BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

SOCKET TELECOM, LLC'S BRIEF REGARDING REHEARINGS IN FEDERAL TELECOMMUNICATIONS ACT CASES

COMES NOW Socket Telecom, LLC ("Socket"), pursuant to Commission Order Directing Filing dated November 8, 2004, and for its Brief states to the Commission:

1. On November 8, 2004 the Commission issued its Order Directing Filing, instructing the parties to "file briefs addressing the question of jurisdiction for a state commission to grant rehearing for a case filed under the Federal Telecommunications Act."

2. On August 4, 2004 Socket filed its Notice of Adoption of the Sprint/Level 3 Interconnection Agreement.

3. Section 252(e)(4) of the Federal Telecommunications Act required that the Commission "act to approve or reject the agreement" within a set period time, or else the "agreement shall be deemed approved." The Sprint/Level 3 was a negotiated agreement, not an arbitrated agreement. See Case No. TK-2004-0567. Accordingly, under Section 252(e)(4), the Commission had 90 days to approve Socket's agreement as "adopted by negotiation under subsection (a) [of Section 252]." The Commission gave notice of the applicability of this deadline in its Order Directing Notice and Making Sprint Missouri, Inc. a Party, dated August 6, 2004. It is Socket's understanding and belief that the Commission has always applied this deadline to proceedings like this one.

4. The Commission in fact acted within the deadline and approved the adopted agreement on September 14, 2004. Socket commented on the fact that the Commission acted in a timely manner in its most recent pleading filed prior to this Brief, being its Reply to Staff filed on October 27, 2004.

5. As of November 2, 2004, the 90-day action period under Section 252(e)(4) expired.

6. Accordingly, Socket submits that the issue of whether the Commission generally has authority in cases under Section 252 of the Act to grant rehearing has become moot in this proceeding. Even if the Commission has such authority, and even if the Commission would otherwise choose to set aside its order approving the agreement issued on September 14, 2004 and rehear the matter, pursuant to Section 252(e)(4) the agreement would nonetheless now be deemed approved. There is no authority for the proposition that a state commission can reject an agreement after expiration of the statutory time limit.

7. Socket is aware that Staff and others have recently contended that the time limits set forth in Section 252(e) for Commission action may not apply to agreements adopted by companies pursuant to their rights under Section 252(i) and related FCC rules. See Case No. TK-2005-0079.[1] Socket notes that no one in this case protested the Commission's announcement that the deadline was applicable in its Notice of August 6, 2004 (which once again was consistent with Commission well-established practices in

[1] Socket observes that it is unclear from the pleadings in Case No. TK-2005-0079 whether Staff's position on the applicability of the time limit represents its general interpretation of the statutes or simply its position regarding the unique circumstances of that other proceeding. But given this lack of clarity, Socket herein refutes any such general interpretation.

these types of cases). But in any event, the language of Section 252(e)(4) regarding time limits directly references adopted agreements and expressly applies to this proceeding.

8. Certainly no one contends that the time limits of Section 252(e)(4) do not apply to proceedings regarding original negotiated or arbitrated agreements. And Section 252(i) is manifestly designed to assure non-discrimination in the availability of terms and conditions of interconnection agreements. See, e.g. GTE North v. McCarty, 978 FSupp 827 (ND Ind. 1997). To twist the interpretation of Section 252(e)(4) in a way that would allow the Commission to sit upon a proposed adoption of an agreement for an indefinite period would unmistakably contradict the purposes and intentions of the statute, in addition to violating its express provisions. Terms and conditions of interconnection must be made available to companies under 252(i) on a timely basis or the purposes of that section would without question be defeated.

9. Questions were raised in the past regarding the necessity of Commission approval of adopted agreements, but the Commission has consistently taken the position that such approval is necessary under 252(e).[2] For example, in its Order Denying Motion to Reject and Approving Interconnection Agreement issued in In the Matter of the Adoption of the GTE/Communication Cable-Laying Co dba Dial US Interconnection Agreement by Teleport Communications Group, Case No. TO-99-94 (Nov. 25, 1998), the Commission rejected GTE's argument that an agreement adopted pursuant to rights granted in Section 252(i) did not have to be submitted for approval under Section 252(e). The Commission stated: "Nothing is 252(i) would override Section 252(e)(1) of the Act, which requires that interconnection agreements be submitted for approval to the state

[2] The Commission is currently working on promulgating a rule concerning such matters in Case No. TX-2003-0565.

commission." There is no basis whatsoever in the statutes for the proposition that the Commission can lawfully obstruct the adoption process by failing or refusing to act on such a matter in a timely manner. The Commission found its authority to approve adopted agreements in the language of Section 252(e) and likewise must abide by the time constraints imposed therein. To date the Commission has always expressly recognized that it must abide by such time constraints.

10. The Commission notes in its Order Directing Filing dated November 8, 2004 that it has ruled in the past that it lacks jurisdiction to grant rehearing in interconnection cases. Certainly, as the Commission stated in the orders cited in this November 8 Order, Section 252 does not expressly authorize a state commission to grant rehearing, nor does it expressly require that a motion for rehearing be filed prior to commencement of a federal court proceeding for review under Section 252(e)(6). On the other hand, the statute does not purport to establish detailed rules for state commission cases regarding interconnection agreements. It is certainly reasonable for the Commission to assume that it can follow its generally applicable procedures, or any special procedures that it lawfully adopts, when handling such matters - provided that it comply with federal law along the way. Under appropriate circumstances, such procedures could presumably include reconsideration or rehearing. But under no circumstances could such procedures allow the Commission to circumvent the provisions of Section 252(e)(4), which deem agreements approved in the absence of timely Commission action. In Case No. TO-99-461, which the Commission cited in its Order Directing Filing, the Commission expressly recognized that it could not grant rehearing after expiration of the statutory time limit (in that situation, the nine month limit on

completing arbitrations under Section 252). The Commission stated: "A request for rehearing made after the nine months have run, as were those under consideration here, asks the Commission to act in a manner clearly contrary to the intent of Congress." Likewise, in Case No. TO-2001-455, the other matter cited in the Commission's Order Directing Filing, the issue of rehearing came up after expiration of the statutory time limit (therein, the 30-day period for review of an arbitrated agreement).[3]

11. As indicated, Section 252(e) does not discuss the availability of rehearing procedures. Specifically, it does not require that rehearing be sought prior to seeking federal court review. Section 386.500 does not apply to require an application for rehearing prior to federal court review, because Section 252 exclusively governs review procedures. The courts have recognized that the procedures for federal court review of interconnection agreements are exclusive. For example, the court in GTE Northwest v. Nelson, 969 FSupp 654 (WD Wash. 1997), held as follows:

> Considering the Act in its entirety, it is clear that Congress intended to defer court review until an agreement has become final. The Commission may approve an agreement in whole or in part, or reject the agreement, if certain standards are met. 47 U.S.C. § 252(e)(2). Review of determinations that have not been made part of a final agreement would only delay and complicate the tightly regulated process established by the Act. The alternative bases for jurisdiction invoked by plaintiff are inapplicable. Where Congress has provided a procedure to obtain review of agency action, that procedure must be followed. *E.g.*, *Louisville & Nashville R.R. Co. v. Donovan*, 713 F.2d 1243, 1245 (6th Cir.1983); *Compensation Dept. of Dist. Five, United Mine Workers of America v. Marshall*, 667 F.2d 336, 340 (3d Cir.1981).

See also Bell Atlantic Pennsylvania v. Penn. PUC, 295 FSupp 529 (ED Pa. 2003). While

[3] Additionally, the applications for rehearing in TO-2001-455 were unique, in that they sought reconsideration of an order denying intervention, and were found moot because the Commission had concluded the proceeding.

the Commission may be able to grant reconsideration or rehearing as a matter of discretion within the applicable time limits, it cannot extend those time limits.

12. Based on the foregoing, Socket submits that Sprint's Application and Motion for Rehearing has become moot, in that the Commission no longer has any authority to reject the agreement. The Commission timely approved the agreement and the time for considering the matter under Section 252(e) has expired.

WHEREFORE, Socket continues to urge the Commission to deny Sprint's Application and Motion for Rehearing.

Respectfully submitted,

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Certificate of Service

A true and correct copy of the foregoing document was mailed this 18th day of November, 2004, by placing same in the U.S. Mail, postage paid to:

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