BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

Verified Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp. for Arbitration of Interconnection Agreements with Southwestern Bell Telephone Company d/b/a AT&T Missouri	)))))))	Case No. CO-2009-0239

SUBMISSION OF SUPPLEMENTAL AUTHORITY

Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp. (collectively, "Sprint") submits the attached Decision Of The Arbitration Panel ("DAP") in Case Number U-15788 in Michigan[1] in a nearly identical case to the one before the Missouri Public Service Commission. The DAP, issued by three (3) arbitrators unanimously, finds that the Sprint arbitration petition to extend its current interconnection agreements for three years against AT&T pursuant to Merger Commitment 7.4 is properly before the Michigan Public Service Commission and that it has jurisdiction. The DAP also finds that Sprint prevails and can extend its current interconnection agreements in Michigan for three years from January 15, 2009.

Sprint and AT&T conducted a nearly identical arbitration in Michigan to the one being conducted here in Missouri. Sprint filed the Michigan arbitration on February 6, 2009. AT&T raised in Michigan the same jurisdictional and other arguments regarding the interpretation of the Merger Commitments that it raises here in Missouri.

AT&T, in Michigan as it does in Missouri, argued that the parties did not negotiate regarding the three year extensions and therefore it was not an "open" issue subject to section

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[1] Decision Of The Arbitration Panel, *In the Matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P. and Nextel West Corp. for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish Interconnection Agreements with Michigan Bell Telephone Company d/b/a AT&T Michigan,*, Case No. U-15788 (April 22, 2009), ("Michigan DAP").

252 arbitration. The DAP found otherwise:

> The panel recognizes that the three-year extension was formally proposed late in the negotiation process. However, under the unique circumstances of this case, while we find that fact unfortunate, we do not believe it, in any way, delegitimizes, the negotiations, as a whole, or the specific three-year extension issue. Clearly, the issue was raised during the negotiation window, and, clearly, AT&T rejected it. The panel feels that, inherent in any negotiation process, is the fact that it may, at times, result in unexpected outcomes with unpredictable twists and turns along the way. So long as they do so in good faith, the parties are free to change positions and present new proposals throughout the negotiation process. Doing so, does not transform a less than perfect negotiation process into one that is legally flawed and insufficient, as it appears AT&T argues.[2]

Therefore, the Panel in Michigan found that no further negotiations were necessary. Exactly as the Arbitration Report in Missouri finds, Sprint properly raised the extension issue in Michigan during the timeframe for negotiations and arbitration and AT&T rejected Sprint's request. Sprint raised an appropriate Section 252 arbitration and the "matter is properly before the Commission."[3]

The DAP, interpreting Merger Commitment 7.4, also found that Sprint is permitted to extend its current interconnection agreements in Michigan for three years from the date that Sprint requested the extensions, January 15, 2009.[4] The Panel found that AT&T's interpretation of Merger Commitment 7.4 unreasonable stating that "adopting AT&T's position would effectively rewrite the commitment."[5]

In the Michigan matter, AT&T proposed numerous changes to the current interconnection agreements. Here, in Missouri, AT&T argues that Sprint's proposal to extend the current interconnection agreements came too late in the process for AT&T to

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[2]Michigan DAP, p. 8, emphasis added.

[3] Michigan DAP, p. 9.

[4] Michigan DAP, p. 14.

[5] Michigan DAP, p. 12.

propose changes. AT&T's plea to make changes to the interconnection agreements is futile. The Michigan DAP finds that a fair interpretation of the Merger Commitment prohibits AT&T from making changes unless required by change in law. The Panel rejected AT&T's changes stating that they did not fit into the change of law exception. "The Panel believes that, if the ICAs were subject to a wide range of amendments, the three-year extension provision would be, unlawfully, rendered a nullity."[6] Therefore, the Michigan Panel found that the proper interpretation of Merger Commitment 7.4 is that the requesting party, Sprint, can extend its current interconnection agreements for three years without change.

In essence, the Michigan DAP concurs with the Arbitrator's Report in Missouri. The Commission has jurisdiction of this arbitration case and Sprint can extend its interconnection agreements for three years according to the promise that AT&T made to the FCC in obtaining approval for its merger with BellSouth.

WHEREFORE, Sprint requests the Missouri Public Service Commission accept the submission of supplemental authority from Michigan and to affirm the Arbitrator's Final Report in this case.

Respectfully submitted on April 27, 2009.

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[6] Michigan DAP, p. 11, f.n. 3.

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SPRINT COMMUNICATIONS
COMPANY L.P.
SPRINT SPECTRUM L.P.
NEXTEL WEST CORP.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Brief has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 27th day of April, 2009, to:

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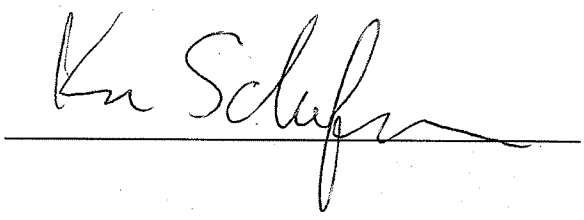

STATE OF MICHIGAN

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish Interconnection Agreements with Michigan Bell Telephone Company d/b/a/ AT&T Michigan	)	Case No. U-15788

NOTICE OF DECISION OF ARBITRATION PANEL

The attached Decision of the Arbitration Panel (DAP) is being issued and served on both parties of record in the above matter on April 22, 2009.

Written objections to the DAP, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on the other party of record on or before May 1, 2009. To be seasonably filed, objections must reach the Commission on or before the date they are due. **The Commission has selected this case for participation in its Paperless**

Electronic Filings Program. No paper documents will be required to be filed in this case.

THE ARBITRATION PANEL

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Issued and Served: April 22, 2009

STATE OF MICHIGAN

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish Interconnection Agreements with Michigan Bell Telephone Company d/b/a/ AT&T Michigan	)	Case No. U-15788

DECISION OF THE ARBITRATION PANEL

I.

HISTORY OF PROCEEDINGS

On February 6, 2009, Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp. (collectively, Sprint or Petitioners) filed a Petition for Arbitration (Petition), pursuant to: Section 252(b) of the Federal Telecommunications Act (Act), 47 USC 151 *et seq.*; Sections 201, 203, and 204 of the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, and; the arbitration procedure orders issued by the Michigan Public Service Commission (Commission) in Cases Nos. U-11134 and U-13774. The Petition identified one issue for arbitration.

On February 24, 2009, the Arbitration Panel (Panel), consisting of Mr. Thomas Saghy, Ms. Shannon Withenshaw, and Administrative Law Judge Mark D. Eyster, was appointed.

On March 3, 2009, AT&T filed its Response to the Petition and a Motion to Dismiss. The Response identified numerous additional issues for arbitration.

On March 4, 2009, the Panel issued a letter to the parties that established a schedule for the proceeding. As part of the letter, the following was directed: by March 6, 2009, the parties were to submit a stipulated table of the issues to be arbitrated; by March 13, 2009, Petitioners were to submit a written explanation of its positions on each of the issues identified by AT&T, and; each party was to file a Proposed Decision of the Arbitration Panel (PDAP), by March 20, 2009, and a response to the PDAP, by March 27, 2009.

On March 6, 2009, the parties filed the stipulated table of issues to be arbitrated. In that filing, Petitioners presented one issue for arbitration; whether its three Interconnection Agreements (ICAs) with AT&T Michigan should each be extended for three years. AT&T presented 23 proposed amendments to the ICAs, each as a separate issue, and stated that it "should have the opportunity to arbitrate changes to the agreements if the arbitration is not dismissed and the Commission finds in favor of [Petitioners] on [its] issue[1].

On March 13, 2009, Petitioners filed a written explanation of its positions on each of the issues identified by AT&T and a Response in Opposition to AT&T Michigan's Motion to Dismiss.

Each party filed a PDAP on March 20, 2009, and a response to the PDAP on March 27, 2009.

[1] See Stipulated table of Issues to be Arbitrated, pp. 3-4.

POSITIONS OF THE PARTIES

Petitioners

Petitioners note that, individually, they have been operating under separate ICAs with AT&T: Sprint Communications Company, L.P., under an ICA that was approved by the Commission on November 7, 2002; Sprint Spectrum, L.P., under an ICA approved on October 7, 2003, and; Nextel West Corp., under an agreement approved on December 6, 1999. Petition, pp. 6-7. The request for the three-year extensions of these agreements represents Petitioners' sole issue in this arbitration.

With regard to the three-year extension request, Petitioners' arguments rest, primarily, upon the rights and obligations of the parties, under federal law, that were created pursuant to the Federal Communication Commission's (FCC) Memorandum Opinion and Order[2] that was released March 26, 2007. Petitioners note that, in March of 2006, AT&T Inc. and BellSouth began the process of seeking FCC approval of their plans to merge the two companies. Petition, p. 7. On March 26, 2007, the FCC released the *Merger Order*, in which, it granted the request to merge, with conditions.

Petitioners stress that the *Merger Order* conditions were included to address FCC concerns that the merger might result in "a 'consolidated entity – one owning nearly all of the telephone network in roughly half the country – *using its market power to reverse the inroads that new entrants have made and, in fact, to squeeze them out of the market altogether:*'" Petition, p. 9. Additionally, Petitioners state at pp. 9-10 of their Petition:

[2] *In the Matter of AT&T Inc and BellSouth Corp*, Memorandum Opinion and Order, FCC 06-189, 22 FCCR 5662, (released March 26, 2007). Hereinafter referred to as the *Merger Order*.

[FCC] Commissioner Adelstein . . . commented on commitments made in the Merger Order to streamline competition and to reduce costs of competitors in dealing with the merged AT&T and BellSouth. He stated:

> Reducing Costs of Interconnection Agreements. I was also pleased that we require the applicants to take a number of steps – including providing Interconnection Agreement portability and allowing parties to extend their existing agreements – to reduce the costs of negotiating Interconnection Agreements. This condition also responds to concerns about incentives for discrimination – whether through the terms of access offered to competitors or through raising competitors' costs – long-recognized by Commission precedent. This condition also addresses the purported purpose of this merger, which is to respond to intermodal competition.

For more specific support of its position, at page 14 of its Petition, Sprint notes that:

> Merger Commitment 7.4 states:
>
> The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current Interconnection Agreement, regardless of whether its initial term has expired, for a period of up to three-years, subject to amendment to reflect prior and future changes of law. During this period, the Interconnection Agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.

Respondent

In regard to Petitioners' single issue, AT&T states in its Response, at pp. 5-6:

> With respect to the allegedly 'open' issue, as AT&T Michigan understands it, Sprint contends that the 'term' of an agreement is an essential component of any agreement, that AT&T Michigan was obligated to negotiate a term under Sections 251 and 252, and that its refusal to do so creates an 'open' issue. This makes no sense.
>
> First, the term of an agreement is not some free-floating provision that exists in a vacuum. It exists with respect to a particular agreement. Had the parties voluntarily negotiated based on the three separate agreements and agreed on everything except the term of those agreements, Sprint might have a point. That, of course, is not what happened. Sprint simply demanded that AT&T Michigan extend the term

of the three current agreements under Sprint's interpretation of Merger Commitment 7.4.

Second, Section 251 is very specific as to what issues an incumbent LEC, such as AT&T Michigan, must negotiate. AT&T Michigan had no Section 251 obligation to negotiate with Sprint as to Merger Commitment 7.4 and did not do so.[12] As discussed in the Motion to Dismiss, extending agreements under a Merger Order is not a subject on which AT&T Michigan is required to negotiate under Section 251. Indeed, if an extension of Sprint's expired ICAs were required by Section 251, there would have been no reason for the Merger Commitment.

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[12] A refusal to negotiate under Section 251 is not the same thing as having an open issue following negotiations. A matter outside the scope of the obligations created under Section 251 of the Act does not become subject to arbitration merely because one party refuses to engage in negotiations on that matter.

AT&T continues by stating its "position that the Commission lacks jurisdiction over the subject matter of Sprint's Petition, and this matter should be dismissed." AT&T Response to Petition, p. 6. However, "[t]o the extent that the Commission entertains Sprint's Petition," AT&T proposes 23 amendments to the current ICA language as issues for arbitration. *Id.*, at 6-7.

DISCUSSION

The Panel acknowledges the considerable time and effort that the parties have expended in presenting this arbitration case to the Panel. After considering the evidence submitted and the varied and extensive arguments, the Panel is convinced that the relevant facts and issues are relatively simple and straight forward. Thus, the Panel endeavors to keep its DAP correspondingly simple and straight forward.

AT&T's Motion to Dismiss

As noted, above, on March 3, 2009, AT&T filed a motion to dismiss the Petition and, on March 13, 2009, Petitioners filed a response to the motion. The Panel believes that, under the arbitration procedures established by the Commission, the Panel is not the preferred body to rule upon the motion. Therefore, the Panel makes no formal recommendation regarding AT&T's motion to dismiss and leaves consideration of the motion to the Commissioners.

Petitioners' Issue - Three-Year Extension

This matter has its roots in Petitioners' December 21, 2007, filing of a complaint against AT&T. In that matter, Case No. U-15491, Petitioners asked that, among other things, the Commission declare that the *Merger Order* commitments required AT&T to permit Sprint to port a Kentucky ICA into Michigan and for the Commission to order AT&T to execute Sprint's proposed election of the Kentucky ICA. In response, AT&T filed a motion to dismiss that, among other things, claimed that the Commission lacked jurisdiction to hear the complaint.

In granting the motion, the Commission stated, in part:

> The Commission concludes that it has no jurisdiction to adjudicate an action based on a claim of violation of an FCC order such as the Merger Order or its commitments. . . . However, that does not leave Sprint without a forum for obtaining what it says it desires. If it desires to import the interconnection agreement entered into between an affiliate of AT&T Michigan and Sprint, it may petition the Commission for arbitration of terms of an interconnection agreement under the provisions of 47 USC 252. For such an action, the Commission clearly has jurisdiction. Sprint may seek to import the contract, and argue that failure to permit it to adopt the provisions is contrary to FCC orders or federal law. . . . Any terms or conditions must be consistent with federal law and FCC orders and rules. To this extent, the Commission may be in a position of interpreting the conditions that were adopted by the FCC. But it will do so in a context that

has been specifically delegated to the states with authority granted by our state Legislature to do so. MCL 484.2201.

* * *

The federal Act has provided a method by which requesting carriers may obtain interconnection agreements in 47 USC 251 and 252. That method does not encompass filing a complaint with a state commission alleging violations of merger commitments adopted by the FCC. Sprint v AT&T, MI, U-15491, Order, pp. 12-13 (August 12, 2008).

Six days after the Commission dismissed the complaint in U-15491, Petitioners sent, to AT&T, a request for negotiation, pursuant to the procedures in Section 252(b)(1) of the Act. Thereafter, the parties negotiated the details of porting the Kentucky ICA. However, on January 15, 2009, the negotiations changed direction, when Petitioners formally, in writing, notified AT&T that they preferred a three-year extension of their current Michigan ICAs, pursuant to *Merger Order,* Commitment 7.4. In response, AT&T affirmatively declined to agree to the extensions.

On February 6, 2008, Petitioners filed this single issue petition for arbitration, requesting three-year extensions to the following ICAs: (1) Agreement for Interconnection Between Sprint Communications Company L.P. and Michigan Bell Telephone Company d/b/a Ameritech Michigan n/k/a AT&T Michigan, approved by the Commission in Case No. U-13580; (2) Wireless Interconnection Agreement by and between SBC Michigan and Sprint Spectrum L.P., approved by the Commission in Case No. U-13879, and; (3) Interconnection Agreement for a Wireless System by and between Ameritech Information Industry Services and Nextel West Corp, approved by the Commission in Case No. U-12145. In short, Petitioners argue that, under federal law, they have the right to receive the three-year extension. With this assertion, the Panel agrees.

AT&T's response rests, primarily, on the arguments that the three-year extension was never properly negotiated and that AT&T has no obligation to make the subject part of the negotiation process. See AT&T Response, p. 6. The Panel rejects both these arguments.

The panel recognizes that the three-year extension was formally proposed late in the negotiation process. However, under the unique circumstances of this case, while we find that fact unfortunate, we do not believe it, in any way, delegitimizes the negotiations, as a whole, or of the specific three-year extension issue. Clearly, the issue was raised during the negotiation window and, clearly, AT&T rejected it. The panel feels that, inherent in any negotiation process, is the fact that it may, at times, result in unexpected outcomes with unpredictable twists and turns along the way. So long as they do so in good faith, the parties are free to change positions and present new proposals throughout the negotiation process. Doing so, does not somehow transform a less than perfect negotiation process into one that is legally flawed and insufficient, as it appears AT&T argues.

With regard to AT&T's argument that it is under no obligation to negotiate the term of the ICAs, again the panel is unpersuaded. Clearly, AT&T is under a statutory duty to negotiate in good faith. That duty extends to all aspects of the ICA. The term is a fundamental component of any ICA and is, thus, an essential topic for negotiation. The fact that Petitioners' right to the three-year extensions springs from the *Merger Order,* does nothing to negate AT&T's affirmative duty to negotiate, in good faith, the term of the ICA.

Additionally, while not ruling on AT&T's motion to dismiss, the Panel feels confident that this matter is properly before the Commission. As apparent from the quote, above, in Case No. U-15491, the Commission confirmed the long recognized right that permits Sprint to petition the Commission for arbitration of any open issues, pursuant to 47 USC 252, which reads, in part, as follows:

> § 252. Procedures for negotiation, arbitration, and approval of agreements
>
> * * *
>
> (b) Agreements arrived at through compulsory arbitration
> (1) Arbitration
> During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Additionally, the Commission confirmed its unquestioned authority to act as arbitrator under the grant of authority found in MCL 484.2201, which reads:

> 448.2201. Commission jurisdiction and authority
> Sec. 201. (1) Except as otherwise provided by this act or federal law, the Michigan public service commission shall have the jurisdiction and authority to administer this act and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state.
> (2) The commission shall exercise its jurisdiction and authority consistent with this act and all federal telecommunications laws, rules, orders, and regulations.

From the applicable statutory provisions, it is clear that the Commission must "exercise its jurisdiction and authority consistent with . . . all federal . . . orders and regulations." Implicit in that mandate, the Commission must, by necessity, interpret the meaning of, among other things, relevant FCC orders. The Commission would be remiss to do otherwise.

Likewise, to properly fulfill its duties, the Panel must review and consider all relevant federal authority. Thus, the Panel believes the merits of Petitioners' positions

rests upon, among other things, the interpretation of relevant federal law and, in particular, that which is contained in the *Merger Order.*

In pertinent part, Appendix F of the *Merger Order* reads:

> **APPENDIX F**
> **Conditions**
>
> The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them. Unless otherwise specified herein, the commitments described herein shall become effective on the Merger Closing Date. The commitments described herein shall be null and void if AT&T and BellSouth do not merge and there is no Merger Closing Date.
>
> It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.
>
> **MERGER COMMITMENTS**
>
> For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.
>
> * * *
>
> **Reducing Transaction Costs Associated with Interconnection Agreements**
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> * * *
>
> 4. The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.

In light of the language above, the Panel finds Petitioners' arguments, regarding their single issue, convincing. A fair reading of the *Merger Order* makes clear Petitioners' right, under federal law, to the three-year extension they have requested during negotiations and in arbitration. Additionally, under federal law, Petitioners' right

to extend their current ICAs is subject only to the requirement that the current ICAs be amended to reflect changes of law[3].

Effective Date of Three-Year Extension

Petitioners request that the extensions be effective as of January 15, 2009, the date their formal requests for the extensions were made to AT&T. After carefully reviewing the relevant information, the Panel concludes that Petitioners' position on this point should be adopted.

At pages 21-22 of its PDAP:

> AT&T asserts that Merger Commitment 7.4 only permits a requesting telecommunications carrier to extend an agreement for up to 36 months from the expiration date of the initial term of the agreement, whether or not that initial term has expired. In an effort to stave off disputes regarding the appropriate construction of this Merger Commitment, AT&T states that on November 16, 2007, it issued an Accessible Letter that voluntarily broadened the scope of Merger Commitment 7.4. The Accessible Letter provides, in relevant part:
>
> > Merger Commitment 7.4 allows carriers to extend the terms of their current ICAs for a period of up to three (3) years, subject to amendment to reflect prior and future changes of law. The question has arisen whether ICAs may be extended for three years from the expiration date of the ICA's initial term (as interpreted and implemented by AT&T) or some other date (e.g., the merger close date of December 29, 2006 or the date of a carrier's extension request.) While AT&T believes that its interpretation supported by the plain language of Merger Commitment 7.4, as well as by the *ex parte* documents submitted to the FCC and the negotiations of the commitment prior to the release

[3] The Panel notes that, should the extensions be ordered, AT&T argues for a number of amendments to the ICAs. However, as the *Merger Order* specifically states, the extensions are only subject to modification to reflect changes in law. No other amendment is required or, for that matter, permitted without agreement of the parties. The Panel believes that, if the ICAs were subject to a wide range of amendments, the three-year extension provision would be, unlawfully, rendered a nullity.

AT&T has presented 23 issues; all representing amendments of the current ICAs. The Panel feels that AT&T has failed to establish that any of the proposed amendments are required by changes in law. None-the-less, Petitioners have indicated a willingness to adopt a number of AT&T's proposed amendments. To the degree that the parties agree on the appropriateness of the amendments, it is recommended that they voluntarily incorporate them into the ICAs, as part of their three-year extension.

> of the Merger Order, AT&T is modifying its position to allow carriers additional opportunities to extend the terms of their agreements.
>
> AT&T presented testimony . . . that explained the Accessible Letter . . . provided a "grace period," whereby carriers whose ICAs had been expired for more than three years (such as the three Sprint agreements at issue in this proceeding) could nonetheless take advantage of the Merger Commitment by submitting a request for an extension of up to three years from the date of request no later than January 15, 2008. The Accessible Letter provides, in relevant part, that:
>
> > AT&T will implement Merger Commitment 7.4 as follows: ICAs Expiring Prior to January 15, 2008 (Option 1): ICAs whose initial terms have already expired, or will expire prior to January 15, 2008, may be extended for up to three years from the date of a carrier's extension request, provided AT&T receives the carrier's extension request prior to January 15, 2008. An ICA's term may be extended only once pursuant to Merger Commitment 7.4. If no request to extend the ICA's term has been received by AT&T prior to January 15, 2008, the ICA's term may not be extended pursuant to the merger commitment.
>
> As AT&T sees it:
>
> > AT&T's Accessible Letter *expanded* the opportunity for Sprint and other carriers to take advantage of Merger Commitment 7.4 by permitting carriers to request, by January 15, 2008, an extension of their ICAs for up to three years, even though the "initial terms have already expired, or will expire prior to January 15, 2008." Sprint failed to take advantage of this voluntary offer and request an extension of its Michigan agreements by January 15, 2008. Accordingly, Sprint can no longer take advantage of this offer. AT&T's Response to Petitioners' PDAP, p. 16.

The panel can not accept AT&T's interpretation of Merger Commitment 7.4. Adopting AT&T's position would effectively rewrite the commitment. Juxtaposition of AT&T's version of what Merger Commitment 7.4 says and its actual language makes this abundantly clear.

What AT&T says:	What Merger commitment 7.4 says:
Merger Commitment 7.4 only permits a requesting telecommunications carrier to extend an agreement for up to 36 months from the expiration date of the initial term of the agreement, whether or not that initial term has expired.	AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years . . . .

From the above, it is clear that AT&T's position requires a rewrite of the merger commitment. However, no rewrite is necessary or permitted. The *Merger Order* is clear and unambiguous; it is the *current interconnection agreement* that is to be extended three years. Current is defined as, "1a. Belonging to the present time. b. Now in progress." *Webster's II New College Dictionary* (2005). Thus, on the date that the three-year extension was requested, the "current interconnection agreement" was the agreement under which the parties were operating, on that date.

By omitting the word "current" and by inserting language referring to "the expiration date of the initial term", AT&T transforms the commitment from a mandate to extend current interconnection agreements, to one that has the limited effect of, apparently, only changing the expiration date of the "initial term" of the agreement. In many instances, including the case at bar, AT&T's version of the commitment renders it a nullity and makes illusory any right to a three-year extension. In short, the commitment does not read as AT&T would have it and AT&T's position conflicts with the plain and unambiguous language of the commitment.

As a general rule, unless the result would be clearly unreasonable or contrary to the public interest, the Panel is to limit its decision by selecting one of the Parties' positions on each issue. For the reasons stated above, we believe AT&T's position conflicts with the plain language of the *Merger Order*. In contrast, we find no conflicts associated with Petitioners' position, it does not appear contrary to the public interest, and it is, otherwise, reasonable. Therefore, with regard to the date from which the three-year extension should run, the Panel adopts Petitioners' position.

AT&T's Issues

For the reasons already stated, above, and, specifically, in footnote 3, we find for Petitioners on all of AT&T's issues. None of AT&T's proposed amendments are adopted by the Panel.

CONCLUSION

For the reasons stated above, the Panel recommends the Commission order the following:

1. Petitioners' position on its one issue is adopted and Petitioners', then current, ICAs are extended from January 15, 2009, to January 15, 2012, and;
2. Respondent's position on its 23 issues is rejected, and;
3. To the degree that the parties can come to agreement on Respondent's issues, the parties are encouraged to make the appropriate amendments to the current agreements.

Any arguments not specifically addressed in this DAP were deemed irrelevant to the findings and conclusions of this matter.

THE ARBITRATION PANEL

Mark D. Eyster

Digitally signed by Mark D. Eyster
DN: cn=Mark D. Eyster, c=US, email=mdeyste@michigan.gov
Date: 2009.04.21 15:18:09 -04'00'

Mark D. Eyster

Shannon Withenshaw

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Date: 2009.04.21 15:51:33 -04'00'

Shannon Withenshaw

Thomas L. Saghy

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Date: 2009.04.21 15:18:33 -04'00'

Thomas L. Saghy

Issued and Served: April 22, 2009

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN)
) SS.
County of Ingham)
)

Case No. U-15788

PROOF OF SERVICE

Dawn M. Prawdzik being duly sworn, deposes and says that on April 22, 2009 A.D. she served a copy of the attached Decision of the Arbitration Panel via E-Mail, to the persons as shown on the attached service list.

Dawn Prawdzik

Digitally signed by Dawn Prawdzik
DN: cn=Dawn Prawdzik, c=US, email=prawdzikd@michigan.gov
Date: 2009.04.21 15:17:43 -04'00'

Dawn M. Prawdzik

Subscribed and sworn to before me
this 22nd day of April 2009.

Lisa Felice

Lisa Felice
Notary Public, Eaton County
acting in Ingham County, MI
My Commission Expires April 15, 2014

ATTACHMENT A

Haran Rashes
Hrashes@clarkhill.com

William Champion, III
wchampion@dickinsonwright.com