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**FILED<sup>2</sup>**

AUG 01 2003

Re: Case No. CK-2004-0031

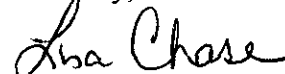
Missouri Public  
Service Commission

Dear Secretary:

Enclosed please find an original and eight copies of the Application to Intervene in Opposition To Agreement, and Request for Hearing of the Missouri Independent Telephone Company Group in the above cited case.

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

Sincerely,



Lisa Cole Chase

LCC:sw

Enc.

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AUG 01 2003

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

Missouri Public  
Service Commission

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

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 Communications Company, L.P. d/b/a Sprint and Southwestern Bell Telephone L.P. d/b/a Southwestern Bell Telephone Company ("SWB"). 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 originated toll traffic over a local connection in derogation to the tariffs of the MITG companies requiring such traffic to be terminated by an interexchange carrier over an

<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.

access facility subject to access tariffs. 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. The Commission has ordered that no traffic is to be terminated from CLECs and CMRS providers to the MITG companies unless there is an approved agreement with the MITG companies therefore. Given that this Traffic Termination Agreement is with Sprint Communications Company, L.P., it is unclear whether the nature of the traffic contemplated under this agreement includes the panoply of traffic in which Sprint is engaged, i.e. ILEC, CLEC, wireless, and long distance. 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. Alma, Choctaw and MoKan are each end office companies being subtended by either Sprint or SWB’s tandem, and Chariton Valley, Mid-Missouri and Northeast are each tandem companies being subtended by SWB’s McGee tandem. Each MITG company is directly interested in and affected by provisions of the agreement whereby Sprint and SWB propose to “transit” local and non-local traffic from each other to carriers other than Sprint or SWB. Yet the MITG companies have 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 and SWB.

5. By the inclusion of “transit” traffic provisions in the proposed agreement, Sprint and SWB have negotiated for the delivery of traffic to the MITG companies without including the MITG 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 SWB and Sprint that, as ILECs, they are obligated to “transit” traffic, has recently been rejected by the FCC.<sup>2</sup> In fact, SWB has acknowledged that it has no federal obligation to transit traffic as reflected in paragraph 20 of the *Application to Intervene and Request for Hearing* of the STCG filed on July 30, 2003. ILECs have no obligation, and in fact no right, to include “transit” traffic provisions in interconnection agreements. Larger ILEC such as SWB and Sprint are ILECs only in their certificated territory. SWB and Sprint are not ILECs

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<sup>2</sup> 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).

in the service territories of the MITG companies. The Missouri Commission has stated that “For the purpose of originating intraLATA interexchange traffic, SWBT is now essentially just another intraLATA IXC, which may, if it chooses to comply with the Respondents’ respective tariffs, originate traffic in the Respondents’ exchanges. As an intraLATA IXC, competing for business with other IXCs, SWBT must comply with the Respondents’ tariffs by using FGD.” The only authority SWB and Sprint have to operate in the service territory of the MITG companies pursuant to this agreement is as an interexchange carrier.

8. The agreement is discriminatory and not in the public interest in that it is contrary to Missouri Commission Orders pertaining to the proper records to be provided to the MITG. The Commission has ordered the former PTCs, including SWB, to provide standard Category 11 records to the small ILECs to provide better information about calls terminated to them.<sup>3</sup> The Commission has also ordered CLECs to “track and record Metropolitan Calling Area traffic and send reports to the small incumbent local exchange carriers for all non-MCA traffic. Alternatively, the competitive local exchange carriers may choose to separately trunk their Metropolitan Calling Area traffic.” In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Report and Order, Case No. TO-99-483, para. 19 (Mo.PSC issued. Sept. 19, 2000) The Commission further stated in that Order, “[m]ost of the CLECs concede that they will be responsible for paying terminating access charges on non-MCA traffic, yet the small ILECs have no way to bill

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<sup>3</sup> In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity, Case No. TO-99-254 et al., *Report and Order*, issued June 10, 1999.

for this traffic if the CLECs do not track the traffic and create the appropriate records. Therefore, CLECs must: (1) separately track and record non-MCA traffic, and (2) send reports to the small ILECs for all non-MCA traffic. Alternatively, the CLECs may choose to separately trunk their MCA traffic.” *Id* at p. 23 “Tracking and Recording of MCA Traffic.”

9. The inclusion of transit traffic provisions in this agreement between SWB and Sprint has the effect of destroying the MITG’s right and preference for negotiating the terms and conditions of its own interconnections and reciprocal compensation provisions with CLECs or CMRS providers.

10. 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 such providers 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.

11. 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 LECs such as SWB or 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 CLECS and CMRS providers, on the ground that no agreement exists.

12. 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.

13. Sprint in particular has been inconsistent with respect to “transit” traffic. Initially Sprint reported transit traffic and payed 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.

14. The Missouri Public Service Commission has authority under Section 252(e)(3) to establish and enforce “other requirements of State law in [the Commission’s] review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The MITG requests the Commission enforce the provision’s of their approved access tariff provisions when reviewing Interconnection Agreements containing transiting provisions, and further requests the Commission to establish requirements that parties to such interconnection agreements abide by current Commission Orders pertaining to reporting obligations, and to further abide by any and all business records rules that may be adopted by the Commission, i.e. the enhanced record exchange rule currently under discussion and development in Case No. TX-2003-0301.

15. 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.



16. 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: 1.31, 1.33, 1.66, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.10, 3.11, 3.12, 4.1, 4.7, 4.10, 6.2, 7.0, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 8.1, 8.2, 9.0, 9.2, 9.8, and 10.3.

17. 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 1 day of August, 2003, to:

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