

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

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.)	

**AT&T MISSOURI’S SUGGESTIONS CONCERNING
COMPLAINANTS’ OPPOSITION TO STAFF JURISDICITONAL BRIEF**

AT&T Missouri¹ apologizes for the lateness of this filing but wishes to present these suggestions in the event the Commission accepts² Complainants’³ response, filed yesterday afternoon opposing Staff’s jurisdictional brief.

Complainants seek to portray the issue in this proceeding simply as a “dispute between Sprint and AT&T Missouri where Sprint is seeking to sign a new interconnection agreement with AT&T Missouri under Merger Commitment 7.1.”⁴ The Complainants thus try to minimize the pivotal fact that the dispute focuses on competing interpretations of the FCC’s Order approving the merger of BellSouth Corporation and AT&T Inc.⁵ and whether commitments made to the

¹ Southwestern Bell Telephone Company, d/b/a AT&T Missouri, will be referred to in this pleading as “AT&T Missouri.” It files pursuant to 4 CSR 240-2.080(15).
² The Commission’s April 14, 2008 Order Directing Filing was directed only at Staff and did not call for responses by other parties. Complainants’ Response was also not filed with the 10 days 4 CSR 240-2.080(15) may have provided, and leave for filing out-of-time was neither sought nor granted.
³ Complainants Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp. and NPCR, Inc. will be referred to in this pleading as “Complainants.”
⁴ Complainants’ Opposition, p. 1.
⁵ Memorandum Opinion and Order, In the matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, FCC 06-189, *rel.*, March 26, 2007 (the “Merger Approval Order”).

FCC entitle Complainants to port an entire interconnection agreement from Kentucky into Missouri.

1. Complainants' Claim of Jurisdiction Under Section 252. In an effort to avoid Staff's explanation of why the Commission has no authority under Section 252 of the federal Act, Complainants claim that this matter is "an interconnection dispute well within the ambit of the state Commission's role in interpreting and adjudicating interconnection disputes."⁶

Complainants completely miss Staff's point. Complainants have claimed this dispute arises out of the parties' existing interconnection agreement⁷ but fail to identify any violation of any provision in that agreement. Nor can they, because the parties' disagreement has absolutely nothing to do with the meaning or effect of any current interconnection agreement. The court cases Complainants cite all deal with disputes arising from interconnection agreements. Here, to resolve this matter, the Commission would neither be interpreting nor enforcing any interconnection agreement from Missouri -- or even from Kentucky. Rather, as Complainants ultimately concede, resolution of the parties' dispute turns on the meaning of the Merger Commitments incorporated in the FCC's Merger Order. ("Sprint seeks the Commission to make a determination under the Merger Commitments").⁸

Complainants also disingenuously attempt to leave the misimpression that all state commissions but one (Mississippi) in AT&T's BellSouth states, as well as Kansas and Ohio, have agreed with Complainants' jurisdictional argument. That is not correct. In the BellSouth states, only Georgia, Kentucky, Mississippi and Tennessee have made jurisdictional rulings and the issue presented in these states (as well as Kansas and Ohio) was whether the FCC's authority

⁶ Complainants', Opposition p. 3.

⁷ Complaint, p. 1 ("This Complaint arises out of the Commission-approved Agreement for Interconnection by and between Sprint and AT&T Missouri. . . .")

⁸ Complainants' Opposition, p. 5.

to interpret the Merger Commitments was exclusive and pre-emptive. That is also the only jurisdictional issue that was presented in Kansas and Ohio. No state commission has determined that it has jurisdiction to enforce the Merger Commitments under Section 252, under state law, or under authority delegated by Congress. The only decision concerning state authority under Section 252 is the May 6, 2008 Michigan Administrative Law Judge's proposed order to grant AT&T Michigan's motion to dismiss, which is consistent with the Staff's jurisdictional brief here.

2. Complainants' Claim of Jurisdiction Under 252(i). For the first time, Complainants point to Commission Rule 4 CSR 240-3.513(4)(b)(4) and assert that it allows 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) . . . even though the interconnection agreement is neither submitted by negotiation or arbitration.⁹

Complainants' request, however, is not a Section 252(i) adoption request. Section 252(i) was not referenced in the Complaint or in any of Complainants' prior filings. Moreover, the availability of such adoptions are limited to approved interconnection agreements from the same state.

Application of GTE Corp., 15 FCC Rcd. 14032, para. 314 (2000).

3. Complaints' Claim They Have No Other Forum. Incredibly, Sprint claims that it has “nowhere to go to enforce the Merger Commitment if the Commission does not accept jurisdiction.”¹⁰ To make this claim, Complainants ignore the fact that they could have filed a complaint at any time with the FCC, the very agency whose Merger Approval Order created the rights and obligations at issue here. Complainants also ignore that the specific issue in this

⁹ Complainants' Opposition, p. 5.

¹⁰ Complainants' Opposition, p. 5.

proceeding -- the meaning of Merger Commitment 7.1 -- has been fully briefed and is presently pending before the FCC, awaiting FCC action. Moreover, Appendix F of the Merger Order specifically provides that the FCC will enforce the merger commitments.

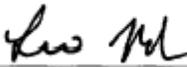
4. Complainants' Misinterpretation of Section 386.390. Complainants' claim of jurisdiction under Section 386.390 RSMo is also misplaced. They claim that "complaints can be made of any thing done or admitted to be done by any public utility" as long as the complaint is made "in writing."¹¹ Complainants' broad interpretation effectively reads the operative language out of the statute. As Staff succinctly explained:

Section 386.390 authorizes the commission to entertain a "complaint in writing, setting forth any act or thing to be done or admitted to be done by any . . . public utility, . . . in violation, or claim to be in violation, of any provision of law, or of any rule or order or decision of the commission." Sprint's Complaint does not claim a violation of any provision of law, or of any rule or order of the Commission. Consequently the Commission does not have authority under Section 386.390 to hear this complaint.¹²

WHEREFORE, AT&T Missouri respectfully requests the Commission to dismiss the Complaint.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY,
D/B/A AT&T MISSOURI

BY 

TIMOTHY P. LEAHY	#36197
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454

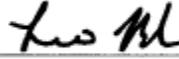
Attorneys for AT&T Missouri
One AT&T Center, Room 3518
St. Louis, Missouri 63101
314-235-2508 (Telephone)/314-247-0014(Facsimile)
leo.bub@att.com

¹¹ Complainants' Opposition, p. 7.

¹² Staff Brief, p. 10 (emphasis added).

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on May 28, 2008.



Leo J. Bub

Jennifer Hernandez
Steven C. Reed
General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102
jennifer.hernandez@psc.mo.gov
steven.reed@psc.mo.gov
general.counsel@psc.mo.gov

Michael F. Dandino
Public Counsel
Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102
mike.dandino@ded.mo.gov
opcservice@ded.mo.gov

Paul S. DeFord
Lathrop & Gage LC
2345 Grand Boulevard
Kansas City, MO 64108
pdeford@lathropgage.com

Jeffrey M. Pfaff
Kenneth A. Schifman
Sprint Communications Company L.P.
6540 Sprint Parkway
Overland Park, KS 66251
Jeff.m.pfaff@sprint.com
Kenneth.schifman@sprint.com