

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 6th day of
May, 2009.

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

**ORDER DENYING APPLICATION FOR RECONSIDERATION
AND ADOPTING FINAL ARBITRATOR'S REPORT**

Issue Date: May 6, 2009

Effective Date: May 12, 2009

This order denies Southwestern Bell Telephone Company, d/b/a AT&T Missouri's motion for reconsideration of the Commission's February 19, 2009 Order Denying Motion to Dismiss. The order also adopts in whole the Final Arbitrator's Report issued on April 13, 2009.

Case History:

On December 5, 2008, Sprint Communications Company, L.P., Sprint Spectrum L.P., and Nextel West Corp. (collectively referred to as "Sprint") filed a Petition for Arbitration under Section 252(b) of the federal Communications Act of 1934, as amended,¹ seeking arbitration of an interconnection agreement between Sprint and AT&T. Sprint had previously filed a complaint² against AT&T seeking to port to Missouri a Kentucky interconnection agreement pursuant to the conditions imposed by the Federal

¹ 47 U.S.C. § 252(b)(1).

² Case No. TC-2008-0182.

Communications Commission on the merger between AT&T and BellSouth. The Commission dismissed that complaint stating that the Commission did not have jurisdiction to interpret and enforce a Kentucky-approved interconnection agreement.³ The Commission also stated that Sprint had not requested that the Commission arbitrate any open interconnection issues, approve or reject an interconnection agreement, or enforce an existing interconnection agreement as the Commission is authorized to do under the federal law.⁴ Failing in its attempt to port the Kentucky agreement to Missouri, Sprint now seeks an extension by a period of three years of its current Missouri-approved interconnection agreements with AT&T.

On December 30, 2008, AT&T filed a motion to dismiss the petition for lack of jurisdiction. After a response from Sprint and a further reply from AT&T, the Commission denied AT&T's motion to dismiss. The arbitration hearing took place on February 25, 2009, as scheduled. AT&T filed an application for reconsideration or rehearing on February 27, 2009. Sprint filed a response to that motion and AT&T filed a further reply. The Arbitrator issued her Draft Arbitrator's Report on March 27, 2009, and on April 13, 2009 issued the Final Arbitrator's Report. The Commission held oral arguments regarding the motion and the Final Arbitrator's Report on April 28, 2009.

Application for Reconsideration and/or Rehearing:

Sprint filed its petition for arbitration and presented as the only issue for arbitration, whether it should be allowed to extend its current Missouri interconnection agreements for a period of three years. AT&T argues that the Section 252 negotiations that were taking place had nothing to do with the Missouri interconnection agreements.

³ *Order Granting Motion to Dismiss* (effective July 4, 2008), Case No. TC-2008-0182.

⁴ *Id.*

AT&T's theory is that the Commission does not have jurisdiction to enforce the FCC's Merger Order,⁵ it only has authority to arbitrate open issues related to interconnection agreements and this was not an open issue that was voluntarily negotiated.

Sprint argues that as a matter of law (the Merger Order), AT&T was required to offer extension of the current interconnection agreements for a period of up to three years. In addition, Sprint argues, as the Arbitrator found, that negotiations regarding the Missouri interconnection agreements took place during the Section 252 negotiation window and therefore became an open issue for arbitration. Sprint further argues that the Commission must interpret and apply the merger conditions in order to resolve the issue in this arbitration.

The Commission has jurisdiction "to arbitrate any open issues" that are the subject of the parties' Sections 251 and 252 negotiations.⁶ Sprint has asked that the Commission arbitrate the single issue of extending the term of the current interconnection agreements.

AT&T is correct in its assertion that merely calling something an open issue or an interconnection-related issue does not make it so. In this instance, however, AT&T and Sprint had multiple exchanges regarding the Missouri interconnection agreements even though the bulk of their negotiations were about the Kentucky agreements. The Commission continues to find that it has authority to interpret and enforce interconnection agreements and to determine through arbitration the appropriate lawful and

⁵ The Commission previously ruled in this manner in the earlier, related complaint case. See. *Order Granting Motion to Dismiss*, Case No. TC-2008-0182 (issued June 24, 2008).

⁶ 47 U.S.C.A. § 252(b)(1).

non-discriminatory terms of that agreement.⁷ In particular the Commission finds that it has jurisdiction to arbitrate this matter and denies AT&T's application for reconsideration.

Adoption of the Final Arbitrator's Report:

Commission Rule 4 CSR 240-36.040(24) allows the Commission to adopt, modify, or reject the arbitrator's final report, in whole or in part. The Commission has considered the Final Arbitrator's Report, the comments filed by the parties, and the oral arguments held on April 28, 2009. The Commission adopts in whole the Arbitrator's Final Report issued on April 13, 2009.

THE COMMISSION ORDERS THAT:

1. The application for reconsideration and/or rehearing filed by Southwestern Bell Telephone Company, d/b/a AT&T Missouri, on February 27, 2009, is denied.
2. The Final Arbitrator's Report issued on April 13, 2009, is adopted in whole.
3. The parties shall file an interconnection agreement that conforms to this order no later than May 13, 2009.
4. This order shall become effective on May 12, 2009.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

Clayton, Chm., Davis, Jarrett,
and Gunn, CC., concur.
Murray, C., dissents, with separate
dissenting opinion attached.

Dippell, Deputy Chief Regulatory Law Judge

⁷ 47 U.S.C.A. §§ 251 and 252.