

**BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION**

Sprint Communications Company L.P.,	)	
Sprint Spectrum L.P., Nextel West Corp	)	
and NPCR, Inc.,	)	
Complainants,	)	
	)	
vs,	)	Case No. TC-2008-0182
	)	
Southwestern Bell Telephone Company	)	
d/b/a AT&T Missouri,	)	
Respondent.	)	

**Sprint Communications Company L.P.,  
Sprint Spectrum L.P., and Nextel West Corp.**

**Response in Opposition to Staff's Brief Regarding Jurisdiction in  
Response to Commission's Order Directing Filing**

Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp (collectively "Sprint"), by and through their attorneys, hereby responds to Staff's Brief Regarding Jurisdiction in Response to Commission's Order Directing Filing ("Staff Brief") filed on April 14, 2008.

1. For background on the dispute between Sprint and AT&T Missouri where Sprint is seeking to sign a new interconnection agreement with AT&T under Merger Commitment 7.1, Sprint refers the Commission to the Complaint filed by Sprint on November 28, 2007 ("Complaint") and Sprint's Response to AT&T's Motion to Dismiss filed on April 24, 2008 ("Sprint Response"). Sprint explains therein that only one of the 9 state commissions in the BellSouth region issue denied having jurisdiction over merger conditions. The two commissions in the 13 state AT&T region (Kansas and Ohio) that have issued orders addressing the jurisdiction issue determined that the state commissions

have the jurisdiction to enforce Merger Commitment 7.1 from the FCC's Merger Order approving the AT&T/BellSouth merger.

2. While the Missouri Staff recognizes that authority in the Staff Brief, it nevertheless "recommends the Commission appears to lack jurisdiction to order AT&T Missouri to enter into an agreement adopting the Kentucky ICA." (Staff Brief, p. 11). Here, Sprint responds specifically to the Staff Brief and the reasons it provides for its recommendation -- namely: (1) Sprint is not asking the Commission to interpret or enforce any provision from its existing ICA; (2) the Commission is a creature of statute and therefore Section 386.250(2) doesn't apply; and (3) Sprint's Complaint does not allege a violation of any provision of law, or of any rule or order of the Commission as required by RSMo § 386.390.

3. While Sprint believes it is not necessary to ask this Commission to interpret or enforce an existing an interconnection agreement, the authority cited in paragraph 24 of the Staff Brief, *Southwestern Bell Telephone Co. v Connect Communications Corp.* 225 F.3d 942, 946 (8<sup>th</sup> Cir. 2000), is ample authority for the Commission to attain jurisdiction over Sprint's complaint. In that case, the Court citing the FCC stated: "The FCC interprets § 252 to provide state commissions with enforcement power and, indeed, enforcement responsibility. See [Starpower Communications, LLC, 15 FCC Rcd 11277](#), No. FCC 00-216, 2000 WL 767701, PP 5-6 (FCC June 14, 2000) (opinion and order)." *Id.* at 946. In the cited Starpower case, the FCC, acting in its Section 252(e)(5) role in place of the state commission stated: "Specifically, at least two federal courts of appeal have held that inherent in state commissions' express authority to mediate, arbitrate, and approve interconnection agreements under Section 252 is the authority to interpret and

enforce previously approved agreements. These court opinions implicitly recognize that, due to its role in the approval process, a state commission is well-suited to address disputes arising from interconnection agreements.” *Starpower*, ¶ 6, citing, [\*Southwestern Bell Telephone Co. v. Public Utility Commission of Texas\*, 208 F.3d 475 \(5th Cir. 2000\)](#) (“The Act’s grant to the state commissions of plenary authority to approve or disapprove these interconnection agreements necessarily carries with it the authority to interpret and enforce the provisions of agreements that state commissions have approved.”); [\*Illinois Bell Telephone Company v. WorldCom Technologies, Inc.\*, 179 F.3d 566 \(7th Cir. \(Ill.\) Jun 18, 1999\) as amended \(Aug. 19, 1999\)](#)(holding that the Act “specifically provides state commissions with an important role to play” in interpreting and enforcing interconnection agreements).

4. Staff claims that since Sprint is not seeking Commission enforcement of a Missouri approved agreement, the Commission has no authority under Section 252. However, this matter is an interconnection dispute well-within the ambit of the state commission’s role in interpreting and adjudicating interconnection disputes. The authority cited by Staff and the other authorities mentioned above do not limit the interpretation role of the state commission to only agreements that it originally approved.

5. Admittedly, the Merger Commitment provides a unique circumstance in that Sprint, pursuant to the plain language of Merger Commitment 7.1, asks the Commission to require AT&T to import the entire effective Kentucky ICA – an interconnection agreement from another state. But Merger Commitment 7.1<sup>1</sup> would have no meaning at

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<sup>1</sup> The text of Merger Commitment 7.1 is: “The AT&T/BellSouth ILECs shall make available to any requesting telecommunications 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

all, if its only purpose was to allow carriers like Sprint to bring arbitration petitions before state commissions based upon interconnection agreements from other states. That is a right that Sprint or any other carrier has without the Merger Commitment and does not reduce transaction costs for Sprint –which is the stated purpose of the Merger Commitments. The plain language of Section 252 does not give the power to the Commission to enforce and interpret agreements that it has arbitrated or approved, but nevertheless, the FCC and federal courts have affirmed that state commissions are “well-suited”<sup>2</sup> for that role and rightfully exercise it. Similarly, this Commission is well-suited to adjudicate this interconnection agreement related dispute arising out of the Merger Commitments and Section 252 does not prohibit it from doing so. To preserve its role in enabling competition,<sup>3</sup> the Commission should accept its important responsibility in resolving interconnection disputes and take jurisdiction over this Complaint.

6. In claiming that the Commission does not have jurisdiction over this dispute under Section 252, Staff further states that the Commission has authority to approve negotiated agreements or conduct arbitrations. Sprint neither submitted a negotiated agreement (because AT&T will not agree to the porting of the entire effective Kentucky ICA) nor filed for arbitration. Therefore, in Staff’s view, the Commission lacks jurisdiction under Section 252. That position is wrong for several reasons.

7. First, Staff’s position essentially is that the Commission cannot approve the adoption of an interconnection agreement over the objection of one party since it is neither an “interconnection agreement adopted by negotiation or arbitration.” 47 U.S.C.

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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.”

<sup>2</sup> *Starpower*, ¶ 6.

<sup>3</sup> RSMo. §392.185

§ 252(e)(1). AT&T has not submitted the Kentucky ICA voluntarily for approval and Sprint did not file for arbitration. Yet, the Commission's own rules describe a situation where it can approve an adoption of an interconnection agreement over the objection of one of the parties. In 4 CSR 240-3.513(4)(b)(4), the Commission rules allow for the Commission to "determine whether to approve or reject the adoption" of an interconnection agreement when one party is a non-signatory to an adoption of an interconnection agreement submitted by the other for adoption under Section 252(i). The Commission rules allow for the Commission to make a determination even though the interconnection agreement is neither submitted by negotiation or arbitration.

8. That is the situation here. Sprint is seeking the Commission to enforce a Merger Commitment made by AT&T that is very similar to a Section 252(i) adoption but allows for Sprint to bring an interconnection agreement into Missouri from another state.<sup>4</sup> Like the situation where the Commission makes a determination on a disputed adoption even if there is no arbitration filing, Sprint seeks the Commission to make a determination under the Merger Commitments. Section 252 does not prohibit the Commission from making a determination in the context of a disputed Section 252(i) adoption; it also does not prohibit the Commission from making a determination on whether the Kentucky ICA can be adopted in Missouri under Merger Commitment 7.1.

9. Second, Staff's position unfairly rewards AT&T's recalcitrance in implementing the plain language of its Merger Commitment 7.1. Sprint has nowhere to go to enforce the Merger Commitment if the Commission does not accept jurisdiction. AT&T can avoid being subject to the Merger Commitment by simply refusing to accommodate

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<sup>4</sup> While similar to a Section 252(i) adoption, the Merger Commitment does not incorporate the FCC's rules regarding Section 252(i) adoptions.

Sprint's election, as it did here. By forcing Sprint to arbitrate, the intent of the Merger Commitments is thwarted. Furthermore, AT&T's petition at the FCC seeking interpretation of whether certain terms are state-specific prices under Merger Commitment 7.1 will not result in effective interconnection agreements in the states. Following any determination, an interconnection agreement will still need to be submitted to the state Commission for approval. The FCC could only act in its Section 252(e)(5) role of stepping in to the shoes of the state commission. Otherwise the FCC has no authority to approve interconnection agreements.

10. With respect to RSMo. § 386.250, Sprint does not understand Staff's citation to precedent of the Commission being a creature of statute. Sprint does not dispute that principle. The point is as a regulated utility in Missouri, under RSMo. § 386.250<sup>5</sup> the Commission has authority to review AT&T's failure to abide by the Merger Commitments it made to secure the FCC's approval of its merger. Sprint is not seeking for the Commission to take jurisdiction over any corporate action taken by AT&T, but it certainly has jurisdiction to consider actions taken by AT&T with respect to regulated telecommunications services that it provides.

11. Staff alleges that Sprint does not invoke the Commission's jurisdiction under RSMo. § 386.390 because Sprint did not allege violation of a specific law, rule or order of the Commission. The plain language of the statute, however, does not require such an

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<sup>5</sup> § 386.250. Jurisdiction of commission

(2) To all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state,

allegation. Complaints can be made of any thing done or omitted to be done by any public utility.

386.390. 1. **Complaint may be made by** the commission of its own motion, or by the public counsel or **any corporation** or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, **by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility,** including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission ...<sup>6</sup>

12. The bolded language demonstrates that a complaint may be made in writing setting forth any act or thing done or omitted to be done by a public utility. References to violations of law, rules or orders of the commission are merely examples of what the complaint can be about as they are in the “included” clause of the statute. The specific reference to those items after “included” does not mean that those are the only items for which complaints can be made under that Section. Sprint here alleges that AT&T has failed to live up to its Merger Commitments and therefore has omitted to implement the Merger Commitments and a complaint can be made under RSMo. § 386.390.1 regarding this omission.

WHEREFORE, for all the reasons state above and in Sprint’s Complaint and the Sprint Response, the Commission must take jurisdiction of the Sprint Complaint and promptly establish a procedural schedule to expeditiously process Sprint’s election to port the Sprint/AT&T Kentucky ICA to Missouri for all of the Sprint entities that have requested such in this proceeding.

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<sup>6</sup> RSMo. § 386.390.1 (emphasis added).

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*/s/ Paul S DeFord*

/s/ Jeffrey M. Pfaff

/s/ Kenneth A. Schiffman

## **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 27<sup>th</sup> day of May, 2008, to:

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*/s/ Paul S. DeFord*  
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