

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

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

**AT&T MISSOURI’S APPLICATION
FOR RECONSIDERATION AND/OR REHEARING**

AT&T Missouri¹ respectfully requests the Missouri Public Service Commission (“Commission”) to reconsider and/or rehear² its February 19, 2009, Order Denying Motion to Dismiss. Not only is this Order unlawful, unjust and unreasonable, but it prejudices AT&T Missouri’s rights under the federal Telecommunications Act and is inconsistent with the Commission’s June 24, 2008, order in Case No. TC-2008-0182.

It is apparent from the Order that the Commission believes AT&T Missouri and the Sprint Companies³ were negotiating under Section 252(a) using the parties’ existing Missouri agreements as a starting point for negotiations and had a disagreement about the term of the agreements they were negotiating.⁴ AT&T Missouri wholeheartedly agrees that if that were the case, the “term” or “duration” of the agreement would certainly be an arbitrable issue. But that is not what happened.

No claim exists in Sprint’s arbitration petition or its testimony that any negotiations took place from the parties’ existing Missouri agreements. The Commission’s Order correctly

¹ Southwestern Bell Telephone Company, d/b/a AT&T Missouri, will be referred to in this pleading as “AT&T Missouri.”

² AT&T Missouri makes this request pursuant to 4 CSR 240-2.160 and Section 386.500 RSMo. (2000).

³ Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp. will be referred to as the (“Sprint Companies”).

⁴ Order Denying Motion to Dismiss, Case No. CO-2009-0239, issued February 19, 2009, at p. 7 (“AT&T offered the Missouri agreements as a starting point during the negotiations and cannot now claim that it was not involved in negotiations regarding those agreements”).

recounts that AT&T Missouri, in its July 16, 2008, letter accepting 252(a) negotiations, offered as a starting point for negotiations either its generic template agreements or the parties' existing Missouri agreements (as it was required to do under Merger Commitment 7.3).⁵ But the Order overlooks the pivotal fact that Sprint rejected both options.

Sprint, in its August 18, 2008, letter insisted on using the Kentucky redlined agreement as a starting point and threatened to file another complaint at the Commission unless negotiations were conducted from the Kentucky document:

We will continue our discussions in adopting the Kentucky ICA and making the minor modifications necessary under the Merger Commitments. If AT&T is unwilling to proceed in that manner, please advise and we will take this issue immediately to the Missouri Public Service Commission.⁶

Sprint admits that AT&T Missouri agreed to negotiate from the Kentucky redlined agreement⁷ and that the parties conducted their negotiations from the Kentucky document.⁸ Sprint further admits that it never requested to use the parties' existing agreements as a starting point, that no redlined versions of the existing Missouri agreements were exchanged, and that such documents do not exist.⁹

The documentation from the parties' negotiations demonstrates that all negotiations between the parties concerned the conformance of the Kentucky redlined agreement for use in Missouri¹⁰ and that to the extent the parties were negotiating under Section 252(a) of the Act, many open issues remained from these negotiations. Neither party, however, has presented any of them for arbitration.

⁵ Sprint Arbitration Petition, paras. 21, 22, citing AT&T's July 16, 2008 letter and footnote 1 from that letter. A copy of AT&T's July 16, 2008, letter is attached to Sprint's Arbitration Petition as Exhibit 4. (Sprint's Arbitration Petition, including its attachments, has been admitted into evidence in this proceeding as Exhibit 6.)

⁶ Exhibit 5 to Sprint Arbitration Petition.

⁷ Sprint Arbitration Petition, paras. 24; and Exhibit 6 to Sprint Arbitration Petition. See also Tr. 31.

⁸ Tr. 32, 36-37.

⁹ Tr. 38, 40.

¹⁰For example, the General Terms and Conditions portion of the redlined Kentucky agreement from which the parties negotiated is attached as Schedule 1P to AT&T Witness Scott McPhee's Direct Testimony.

If the Commission believes Section 252(a) negotiations occurred using the existing agreements as a starting point – which the undisputed record plainly shows did not happen -- it needs to recognize that AT&T Missouri would have had many other unresolved issues -- issues that neither party presented for arbitration because of the 11th hour timing of Sprint's extension request. As the record reflects, Sprint made its extension request (November 21st) just two weeks before it filed its arbitration petition (December 5th).¹¹ The lateness of this notice -- made the Friday before the Thanksgiving holidays -- left AT&T Missouri insufficient time to analyze the parties' existing agreements and precluded it from making any type of counter proposal.¹² Consequently, the Commission's resolution of this one issue (i.e., the term) will not yield an interconnection agreement and prejudices AT&T Missouri's rights under the Act.

Sprint's answer, of course, is that the ONLY thing that needs to be resolved is the duration question, because the merger commitment entitles it to an extension of its existing agreement "as is." In fact, at the hearing, Sprint's witness testified that AT&T Missouri was bound by the merger commitment and had no right to negotiate or arbitrate any change to the parties' existing agreements.

. . . if Sprint had elected to negotiate an agreement pursuant to Merger Commitment 7.3 and begin with the current agreement as the starting point for negotiations, then, yes, AT&T would have had the right to propose modifications of that.

However, we didn't elect to negotiate an agreement pursuant to Merger Commitment 7.3. We elected to extend our current agreement pursuant to Merger Commitment 7.4, and under the Merger Commitment, I would not agree that AT&T has the right to propose modifications to that agreement. We have the right under Merger commitment 7.4 to extend our current interconnection agreement without modification.¹³

¹¹ Hearing Exhibit 6, Sprint Arbitration Petition, para. 26 and Exhibit 7 to Sprint's Petition,

¹² Tr. 87.

¹³ Tr. 39.

But this exposes the error in the Commission's decision denying the motion to dismiss -- what Sprint has presented is NOT an arbitrable disagreement about the term of an interconnection agreement being negotiated under 252(a), but a non-arbitrable disagreement about Sprint's entitlement to extend entirely different agreements under the merger commitment.

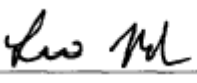
CONCLUSION

No Section 252(b) jurisdiction exists here because Sprint seeks to arbitrate an issue that was never the subject of Section 252 interconnection negotiations between the parties. Sprint's petition to arbitrate AT&T Missouri's refusal to extend the existing agreements is simply an indirect attempt to bring another complaint alleging a violation of the FCC's AT&T/BellSouth merger commitments, over which this Commission has previously, and directly ruled it has no jurisdiction.¹⁴

WHEREFORE, AT&T Missouri respectfully requests the Commission to grant reconsideration and/or rehearing and dismiss the Sprint's Petition for Arbitration.

Respectfully submitted,

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

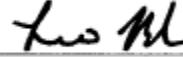
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¹⁴ Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp and NPCR, Inc. v. Southwestern Bell Telephone Company, d/b/a AT&T Missouri, Case No. TC-2008-0182, Order Granting Motion to Dismiss, issued June 24, 2008.

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on February 27, 2009.



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