

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

Sprint Communications Company L.P., )  
Sprint Spectrum L.P., Nextel West Corp )  
and NPCR, Inc., )

Complainants, )

vs. )

Case No. TC-2008-0182

Southwestern Bell Telephone Company, )  
d/b/a AT&T Missouri, )

Respondent. )

**AT&T MISSOURI'S RESPONSE TO  
APPLICATION FOR REHEARING**

AT&T Missouri<sup>1</sup> respectfully opposes Complainants'<sup>2</sup> Application for Rehearing, which for the most part simply repeats arguments previously made.<sup>3</sup> Complainants have not raised any grounds that merit rehearing and the Commission should deny the Application.

1. Complainants' Claim of Jurisdiction. Complainants claim the Commission "erringly finds that neither state nor federal law gives the Commission jurisdiction to hear Sprint's Complaint."<sup>4</sup> Complainants, however, fail to point to any affirmative grant of jurisdiction that would allow the Commission to exercise authority over the Complaint. Instead, Complainants merely point to various savings clauses in the Merger Commitments<sup>5</sup> and federal law.<sup>6</sup> But those savings clauses do not delegate any authority to state commissions. Rather, they only preserve such

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<sup>1</sup> Southwestern Bell Telephone Company, d/b/a AT&T Missouri, will be referred to in this pleading as "AT&T Missouri." It files pursuant to 4 CSR 240-2.080(15).

<sup>2</sup> Complainants Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp. and NPCR, Inc. will be referred to in this pleading as "Complainants."

<sup>3</sup> AT&T Missouri sufficiently addressed Complainants' arguments in AT&T Missouri's May 5, 2008, Reply and its May 28, 2008, Suggestions (which it incorporates into this Response by reference) and will not repeat its full arguments here.

<sup>4</sup> Application for Rehearing, p. 2.

<sup>5</sup> Id., p. 2.

<sup>6</sup> Id., p. 6.

state authority as already exists.<sup>7</sup> Contrary to Complainants' assertions,<sup>8</sup> there is no need for the Commission to "address how federal law limits" the Commission's authority, as the question here focuses on whether the Commission has jurisdiction in the first instance.<sup>9</sup> Since the Commission does not have jurisdiction in the first instance, no question of preemption arises.

The FCC's responsibility to evaluate the AT&T/BellSouth merger and its authority to condition approval of that transaction on the Merger Commitments come from Sections 214 and 303(r) of the Telecommunications Act of 1934. Neither the Missouri Legislature nor Congress has delegated any authority to the Missouri Commission to enforce Section 214 Merger Commitments. As Complainants have not identified any substantive statutory provision granting the Commission jurisdiction to adjudicate disputes arising out of an FCC Merger Approval Order, the Commission appropriately dismissed this Complaint for lack of jurisdiction.

2. Complainants' Claim the Commission Ignored its Own Rules. Complainants point to 4 CSR 240-3.513(4)(b)(4) and claim the Commission "ignores its own rules which allow for a procedure by which a party can seek Commission disposition regarding an interconnection agreement that is neither agreed to nor submitted for arbitration under the bounds prescribed in federal law."<sup>10</sup> The rule Complainants reference, however, has no application here because it pertains to Section 252(i) adoption requests. Clearly the Complaint is not a Section 252(i) adoption request. And in any event, the availability of such adoptions is limited to approved interconnection agreements from the same state. Application of GTE Corp., 15 FCC Rcd. 14032, para 314 (2000).

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<sup>7</sup> The FCC Merger Order at p. 147, states "It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction . . . or to limit state authority . . . that are not inconsistent with these commitments. . ." (emphasis added). 47 USC Section 261(c) states "Nothing in the part precludes a state from imposing requirements . . . as long as the state requirements are not inconsistent with this part or the Commission's regulations. . ." (emphasis added). (Both quoted more fully at pp. 2 and 6 of Complainants' Application for Review.)

<sup>8</sup> Application for Rehearing, p. 3.

<sup>9</sup> AT&T Missouri sees no need to address Complainants' efforts to distinguish Core Communications, Inc. v. Verizon Pennsylvania, Inc., 493 F.3d 333 (3<sup>rd</sup> Cir. 2007), as the Commission's reference to the case was in the portion of its Order reciting Complainants' arguments and the cases they cite.

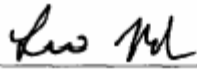
<sup>10</sup> Application for Rehearing, p. 3.

3. Complainants' Mischaracterization of the Verizon Wireless Case. Complainants' claim that the Commission has already exercised authority "to enforce a Merger Commitment made by AT&T"<sup>11</sup> is incorrect. While AT&T Missouri and Verizon Wireless did have a dispute concerning Merger Commitment obligations, the parties themselves resolved the dispute and Verizon Wireless dismissed its Complaint with prejudice.<sup>12</sup> The only action the Commission took was the routine approval of a voluntarily-agreed to amendment to the parties' interconnection agreement to reflect their own resolution of the dispute. Complainants' characterizing this predominantly ministerial act as an "enforcement" is an overstatement at best.

WHEREFORE, AT&T Missouri respectfully requests the Commission to deny Complainants' Application for Rehearing.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY,  
D/B/A AT&T MISSOURI

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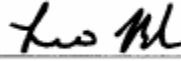
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<sup>11</sup> Application for Rehearing, p. 5 (emphasis added).

<sup>12</sup> See Verizon Wireless' February 26, 2008, filing dismissing its Complaint in Case No. TC-2008-0150 with prejudice, and the Commission's March 10, 2008, Notice taking note of the dismissal and closing the case.

## **CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on July 9, 2008.



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