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June 5, 2003

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

JUN 05 2003

Missouri Public  
Service Commission

Secretary  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, Missouri 65102

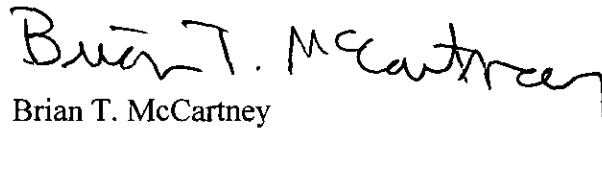
**Re: Application of Fidelity Telephone Company for Commission  
Approval of Traffic Termination Agreement with Sprint PCS**

Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of the Application of Fidelity Telephone Company for Approval of a Traffic Termination Agreement under the Telecommunications Act of 1996.

Please see that this filing is brought to the attention of the appropriate Commission personnel. I thank you in advance for your cooperation in this matter.

Sincerely,

  
Brian T. McCartney

BTM/da  
Enclosure  
cc: Parties of Record

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

JUN 05 2003

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Application of Fidelity Telephone Company )  
for Approval of a Traffic Termination Agreement )  
under the Telecommunications Act of 1996 )

Missouri Public  
Service Commission  
Case No. \_\_\_\_\_

**APPLICATION OF FIDELITY TELEPHONE COMPANY  
FOR APPROVAL OF A TRAFFIC TERMINATION AGREEMENT  
UNDER THE TELECOMMUNICATIONS ACT OF 1996**

COMES NOW Fidelity Telephone Company ("Fidelity") and hereby files its Application for Approval of a Traffic Termination Agreement between Fidelity and Sprint Spectrum L.P., as agent and General Partner for Wireless Co., L.P. d/b/a Sprint PCS ("Sprint PCS") under the Telecommunications Act of 1996 ("the Act"). In support of this Application, Fidelity states to the Commission as follows:

**I. AGREEMENT REACHED**

Fidelity is a local exchange carrier operating in Missouri. Fidelity is a Missouri corporation in good standing with the Missouri Secretary of State. In Case No. TC-2002-1077, Fidelity filed a Certificate of Good Standing from the Missouri Secretary of State which Fidelity requests be incorporated by reference in this case. Fidelity is not aware of any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates. Fidelity's annual report and assessment fees are not overdue. This information is still current and correct, as evidenced by the notarized affidavit of Mr. Dave Beier.

Sprint PCS is a commercial mobile radio service carrier operating in Missouri.

On May 23, 2003, after good faith negotiations, Fidelity and Sprint PCS executed a Traffic Termination Agreement ("the Agreement") for the state of Missouri

pursuant to the terms of the Federal Act (see Agreement, Attachment I). Pursuant to the Act, Fidelity hereby submits this Agreement for approval by the Commission. The Agreement complies fully with Section 252(e) of the Federal Act because the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier. The Agreement consists of twenty (20) pages. There are no outstanding issues between Fidelity and Sprint PCS that need the assistance of mediation or arbitration.

## **II. REQUEST FOR APPROVAL**

Fidelity seeks the Commission's approval of the Agreement, consistent with the provisions of the Federal Act and Missouri law. Fidelity represents that the implementation of this negotiated and executed Agreement complies fully with both Missouri law and Section 252(e) of the Federal Act because the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier. Fidelity respectfully requests that the Commission grant expeditious approval of this Agreement, without change, suspension or delay in its implementation. This is a bilateral agreement, reached as a result of negotiations and compromise between the parties. Correspondence, orders and decisions in this matter should be addressed to:

Dave Beier  
Fidelity Telephone Company  
64 North Clark  
Sullivan, MO 63080

W.R. England/Brian T. McCartney  
Brydon, Swearingen & England P.C.  
P.O. Box 456  
Jefferson City, MO 65102-0456  
[trip@brydonlaw.com](mailto:trip@brydonlaw.com)  
[bmccartney@brydonlaw.com](mailto:bmccartney@brydonlaw.com)

### **III. COMMISSION AUTHORITY**

Under the Federal Telecommunications Act of 1996 ("the Act"), the Commission has the authority to grant the relief requested by Fidelity. Specifically, Section 252(a) of the Act provides:

#### **(a) AGREEMENTS ARRIVED AT THROUGH NEGOTIATION**

(1) **VOLUNTARY NEGOTIATIONS.** -- Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

### **III. STANDARD OF REVIEW**

Under Section 252 of the Act, the Commission has the authority to approve an agreement negotiated between an incumbent local exchange company (ILEC) and other telecommunications carriers. The Commission may only reject an agreement if

the agreement is discriminatory to a nonparty or is inconsistent with the public interest, convenience, and necessity. Section 252(e)(2) of the Act provides as follows:

**GROUND FOR REJECTION.**-- The State Commission may only reject --

- (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --
  - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
  - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity;

The affidavit of Mr. Dave Beier, Vice President - Regulatory of Fidelity, establishes that the Agreement satisfies these standards. (Affidavit, Attachment II)

#### IV. EXEMPTIONS

Section 251(f)(1) of the Act exempts certain rural telephone companies from the additional interconnection requirements contained in Section 251(c). Thus, although all ILECs, as telecommunications carriers, have the duty to interconnect, not all ILECs have to meet the additional interconnection requirements imposed by Section 251(c) of the Act.<sup>1</sup> As a rural carrier, Fidelity is not required to meet the additional interconnection requirements of Section 251(c). Fidelity and Sprint PCS sought to

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<sup>1</sup> Section 23.1 of the Agreement states: "This Agreement is not an agreement under 47 U.S.C. 251(c). The parties acknowledge that Fidelity may be entitled to a rural exemption as provided by 47 USC 251(f) and Fidelity does not waive such exemption by entering into this Agreement."

highlight in Section 23.1 of their Agreement that, while they are submitting a Traffic Termination Agreement pursuant to Section 251(b)(5) to this Commission for approval, it is not an interconnection agreement under Section 251(c), and Fidelity has not waived its Section 251(f)(1) rural exemption.

## V. CONCLUSION

WHEREFORE, Fidelity respectfully requests the Commission to issue an Order that: (1) approves expeditiously the Traffic Termination Agreement between Fidelity and Sprint PCS, and (2) grants such other relief as is reasonable in the circumstances.

Respectfully submitted,

By Brian T. McCartney

W.R. England, III                      Mo. #23975  
Brian T. McCartney                      Mo. #47788  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 East Capitol Avenue, P.O. Box 456  
Jefferson City, MO 65102-0456  
[trip@brydonlaw.com](mailto:trip@brydonlaw.com)  
[bmccartney@brydonlaw.com](mailto:bmccartney@brydonlaw.com)  
(573) 635-7166  
(573) 634-7431 (FAX)

Attorneys for Fidelity

VERIFICATION

I, Dave Beier, Vice President - Regulatory of Fidelity Telephone Company, hereby verify and affirm that I have read the foregoing *APPLICATION OF FIDELITY TELEPHONE COMPANY FOR APPROVAL OF A TRAFFIC TERMINATION AGREEMENT UNDER THE TELECOMMUNICATIONS ACT OF 1996* and that the statements contained herein are true and correct to the best of my information and belief.

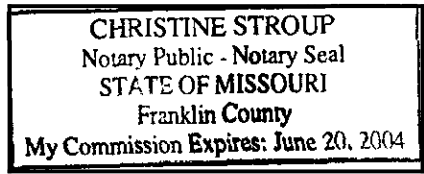
Dave Beier  
Dave Beier

STATE OF MISSOURI )  
  ) ss  
COUNTY OF                     )

Subscribed and sworn to me, a Notary Public, on this 4th day of June, 2003.

Christine Stroup  
Notary Public

My Commission expires June 20, 2004



CERTIFICATE OF SERVICE

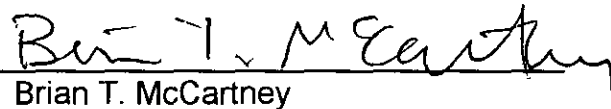
I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 5th day of June, 2003, to the following parties:

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

Michael F. Dandino  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, Missouri 65102

Law and Regulatory Affairs  
Sprint PCS  
6391 Sprint Parkway  
Mailstop: KSOPHT0101-Z2060  
Overland Park, KS 66251

Manager - Carrier and Interconnection  
Management  
Sprint PCS  
6450 Sprint Parkway  
Mailstop: KSOPHN0212  
Overland Park, KS 66251

  
\_\_\_\_\_  
Brian T. McCartney



## **TRAFFIC TERMINATION AGREEMENT**

This Agreement for the termination of traffic between Fidelity Telephone Company ("Fidelity") with offices at 64 N. Clark, Sullivan, Missouri 63080 and Sprint Spectrum L.P., a Delaware limited partnership, as agent and General Partner for WirelessCo., L.P., a Delaware limited partnership, d/b/a Sprint PCS, ("Sprint PCS") with offices at 6200 Sprint Parkway, Overland Park, KS 66251, is effective upon the date of execution below. This Agreement has been executed pursuant to Section 251(b)(5) of the Telecommunications Act of 1996.

Fidelity is a local exchange carrier operating in Missouri. Sprint PCS is a commercial mobile radio service carrier operating in Missouri. Sprint PCS terminates traffic originated by its end user customers through the local exchange carrier network in Missouri to end user customers of Fidelity. Fidelity may originate traffic from its end user customers under the provisions of its tariffs that terminates through the local exchange carrier network in Missouri to end user customers of Sprint PCS. Sprint PCS and Fidelity recognize their respective responsibilities to compensate the other pursuant to Section 4 of this Agreement for termination of the traffic originated by and under the responsibility of each party.

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

### **SECTION 1 – SCOPE OF AGREEMENT**

1.1 This Agreement shall cover traffic originated by, and under the responsibility of, one of the Parties and terminated to the other Party without the direct interconnection of the Parties' networks. "Traffic originated by and under responsibility of," a Party means traffic that is originated by a Party pursuant to that Party's rate schedules, tariffs or contract with the end-user customer. This Agreement does not cover traffic for which the originating Party has contracted with some other carrier to assume the responsibility for terminating the traffic. This Agreement shall cover both Telecommunications Traffic subject to reciprocal compensation and Telecommunications Traffic subject to access charges as those terms are defined in this agreement. The termination of traffic

under this Agreement will be accomplished by both Parties interconnecting their networks with a third-party local exchange carrier(s) who transits traffic between the Parties on their network(s).

- 1.2 The Parties disagree as to how Fidelity originated traffic to Sprint PCS numbers (i.e., NPA – NXXs) rate centered in rate centers that would not be within the local calling scope for Fidelity's end users would be handled. However, the Parties acknowledge that this issue is being considered by the FCC in CC Docket No. 01-92, FCC 01-132, In the Matter of Developing a Unified Intercarrier Compensation Regime, Released April 27, 2001. Therefore, for the purposes of this Agreement, and until there is a final ruling by the FCC on the handling of this traffic, these wireline to wireless calls shall be handled in accordance with the FCC's and the Commission's presubscription rules and routed in accordance with Telcordia's Local Exchange Routing Guide (LERG).

## SECTION 2 – DEFINITIONS

Certain terms used in this Agreement shall have the meanings as defined below. Other terms used but not defined herein will have the meanings ascribed to them in the Act or in the Rules and Regulations of the FCC or the Missouri Public Service Commission. The Parties acknowledge that other terms appear in this Agreement that are not defined or ascribed as stated above. The Parties agree that any such terms shall be construed in accordance with their customary usage in the telecommunications industry as of the Effective Date of this Agreement.

- 2.1 "Act" – the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the Federal Communication Commission or a state regulatory commission.
- 2.2 "CMRS" – Commercial Mobile Radio Service, as defined in the Act.
- 2.3 "Commission" – Missouri Public Service Commission

- 2.4 "CTUSR" – Cellular Transiting Usage Summary Report, provided by Southwestern Bell Telephone Company, tracks the minutes of Transiting Traffic for calls originating from CMRS providers and terminating to LECs.
- 2.5 "FCC" – Federal Communications Commission.
- 2.6 "LEC" – local exchange carrier, includes any provider of local exchange telecommunications service that holds a certificate of convenience and necessity or certificate of service authority from the Missouri Public Service Commission.
- 2.7 "MTA" – Major Trading Area as defined in 47 C.F.R. Part 24.
- 2.8 "Party" or "Parties" – means either or both Parties to this agreement.
- 2.9 "Telecommunications Traffic subject to reciprocal compensation" – Telecommunications Traffic subject to reciprocal compensation is traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area (MTA) as defined in Part 24 202 (a) of the FCC rules and subject to reciprocal compensation. For Fidelity, the origination or termination point of a call shall be the end office switch that serves, respectively, the calling or called party at the beginning of the call. For Sprint PCS, the origination or termination point of a call shall be the cell site/base station that serves, respectively, the calling or called party at the beginning of the call.
- 2.10 "Telecommunications Traffic subject to access charges" – Telecommunications Traffic subject to access charges is traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within two different Major Trading Areas (MTA) and is subject to access charges. Telecommunications Traffic subject to access charges may be either interstate or intrastate traffic, depending on the locations where the call originates and terminates.

### SECTION 3 – TRAFFIC EXCHANGE

- 3.1 The Parties shall exchange traffic under this agreement by each Party physically connecting its network to a third-party LEC(s) which shall transit the traffic between the two Parties. Each Party shall be responsible for establishing appropriate contractual relationships with this third party LEC(s) for

interconnecting with its network and transiting traffic over that network to the other Party. Each Party shall be responsible for providing the trunks from its network to the point of interconnection with the third party LEC(s) network and for paying the third party LEC(s) network provider for the costs of transiting calls that the Party originates.

#### SECTION 4 – COMPENSATION

- 4.1 Compensation for traffic originated by, and under the responsibility of, a Party and terminated to the other Party's network shall be based upon the specific type and jurisdiction of the call as follows:
- 4.1.1 Telecommunications Traffic subject to reciprocal compensation as defined in Section 2 of this Agreement and shall be compensated based on the rates established in Appendix 1.
  - 4.1.2 Intrastate Telecommunications Traffic subject to access charges as defined in Section 2 of this Agreement originating and terminating within the same State will be compensated based upon the intrastate access tariffs of Fidelity.
  - 4.1.3 Interstate Telecommunications Traffic subject to access charges as defined in Section 2 of this Agreement originating and terminating within different States will be compensated based upon the interstate access tariffs of Fidelity.

#### SECTION 5 – RECORD EXCHANGES AND BILLING

- 5.1 The Parties will work cooperatively to exchange billing records in standard industry formats regarding calls they originate that terminate on the other Party's network. The Parties terminating traffic under this Agreement shall issue bills (i.e., the "Billing Party") based on the best information available including, but not limited to, records of terminating traffic created by the Party at its end office or tandem switch. Records should be provided at an individual call detail record, if possible, with sufficient information to identify the specific date and time of the call, the call duration, and the originating and terminating numbers. Neither Party

shall be obligated as a result of this Agreement to develop or create new billing formats or records to satisfy any duty or obligation hereunder.

- 5.2 If a Billing Party is unable to record traffic terminating to its network and the other Party is unable to provide billing records of the calls that it originates to the other Party, the Billing Party may use usage reports and/or records (such as a CTUSR) generated by a third party LEC whose network is used to transit the traffic as a basis for billing the originating Party.
- 5.3 The Parties contemplate that they may exchange Telecommunications Traffic subject to access charges over the local exchange carrier network as provided for under this Agreement. Charges for the transport and termination of Telecommunications Traffic subject to access charges shall be in accordance with Fidelity's intrastate or interstate access tariffs as appropriate. The Parties will develop an initial factor representative of the percentage of total traffic terminating to each Party of terminating traffic exchanged over the local exchange carrier network that is not subject to reciprocal compensation. The Parties have agreed upon an InterMTA Factor specified in Appendix 1, which represents the percent of total minutes to be billed access charges. The Parties have also agreed to a Percent Interstate Usage Factor ("PIU") applied as follows: First, the InterMTA Factor is applied to the total minutes of use to obtain the Telecommunications Traffic subject to access charges. Then, the PIU Factor will be applied to the total Telecommunications Traffic subject to access charges for application and billing of interstate and intrastate access charges as appropriate. The InterMTA and PIU Factors will be used until actual traffic usage data can be measured. These factors are subject to change based upon mutually agreeable traffic data on a semi-annual basis. If the factors are not updated semi-annually, the Parties shall use the last previously established factors.
- 5.4 The originating Party shall pay the billing Party for all charges properly listed on the bill. Such payments are to be received within thirty (30) days from the effective date of the billing statement. The originating Party shall pay a late charge on any undisputed charges, which are not paid within the thirty (30) day period. The rate of the late charge shall be the lesser of 1.5% per month or the

maximum amount allowed by law. Normally, neither Party shall bill the other Party for traffic that is more than ninety (90) days old. However, in those cases where billing cannot be performed within that time frame because of record unavailability, inaccuracies, corrections, etc., billing can be rendered or corrected for periods more than ninety (90) days old. In no case, however, will billing be made for traffic that is more than one (1) year old.

- 5.5 At the same time that the Parties execute this Agreement, they are entering into a confidential agreement to settle all claims related to traffic exchanged between the Parties prior to the effective date of this Agreement. Each Party represents that this settlement agreement completely and finally resolves all such past claims.

#### SECTION 6 – AUDIT PROVISIONS

- 6.1 As used herein, “Audit” shall mean a comprehensive review of services performed under this Agreement. Either Party (the “Requesting Party”) may perform one (1) Audit per 12-month period commencing with the Effective Date.
- 6.2 Upon thirty (30) days written notice by the Requesting Party to the other “Audited Party,” the Requesting Party shall have the right, through its authorized representative(s) to perform an Audit, during normal business hours, of any records, accounts and processes which contain information bearing upon the services provided, and performance standards agreed to, under this Agreement. Within the above described 30-day period, the Parties shall reasonably agree upon the scope of the Audit, the documents and processes to be reviewed, and the time, place and manner in which the Audit shall be performed. The Audited Party agrees to provide Audit support, including reasonable access to and use of the Audited Party’s facilities (e.g. conference rooms, telephones, copying machines.)
- 6.3 Each Party shall bear the cost of its own expenses in connection with the conduct of the Audit. The reasonable cost of special data extraction required by the Requesting Party to conduct the Audit will be paid for by the Requesting Party. For purposes of this Section 6.3, “Special Data Extraction” shall mean the creation of an output record or information report (from existing data files) that is not created in the normal course of business by the Audited Party. If any program

is developed to the Requesting Party's specifications and at the Requesting Party's expense, the Requesting Party shall specify at the time of request whether the program is to be retained by the Audited Party for reuse during any subsequent Audit.

- 6.4 Adjustments, credits or payments shall be made, and any correction action shall commence, within thirty (30) days from the Requesting Party's receipt of the final audit report to compensate for any errors or omissions which are disclosed by such Audit and are agreed to by the Parties. One and one-half (1 ½) percent, or the highest interest rate allowed by law for commercial transactions, whichever is lower, shall be assessed and shall be computed on any adjustments, credits or payments if the audit establishes an overpayment or underpayment of greater than two percent (2) of the actual amount due by compounding monthly from the time of the error or omission to the day of payment or credit.
- 6.5 Neither the right to Audit, nor the right to receive an adjustment, shall be affected by any statement to the contrary appearing on checks or otherwise, unless such statement expressly waiving such right appears in writing, is signed by the authorized representative of the Party having such right and is delivered to the other Party in a manner provided by this Agreement.
- 6.6 This Section 6 shall survive expiration or termination of this Agreement for a period of one (1) years after expiration or termination of this Agreement.

#### SECTION 7 – DISPUTE RESOLUTION

- 7.1 The Parties agree to resolve disputes arising out of this Agreement with a minimum amount of time and expense. Accordingly, the Parties agree to use the dispute resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement, except for an action seeking to compel compliance with the confidentiality provision of Section 8 or this dispute resolution process (venue and jurisdiction for which would be in Jefferson City, Missouri). At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to

this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in any subsequent regulatory or court proceedings without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

7.2 The Parties agree that any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve within sixty (60) days of receipt of the written request to resolve such dispute, may be submitted to the Commission for resolution. The Parties agree to seek expedited resolution by the Commission, and shall request that resolution occur in no event later than ninety (90) days from the date of submission of such dispute. If the Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, the Parties will reimburse the Commission as required by its rules and regulations or as otherwise mutually agreed. During the Commission proceeding each Party shall continue to perform its obligations under this Agreement provided, however, that neither Party shall be required to act in any unlawful fashion. This provision shall not preclude the Parties from seeking any other relief that may be available in any other forum. If the dispute cannot be resolved by the Commission, and it must be brought before a court of competent jurisdiction, then the Party prevailing before the Court shall be entitled to recover its reasonable expenses relating to the Court action, including reasonable attorney fees.

7.3 If any portion of an amount due to the Billing Party under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-



Paying Party”) shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give notice to the Billing Party of the amounts in dispute (“Disputed Amounts”) and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. If the Parties are unable to resolve the issues related to the Disputed Amounts within 60 days of the notice of dispute, then either Party may submit the dispute to the Commission for determination in accordance with Section 7.2. The balance of the Disputed Amount shall thereafter be paid, with late charges as provided in Section 5.4, if appropriate, upon final determination of such dispute. Late charges assessed on those amounts which were unpaid but disputed after thirty (30) days from the receipt of the invoice, shall be credited to the non-paying Party for any disputed amounts which were ultimately found to be not due and payable.

#### SECTION 8 – CONFIDENTIAL INFORMATION

- 8.1 The Parties recognize that they or their authorized representatives may come into possession of confidential and/or proprietary data about each other’s business as a result of this Agreement. Each Party agrees to treat all such data as strictly confidential and to use such data only for the purpose of performance under this Agreement.
- 8.2 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its “Representatives” and with a Party, “Receiving Party”) pursuant to this Agreement shall be deemed the property of the Disclosing Party. Proprietary Information, if written shall be clearly and conspicuously marked “Confidential” or “Proprietary” or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it

confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 8.3 of this Agreement.

- 8.3 If any Receiving Party is required by a governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing party chooses to obtain.
- 8.4 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement.
- 8.5 Each Party's obligation to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- 8.6 Each Party agrees that the Discloser may be irreparably injured by a disclosure by the Recipient or its representatives in breach of this Agreement, and the Parties agree that the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such

remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or equity.

#### SECTION 9 – LIABILITY AND INDEMNIFICATION

- 9.1 Neither Party assumes any liability for any act or omission of the other Party in the furnishing of its services to its subscribers solely by virtue of entering into the Agreement. To the extent not prohibited by law or inconsistent with the other terms of this Agreement, each Party shall indemnify the other Party and hold it harmless against any loss, costs, claims, injury or liability relating to any third-party claim arising out of any act or omission of the indemnifying Party in connection with the indemnifying Party's performance under this Agreement. Furthermore, the Parties agree to arrange their own interconnection arrangements with other telecommunications carriers, and each Party shall be financially or otherwise responsible for the rates, terms, conditions, or charges between the other Party and another telecommunications carrier.
- 9.2 NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, FOR ANY HARDWARE, SOFTWARE, GOODS, OR SERVICES PROVIDED UNDER THIS AGREEMENT. ALL WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND WAIVED.
- 9.3 In any event, each Party's liability for all claims arising under this Agreement, or under the provision of the service provided under this Agreement, shall be limited to the amount of the charges billed to the Party making a claim for the month during which the claim arose.

#### SECTION 10 – INTERVENING LAW

- 10.1 The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event that any of the rates, terms and/or conditions herein, or any laws or regulations that were the basis for such

rates, terms, and/or conditions in the Agreement are invalidated, modified, clarified or stayed by any final action of any state or federal regulatory agency or legislative body or courts of competent jurisdiction, including but not limited to any decision issued by the FCC in CC Docket 96-98, *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, the affected provision shall be invalidated, modified, clarified or stayed consistent with the action of the legislative body, court or regulatory agency upon written request of either Party. In such event, the parties shall expeditiously seek to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to section 7.2 of the Dispute Resolution Section of this Agreement. Once resolved, the outcome shall relate back to the date of the written request noted above.

#### SECTION 11 – TERM OF AGREEMENT

- 11.1 This Agreement shall commence on the effective date, and shall terminate one (1) year after the Effective Date. This Agreement shall renew automatically for successive one (1) year terms, commencing on the termination date of the initial term or latest renewal term. The automatic renewal shall take effect without notice to either Party, except that either Party may elect 1) not to renew by giving the other Party ninety (90) day's written notice of the desire not to renew; or 2) to negotiate a subsequent Agreement by giving the other Party ninety (90) days written notice of the desire to commence negotiations. If a subsequent Agreement has not been consummated prior to the End Date of the current Agreement, the current Agreement shall continue to be in effect until it is replaced by a new Agreement, or one hundred eighty (180) days beyond the End Date of the current Agreement whichever is less unless either Party files a Petition for Arbitration with the Commission in which case the current Agreement will remain in effect until replaced by a new Agreement resulting from the Commission's Order on Arbitration.

- 11.2 This Agreement shall be terminated in the event that:
- a. the FCC revokes, cancels, does not renew or otherwise terminates Sprint PCS' authorization to provide CMRS in the MTA's encompassed by the State of Missouri, or the State Commission revokes, cancels, or otherwise terminates Fidelity's certification to provide local service;
  - b. either Party becomes bankrupt or insolvent, makes a general assignment for the benefit of, or enters into any arrangement with creditors, files a voluntary petition under any bankruptcy, insolvency or similar laws, or proceedings are instituted under any such laws seeking the appointment of a receiver, trustee or liquidator instituted against it which are not terminated within sixty (60) days of such commencement.
- 11.3 Either Party shall have the right to terminate this Agreement at any time upon written notice to the other Party in the event a Party is in arrears in the payment of any undisputed amount due under this Agreement for more than ninety (90) days, and the Party does not pay such sums within ten (10) business days of the other Party's written demand for payment.

#### SECTION 12 – INDEPENDENT CONTRACTORS

- 12.1 The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have the right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind the other Party. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

#### SECTION 13 – THIRD PARTY BENEFICIARIES

- 13.1 This Agreement is not intended to benefit any person or entity not a Party to it and no third Party beneficiaries are created by this Agreement.

#### SECTION 14 – GOVERNING LAW, FORUM AND VENUE

- 14.1 For all claims under this Agreement that are based upon issues within the primary jurisdiction of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the primary jurisdiction of the Commission, the exclusive jurisdiction for all such claims shall be the Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Missouri without reference to conflict of law provisions.

#### SECTION 15 – ENTIRE AGREEMENT

- 15.1 This Agreement, including all Parts and Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

#### SECTION 16 – NOTICE

- 16.1 Notices shall be effective when received or within three (3) business days of being sent via first class mail, whichever is sooner, in the case of Sprint PCS to:

Law and Regulatory Affairs  
Sprint PCS  
6391 Sprint Parkway  
Mailstop: KSOPHT0101-Z2060  
Overland Park, KS 66251

Copy to:

Manager – Carrier & Interconnection Management  
Sprint PCS  
6450 Sprint Parkway  
Mailstop: KSOPHN0212  
Overland Park, KS 66251

and in the case of Fidelity, to:

Dave Beier  
Vice President – Regulatory  
64 N. Clark  
Sullivan, MO 63080

Or to such other location as the receiving party may direct in writing.

#### SECTION 17 – FORCE MAJEURE

17.1 The Parties shall comply with applicable orders, rules or regulations of the FCC and the Commission and with applicable Federal and State law during the terms of this Agreement. Notwithstanding anything to the contrary contained herein, a Party shall not be liable nor deemed to be in default for any delay or failure of performance under this Agreement resulting from acts of God, civil or military authority, acts of public enemy, war, hurricanes, tornadoes, storms, fires, explosions, earthquakes, floods, government regulation, strikes, lockouts or other work interruptions by employees or agents not within the control of the non-performing Party. If any Force Majeure condition occurs, the Party delayed or unable to perform shall give notice as soon as is practicable to the other Party and shall take all reasonable steps to correct the Force Majeure condition.

#### SECTION 18 – TAXES

18.1 The Party collecting revenues shall be responsible for collecting, reporting and remitting all taxes associated therewith, provided that the tax liability shall remain with the Party upon whom it is originally imposed.

#### SECTION 19 – NETWORK MANAGERS

19.1 Nothing in this Agreement shall prohibit Sprint PCS from enlarging its CMRS network through management contracts with third-parties for the construction and operation of a CMRS system under the Sprint PCS brand name and license. Traffic originating on such extended networks shall be treated as Sprint PCS traffic subject to the terms, conditions, and rates of this Agreement. Sprint PCS

Network Managers are included as part of this Agreement as of the effective date and are listed on Appendix 2 attached hereto. If, during the term of this Agreement, Sprint PCS seeks to include new Network Managers, it shall notify Fidelity in writing and the Parties shall amend Appendix 2 accordingly.

#### SECTION 20 - ASSIGNMENT

- 20.1 Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be reasonably withheld or delayed, provided, however, a Party may assign this Agreement or any portion thereof, without consent, to any entity that controls, is controlled by or is under common control with the assigning Party. Any such assignment shall not, in any way, affect or limit the rights and obligations of the Parties under the terms of this Agreement.

#### SECTION 21 – TERMINATION OF SERVICE TO EITHER PARTY

- 21.1 If either Party fails to pay when due, any undisputed charges billed to them under this Agreement (Undisputed Unpaid Charges), and any portion of such charges remain unpaid more than thirty (30) days after the due date of such Undisputed Unpaid Charges, the Billing Party will notify the billed Party in writing that in order to avoid having service disconnected, the billed Party must remit all Undisputed Unpaid Charges to the Billing Party within thirty (30) days after receipt of said notice (the "Termination Notice"). Disputes hereunder will be resolved in accordance with the Dispute Resolution Procedures set out in Section 7 of this Agreement. Either Party may discontinue service to the other Party upon failure to pay Undisputed Unpaid Charges as provided in this Section, and shall have no liability as a result of such discontinuance. To the extent necessary, either Party may request the assistance of a third party LEC(s) in order to effectuate disconnection.
- 21.2 After disconnect procedures have begun, the Billing Party will not accept service orders from the non-paying Party until all Undisputed Unpaid Charges are paid in full, in immediately available funds. The Billing Party will have the right to require a deposit equal to one month's charges (based on the highest previous



month of service from the billing Party) prior to resuming service to the non-paying Party after disconnection for nonpayment.

#### SECTION 22 – MOST FAVORED NATIONS

- 22.1 In accordance with Section 252(i) of the Act, Fidelity shall make available to Sprint PCS any interconnection, service, or network element provided by Fidelity under an agreement approved under Section 252 of the Act to which Fidelity is a party upon the same terms and conditions as those provided in the other agreement.

#### SECTION 23 – MISCELLANEOUS

- 23.1 This Agreement is not an agreement under 47 U.S.C. 251(c). The Parties acknowledge that Fidelity may be entitled to a rural exemption as provided by 47 U.S.C. 251(f) and Fidelity does not waive such exemption by entering into this Agreement.

This Agreement is executed this 23 day of May, 2003.

Sprint Spectrum L.P.

Fidelity Telephone Company

W. Richard Morris

By

W. Richard Morris

Name

Vice President, External Affairs

Title

5/5/03

Date

Dave Beier

By

Dave Beier

Name

VP - Regulatory

Title

5/23/03

Date

APPENDIX 1 TO TRAFFIC TERMINATION AGREEMENT BETWEEN  
FIDELITY AND SPRINT PCS

Rates for indirect termination of Telecommunications Traffic subject to reciprocal compensation (See Definitions 2.9):

Indirect Termination Rate	\$0.035
InterMTA Factor	
Mobile to Land	0%
Land to Mobile	0%
Percent Interstate Usage ("PIU")	
Mobile to Land	0%
Land to Mobile	0%

APPENDIX 2 TO TRAFFIC TERMINATION AGREEMENT BETWEEN  
FIDELITY AND SPRINT PCS

Network Managers

Alamosa PCS  
Airgate PCS

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

**AFFIDAVIT OF DAVE BEIER**

Before me, the Undersigned Authority, on this 4<sup>th</sup> day of June, 2003, personally appeared Dave Beier, Vice-President, Regulatory of Fidelity Telephone Company, who, upon being by me duly sworn on oath deposed and said the following:

1. My name is Dave Beier. I am over the age of twenty-one, of sound mind and competent to testify to the matters stated herein. I am the Vice President - Regulatory of Fidelity Telephone Company ("Fidelity") and have personal knowledge of the agreement between Fidelity and Sprint PCS. I have reviewed the agreement on behalf of Fidelity and have personal knowledge of the provisions. The parties have negotiated diligently under the Telecommunications Act of 1996, culminating in an executed agreement ("the Agreement") by Fidelity and Sprint PCS on May 23, 2003.
2. The Agreement is the result of negotiation and compromise.
3. There are no outstanding issues between the parties that need the assistance of mediation or arbitration if this Agreement is approved.
4. Approval of this Agreement is consistent with the public interest, convenience, and necessity, as it will allow the exchange of traffic between Fidelity and Sprint PCS.
5. This Agreement does not discriminate against any telecommunications carrier. The terms of this agreement are available to any similarly situated provider in negotiating a similar agreement.
6. Fidelity is a Missouri corporation in good standing with the Missouri Secretary of State.
7. Fidelity is not aware of any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates.

8. Fidelity's annual report and assessment fees are not overdue.

Further Affiant sayeth naught.



Dave Beier  
Vice President, Regulatory of Fidelity Telephone  
Company

Sworn and Subscribed to before me this 14th day of June, 2003 to certify which  
witness my hand and seal of office.



Notary Public

