Sprint

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Dale Hardy Roberts
Secretary of the Commission
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102

Re: Sprint's Comments in Case No. TX-2003-0487

Dear Mr. Roberts:

Sprint has reviewed the Chapter 36 Proposed Rules pertaining to Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996 and provides the following comments.

4 CSR 240-36.010 Definitions

Sprint has one comment regarding the ability for two negotiating carriers to mutually "stop the clock" for the arbitration window. The Act states that any carrier seeking arbitration must do so within day 135 and day 160; however, in many instances, negotiations are complex and additional time is needed by both parties. In most other states, the two parties may mutually agree to "stop the clock" in an effort to reach agreement. Stopping the clock would especially be needed if both parties agreed to voluntary mediation. This practice has not been adopted in Missouri and Sprint recommends the following change to Proposed Rule 010 (additional language in uppercase).

(7) Request for negotiation means the first date on which an incumbent local exchange carrier receives a written request to negotiate pursuant to the Act, OR ANY OTHER DATE AS MUTUALLY AGREED UPON BY BOTH PARTIES IN WRITING.

4 CSR 240-36.020 Filing Procedures

Sprint has one minor concern with section (2) of the proposed rule. Specifically, section (2) requires the petitioners to include in their petition a case number associated with the carrier certification as well as a list of the current

telecommunications services offered in Missouri. Sprint submits that this step is burdensome and unneeded. Sprint Missouri Inc., for instance, offers thousands of services in Missouri and to include this listing in all its interconnection applications would be without any merit. Both ILECs and CLECs have a listing of their currently available services within their tariffs which is publicly and readily available to anyone. Furthermore, wireless carriers are not certified in Missouri and any requirements for a listing of services offered would not have any meaningful purpose.

Sprint recommends the following change to Proposed Rule 020.

(2) Only telecommunications carriers, as defined in the Act, providing or in the process of enabling their provision of telecommunications service, as defined in the Act, in the state of Missouri may file petitions under this chapter. ~~Each petition shall include the case number of each case in which the commission has granted to the petitioner a certificate to provide any telecommunications service together with a list of the telecommunications service(s) the petitioner offers in Missouri. In the event the petitioner does not have a certificate to provide telecommunications service in Missouri, the petitioner shall list each case before the commission in which an application for a certificate to provide telecommunications service is pending or, for each telecommunications service(s) it offers in the state of Missouri, a brief explanation of why the petitioner is not certificated by the commission.~~

4 CSR 240-36.030 Mediation

Sprint has two items for this section of the proposed rule. First, Sprint questions the practical nature of having a sitting commissioner serve as the mediator. The five-member commission was established in order for there to be five votes; however, that would not be the case if one member is removed. Furthermore, Sprint submits that issues or topics that may be discussed or addressed in the course of the arbitration may have interplay with other Commission cases in which the commissioner/mediator is actively involved.

Sprint also requests a simple clarification for section (3) dealing with parties' statements. As proposed, rule (3) seems to apply even when one party does not accept voluntary mediation. Developing a written summary would be an administrative burden and unnecessary if mediation was not going to occur.

Sprint recommends the following changes to Proposed Rule 030 (additional language in uppercase).

(2) Appointment of Mediator—Upon receipt of a request for mediation, the commission, or its designee, shall determine whether all parties to the negotiation agree to mediation. In the event all parties agree to mediation, the Commission shall appoint a mediator. The mediator shall be an ~~commissioner or~~ employee of the commission unless the parties consent to the appointment of an outside mediator. The costs of an outside mediator shall be borne equally by the parties. The mediator shall be disqualified from participating as an arbitrator or presiding officer in subsequent proceedings regarding the same negotiation. Presiding officer is defined in 4 CSR 240-2.120.

(3) Parties' Statements—Within fifteen (15) days after ~~the filing of a request for mediation~~ THE SELECTION OF A MEDIATOR, each party to the negotiation shall submit a written statement to the mediator summarizing the dispute, and shall furnish such other material and information it deems appropriate to familiarize the mediator with the dispute. The mediator may require any party to provide supplemental material or information.

4 CSR 240-36.040 Arbitration

Sprint has four areas of concern with the rules regarding arbitration. The first issue deals with section (3)(C) and the requirement to file testimony with the petition for arbitration as well as the response to the petition. While parties know in a broad sense what the issues will be when the arbitration is filed, additional time in the face of pending arbitrations is generally very effective in reducing and refining the issues between the parties. Therefore, Sprint would request that a procedural schedule be set at the initial arbitration meeting discussed in section 9 of the rule.

Second, Section (3)(F) references the certification requirements of Proposed Rule 20. Sprint submitted previously that there is no need for carriers to list its certification case or products offered (see Sprint's comments for Proposed Rule 020).

Third, Sprint is concerned that the portion of Section (11) may provide the opportunity for a party to unfairly expand the issues to include those not raised in the petition or the response. Consistent with the language of Section 19 of the

rule, Sprint believes that the issues should be limited to those raised by the petition and the response.

Fourth, Sprint has a concern with the arbitrator relying upon an outside expert in section (12). Quite often, the use of an outside consultant must be put to a competitive bid; however, there simply is not sufficient time in an arbitration case. Furthermore, it is highly likely that one, if not both, parties may object to the outside expect being non-neutral. Sprint submits that Staff is more than capable of serving as an independent expert.

Sprint recommends the following changes to Proposed Rule 040 (additional language in uppercase).

(3) Content—A petition for arbitration must contain:

(A) A statement of each unresolved issue.
(B) A description of each party's position on each unresolved issue.
(C) A statement of all resolved issues and the terms of resolution.
(D) A proposed agreement addressing all issues, including those upon which the parties have reached an agreement and those that are unresolved. In preparing the proposed agreement, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously arbitrated and approved by this Commission.
(E) ~~Direct testimony that supports the petitioner's position on each unresolved issue.~~
~~(F)~~ Documentation that the petition complies with the time requirements of 4 CSR 240-36.040(2) ~~and the certificate requirement of 4 CSR 240-36.020(2).~~

(7) Opportunity to Respond—Pursuant to subsection 252(b)(3) of the Act, any party to a negotiation, which did not file a petition for arbitration ("respondent"), shall file with the commission, within twenty-five (25) days of the date the petition for arbitration is filed with the commission, a response to the petition for arbitration. For each issue listed in the petition, the respondent shall restate the issue followed by the respondent's position on that issue. The respondent shall also identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the commission's review. The respondent shall include, in the response, a document containing the language upon which the parties agree and, show where the

parties disagree, and provide both the petitioner's proposed language (bolded) and the respondent's proposed language (underscored). ~~Finally, the response must contain direct testimony that supports the respondent's position on each issue identified in the response that remains unresolved.~~ On the same day that the respondent files a response with the Commission, the respondent must serve a copy of the response, and all supporting documentation, on each other party to the negotiation.

(9) The arbitrator may call a mandatory initial meeting for purposes such as setting a procedural schedule, establishing a time limit for submission of final offers, ~~allow~~ the filing of ~~rebuttal~~ testimony ~~and setting a time by which rebuttal testimony may be filed~~, simplifying issues, or resolving the scope and timing of discovery.

(11) Limitation of Issues—Pursuant to subsection 252(b)(4)(A) of the Act, the arbitrator shall limit the arbitration to the resolution of the unresolved issues raised in the petition and the response. ~~and the revised statement of unresolved issues (where applicable).~~ However, in resolving these issues, the Arbitrator shall ensure that such resolution meets the requirements of the Act.

(12) Arbitrator's Reliance on Experts—The arbitrator may appoint and rely upon advisory staff in the decision-making process. Advisory staff may be selected from commission staff ~~or be retained outside experts~~. The arbitrator shall inform the parties of the names of the advisory staff members. The advisory staff's role is limited to providing legal advice and other analysis to the arbitrator. Persons that advised a mediator regarding the same negotiation are ineligible to serve as advisors to the arbitrator. Upon the arbitrator's request, and after notice to the parties to the arbitration, the arbitrator may pose technical questions to commission staff members or outside individuals who are not advisory staff. Anyone who answers a technical question is not to advocate a position, but merely to provide neutral input to assist the arbitrator. Technical questions shall be answered either in written form or at an arbitration session attended by both parties. The parties may submit written responses to answers to technical questions in a timely manner as determined by the Arbitrator. Advisory Staff shall not have *ex-parte* contacts with any of the parties individually regarding the issues in the negotiation.

4 CSR 240-36.050 Commission Approval of Agreements Reached by Arbitration

Sprint has three concerns with proposed rule 050. First, section (1) of the proposed rule requires parties to file final agreements within seven days of the Commission's Order. Sprint submits that 10 days would be consistent with standard commission operations and beneficial to both parties without harming any outside interest.

Second, in section (2), the Proposed Rule does not address what happens in the absence of Commission action. Other Chapter 36 Proposed Rules affirmatively state that the agreement is approved in the absence of Commission action – such as 240-36-060 (3) -- and Sprint submits that similar language is reasonable and prudent for Rule 050.

Third, in section (3), the Proposed Rule states that the Commission may reject the agreement for other reasons including quality of service standards. Sprint submits that a carriers' obligation to meet Commission quality of service standards is outside the scope of an interconnection agreement. Current Commission rules address quality of service standards for all carriers and including such rules in an interconnection agreement is not warranted. Sprint asks what would happen if a carrier fails such end-user standards – would the interconnection agreement become void? Of course not. Simply put, the Commission's quality of service standards are fully addressed in other rules and are not within the scope of Chapter 36 rules.

Sprint recommends the following change to Proposed Rule 050 (additional language in uppercase).

(1) Filing of Conformed Agreement—Within ~~seven (7)~~ TEN (10) days of the filing of a commission order approving, rejecting or modifying the arbitrator's final report, the parties shall file with the commission the entire agreement that was the subject of the negotiation. The agreement shall conform in all respects to the commission's order. Concurrently with the filing of the conformed agreement, the parties shall each file statements that indicate whether the agreement complies with the requirements of sections 251 and 252 of the Act, Missouri statutes, and the commission's rules.

Within ten (10) days of the filing of the agreement, anyone may file comments concerning the agreement; however, such comments shall be limited to the standards for review provided in section 36.050(3) of this

chapter. The commission, upon its own motion, may hold additional informal hearings and may hear oral argument from the parties to the arbitration.

(2) Commission Review of Arbitrated Agreement—Within thirty (30) days following the filing of the arbitrated agreement, the commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to subsection 252(e) of the Act and all its subparts. ABSENT COMMISSION ACTION WITHIN THE SPECIFIED THIRTY (30) DAYS, THE AGREEMENT IS DEEMED APPROVED BY THE COMMISSION.

(3) Standards for Review—Pursuant to subsection 252(e)(2)(B) of the Act, the commission may reject arbitrated agreements or portions thereof that do not meet the requirements of section 251 of the Act, the FCC's regulations prescribed under section 251 of the Act, or the pricing standards set forth in subsection 252(d) of the Act. Pursuant to subsection 252(e)(3) of the Act, the commission may also reject agreements or portions thereof that violate other requirements of the commission, ~~including, but not limited to, quality of service standards.~~

4 CSR 240-36.060-Commission Approval of Agreements Reached by Mediation or Negotiation

Sprint has one concern with proposed Rule 060. In sections (1) and (2), the Proposed Rule addresses the Commission's quality of service standards. Sprint submits that the quality of service standards is outside the scope of an interconnection agreement. Sprint made the same arguments above in Proposed Rule 050 and will not reiterate its statements but incorporates the above.

Sprint recommends the following change to Proposed Rule 060.

(1) Content—A request for commission approval of an agreement reached by mediation or negotiation shall be filed with the commission and must state that the agreement is a voluntary agreement that is being filed for commission approval under section 252 of the Act. The request shall include a copy of the agreement and a statement of facts sufficient to show that the agreement meets the following: the standards contained in section 252(e) of the Act; and requirements of Missouri state law. ~~and the commission's intrastate telecommunications service quality standards or requirements~~. If applicable, the agreement shall itemize the charges for

interconnection and each service or network element that is included in the agreement.

(2) Public Comments—Any member of the public (including the parties to the agreement and competitors) may file a protest concerning the negotiated agreement within thirty (30) days of the filing of the agreement with the commission. Such protest shall be limited to the standards for rejection provided in section 252(e) of the Act, including other state law requirements ~~and compliance with intrastate telecommunications service quality standards or requirements established by the commission~~.

4 CSR 240-36.070 Commission Notice of Adoption of Previously Approved Agreement

Sprint has one concern regarding the availability of previously approved agreements. The proposed rule specifies that carriers shall make available for a reasonable time any agreement approved under this section; however, the Telecom Act does not make any reference to a "reasonable time." The Telecom Act requires carriers to make available any agreement on the same terms and conditions.

Sprint recommends the following change to Proposed Rule 060.

(1) Provision of Previously Approved Agreements—Carriers shall make available ~~for a reasonable time~~ any agreement approved under this section in accordance with section 252(i) of the Act and section 51.809 of the Code of Federal Regulations. A carrier may request that the commission take notice of the adoption of a previously approved agreement, and the requesting carrier is not required to have prior approval or signature of the carrier from whom it received the agreement. The carrier shall serve the incumbent local exchange carrier with its request for adoption when it submits the request to the commission. If the incumbent local exchange carrier wishes to object to the commission, it must do so within ten (10) days of the date the request is submitted to the commission, and its objection must be based on, and allege facts that support, one or both of the following grounds:

4 CSR 240-36.080-Commission Approval of Amendments to Existing Commission-Approved Agreements

Sprint seeks a clarification to this proposed rule. Specifically, the rule requires amendments to be "submitted" to the commission. Does the commission mean "submit" or "filed"? If the amendments are only intended to be "submitted" but not filed, how would other carriers be able to file comments? If the amendments are intended to be "filed," Sprint seeks a clarification regarding the case number. Most likely the initial case number associated with the main agreement has been closed.

Please do not hesitate to contact myself or John Idoux at (913) 315-8564 if you have any questions.

Sincerely,

Lisa Creighton Hendricks