 12, as well as supporting Suggestions.

2. It is clear from Fidelity's pleadings that there is no dispute regarding Data Request 3. ICG only objected to the Data Request "to the extent it seeks the identity of other carriers from whom ICG might obtain facilities, equipment and/or services." Fidelity states in its Suggestions that ICG "need not, in answering this request, supply the name of the party providing such facilities, equipment and/or services." (Suggestions, page 3). Hence, Fidelity has accepted ICG's objection.

3. Data Requests 10, 11 and 12, as modified by Fidelity's subsequent pleadings, seek information about potential customers whom ICG might serve by contract rather than tariff, if ICG or a related entity has an ownership interest in a potential customer (DR 10), if a potential customer has an ownership interest in ICG or a related entity (DR 11), or if ICG has agreed to provide exclusive use of a portion of its facilities to a

potential customer (DR 12). As stated in ICG's objections to these Data Requests, the requests seek information that is irrelevant to the Commission's consideration of ICG's application and that is not reasonably calculated to lead to the discovery of admissible evidence.

4. ICG is entitled to equal treatment with Level 3, which has recently obtained the authority that ICG requests herein, and other carriers that have already obtained such authority. Notwithstanding the efforts of Fidelity and the other intervenors to obstruct any form of local competition in their exchanges, the Commission has already determined that the form of competition presented by ICG's application is in the public interest by granting the Level 3 and other previous applications.

5. The identity of ICG's potential customers has nothing to do with the standards applicable to the Commission's consideration of ICG's application, whether or not any such customer has any affiliation with ICG and whether or not any such customer might have exclusive rights to use certain portions of ICG's facilities. Inquiries about de-tariffed, de-regulated services are also unrelated to an application for authority to provide regulated service. The Commission should not allow Fidelity to fish for information that has nothing to do with the proceedings. Likewise, when the time comes, the Commission should not allow Fidelity to dump irrelevant information into the Record.

6. On May 17, 2002, ICG filed its verified application pursuant to the federal Telecommunications Act of 1996 ("Act"), Sections 392.361, 392.410, 392.420, 392.430, and 392.440 RSMo, and 4 CSR 240-2.060, seeking to expand its certificates of service authority to include provision of switched local exchange telecommunications service (other than basic local exchange service) throughout the State of Missouri.

7. ICG already has obtained authority from the Commission to provide facilities-based and resold basic local telecommunications services in the service territories of Southwestern Bell Telephone Company ("SWBT"), Sprint Missouri, Inc. d/b/a Sprint ("Sprint"), and GTE Midwest Incorporated d/b/a Verizon Midwest, Inc. ("Verizon").¹ ICG also has already obtained certificates of service authority to provide interexchange services and non-switched local exchange services, limited to providing dedicated, non-switched local exchange private line services, throughout the state of Missouri.² ICG and its services have been classified as competitive.³

8. In the pending application, ICG only seeks the additional authority to provide switched local exchange services other than basic local exchange service throughout the State (i.e. beyond the service territories of SWBT, Sprint, Spectra and Verizon). ICG does not seek any additional authority to provide basic local service. Additionally, pursuant to Sections 392.361 and 392.420 RSMo, ICG requests that its additional services be classified as competitive, that the company remain classified as competitive, and that certain statutes and regulations remain waived as to its additional services.

9. Fidelity attempts to denigrate ICG's application, describing the authority that ICG seeks as something ICG has somehow invented (i.e. using the phrase "what it

¹ See *Application of ICG Telecom Group, Inc. for a Certificate of Service Authority to Provide Basic Local Telecommunications Services in Portions of the State of Missouri and to Classify Said Services as Competitive*, Case No. TA-98-589 (effective October 6, 1998). ICG's authority therefore now includes the service territory of Spectra Communications Group, LLC, which was purchased from Verizon. It also includes the exchanges Verizon is in the process of selling to CenturyTel of Missouri LLC, see Case No. TM-2002-232.

² See *Application of ICG Telecom Group, Inc. for a Certificate of Service Authority to Provide Competitive Intrastate Interexchange and Local Exchange Telecommunications Services in the State of Missouri*, Case No. TA-98-577 (effective August 14, 1998).

(ICG) calls" on page 1 of the Motion to Compel). As indicated, ICG did not come up with this service description; rather, it comes from the Missouri statutes and previous proceedings in which the Commission has granted other carriers such authority under those statutes.

10. Section 392.430 provides that "the commission shall approve an application for a certificate of local exchange or interexchange service authority upon a showing by the applicant, and a finding by the commission, after notice and hearing, that the grant of authority is in the public interest."

11. Section 392.440 makes the same provision for issuance of a certificate for the resale of local exchange service.

12. Section 392.410.2 requires a company to obtain a certificate before providing or offering local exchange service.

13. Section 392.361.2 authorizes the Commission to classify a telecommunications company as competitive if all of its services are competitive. Section 392.361.3 authorizes the Commission to classify telecommunications services as competitive if it determines that the service is "subject to sufficient competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection of ratepayers and promotes the public interest." Under Section 392.361.2, the commission may "rely on a finding of fact made in a prior hearing" regarding the same telecommunications service.

14. Section 392.361.5 authorizes the Commission to "suspend or modify the application of its rules or the application of any statutory provision contained in sections

³ See supra notes 1 and 2.

392.200 to 392.340 except as provided in Section 392.390" in connection with an order classifying a company or its services as competitive.

15. Section 392.420 authorizes the Commission to take action pursuant to Section 392.361 "in connection with the issuance or modification of a certificate of interexchange or local exchange service authority."

16. Commission rule 4 CSR 240-2.060 sets forth the required contents for an application for local exchange service authority.

17. Neither the foregoing statutes nor the applicable Commission rule provide a basis for examining relationships between an applicant and specific potential customers in the course of an application proceeding.

18. The Commission has already made this decision by granting similar requests for authority to other companies, including most recently Level 3 Communications in Case No. TA-2002-376,⁴ without undertaking any examination of individual customer relationships.

19. Moreover, the Commission granted ICG its current certificates of service authority, based in part upon a finding that the grant of ICG's certificates was in the public interest. The grant of the pending Application will also further the public interest by expanding the availability of local exchange telecommunications services statewide. ICG's proposed services will create and enhance competition and expand customer service options consistent with the legislative goals set forth in the federal Telecommunications Act of 1996 and Chapter 392 RSMo. In particular, the public will benefit directly through the use of the competitive local exchange services to be offered

by ICG. The public will also benefit indirectly because the competitive presence of ICG statewide will increase the incentives for incumbents and others to operate more efficiently, offer more innovative services, reduce prices, and improve the quality and coverage of their services. One of the significant benefits ICG will bring to consumers is the ability to access advanced services over its network in areas in which those services are not competitively available or are nonexistent. Intrastate offering of these services is in the public interest because the services will provide Missouri customers with access to new technologies and service choices and can permit customers to achieve increase efficiencies and cost savings. Prompt approval of ICG's application also will expand the availability of innovative, high quality, and reliable telecommunications services within the State of Missouri.

20. Granting ICG's Application will promote the availability of quality services and increased consumer choice for Missouri telecommunications consumers. Competition for customers statewide should result in benefits to consumers in the form of lower prices, better quality, and increased investment in broadband infrastructure. ICG's expertise in the telecommunications industry will allow it to provide economic and efficient services, thereby affording customers with an optimal combination of price, quality, and customer service. ICG anticipates that its proposed services will increase consumer choice of innovative, diversified, and reliable service offerings statewide and further the public interest.

21. Fidelity and the other intervenors should not be allowed to impede such positive developments by converting a certificate application case into a customer-by-

⁴ In that case, Staff indicated in its Recommendation that similar authority had also been granted in Case Nos. TA-96-322 (ATT), TA-96-424 (Sprint), TA-98-318 (Frontier), and TT-99-237 (ATT). See Keesee

customer inquisition, by injecting themselves into ICG's business determinations as to what authority it wants from the Commission, or by seeking to litigate hypothetical future disputes.

22. ICG intends to offer its local exchange services to, among other customers, Internet Service Providers (ISPs) that currently do not have points of presence in many of the exchange areas covered by its Application. The FCC has held that ISPs are interstate information service providers that are exempt from having to pay for access services and instead are entitled to obtain access to telecommunications networks by purchasing services out of local exchange tariffs.⁵ ICG should be authorized to provide such local service to ISPs, just as Level 3 and others have been authorized. Again, contrary to Fidelity's arguments, ICG did not invent this certificate or service classification – the FCC and this Commission previously determined such matters.

23. Consumers who currently place long distance calls for access to ISPs will benefit by the establishment of points of presence in their local calling areas. The Commission has long recognized the need for local access to ISPs and thereby the Internet. The Commission continues to seek more ways to enable end users to reach the Internet on a locally dialed basis in Case No. TO-2001-391.

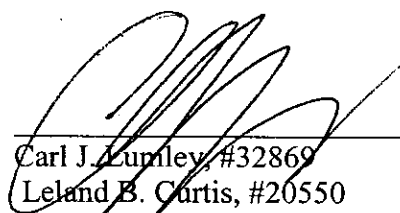
24. ICG's application meets the same standards that have been applied to other companies. While the Commission has sometimes (but not always) issued separate certificates of authority for switched versus non-switched local (non-basic) exchange service, there is no statutory or regulatory basis for applying different standards to applications for such certificates.

Direct, Schedule 3 filed herein.

25. Notwithstanding Fidelity's efforts to expand the scope of this proceeding, this is not a case about classification of particular services (or reconsideration of prior Commission and FCC decisions), Fidelity's rural exemption, bankruptcy, piercing the corporate veil of purported alter egos, or customer identities. This is simply a case involving an application for authority that has been granted to others and should be granted again according to the same limited standards and scrutiny. Fidelity's Data Requests 10-12 are irrelevant and the Commission should deny the Motion to Compel.

WHEREFORE, ICG Telecom Group, Inc. respectfully requests the Commission to deny Fidelity's Motion to Compel.

Respectfully submitted,



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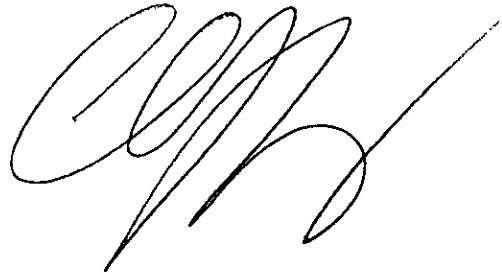
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⁵ See Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98 (April 27, 2001).

Certificate of Service

A true and correct copy of the foregoing document was mailed this 21
day of Aug, 2002, by placing same in the U.S. Mail, postage paid to:

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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