

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the 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**

**DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY**

I dissent from today's Order because its effect is to assume jurisdiction over enforcement of FCC merger conditions. This is contrary to this Commission's ruling in TC-2008-0182, issued June 24, 2008, that the Commission does not have jurisdiction to enforce the FCC's Merger Order.

Sprint did a superb job of obfuscating the issues and making it appear that it was simply exercising its right to negotiate and arbitrate under section 252 of the Telecommunications Act. As counsel for AT&T pointed out at the oral argument, however, there were no bi-lateral negotiations concerning the terms and conditions of the current interconnection agreements (ICAs). There was simply the demand by Sprint that AT&T extend the Missouri ICAs with all terms and conditions unchanged. The Telecommunications Act does not contemplate the arbitration of such "non-negotiations." Therefore, this is not a section 252 arbitration issue. It is purely and simply an FCC merger condition, not subject to this Commission's jurisdiction.

When I voted with the majority to deny AT&T's original motion to dismiss for lack of jurisdiction, I incorrectly assumed that there was a proper request to arbitrate under section 252 of the Telecommunications Act. I assumed that the parties were in good-faith

negotiations concerning the terms and conditions of the current interconnection agreements Sprint was seeking to extend. It is apparent now, however, that the only section 252 negotiations between the parties were related to the Kentucky ICAs. Sprint's request for arbitration was not related to negotiated terms and conditions of the Kentucky ICAs, but rather to enforcement of FCC merger condition 7.4 as it relates to the Missouri ICAs.


The Arbitrator erroneously found that Sprint's requests for an extension of the Missouri ICAs were timely because they were made between the 135<sup>th</sup> and the 160<sup>th</sup> day of negotiation. Sprint's requests for negotiation which began the 135-160 day clock were not for negotiation of the Missouri ICAs. They were for negotiation of the terms and conditions of the Kentucky ICAs. It is instructive to note that Sprint did not request this Commission to enforce the merger commitment to make available the entire Kentucky ICA, apparently realizing that the Commission would quickly dismiss such a petition for lack of jurisdiction.<sup>1</sup> It appears, however, that Sprint believed it could create a scenario of section 252 negotiations related to terms and conditions of the Kentucky ICAs and later change its request to one of enforcement of the merger condition requiring extension of current Missouri ICAs without negotiation of terms and conditions. Sprint claimed that the original negotiations allowed it to timely request arbitration of the extension without modification of the Missouri ICAs. There is no requirement for such an extension except in the FCC Merger Order. Unfortunately, the Arbitrator and the majority of the Commission allowed Sprint to stir together the Telecommunications Act and the FCC Merger Order to prevail with this turbid result.

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<sup>1</sup> TC-2008-0182

I respectfully dissent.

**Respectfully submitted,**

  
Connie Murray, Commissioner

Dated at Jefferson City, Missouri  
on this 6th day of May 2009.