BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Sprint Communications Company L.P.,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. TC-2002-1104
	)	
Southwestern Bell Telephone Company,	)	
	)	
Respondent.	)	

REPLY OF SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company (SWBT), and for its Reply to the Response of Sprint Communications Company, L.P. d/b/a Sprint to SWBT's Motion to Dismiss, states to the Missouri Public Service Commission (Commission) as follows:

I. EXECUTIVE SUMMARY

Sprint's Response to SWBT's Motion to Dismiss only confirms that the Commission should dismiss Sprint's Complaint in this case for failure to state any claim upon which the Commission can grant relief. In its Motion to Dismiss, SWBT relied on the express language contained in the SWBT/Sprint interconnection agreement to establish, as a matter of law, that Sprint's Complaint is time-barred. The admissions contained in Sprint's Response, along with the express provisions contained in the SWBT/Sprint interconnection agreement and the collocation appendix thereto, confirm that Sprint's Complaint is time-barred as a matter of law. In is Motion to Dismiss, SWBT also established that the real relief requested by Sprint – a calculation of Sprint's claimed damages based on a retroactive application of rates contained in SWBT's collocation tariffs to collocation arrangements requested and completed years before SWBT's collocation tariff became effective – was beyond the jurisdiction of the Commission.

Again, the admissions contained in Sprint's Response, along with the express provisions contained in the SWBT/Sprint interconnection agreement and the collocation appendix thereto, confirm that the Commission does not have jurisdiction to entertain Sprint's Complaint.

As described below, in its Response to SWBT's Motion to Dismiss, Sprint now asks the Commission to ignore the express language of the SWBT/Sprint interconnection agreement to salvage its Complaint. Sprint attaches distorted and bizarre interpretations to language appearing in the SWBT/Sprint interconnection agreement, for the sole purpose of doing an end-run around the plain meaning of the contract language. The Commission should not be fooled by Sprint's attempted wizardry, which is nothing more than an effort to rewrite the SWBT/Sprint interconnection agreement to resurrect a claim that not only has no substantive merit, but is also clearly time-barred and beyond the Commission's jurisdiction.

II. SPRINT'S COMPLAINT IS UNTIMELY

A. Sprint's Complaint is Untimely Under Section 3.4 of the Collocation Appendix

As SWBT established in its Motion to Dismiss, the SWBT/Sprint interconnection agreement contained an explicit and exclusive mechanism for Sprint to challenge individual case basis (ICB) price quotations for collocation arrangements requested by Sprint. The collocation appendix to the SWBT/Sprint interconnection agreement provided as follows:

> 3.4 SWBT's price quotation will be calculated using an actual cost methodology for non-recurring charges and a Missouri PSC approved forward-looking costing methodology for recurring charges. SWBT's price quotation will be sufficient to cover SWBT's reasonable costs and will be no greater than necessary for SWBT to earn a reasonable profit. Sprint will have 65 calendar days to accept or reject the price quotation. Upon acceptance, Sprint may ask the State Commission to review any of SWBT's charges for conformity with the above standards. However, Sprint remains committed to occupy the space regardless of the Commission's decision concerning pricing.

Under this provision, which Sprint concedes is applicable to its Complaint, Sprint had 65 calendar days to either accept or reject each ICB price quotation for collocation arrangements it requested. Therefore, upon Sprint's receipt, on January 13, 1999, of SWBT's first ICB price quotation prepared in response to Sprint's application to collocate in the McGee central office, Sprint had 65 days to either accept or reject SWBT's quote. Pursuant to the express language contained in Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement, if Sprint believed SWBT's ICB price quotation for nonrecurring costs did not satisfy the actual cost methodology required under Section 3.4, or that SWBT's forward looking costing methodology for determining monthly recurring rates did not satisfy the requirements of Section 3.4, Sprint could have simply rejected SWBT's ICB price quotation. However, if Sprint did so, it would not have been able to collocate in the McGee central office. Section 3.4 of the collocation appendix offered an alternative, however. Under Section 3.4, Sprint could accept SWBT's ICB price quotation (to secure the collocation space requested and permit construction to begin) and at the same time ask the Commission to review SWBT's ICB price quotation for conformity with the standards contained in Section 3.4, so long as Sprint did so *upon acceptance* of SWBT's ICB price quotation. There is no dispute, however, that Sprint did not do so, and instead, accepted SWBT's ICB price quotation for the McGee central office, along with the other 75 collocation arrangements about which Sprint now complains.

It is likewise undisputed that the SWBT/Sprint interconnection agreement contains no provision which would permit Sprint to challenge collocation charges years after Sprint accepted SWBT's ICB price quotation for a requested collocation arrangement, and years after SWBT built the requested collocation arrangement and paid its subcontractors. The parties simply did not agree to such a ridiculous process, and Sprint should not be permitted to rewrite the

collocation appendix to the SWBT/Sprint interconnection agreement to provide for such a process now, at a time when the interconnection agreement should have already long expired.

In its Response to SWBT's Motion to Dismiss, Sprint concedes that under Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement, Sprint could have asked the Commission "to review SWBT's charges."[1] Sprint contends, however, that although it could have asked the Commission "to review any of SWBT's charges for conformity with the above standards" as provided in Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement, it was not required to do so.[2]

Sprint can point to no other provision in the entire SWBT/Sprint interconnection agreement which even remotely suggests that the process for seeking Commission review of a SWBT ICB price quotation (while still permitting Sprint to obtain the requested collocation arrangement) is "optional" or "permissive." No post-possession process to challenge a SWBT ICB price quotation is described anywhere else in the agreement, because no such post-possession challenge process was contemplated or agreed to by the parties when the agreement was executed by the parties and approved by the Commission. Sprint argues, however, that because Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement provides that "upon acceptance, Sprint may ask the State Commission to review any of SWBT's charges for conformity with the above standards" (emphasis added), this process was optional and permissive, not required.

Sprint's argument is ludicrous. The use of the word "may" in Section 3.4 is completely appropriate and consistent with the exclusive mechanism described in Section 3.4 to challenge SWBT's ICB price quotation for conformity with the standards contained therein. Sprint was not required to challenge every ICB price quotation provided by SWBT. But if Sprint did wish

[1] Sprint Response, p. 8.
[2] Id.

to challenge an ICB price quotation for collocation, then Sprint was required to do so under the process and within the timeliness set out in Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement.

Under Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement, upon receipt of an ICB price quotation from SWBT, Sprint had the following options:

1. Accept SWBT's ICB price quotation;
2. Reject SWBT's ICB price quotation; or
3. Accept SWBT's ICB price quotation and, upon such acceptance, ask the "Commission to review any of SWBT's charges for conformity" with the standards described earlier in Section 3.4.

For each of the 76 collocation arrangements identified by Sprint in its Complaint, Sprint chose the first option described above, and unconditionally accepted SWBT's ICB price quotations. Under the express language contained in Section 3.4, if Sprint believed a particular SWBT ICB price quotation did not conform to the pricing standards contained in the agreement, Sprint had two alternatives. Sprint could have rejected SWBT's ICB price quotations (which Sprint never did), but if Sprint did so, the collocation space requested by Sprint would be available for another competitive local exchange carrier (CLEC) for collocation. Alternatively, Sprint could have accepted SWBT's ICB price quotation, and "upon acceptance," asked the Commission to review any costing methodology or proposed charge Sprint believed did not conform to the requirements of the interconnection agreement. Sprint never did so. Instead, Sprint now seeks to have the Commission rewrite the SWBT/Sprint interconnection agreement it approved in 1998 to provide a fourth option the parties never agreed to, i.e., to permit Sprint to challenge SWBT's ICB price quotes years after the work has been completed.

1. The General Dispute Resolution Process Does Not Apply.

Sprint argues that Section 21.1 of the collocation appendix supports its claim that the process described in Section 3.4 of the collocation appendix to contest ICB price quotes is permissive. Sprint is wrong, as the provisions of Section 21.1 are actually inconsistent with Sprint's argument. Sprint contends that Section 21.1 permits it to use the dispute resolution procedure contained in the SWBT/Sprint interconnection agreement rather than the specific process applicable to ICB price quotes contained in Section 3.4 of the collocation appendix. Section 21.1 of the collocation appendix provides as follows:

> 21.1 All disputes arising under this Appendix will be resolved in accordance with the dispute resolution procedures set forth in the General Terms and Conditions portion of this Agreement, with the exception that disputes relating to SWBT's price quotation or Completion Interval may be brought to the Commission for resolution, as set forth in this Appendix, and that disputes relating to the content of SWBT's technical publications related to collocation will be resolved in accordance with Section 11.2

This section provides that as a general matter, disputes arising under the collocation appendix will be resolved in accordance with the dispute resolution procedures contained in the general terms and conditions section of the SWBT/Sprint interconnection agreement, which contains a twenty-four month claims limitation period.[3] Section 21.1 of the collocation appendix, however, specifically carves out "disputes relating to SWBT's price quotation or Completion Interval," which Section 21.1 provides "may be brought to the Commission for resolution, as set forth in this Appendix." Accordingly, disputes regarding SWBT's ICB price quotations, which includes all of Sprint's Complaint, are "excepted" from this limitations period, and are subject to the requirements of Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement.

As a matter of law, the process described in Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement required Sprint to seek Commission review of SWBT's

[3] See, Section 9.1.1.

ICB price quotations "upon acceptance" of those ICB price quotations, not years later as Sprint now seeks to do in its Complaint.

2. The True-Up Process in Section 5.8 of the Collocation Appendix Does Not Authorize This Complaint.

Sprint also claims that the true-up process described in Section 5.8 of the collocation appendix provides an independent basis to pursue its Complaint. Again, Sprint's arguments actually support SWBT's position in this case. Sprint quotes Section 3.6 of the collocation appendix, which provides as follows:

> 3.6 SWBT's price quotation will constitute a firm offer that Sprint may accept in writing within sixty-five (65) days of Sprint's receipt of the price quotation, subject only to the true-up procedure specified in Section 5.8 below. SWBT will not reserve the Collocated Space for Sprint during this sixty-five day period. If Sprint does not accept the price quotation in writing within sixty-five (65) days of Sprint's receipt of the price quotation, the price quotation will be automatically rescinded. Within thirty business days following acceptance, payment will be made pursuant to paragraphs 4.2 and 4.3. Failure to make such payment will be deemed a withdrawal of Sprint's acceptance.

Sprint then quotes Section 5.8 of the collocation appendix, which describes a limited "true-up" process for the actual amounts billed by subcontractors. Section 5.8 provides as follows:

> 5.8 Within one hundred twenty (120) days of the completion date of the Collocated Space, SWBT will perform a true up of all Subcontractor Charges using the actual amounts billed by subcontractors. Any amounts incurred above the Subcontractor Charges will be billed to Sprint or, alternatively, any amount below such Charges will be remitted to Sprint.

Sprint claims it would be "ludicrous" to suggest that any challenge to SWBT's ICB price quotations were required to be made "upon acceptance" of SWBT's ICB price quote (as specifically required under Section 3.4 of the collocation appendix), when Sprint would not know what the actual charges were for its collocation arrangements until after a true-up took

place.[4] Sprint goes on to state that "Sprint could not know that it had a claim that SWBT's price quotation did not comport with the reasonableness standard for non-recurring charges or the Missouri PSC approved forward-looking methodology at least until sprint received the true-up notices under Section 5.8."[5]

Sprint's argument is simply incorrect. Sprint's characterization of the purpose of the "true-up" process is inconsistent with the express language of Section 5.8 of the collocation appendix, which sets forth a very limited purpose for "true-ups" relating to actual subcontractor bills. Pursuant to Section 5.8 of the collocation appendix, the only thing subject to "true-up" after construction is completed is the difference between what SWBT originally estimated the subcontractors' charges to be, and "the actual amounts billed by subcontractors." The true-up process required by Section 5.8 does not contemplate what Sprint seeks here -- an investigation into the "reasonableness" of any charges or SWBT's costing methodology, whether related to nonrecurring costs or monthly recurring rates. The different cost methodologies required under Section 3.4 (relating to nonrecurring and monthly recurring charges) are simply irrelevant to the true-up process contemplated by Section 5.8. If Sprint believed that either the nonrecurring costs or recurring rates contained in SWBT's ICB price quotations were not reasonable, or that SWBT was not utilizing an appropriate costing methodology to arrive at the nonrecurring or recurring charges, it was required to bring any such issue to the Commission "upon acceptance" of the ICB price quotation, and clearly could have done so. The "true-up" process contemplated by Section 5.8 of the collocation appendix had nothing to do with any such complaints.

3. The Billing Provisions of Section 6.1 of the Collocation Appendix and the Verification Review Provisions of Section 31 of the Interconnection Agreement Do Not Authorize This Complaint.

[4] Sprint Responses, p. 10.
[5] Sprint Response, pp. 10-11.

Finally, Sprint claims that its Complaint is timely because Section 6.1 of the collocation appendix provides that "Payment of a bill does not waive Sprint's right to dispute the charges contained therein"[6] and because, in Sprint's view, Sprint had an unlimited right to "verification reviews" under Section 31 of the SWBT/Sprint interconnection agreement. Sprint is grasping at straws in an attempt to salvage its Complaint. Sprint's waiver argument is irrelevant. SWBT does not contend that Sprint waived its claims because Sprint has paid some of its bills relating to collocation arrangements it requested. Rather, SWBT's position is that Sprint's claims are barred because these claims were first raised well beyond the time permitted under the express provisions of Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement.

Likewise, Sprint's claim that its Complaint is timely because it could be considered in the nature of an "audit" under Section 31 of the SWBT/Sprint interconnection agreement holds no water. First, Sprint did not assert in its Complaint or in its March 1, 2002, "Demand for Payment" that it was seeking a "verification review" under Section 31 of the interconnection agreement. Furthermore, verification reviews under Section 31 are expressly for the limited purpose of "evaluating the accuracy of the other Party's billing and invoicing" and are not applicable to Sprint's claims in this case.

B. Sprint's Complaint is Untimely Under the 24 Month Limitations Period Contained in Section 9 of the SWBT/Sprint Interconnection Agreement

In its Response, Sprint also argues that its Complaint is timely because it was brought within the twenty-four month period provided by Section 9.1.1 of the SWBT/Sprint interconnection agreement. As described above, the twenty-four month limitations period contained in Section 9.1.1 is not applicable to the allegations contained in Sprint's Complaint, which are directed solely at SWBT's ICB price quotations for collocation arrangements, which

[6] Sprint Response, p. 11.

are governed by Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement. Even if the twenty-four month limitations period were applicable, however, Sprint's Complaint would still be time-barred.

As SWBT described in its Motion to Dismiss, Sprint began receiving ICB price quotations from SWBT on January 13, 1999, and Sprint received numerous such ICB price quotations from SWBT prior to March 1, 2000 (the date corresponding to twenty-four months prior to the date Sprint notified SWBT of its "Demand for Payment"). If Sprint had any issue with the methodology or the nonrecurring costs or recurring rates contained in these specific ICB price quotations, the 24 month claims limitation period provided in Section 9.1.1 began running upon receipt of the ICB price quotation. Again, however, Sprint did not raise any claim relating to the sufficiency of SWBT's ICB price quotations or the methodology supporting those ICB price quotations within 24 months of the date when it clearly knew or should have known of any such purported claim, and as a result, any such claim is time-barred.

Sprint also claims that SWBT's alleged failure to provide true-ups in a timely manner as required by Section 5.8 of the collocation appendix excuses Sprint's failure to raise its claim in a timely manner.[7] Again, Sprint's claim has no factual or legal basis. Any claim that SWBT's true-up process did not comply with the requirements the collocation appendix, or that SWBT's subcontractors bills were somehow either incorrect or unreasonable, was well known to Sprint prior to March 1, 2000. As SWBT described in its Motion to Dismiss, SWBT provided ICB price quotations, completed the requested collocation arrangements, and provided Sprint with completed and final true-ups (specifically identifying the differences between the cost and rate estimates contained in each ICB price quotation and the actual subcontractor costs and recurring

[7] Sprint Response, pp. 18-20.

rates relating to each finished collocation project) for 14 major collocation projects prior to March 1, 2000.

Based on the detailed information included in the 14 true ups which took place prior to March 1, 2000, Sprint clearly knew or should have known of any claim it had with respect to SWBT's ICB price quotations, nonrecurring costs, recurring costs and rates, along with the methodology SWBT utilized to develop these charges, and SWBT's true-up processes, prior to March 1, 2000. Again, however, Sprint's "Demand for Payment" was not made until March 1, 2002, more than twenty-four months after Sprint knew or should have known if any such claim.

The lengths to which Sprint is willing to go to attempt to resuscitate its untimely claim are further illustrated by its arguments regarding the monthly recurring rates Sprint agreed to pay for its collocation arrangements. Throughout its Complaint, and in its Response to SWBT's Motion to Dismiss, Sprint makes it clear that its claim with respect to monthly recurring rates has to do with the *methodology* SWBT utilized to determine the monthly recurring rates for each of Sprint's 76 collocation arrangements, and in particular, Sprint's contention that SWBT's methodology did not satisfy the requirements contained in the collocation appendix, i.e., "a Missouri PSC approved forward-looking costing methodology for recurring charges."[8] In its Response to SWBT's Motion to Dismiss, Sprint claims that it could not have even discovered its claim regarding the methodology used by SWBT to determine the monthly recurring charges for each of Sprint's collocation arrangements "until the Commission approved a forward-looking costing methodology in its review of SWBT's collocation tariff in November, 2001."[9]

Sprint's claim is bizarre and unsupported by the facts. First, the Commission did not approve a specific forward-looking costing methodology applicable to ICB collocation arrangements in Case No. TT-2001-298. In fact, as SWBT described in its Motion to Dismiss, in

[8] See, Collocation appendix, Section 3.4.
[9] Sprint Response, p. 16.

its June 7, 2001, Phase 1 Report and Order in Case No. TT-2001-298, the Commission specifically found that *both* the costing model submitted by SWBT and the costing model submitted by Mr. Turner on behalf of the Joint Sponsors "comply with TELRIC principles."[10] Thereafter, the parties reached a settlement on the rates that would be included in SWBT's collocation tariff, and agree that the rates would apply prospectively. The SWBT collocation tariff case Sprint attempts to rely on was and is unrelated to collocation provided on an ICB basis prior to October, 2001.

Second, Sprint's argument that SWBT's collocation tariff case (Case No. TT-2001-298), and the tariffs which were eventually approved by the Commission in that case, were somehow a continuation of or contemplated by the interconnection agreement that resulted from the SWBT/AT&T initial arbitration decision is absurd. As SWBT described in detail in its Motion to Dismiss, Case No. TT-2001-298 was initiated after SWBT agreed, in an on the record presentation in SWBT's Section 271 notification case, to file a collocation tariff. At the arbitration hearing in Case No. TO-97-40, AT&T argued that collocation should be provided pursuant to tariff, and SWBT argued that collocation should be provided on an ICB basis. The Commission ruled in SWBT's favor. The interconnection agreement between SWBT and AT&T that resulted from the Commission's arbitration decision in Case No. TO-97-40 clearly provided that collocation would be provided on an individual case basis, and did not contemplate that the Commission would determine the appropriate forward looking costing methodology for collocation arrangements requested on an ICB bases in some future tariff case. Sprint adopted this interconnection agreement pursuant to Section 252(i) of the Telecommunications Act of 1996 (Act). Sprint's argument that the "Missouri PSC approved forward-looking costing methodology for recurring charges" referenced in the collocation appendix to the SWBT/AT&T

[10] Case No. TT-2001-298, Phase 1 Report and Order, June 7, 2001, p.4.

interconnection agreement, and in Section 3.4 of the collocation appendix to the SWBT/Sprint interconnection agreement, actually refers to the settlement rates contained in the SWBT collocation tariffs approved on October 3, 2001, has no basis in fact, and should be rejected by the Commission outright.

The fact of the matter is that if Sprint really had any problem or issue with the forward looking costing methodology utilized by SWBT to determine the monthly recurring costs for Sprint's collocation arrangements, it could and should have been raised in January, 1999, when SWBT provided Sprint with the first detailed ICB price quotation for a collocation arrangement requested by Sprint. A copy of this ICB price quote was attached to SWBT's Motion to Dismiss as Exhibit 4. As reflected in Exhibit 4, on January 13, 1999, SWBT provided Sprint with a "complete cost quote" for Sprint's collocation request at the McGee central office. SWBT's January 13, 1999, ICB price quote included the monthly cost for equipment, collocator space monthly rental cost, and collocator space monthly power cost. The methodology that SWBT utilized to calculate these monthly recurring costs did not change over the period from January 13, 1999, until October, 2001. If Sprint had *any* question about these monthly recurring costs, it was incumbent on Sprint, a company that is very familiar with costing methodologies due to the fact that it is an incumbent LEC, a competitive LEC and interexchange carrier, to raise its claim regarding the methodology used by SWBT prior to accepting SWBT's ICB price quotation (as described above). Even if the twenty-four month limitations period contained in the SWBT/Sprint interconnection agreement were applicable to Sprint's claim, Sprint's claim with respect to monthly recurring charges is still time barred. The 24 month period within which such a claim could be raised clearly started on or about January 13, 1999, when Sprint received SWBT's first ICB price quotation that included monthly recurring costs. Since Sprint did not raise its claim regarding the forward looking costing methodology utilized by SWBT until March

1, 2002, it is clearly time-barred under the 24 month limitation period contained in Section 9.1.1 of the SWBT/Sprint interconnection agreement.

Finally, even if the 24 month limitations period to raise a claim regarding the forward looking costing methodology utilized by SWBT to determine the monthly recurring costs for Sprint's collocation requests did not commence until Sprint began receiving "true-ups" of its ICB quotes for completed collocation arrangements, Sprint's claim is still time barred. As SWBT described in its Motion to Dismiss, SWBT provided the first group of 6 detailed "true-up" statements to Sprint on December 1, 1999. One of the true-up statements provided by SWBT to Sprint on December 1, 1999, was attached to SWBT's Motion to Dismiss as Exhibit 5. These true-up statements provided Sprint with a detailed analysis of the actual subcontractor costs associated with each of Sprint's completed collocation projects, along with the monthly recurring charges associated with each of these arrangements. *At the very latest,* Sprint's claim concerning the forward looking costing methodology utilized by SWBT to determine Sprint's monthly recurring rates for requested collocation arrangements arose on December 1, 1999, when SWBT provided the detailed true-up information to Sprint on 6 completed collocation arrangements. As of December 1, 1999, Sprint knew the exact charges for both the nonrecurring costs and monthly recurring rates relating to these 6 collocation arrangements. Again, however, even utilizing December 1, 1999 as the date on which the 24 month limitations period began to run on Sprint's claim, Sprint's March 1, 2002, "Demand for Payment" was not timely.

In short, no matter how Sprint seeks to contort the express language contained in the interconnection agreement, or argue that the interconnection agreement means something completely different that what it actually says, the pleadings in this case already confirm that Sprint's Complaint is time-barred. As a result, Sprint's Complaint should be dismissed by the Commission.

III. THE COMMISSION DOES NOT HAVE JURISDICTION TO GRANT THE RELIEF REQUESTED BY SPRINT IN ITS COMPLAINT

In its Motion to Dismiss, SWBT established that the Commission does not have jurisdiction to entertain Sprint's Complaint under Missouri law. In its Response to SWBT's Motion to Dismiss, Sprint takes a new approach, and now asserts that the Commission has jurisdiction to "construe or enforce" the interconnection agreement between SWBT and Sprint under Sections 251 and 252 of the Act, and not under state law.[11] As SWBT described in its Motion to Dismiss, Sprint apparently now concedes that the Commission does *not* have jurisdiction under Missouri law to hear this case and grant the relief demanded by Sprint.

In its Complaint, Sprint did not allege that the Commission had jurisdiction under sections 251 and 252 of the Act. But even if the Complaint had alleged federal jurisdiction, the Commission could not grant the relief requested by Sprint. While the Act gives the Commission jurisdiction to enforce interconnection agreements entered into pursuant to sections 251 and 252 of the Act, the Act does *not* grant the Commission jurisdiction to grant the relief sought by Sprint, i.e., interpretation of the interconnection agreement to require the retroactive application of tariffed rates to collocation arrangements provided on an ICB basis prior to the effective date of SWBT's collocation tariffs. Nor does federal law give the Commission authority to award money damages to Sprint. On that issue, the Commission continues to lack jurisdiction.

As described above, in the "PARTIES AND JURISDICTION" section of its Complaint, Sprint does not mention sections 251 and 252 (or any other section) of the Act as a basis for the Commission's jurisdiction to "enforce" the SWBT/Sprint interconnection agreement in the manner described by Sprint. In its Complaint, Sprint relied exclusively on several Missouri statutes for its assertion that the Commission had jurisdiction over Sprint's Complaint. Now, for the first time, and only in response to SWBT's Motion to Dismiss, Sprint has abandoned its

[11] Sprint Response, p. 22.

argument that the Commission has any jurisdiction under Missouri law to hear this Complaint, and instead, now argues that the Commission's jurisdiction arises solely from the Act.

While Sprint appears to concede that the Missouri Supreme Court's decision in Wilshire Construction Co. v. Union Electric Co.[12] would preclude the Commission from "interpreting" the SWBT/Sprint interconnection agreement as requested by Sprint,[13] Sprint apparently believes that under the Act, the Commission nevertheless has the authority to do so. Sprint has not and cannot cite any federal case law or statute which grants the Commission authority to interpret an interconnection agreement in a manner designed to award damages, where the Commission clearly does NOT have any such jurisdiction to do so under state law. The Eighth Circuit's decision in Connect, cited by Sprint, certainly does not stand for this proposition. As the Eighth Circuit stated in its Connect decision, the *only* issue the court decided was that "the District Court has jurisdiction to hear Southwestern Bell's federal-law claim."[14] Sprint's argument that the Connect decision grants this Commission jurisdiction to "interpret" the interconnection agreement to determine money damages or to retroactively apply the rates contained in SWBT's collocation tariffs to preexisting collocation arrangements has no merit, and is clearly not supported by the Eighth Circuit's Connect decision.

At pages 25-27 of its Response to SWBT's Motion to Dismiss, Sprint attempts to avoid the indisputable fact that Sprint is asking the Commission to retroactively apply the rates contained in SWBT's collocation tariffs, which bear an effective date of October 12, 2001, to collocation arrangements Sprint requested and SWBT provided on an ICB basis (as *required* under the parties' interconnection agreement) by mischaracterizing the basis of SWBT's Motion to Dismiss. As SWBT pointed out in its Motion to Dismiss, Sprint's Complaint is muddled in

[12] 463 S.W.2d 903 (Mo. 1971).
[13] See, Sprint Response, pp. 24-25.
[14] 208 F. 3d at 949.

several respects. The one thing that is crystal clear, however, is that the fundamental basis of Sprint's Complaint is that the Commission should apply the rates contained in SWBT's October 12, 2001, collocation tariffs to Sprint's collocation arrangements, which were provided to Sprint prior to that date on an ICB basis, as required under the SWBT/Sprint interconnection agreement approved by the Commission in September, 1998. As SWBT described in its Motion to Dismiss, there is no basis under the SWBT/Sprint interconnection agreement to do so, nor is there any basis under the SWBT collocation tariff or any provision of Missouri law to do so. Even if Sprint were to rely on federal law to support its jurisdictional claim, Sprint's Complaint would not be saved. There is no federal authority that would grant the Commission jurisdiction to apply the rates contained in SWBT's October 12, 2001, collocation tariffs to collocation arrangements which were provided to Sprint before that date on an ICB basis, as required under the Commission-approved interconnection agreement between the parties.

WHEREFORE, having fully replied to Sprint's Response to SWBT's Motion to Dismiss, SWBT respectfully requests the Commission enter an Order dismissing Sprint's Complaint in its entirety.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE L.P.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served on the following counsel by electronic mail on November 18, 2002.

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