

**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.

Southwestern Bell Telephone Company,
d/b/a AT&T Missouri,

Respondent.

Case No. TC-2008-0182

**STAFF'S RESPONSE TO THE
COMMISSION'S ORDER DIRECTING FILING**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and respectfully recommends the Missouri Public Service Commission ("Commission") deny Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel West Corp., and NPCR, Inc.'s (collectively know as "Sprint") Application For Rehearing. In support, Staff respectfully states as follows:

1. On July 1, 2008, Sprint filed its Application For Rehearing ("Application"). The Application states the Commission's June 24, 2008 Order Granting Motion to Dismiss is "unlawful as the Commission clearly has the authority under state and federal law to consider Sprint's Complaint to enforce the Merger Commitments."
2. On July 14, 2008, the Commission issued its Order Directing Filing, directing Staff to respond to Sprint's Application.
3. Counsel for Staff has reviewed all pleadings and will advise the Commission in three parts: first, addressing Sprint's 4 CSR 240-3.513(4)(B)(4) argument in paragraph seven (7) of its Application; second, Sprint's citation of 47 U.S.C. Section 261(c) in paragraph

eleven (11) of its Application; and third, the requirement for rehearing under Section 386.500 RSMo 2000.

4 CSR 240-3.513(4)(B)(4)

4. Sprint rightly asserts the Commission never specifically addressed its 4 CSR 240-3.513(4)(B)(4) argument in the June 24, 2008 Order Granting Motion to Dismiss. Sprint's argument was before the Commission, as it was raised in Sprint's Response in Opposition to Staff's Brief Regarding Jurisdiction in Response to Commission's Order Directing Filing. The current Application asserts 240-3.513 (4)(B)(4) "allows 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.'" However, Sprint overlooks the plain reading of the subsection.
5. Subsection 3.513(4)(A) provides that if both parties to the adoption have signed the signature page, either company may submit a letter to the Commission. "The letter shall include the case number in which the adopted agreement was previously approved by *this* Commission." (emphasis added). Subsection 3.513(4)(B) provides that "[i]f both parties have not signed the signature page to the adoption, the adopting company shall file an application with the Commission." Reading subsection 3.513(4)(B) in unison with subsection 3.513(4)(A), the requirement that an agreement be previously approved by this Commission also applies to paragraph 3.513(4)(B)(4). This reading is supported by the title of this section.
6. Section 3.513(4) is titled "Adoptions of Interconnection Agreement *Previously Approved by this Commission.*" (emphasis added). This Commission has never approved the

Kentucky interconnection agreement between BellSouth Corporation, Sprint Spectrum, L.P., and Sprint Communications Company L.P.

7. Additionally, the court in *State v. Rousseau*, 34 S.W.3d 254 (Mo. 2000) determined “as an aid to statutory interpretation, we are allowed to consider an act’s title when construing the meaning of the provisions therein. *State v. Rousseau* at 260, citing *Bullington v. State*, 459 S.W.2d 334, 341 (Mo.1970) (“the title of a statute is necessarily a part thereof and is to be considered in construction”).
8. To apply this rule of statutory interpretation to the Commission’s regulations is logical, and as such, Sprint’s argument is without merit.

Sprint’s Use Of 47 U.S.C. Section 261(c)

9. In paragraph eleven (11) of Sprint’s Application, Sprint provides a new citation, 47 U.S.C. Section 261(c) for this Commission’s authority to order Southwestern Bell Telephone Company, d/b/a AT&T Missouri (“AT&T Missouri”) to allow Sprint to port the Kentucky interconnection agreement to Missouri.
10. While the citation is new, this argument was before the Commission for its consideration prior to its Order Granting Motion to Dismiss.
11. Section 261(c), “Additional State requirements” provides

[n]othing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State’s requirements are not inconsistent with this part or the Commission’s regulations to implement this part.
12. Section 261(c) provides for this Commission the authority to impose additional requirements on telecommunications companies than those already provided by the United States Code, *if* the state possesses independent statutory authority to do so. Sprint

has not cited to, nor can Staff find, any independent authority that would authorize the Commission to order AT&T Missouri to allow Sprint to port the Kentucky interconnection agreement to Missouri. In the Order Granting Motion to Dismiss, the Commission already concluded that “[n]either state nor federal law gives the Commission jurisdiction to hear Sprint’s complaint.” As such, the Section 261(c) argument is without merit.

Section 386.500 Rehearing Requirements

13. Section 386.500 RSMo 2000 provides for rehearing before the Commission. It states

[a]fter an order or decision has been made by the commission,....any....public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment *sufficient reason therefor be made to appear*.

(emphasis added).

14. In Case Number GA-2006-0561, In the Matter of the Application of Ozark Energy Partners, LLC, *sufficient reason* was explained by the Commission’s March 13, 2008 Order Denying Application For Rehearing. In that case, the Commission stated the issues raised in the application for rehearing were before the Commission when it issued its order. As such, the Commission denied the application for rehearing.

15. As in this case, Sprint has failed to raise any new issues or support that were not before the Commission prior to its issuance of the Order Granting Motion to Dismiss. Therefore, it is Staff’s recommendation that Sprint’s Application be denied.

WHEREFORE, Staff respectfully recommends the Commission deny Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel West Corp., and NPCR, Inc.’s Application for Rehearing.

Respectfully submitted,

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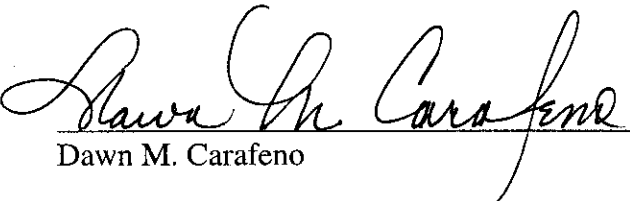
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was delivered to all counsel of record via
U.S. mail, electronic mail or facsimile this 23rd day of July, 2008.


Dawn M. Carafeno