

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day
of June, 2008.

Sprint Communications Company, L.P., Sprint
Spectrum, L.P., Nextel West Corp., and NPCR,
Inc.,)

Complainants,)

v.)

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

Respondent.)

Case No. TC-2008-0182

ORDER GRANTING MOTION TO DISMISS

Issue Date: June 24, 2008

Effective Date: July 4, 2008

On November 28, 2007, Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel West Corp., and NPCR, Inc., ("Sprint") filed a complaint against Southwestern Bell Telephone Company, d/b/a AT&T Missouri ("AT&T Missouri"). The gist of the complaint is that AT&T Missouri has failed to comply with merger commitments it made to the FCC in the BellSouth merger case.¹ According to Sprint, the AT&T/BellSouth Order requires AT&T Missouri to allow Sprint to port in a Kentucky interconnection agreement between BellSouth, Sprint Spectrum, LP, and Sprint Communications Company L.P. into

¹ *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 6285 (March 26, 2007)(hereafter the AT&T/BellSouth Order).

Missouri (“the Kentucky ICA”). After the parties attempted mediation and were unable to resolve their disputes, AT&T Missouri filed a Motion to Dismiss on April 14, 2008.

Arguments

AT&T Missouri

AT&T Missouri argues that Congress allows the Commission to arbitrate interconnection agreements, and also to approve or reject them.² Further, federal courts also now hold that the Commission has authority to interpret agreements they approve.³

What Sprint requests is something other than arbitration, approval, rejection, or interpretation of a Commission approved agreement. Therefore, the Commission does not have jurisdiction.

Further, AT&T Missouri asserts that the FCC has reserved jurisdiction over the merger commitments AT&T Missouri made in the BellSouth merger case.⁴ Such a statement from the FCC is hardly surprising in light of the FCC’s authority for evaluating and approving telecommunications mergers.⁵

Finally, AT&T Missouri states that even if the Commission believes it has jurisdiction, it should defer it to the FCC. AT&T Missouri points out that the exact issue Sprint brings to the Commission is currently pending before the FCC.⁶ AT&T Missouri argues that other state commissions have concluded that either they do not have jurisdiction, or that they have deferred ruling while awaiting the FCC’s order.

² 47 U.S.C. § 252(b), (e).

³ See, e.g., *S.W. Bell Tel. Co. v. Pub. Util. Comm’n of Texas*, 208 F.3d 475, 79 (5th Cir. 2000).

⁴ *Supra* at note 1, Appendix F at p. 147 (stating that “(f)or the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC . . .)

⁵ See 47 U.S.C. §§ 214(a), 310(d).

⁶ *Petition of the AT&T ILECs for a Declaratory Ruling*, WC Docket No. 08-23 (filed Feb. 5, 2008)

Sprint

Sprint opposes AT&T Missouri's motion, claiming that the Commission has general authority over AT&T Missouri because of its status as a regulated telecommunications company.⁷ Moreover, Sprint points to language in the FCC order approving the AT&T/BellSouth merger and claims that the FCC intended for the Commission to have jurisdiction to hear this dispute.⁸ Sprint further argues that every federal appellate court to consider the issue has ruled that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements.⁹ In support of its argument, Sprint lists the state commissions that have found jurisdiction in this situation.

Staff

Staff commented on recent decisions made by other state commissions that found jurisdiction over this Sprint/AT&T Missouri dispute. Nevertheless, Staff's analysis was that Congress allows this Commission to arbitrate and approve (or reject) interconnection agreements and that federal courts have expanded state's authority to include interpreting agreements approved by the state commissions. Because Sprint does not request the Commission to interpret or enforce any provision from an interconnection agreement that

⁷ Section 386.250(2), .390.1, RSMo.

⁸ *Supra* at note 4, p. 149 (stating that "(i)t is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.")

⁹ See *Core Comm., Inc. v. Verizon Penn, Inc.*, 493 F.3d 333, 344 at fn 7 (3d Cir. 2007)(citing *Puerto Rico Tel Co v. Telecommunications Red Bd.*, 189 F.3d 1, 10-13 (1st Cir. 1999); *Bell Atlantic Md., Inc. v. MCI WorldCom*, 240 F.3d 279, 304 (4th Cir. 2001), *vacated on other grounds*, *Verizon Maryland, Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002); *Southwestern Bell Tel. Co. v. Public Util. Comm.*, 208 F.3d 475, 479-80 (5th Cir. 2000); *Illinois Bell Tel. Co. v. Worldcom Tech., Inc.*, 179 F.3d 566, 573 (7th Cir. 1999); *Iowa Utils Bd. V. FCC*, 120 F.3d 753, 804 (8th Cir. 1999), *rev'd in part on other grounds*, *Iowa Util. Bd.*, 525 U.S. at 385; *Southwestern Bell Tel Co v. Brooks Fiber Comm. of Ok. Inc.*, 235-F.3d 493, 497 (10th Cir 2000); *BellSouth Telecomm., Inc., v. MCI Metro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1278 (11th Cir. 2003)(en banc).

this Commission has approved, Staff argues that the Commission lacks jurisdiction to hear Sprint's complaint.

Analysis

The Commission finds AT&T Missouri's and Staff's arguments more persuasive than Sprint's arguments, and will therefore grant AT&T Missouri's motion. Neither state nor federal law gives the Commission jurisdiction to hear Sprint's complaint.

State law

Sprint argues that under Section 386.250 the Commission has authority to review AT&T Missouri's failure to abide by the commitments it made in the BellSouth merger case. But even a case Sprint cites states otherwise.

Sprint argues that The Eighth Circuit has ruled that state commissions have authority to attain jurisdiction over this complaint.¹⁰ But that very opinion states that

(t)he new regime for regulating competition in this industry is federal in nature . . . and while Congress has chosen to retain a significant role for the state commissions, the scope of that role is measured by federal, not state law.¹¹

Thus, the Commission has no authority to resolve this dispute unless Congress has granted the Commission that authority.

Federal law

The Commission has authority to approve, reject, or arbitrate interconnection agreements.¹² In addition, it has authority to interpret interconnection agreements.¹³ Sprint relies on language from the AT&T/BellSouth Order that states that nothing in the order was

¹⁰ See *Southwestern Bell Telephone Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000)

¹¹ See *id.* at 947.

¹² 47 U.S.C. § 252.

¹³ *Supra* at note 9. See also *SW Bell Tel. Co. v. Pub. Util. Comm'n of Texas*, 208 F.3d 475, 479 (5th Cir. 2000).

intended to “restrict, supersede, or otherwise alter state or local jurisdiction.”¹⁴ However, as Staff aptly put it, “what jurisdiction does a state possess that is not being restricted, superseded, or altered?”¹⁵

Sprint and AT&T Missouri have not submitted a negotiated interconnection agreement for the Commission’s approval in this case, and also have not asked the Commission to arbitrate any open issues between them. Therefore, only if the Commission is interpreting an interconnection agreement does the Commission have jurisdiction to hear this case.

Sprint, however, is not asking the Commission to interpret an agreement that the Commission has approved. Instead, Sprint is asking the Commission to order AT&T Missouri to allow Sprint to port the Kentucky ICA to Missouri.

Each case that Sprint cites involves a state commission interpreting an interconnection that it approved.¹⁶ Not one case discussed a commission from State A interpreting an agreement approved by State B. But this is what Sprint asks for.

Sprint’s efforts to gloss over this distinction by vaguely claiming that state commissions can interpret interconnection agreements, or by referring to this case as an “interconnection agreement related dispute”,¹⁷ are unconvincing. The *Verizon* court stated that “(p)ursuant to the FCC’s guidance, we hold that interpretation and enforcement actions that arise after a state commission has approved an interconnection agreement must be

¹⁴ Supra at note 8.

¹⁵ See Staff’s Brief Regarding Jurisdiction in Response to Commission’s Order Directing Filing, ¶ 32 (filed May 9, 2008).

¹⁶ Supra at note 9.

¹⁷ See 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, p. 4 (filed May 27, 2008).

litigated in the first instance before **the relevant state commission.**¹⁸ That same court concluded that the “relevant state commission” to interpret an interconnection agreement is the commission that approved it, stating

[a] state commission's authority to approve or reject an interconnection agreement would itself be undermined if it lacked authority to determine in the first instance the meaning of an agreement that it has approved. A court might ascribe to the agreement a meaning that differs from what the state commission believed it was approving—indeed, the agreement as interpreted by the court may be one the state commission would never have approved in the first place. **To deprive the state commission of authority to interpret the agreement that it has approved would thus subvert the role that Congress prescribed for state commissions.**¹⁹

Thus, the Commission has no authority to interpret the Kentucky ICA.

Decision

Any jurisdiction the Commission has to resolve this dispute is found in federal law, not state law. Federal law allows the Commission to arbitrate open interconnection issues, to approve interconnection agreements, to reject interconnection agreements, and to interpret and enforce interconnection agreements it has approved. Sprint's complaint does not ask the Commission to arbitrate open interconnection issues, to approve an interconnection agreement, to reject an interconnection agreement, or to interpret or enforce an interconnection agreement it has approved. Therefore, the Commission has no jurisdiction, and the Commission will grant AT&T Missouri's Motion to Dismiss.

IT IS ORDERED THAT:

1. AT&T Missouri's Motion to Dismiss Complaint, filed by Southwestern Bell Telephone Company, d/b/a AT&T Missouri, is granted.

¹⁸ *Supra* at note 9, 493 F.3d at 344 (emphasis supplied)

¹⁹ See *id.*, 493 F.3d at 343 (citing *BellSouth Telcomms., Inc. v. MCI Metro Access Transmission Servs. Inc.*, 317 F.3d 1270, 1278 at fn. 9 (11th Cir. 2003) (emphasis supplied)).

2. All other pending motions are denied.
3. This order shall be effective on July 4, 2008.
4. This case shall be closed on July 5, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and
Jarrett, CC., concur.
Clayton and Gunn, CC., dissent,
with separate dissenting opinion(s)
to follow.

Pridgin, Senior Regulatory Law Judge