

**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. CO-2009-0239

**SPRINT'S RESPONSE TO AT&T MISSOURI'S APPLICATION FOR
RECONSIDERATION AND/OR REHEARING**

Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp. (collectively, "Sprint") files its Response to Southwestern Bell Telephone Company d/b/a AT&T Missouri's ("AT&T") Application for Reconsideration and/or Rehearing ("Rehearing Application") on February 27, 2009. The Commission should deny the Rehearing Application as it raises no new issues not already addressed by the Commission's February 19, 2009 Order Denying Motion to Dismiss ("Commission Order").¹ Moreover, AT&T's Rehearing Application inappropriately raises issues beyond the pleadings (as a motion to dismiss must rely upon the pleadings), and to top it off, mischaracterizes the pleadings and the record.

1. AT&T argues that the Commission does not have Section 252(b) jurisdiction over Sprint's December 5, 2008, Sprint Petition for Arbitration ("Petition") claiming that Sprint and AT&T did not conduct negotiations over extending the terms of Sprint's current interconnection agreements pursuant to the FCC's Order, Merger Commitment² 7.4 and 252 of the Telecommunications Act of 1996 (the "Act"). This claim is not new as the Commission Order

¹ For brevity, Sprint incorporates herein its Response to AT&T Missouri's Motion to Dismiss filed on January 16, 2009.

² *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, Ordering Clause ¶ 227 at page 112, WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007) ("AT&T/BellSouth" or "FCC Order").

considered and addressed that issue. The Commission Order states that “the length of the agreement is certainly one of the terms in the Missouri agreements as well as in the Kentucky agreement and the template agreements which were all part of the negotiations.”³

2. Moreover, the Commission Order states: “The length of the agreements was at issue during negotiations because it is a necessary term to fulfilling the Section 251 duties. It was a term in all of the various agreements discussed during negotiations, *and Sprint specifically stated it was a term that would be presented to the Commission for arbitration.*”⁴ Contrary to AT&T’s Rehearing Application, the length of the interconnection agreements was an open issue between Sprint and AT&T and subject to negotiations. The Commission Order succinctly addressed and already disposed of AT&T’s claim that jurisdiction is lacking because an “open” negotiation issue had not been raised in Sprint’s Petition.

3. The PSC has provided the standard of when it can dismiss a complaint in multiple cases.

In considering a motion to dismiss for failure to state a claim upon which relief can be granted, the standard for review has been clearly established by Missouri’s courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff’s petition. It assumes that all of plaintiff’s averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.⁵

³ Commission Order at 6.

⁴ Commission Order at 7 (*italics emphasis added*).

⁵ *MCIMetro Access Trans. Svc. Et al. v CenturyTel of Missouri, Inc.*, Missouri Public Service Commission Case No. LC-2005-0080, Order Denying Motion to Dismiss (Nov. 23, 2004) at 3-4, *citing, Eastwood v. North Central Missouri Drug Task Force*, 15 S.W.3d 65, 67 (Mo. App. W.D. 2000).

4. As in the Commission's Order denying CenturyTel's motion to dismiss in the above quoted case, the Commission here must accept as true Sprint's allegations. AT&T's citations to the transcript from the hearing and testimony must be disregarded. Clearly based on the allegations in the Petition, Sprint has raised open issues for arbitration sufficient to give the Commission jurisdiction to conduct the arbitration under section 252(b). Nothing in AT&T's Rehearing Application demonstrates that the Commission erred in accepting jurisdiction based on the allegations in the Petition.

5. In addition, the Commission must deny the Rehearing Application because AT&T mischaracterizes the record by claiming that "[n]o claim exists in Sprint's arbitration petition or its testimony that any negotiations took place from the parties' existing Missouri agreements."⁶ To the contrary, Sprint's arbitration petition describes its current interconnection agreements ("ICAs") with AT&T that it wants to extend for a three-year term under Merger Commitment 7.4⁷ and describes the negotiations that occurred. Sprint verbally asked for three year extensions and then by letter dated November 21, 2008.⁸ AT&T verbally rejected Sprint's request for extensions citing a November 16, 2007 CLEC accessible letter.⁹ The Petition sets forth the basic allegations that negotiations occurred about extending its existing interconnection agreements. The Commission Order plainly recognizes that negotiations occurred.

6. While Sprint disputes that consideration of matters beyond the pleadings should be examined when considering a motion to dismiss, since AT&T cites to record evidence, Sprint will too. AT&T witness McPhee acknowledged that Sprint requested extensions of its existing

⁶ Rehearing Application at 1.

⁷ Petition, ¶ 29.

⁸ Petition, ¶ 32 and Exhibit 7.

⁹ Petition, ¶ 33 and Exhibit 11.

interconnection agreements and AT&T denied Sprint's request.¹⁰ When asked if it would have done any good for Sprint to continue to ask to extend, Mr. McPhee stated that AT&T's answer would have been the same and it would not have extended the ICAs.¹¹ Therefore, no further negotiations were necessary. AT&T witness, Ms. Allen-Flood, acknowledged that verbal discussions occurred on two occasions and Sprint sent AT&T a letter memorializing its position about extending the existing ICAs.¹² Ms. Allen-Flood stated that those discussions occurred before the deadline for filing for arbitration.¹³ As Mr. Felton stated in his Direct testimony, "[t]he negotiations were simple. Sprint desired to extend its existing interconnection agreements and AT&T said no."¹⁴ Therefore, AT&T is wrong. The parties *did* negotiate regarding extending the current agreements and the Commission Order recognizes that fact. Rehearing or reconsideration is inappropriate as the Commission has already considered and rejected AT&T's arguments.

7. AT&T then claims that it would have inserted many other unresolved issues if it had time.¹⁵ This argument is a red herring. Merger Commitment 7.4 does not allow AT&T to add additional terms or to modify the current interconnection agreements. AT&T's position that it should be allowed to present additional issues is entirely contrary to the express language and the intent of Merger Commitment 7.4. There is only one issue for consideration – whether to extend the term of the ICAs for 3 years. If AT&T can present additional issues that would need to be arbitrated, it defeats the purpose of a merger commitment intended to reduce costs and

¹⁰ Tr. 141.

¹¹ Tr. 141.

¹² Tr. 68.

¹³ Tr. 73.

¹⁴ Exhibit 1, p. 14.

¹⁵ Rehearing Application at 3.

streamline processes. Contrary to AT&T's assertions, the Merger Commitment does not permit AT&T to analyze the existing agreements and make counter-proposals.¹⁶ Sprint's election to extend should only elicit a yes or no response from AT&T. AT&T answered no. No further negotiations or discussions are necessary or warranted in order for Sprint to present this matter to the Commission.

8. AT&T apparently believes that Sprint's election to extend its ICAs without change under Merger Commitment 7.4 robs the Commission of its jurisdiction. To be sure, it is Sprint's position that Merger Commitment 7.4, which allows parties to extend current ICAs, whether expired or unexpired, does not allow for changes to be made to the ICAs.¹⁷ Taking the Merger Commitment as it is written, Sprint should be allowed to extend its ICAs without change. The Commission's decision regarding whether it has jurisdiction over Sprint's Petition is based upon its delegated authority over interconnection agreements. The Commission properly ruled that it did have jurisdiction. The Commission thus has considered and rejected AT&T's rehearing point.

9. Accordingly, AT&T fails to show that rehearing or reconsideration should be had under Missouri law. The Commission considered and rejected all of AT&T's arguments based on the pleadings. The term of an ICA is an arbitrable issue. Moreover, the pleadings and the record (even though matters outside of the pleadings should not be considered) demonstrate that the


¹⁶ Rehearing Application at 3.

¹⁷ *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 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."* FCC Order at p. 150, APPENDIX F (emphasis added).

parties negotiated and Sprint raised an "open" arbitration issue. The Commission undoubtedly has jurisdiction in this matter.

WHEREFORE, Sprint respectfully requests that the Commission deny AT&T Missouri's Application for Reconsideration And/Or Rehearing and such other relief as the Commission determines to be just and reasonable.

Respectfully submitted on March 4, 2009.



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Response to AT&T Missouri's Motion to Dismiss has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 4^h day of March, 2009, to:

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