

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

In the matter of the Adoption of an)	
Interconnection Agreement with Sprint)	<u>Case No. CO-2005-0039</u>
Missouri, Inc. by Socket Telecom, LLC)	

**APPLICATION AND MOTION FOR REHEARING
OF SPRINT MISSOURI, INC.**

COMES NOW Sprint Missouri, Inc. ("Sprint") pursuant to Section 386.500 RSMo and files this Application for Rehearing because the effectiveness of the FCC's Interim Rules prohibit CLECs from adopting interconnection agreements containing provisions that are frozen in place by the FCC's interim approach.¹ In support of this application and motion, Sprint states as follows:

1. On August 4, 2004, Socket Telecom, LLC ("Socket") filed a Notice of Adoption of Interconnection Agreement with the Missouri Public Service Commission ("Commission"). Socket stated that it intended to adopt the interconnection agreement between Sprint and Level 3 approved by the Commission in Case No. TK-2004-0567.
2. Socket stated in its Notice of Adoption that it understands that Sprint does not provide the Agreement as either a voluntary or negotiated agreement but rather it is available for adoption under Section 252(i) and 47 CFR 51.809.
3. On August 6, 2004 the Commission issued an Order Directing Notice and Making Sprint Missouri, Inc. a Party. The Order required any party requesting a hearing to

¹ *In the Matter of the Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, (Released August 20, 2004, Effective Date: September 13, 2004). ("Interim Rules").

file a pleading asking for one no later than August 26, 2004 and required the Staff to file a memorandum advising either approval or rejection of the adoption.

4. On September 3, 2004, Staff filed a memorandum recommending approval of the adoption by Socket of the Sprint and Level 3 interconnection agreement, noting that the notice of adoption was signed only by Socket and not by Sprint.

5. The Commission approved the adoption in an Order dated September 14, 2004 with an effective date of September 24, 2004.

6. While these events were happening at the Missouri Commission, actions taken by the FCC with respect to its rules governing access to unbundled network elements have superseded the ability of CLECs to opt into interconnection agreements that contain contract provisions frozen in place by the FCC's Interim Rules. These actions taken by the FCC require the Commission to rehear its Order granting Socket's adoption of the Level 3 agreement and rule that the adoption is ineffective and that Socket must operate under the previous interconnection agreement with Sprint until superseded by a new agreement that reflects the interim rules regime.

7. The FCC released its Interim Rules on August 20, 2004. There the FCC by Order issued a set of Interim Rules and a Notice of Proposed Rulemaking to address the D.C. Circuit Court's decision in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II"). The USTA II decision vacated and remanded back to the FCC various rules related to the provision of unbundled network elements decided by the FCC's Triennial Review Order.²

² *In the Matter of the Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, CC Docket No. 96-98, CC Docket No. 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, (Released

8. The Interim Rules became effective on publication. The FCC stated, “[g]iven the need for immediate interim action, the requirements set forth here shall take effect immediately upon Federal Register publication, and without prior public notice and comment.”³ Publication occurred on September 13, 2004 in the Federal Register at 69 Federal Register 55111-12, just one day before the Missouri Commission’s approval of Socket’s Notice of Adoption.

9. The FCC’s Interim Rules require that from its Effective Date of September 13, 2004 until the effective date of the FCC’s permanent rules that ILECs “shall continue providing unbundled access to switching, enterprise market loops and dedicated transport under the rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004. These rates, terms, and conditions shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the Commission or six months after Federal Register publication of this Order, except to the extent that they are or have been superseded by (1) voluntarily negotiated agreements, (2) intervening Commission order affecting specific unbundling obligations ... , or (3) (with respect to rates) a state public utility commission order raising the rates for network elements.”⁴

10. Due to its thrust of providing interim relief only to CLECs in light of the USTA II decision vacating and remanding certain UNEs, the FCC also found that CLECs *cannot* opt into contract provisions referring to UNEs frozen by the FCC’s interim approach. The FCC stated: **“We also hold that competitive LECs may not opt into the contract provisions ‘frozen’ in place by this interim approach.** The fundamental thrust of the

August 21, 2003), amended by Errata September 17, 2003. (“Triennial Review Order” or “TRO”).

³ Interim Rules, ¶ 27.

interim relief provided here is to maintain the *status quo* in certain respects with expanding unbundling beyond that which was in place on June 15, 2004. This aim would not be served by a requirement permitting new carriers to enter during the interim period.”⁵ Thus, CLECs unambiguously are prohibited from opting into agreements during the effective period of the Interim Rules. Sprint’s interconnection agreement with Level 3 adopted by Socket on September 14, 2004 contains terms and conditions regarding access to unbundled network elements addressed in the Triennial Review Order, USTA II, and the Interim Rules. The FCC’s goal of maintaining the status quo with respect to unbundling obligations of ILECs could not be achieved by allowing CLECs to opt into interconnection agreements containing UNEs that are the subject of the Interim Rules after the issuance of the D.C. Circuit Court’s mandate in the USTA II decision on June 16, 2004.⁶

11. The Interim Rules became effective on September 13, 2004, only one day before the Commission’s Order allowing Socket to opt into the Level 3 agreement. Clearly, under the FCC’s Interim rules, Socket is prohibited from opting into the Level 3 agreement with Sprint. Socket is proposing to opt into an agreement after June 15, 2004. This is contrary to the FCC’s approach of “freezing in place carriers’ obligations as they stood on June 15, 2004” except to the extent the agreement is replaced by a voluntarily negotiated agreement.⁷ Allowing Socket to opt into the Sprint and Level 3 interconnection agreement would be contrary to the FCC’s rationale because it would allow for the expansion of the

⁴ Interim Rules, ¶ 21.

⁵ Interim Rules, ¶ 22 (bold emphasis added). June 15, 2004 is picked as the end drop-dead date in the Interim Rules because the D.C. Circuit Court’s mandate in the USTA II decision issued on June 16, 2004. Interim Rules, ¶ 7.

⁶ Interim Rules, ¶ 23. The FCC stated, “Moreover, if the vacated rules were still in place, competing carriers could expand their contractual rights by seeking arbitration of new contracts, or by opting into new contracts. The interim approach adopted here, in contrast, does not enable competing carriers to do either.”

interconnection obligations of ILECs after the USTA II decision. The FCC confirmed its approach of not allowing CLECs to opt into interconnection agreements after June 15, 2004 in its papers to the D.C. Circuit Court of Appeals in opposition to petitions for writ of mandamus.⁸ The FCC stated that the restriction on opt-ins is a distinguishing factor demonstrating that the FCC did not just reinstate the rules vacated and remanded by USTA II.⁹

12. Sprint regrets not bringing the issue of the Interim Rules' prohibition of carriers opting into interconnection agreements after June 15, 2004 before the Commission earlier. That prohibition became effective, however, upon publication in the Federal Register only one day before the Commission's approval of the Socket Notice of Adoption. Effective law now makes the Commission's decision to approve the adoption unjust and unwarranted and there is sufficient reason to grant rehearing under Section 386.500 RSMo.

WHEREFORE, for the reasons stated herein, Socket's adoption of the Sprint and Level 3 Interconnection Agreement approved by the Commission on September 14, 2004 is unlawful because the FCC's Interim Rules prohibiting CLEC adoption of interconnection agreements became effective on September 13, 2004. Sprint requests that its application and motion for rehearing be granted.

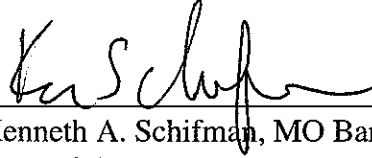
⁷ Interim Rules, ¶¶ 16, 21 and 23.

⁸ FCC's Opposition of Respondents to Petition For a Writ of Mandamus in USTAIL, filed on September 16, 2004 in D.C. Circuit Court of Appeals, Case No. 00-1012, p. 7.

⁹ Id. at 10.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of September, 2004, a copy of Sprint's Application and Motion for Rehearing was served via U.S. Mail, postage prepaid, to each of the following parties:

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