

**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. _____

**VERIFIED PETITION FOR ARBITRATION OF SPRINT COMMUNICATIONS
COMPANY L.P., SPRINT SPECTRUM L.P., AND NEXTEL WEST CORP.**

Request for Negotiations Received:	July 1, 2008
135th Day Thereafter:	November 12, 2008
160th Day Thereafter:	December 7, 2008
270 th day Thereafter:	March 27, 2009

COMES Now, Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp. (collectively "Sprint") pursuant to Section 252(b) of the federal Communications Act of 1934, as amended (the "Act")¹, Rules of the Department of Economic Development/Public Service Commission, Division 240, Chapters 2 and 36 (4 CSR 240-2 and 4 CSR 240-36) and other applicable state and federal statutes, rules, regulations, and decisions, hereby files this Verified Petition for Arbitration (the "Petition") seeking resolution of certain issues arising between Sprint and Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T Missouri") (Sprint and AT&T Missouri may hereinafter be collectively referred to as the "Parties") in the negotiation of an interconnection agreement pursuant to Sections 251 and 252 of the Act. In support of its Petition for Arbitration, Sprint alleges the following:

¹ 47 U.S.C. § 252(b)(1)

INTRODUCTION

1. Previously, Sprint filed a complaint against AT&T Missouri seeking to port in a Kentucky Interconnection Agreement pursuant to the conditions imposed by the Federal Communications Commission ("FCC") on the merger between AT&T and BellSouth.² The Commission in a 3-2 decision dismissed the Complaint stating that the Complaint was beyond the Commission's jurisdiction since it did not ask the Commission to arbitrate open interconnection issues, approve or reject an interconnection agreement, or enforce an existing interconnection agreement.³ Here, Sprint responds to the Commission's directive and seeks arbitration of open interconnection issues.

2. Due to the roadblocks erected every step of the way by AT&T in preventing Sprint from porting the Kentucky ICA under merger condition 7.1 as detailed in Sprint's Complaint in Case No. TC-2008-0182, Sprint now has opted simply to extend its existing interconnection agreements in Missouri according to a different merger commitment. Yet, AT&T again fails to live up to its merger commitments and objects to Sprint's requests to extend its existing interconnection agreements. This Petition arises out of Sprint's request to extend its existing Commission-approved interconnection agreements pursuant to the conditions imposed by the Federal Communications Commission ("FCC") on the merger between AT&T and BellSouth.⁴ Specifically, Sprint petitions the Commission to direct AT&T to execute a three (3) year extension of its existing Commission approved interconnection agreements in accordance with

² Case No. TC-2008-0182, see Complaint, Exhibit 1.

³ Id. Order Granting Motion to Dismiss, p 6.

⁴ Memorandum Opinion and Order. *In the Matter of AT&T, Inc. and BellSouth Corporation Application for Transfer of Control*, 22 F.C.C.R. 5662 at ¶222, Appendix F (March 26, 2007) ("Merger Order").

Merger Commitment 7.4 made by AT&T.⁵ Sprint seeks the extension of three separate agreements, as they have been amended, according to the Merger Commitments: (1) Agreement for Interconnection Between Sprint Spectrum L.P. and SBC Missouri; (2) Agreement for Reciprocal Compensation and Interconnection between Nextel West Corp. and Southwestern Bell Telephone; and (3) Interconnection Agreement between SBC Missouri and Sprint Communications Company L.P.

THE PARTIES

3. Sprint Communications Company L.P., Sprint Spectrum L.P. and Nextel West Corp. are indirect wholly-owned subsidiaries of Sprint Nextel Corporation existing under the laws of the State of Delaware with headquarters at 6200 Sprint Parkway, Overland Park, Kansas 66251. Sprint Communications Company L.P. is duly authorized to provide competitive local exchange and interexchange services in Missouri. Sprint is registered as a CLEC in Missouri and has been granted a certificate in Case Numbers TA-96-424 and TA-97-269. Sprint provides local exchange, long distance and data telecommunications services. Sprint has submitted the information in subsections (1)(B)-(F) of 4 CSR -2.060 in previous applications and incorporates the same by reference. See Report and Order, Case No. TA-97-269. Sprint Spectrum L.P., a Delaware limited partnership, as agent and General Partner for WirelessCo, L.P., a Delaware limited partnership, SprintCom, Inc., a Kansas corporation, Sprint Telephony PCS, L.P. f/n/a Cox Communications PCS, L.P. a Delaware limited partnership and APC PCS, LLC, a Delaware limited liability company, and PhillieCo, L.P. a Delaware limited partnership, all the foregoing

⁵ 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. Merger Order, Appendix F, 7.4, p. 149.

entities jointly d/b/a Sprint PCS ("Sprint PCS"), provides commercial mobile radio service ("CMRS") in Missouri under licenses issued by the Federal Communications Commission ("FCC"). Nextel West Corp., a Delaware corporation, ("Nextel") provides CMRS in Missouri under licenses issued by the FCC. The Sprint entities are "telecommunications carriers" under the Act.

4. Sprint is a large national corporation that is often engaged in various litigations and administrative proceedings, which may involve customer service or rates. Sprint contends that no pending action, proceeding or judgment involving customer service or rates is relevant to the Commission's consideration of this particular Petition. Further, Sprint does not have any annual report or assessment fees that are overdue in Missouri. See Corrected Order Granting Request for Waivers, Case No. CE-2009-0099.

5. Sprint's principal place of business is 6200 Sprint Parkway, Overland Park, Kansas 66251. The Sprint representatives involved in this dispute are:

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6. AT&T is a Missouri corporation having an office at One Bell Center, St. Louis, Missouri, 63101. AT&T is an incumbent local exchange carrier as defined by 47 U.S.C. § 252(h). AT&T is subject to the Commission's jurisdiction.

7. AT&T and Sprint Communications Company L.P. have been operating in Missouri under an interconnection agreement for years, with the latest version of the agreement effective in

August, 2005. AT&T and Sprint Spectrum L.P. have been operating in Missouri under an interconnection agreement for years, with the latest version of the agreement effective in 2003. Nextel West Corp and AT&T have been operating under the interconnection agreement originally entered into in August, 1998. The interconnection agreements have been subject to various amendments subsequent to their initial execution.

BACKGROUND ON NEGOTIATIONS AND TIMELINE FOR PETITION OF ARBITRATION

8. On March 4, 2006, AT&T's parent corporation, AT&T Inc., entered into an agreement to merge with BellSouth Corporation, the parent company of BellSouth Telecommunications, Inc. On March 31, 2006, AT&T Inc. and BellSouth Corporation filed a series of applications seeking FCC approval of the transaction.⁶ During the resulting FCC proceeding, AT&T Inc. made a number of promises in the form of commitments in order to elicit FCC approval. The FCC ordered compliance with these commitments and included such commitments as Conditions of its approval of the AT&T Inc./BellSouth Corporation merger.⁷ Appendix F of the FCC Order is attached to this Petition as Exhibit 2.

9. In the FCC Order approving the AT&T Inc./BellSouth Corporation merger, the interconnection-related Merger Commitments Nos. 1 and 2 (under the heading "**Reducing Transaction Costs Associated with Interconnection Agreements**") (collectively, the "Merger Commitments") obligate AT&T as follows:

Merger Commitment No. 7.1:

The AT&T/BellSouth ILECs shall make available to any requesting telecommunications

⁶ In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order, FCC 06-189, paragraphs 14, 17 (released March 26, 2007).

⁷ Id. at para. 227. ("IT IS FURTHER ORDERED that as a condition of this grant AT&T and BellSouth shall comply with the conditions set forth in Appendix F of this Order.").

carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.⁸

Merger Commitment No. 7.2:

The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.⁹

10. In addition, Merger Commitment 4 requires AT&T to allow interconnection carriers to extend existing interconnection agreements, whether expired or unexpired.

Merger Commitment No. 7.4:

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.

⁸ *Merger Order* at p. 148, APPENDIX F (emphasis added).

⁹ *Merger Order*, Appendix F, Merger Commitment 7.2, p. 148

During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.¹⁰

11. There was acknowledged FCC concern regarding a merger that created 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.*"¹¹

"To mitigate this concern, the merged entity has agreed to allow the portability of interconnection agreements and to ensure that the process of reaching such agreements is streamlined. These are important steps for fostering residential telephone competition and ensuring that this merger does not in any way retard such competition."¹²

12. Commissioner Adelstein also 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.¹³

13. Sprint filed a Complaint against AT&T Missouri on November 28, 2007 seeking to port an interconnection agreement from Kentucky that it had with BellSouth (the "Kentucky ICA")

¹⁰ *Id.* Merger Commitment 7.4, p. 149.

¹¹ *Id.* Commissioner Copps Statement, p. 172 (emphasis added).

¹² *Id.* (emphasis added).

¹³ *Id.* Commissioner Adelstein Statement, p. 177 (emphasis added).

under Merger Commitment 7.1. The Commission docketed the Complaint as Case No. TC-2008-0182. See Exhibit 1.

14. Sprint and AT&T Missouri agreed to mediate the Complaint but were unable to reach agreement.

15. AT&T Missouri moved to dismiss the Complaint and Sprint responded. Included in Sprint's Response to the Motion to Dismiss and in its original Complaint, Sprint provided details regarding its efforts to port the Kentucky ICA into Missouri and AT&T's refusals to do so. See Exhibit 1.

16. Ultimately, the Commission in a 3-2 decision dismissed the Complaint stating that the Complaint was beyond the Commission's jurisdiction since it did not ask the Commission to arbitrate open interconnection issues, approve or reject an interconnection agreement, or enforce an existing interconnection agreement.¹⁴

17. Sprint filed for rehearing of the Commission's decision on July 1, 2008 and rehearing was denied on August 7, 2008.

18. While not conceding it appropriate to enforce the merger conditions by means of the negotiation and arbitration context under the federal Act, Sprint then sent a request for negotiation to AT&T on June 30, 2008 under the procedures in Section 252(b)(1) of the Act. The negotiation letter is attached hereto as Exhibit 3.

19. The June 30, 2008 letter requested that the parties utilize the Kentucky ICA as the starting point for negotiations.

¹⁴ Case No. TC-2008-0182, Order Granting Motion to Dismiss, p 6.

20. AT&T Missouri responded in a letter dated July 16, 2008 that it acknowledged Sprint's request for negotiations under the Act. Exhibit 4.

21. AT&T Missouri's July 16, 2008 letter rejected Sprint's request to utilize the Kentucky ICA as the starting point for negotiations and instead offered to utilize its template CLEC and wireless agreements as a starting point for negotiations.

22. Alternatively, AT&T stated in footnote 1 on page 1 of the July 16, 2008 letter, "If Sprint would like to commence negotiations pursuant to its existing Missouri interconnection agreements, AT&T Missouri is willing to do so in accordance with Merger Commitment 7.3."

23. Sprint responded to AT&T Missouri's July 16, 2008 letter in a letter dated August 18, 2008 reiterating its position that it can utilize the Kentucky ICA as the starting point for negotiations. Exhibit 5.

24. AT&T Missouri, in a letter dated September 2, 2008, stated that it "is willing to use as a starting point for Sprint's requested negotiation of an interconnection agreement the redlined Kentucky ICA as it currently stands in light of our discussions over the last several months." Exhibit 6.

25. Sprint began the porting process of the Kentucky ICA into the 13 non-BellSouth AT&T states with AT&T in the summer of 2007 and still does not have an approved final interconnection agreement in any state where Sprint sought to port the entire effective Kentucky ICA pursuant to Merger Commitment 7.1.

26. Frustrated with the lack of progress in porting the Kentucky ICA and reducing transaction costs, Sprint notified AT&T Missouri that it did not want to use the Kentucky ICA as

the basis to arbitrate issues in Missouri. Rather, on November 21, 2008, Sprint notified AT&T Missouri that it elects to utilize Merger Commitment 7.4 to extend its existing Missouri interconnection agreements. Exhibit 7.

27. Sprint's notification of extending its Missouri interconnection agreements essentially takes AT&T up on its offer in its July 16, 2008 letter to commence negotiations pursuant to Sprint's existing interconnection agreements.

28. AT&T Missouri has not responded in writing to Sprint's request to extend its existing interconnection agreements in Missouri under Merger Commitment 7.4.

STATEMENT OF UNRESOLVED ISSUES AND EACH PARTY'S POSITION

29. Pursuant to Merger Commitment 7.4, Sprint seeks to extend its existing interconnection agreements in Missouri for a period of three years. Specifically the agreements for which Sprint seeks extension are: (1) Agreement for Interconnection Between Sprint Spectrum L.P. and SBC Missouri, as amended, originally approved by Commission Order in Case No. TK-2004-0180; amended by tracking number filings VT-2005-0041 and VT-2005-0042, Exhibit 8 (2); Agreement for Reciprocal Compensation and Interconnection between Nextel West Corp. and Southwestern Bell Telephone, as amended, approved by Commission Order in Case No. TO-99-149, Amendment approved in Case No. TK-2005-309; Exhibit 9; and (3) Interconnection Agreement between SBC Missouri and Sprint Communications Company L.P., approved by Commission Order in Case No. TK-2006-0044. Exhibit 10.

30. Sprint has been operating under the above-specified agreements with AT&T Missouri (or its predecessors) since they were originally approved by the Commission and continues to operate under those agreements.

31. 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.¹⁵

32. Sprint requests the Commission extend each of the Interconnection Agreements for a period of three years from November 21, 2008, the date that Sprint formally requested extension of its existing interconnection agreements under Merger Commitment 7.4. See Exhibit 7.

33. Verbally, AT&T Missouri representatives have objected to Sprint extending its existing interconnection agreements citing a November 16, 2007 CLEC accessible letter (Exhibit 11) where it arbitrarily placed a deadline of January 15, 2008 on carriers extending expired agreements for three years. In the accessible letter, AT&T claims it will not allow carriers to extend expired agreements unless notice of election of a three year extension was given before January 15, 2008.

34. Sprint's position is that Merger Commitment 7.4 has no such arbitrary deadlines and that the requirement to allow carriers to extend existing expired or unexpired interconnection agreements remains effective until such time the Merger Commitments sunset. Therefore, under Merger Commitment 7.4, Sprint is entitled to the requested three year extensions to the identified interconnection agreements.

¹⁵ *Id.* Merger Commitment 7.4, p. 149.

35. The Missouri PSC already has approved a three year extension of an existing interconnection agreement under Merger Commitment 7.4. In Case No. TC-2008-0150, Verizon Wireless entities filed a complaint against AT&T Missouri seeking the Commission to enforce Merger Commitment 7.4 relating to AT&T's promise in the Merger Commitments to extend existing interconnection agreements for a period of three years. AT&T initially resisted Verizon Wireless' efforts but eventually relented and agreed to extend the subject interconnection agreements. The Commission approved the amendment in Case No. IK-2008-0222 on February 13, 2008 and the Order became effective on February 23, 2008.

36. Approval of the Sprint requested extensions to the specified interconnection agreements under which it has been operating with AT&T will reduce transaction costs consistent with the purpose and meaning of the Merger Commitments.

STATEMENT OF RESOLVED ISSUES AND PROPOSED AGREEMENTS

37. In Sprint's view, the resolved issues are all of the terms and conditions of the existing identified interconnection agreements.

38. To effectuate the three year extensions to the identified interconnection agreements, Sprint requests the Commission to order and approve the parties to execute the attached amendments to the Interconnection Agreements specified in paragraph 29. Exhibit 12.

39. Sprint further attaches a DPL showing the single disputed issue between the parties at this time for the interconnection agreements specified in paragraph 29. Namely, should Sprint be permitted to extend its existing Missouri Public Service Commission approved interconnection

agreements, as amended, pursuant to AT&T/BellSouth Merger Commitment 7.4 for a period of three years from making the request? Exhibit 13.

40. At this time, Sprint seeks resolution of no other issues pursuant to the Petition. The identified interconnection agreements will remain in full force and effect. The only change will be the expiration dates of the agreements.

WHEREFORE, Sprint respectfully requests that the Commission assert jurisdiction over this Complaint pursuant to 47 U.S.C. § 252 and applicable Missouri law (e.g. 4 CSR 240, Chapter 36), and resolve the disputed issue between the Parties of whether Sprint's existing interconnection agreements may be extended pursuant to Merger Commitment 7.4 for a period of three years, and for such other relief that it deems just and reasonable under the circumstances.

Respectfully submitted,

Handwritten signature of Jeffrey M. Pfaff in cursive, with a circled "bx KAS" next to it.

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SPRINT COMMUNICATIONS COMPANY L.P.
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NEXTEL WEST CORP.

VERIFICATION

State of Kansas)
)
County of Johnson) ss:

I, Kenneth A. Schiffman, being first duly sworn, state that I am Director and Senior Counsel, State Government Affairs Regulatory for Sprint Nextel Corporation, the Petitioner in the foregoing Petition; that I am authorized to make this Verification on its behalf; that the foregoing Petition was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information and belief.


Kenneth A. Schiffman
Director, State Government Affairs

Sworn and subscribed before me this 5th day of December, 2008.


Notary Public

My commission expires: 9-12-2012

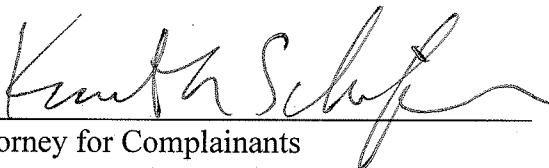
CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Complaint has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 5th day of December, 2008, to:

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