

**BEFORE THE
MISSOURI PUBLIC UTILITY 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.**

APPLICATION FOR REHEARING

Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp (collectively "Sprint"), pursuant to Section 386.500 RSMO. and 4 CSR 240-2.160 and for its Application for Rehearing states to the Commission:

1. The Commission issued its Order Granting Motion to Dismiss ("Order") on June 24, 2008 with an effective date of July 4, 2008. Sprint hereby timely files this Application for Rehearing prior to the effective date.
2. The Order grants AT&T Missouri's Motion to Dismiss Complaint filed on April 14, 2008. Sprint originally filed the Complaint on November 28, 2007 ("Complaint"). Sprint's Complaint asserts that Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T Missouri") should be required to implement Sprint's election to port

the Sprint/AT&T Kentucky Interconnection Agreement (the "Kentucky ICA") into Missouri and asserts that AT&T's denial of such election violates the Federal Telecommunications Act and Federal Communications Commission's orders that this Commission has authority and jurisdiction to enforce. Sprint responded to AT&T Missouri's Motion on April 24, 2008 and filed a further Response in Opposition to Staff's Brief Regarding Jurisdiction in Response to Commission's Order Directing Filing on May 27, 2008. Sprint hereby incorporates its April 24 and May 27, 2008 filings explaining why the Commission appropriately has jurisdiction to resolve Sprint's Complaint.

3. The Commission Order erringly finds that neither state nor federal law gives the Commission jurisdiction to hear Sprint's Complaint.

4. With respect to State law, the Order wrongly concludes that the Commission only has jurisdiction to consider an interconnection dispute "unless Congress has granted the Commission that authority." (Order, p. 4).

5. Such a finding is contrary to the plain language of the Merger Commitments, which contemplates state authority being exercised.

"It 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."

Accordingly, the FCC made clear, as is evident from the language quoted above, that the states are authorized to enforce the Merger Commitments, otherwise this language would be superfluous. The FCC itself therefore recognizes that states have

authority over matters included in the Merger Commitments and that state authority is not superseded by the Merger Commitments.

6. By making the conclusion that state law does not permit consideration of the Complaint, the Commission ignores its own rules which allows for a procedure by which a party can seek Commission disposition regarding an interconnection agreement that is neither agreed to nor submitted for arbitration under the bounds prescribed in federal law.

7. The rules describe a situation where the Commission 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; otherwise there is no recourse to a party whose adoption request was refused. The Order never addresses this argument made by Sprint in its May 27, 2008 filing.

8. Moreover, the Order does not address how federal law limits the Commission’s ability to address Complaints under RSMo. § 386.250 or under RSMo. § 386.390. Each of those statutes gives the Commission jurisdiction to review the acts and omissions of a regulated utility. AT&T Missouri’s failure to live up to the Merger Commitments and implement Sprint’s election to port the Kentucky ICA in Missouri is an independent violation of state law that is not limited by the jurisprudence interpreting 47 U.S.C. § 252. While state commissions have the authority to interpret interconnection agreement

disputes of agreements that the state commission has approved, the state commission is not limited to entertaining complaints only with respect to existing interconnection agreements. The text of the Merger Commitments recognizes that principle.

9. With respect to its analysis of federal law, the Order further errs in its conclusion that “only if the Commission is interpreting an interconnection agreement does the Commission have jurisdiction to hear this case.” Order, p. 5. The Commission misconstrues the law. The cases cited for the proposition that the state commission must first approve an interconnection agreement before an action can be brought to enforce it under Section 252 are distinguishable from the issue at hand. See *Core Comms, Inc. v. Verizon Penn, Inc.* 493 F.3d 333, 343-344 (3d Cir. 2007), Order, pp. 5-6. Sprint does not dispute that post interconnection disputes should be submitted to the relevant state commission for resolution before going to federal court as is required in the *Core* case. The dispute in *Core* was whether Core could bring a claim in federal court directly regarding an allegation of a breach of an interconnection agreement by Verizon or whether Core had to first bring the claim to the Pennsylvania PUC for resolution. The 3rd Circuit held that Core could not rush directly to federal court to litigate a claim arising under an approved interconnection agreement; it must first go to the state commission. That is not the case here. Sprint is not attempting to enforce an interconnection agreement approved by the Kentucky PSC and seeking resolution at federal court instead of at the state commission. Instead, Sprint asks the Commission to resolve a dispute where AT&T is refusing to implement Sprint’s election to port the approved Kentucky ICA in Missouri pursuant to the Merger Commitments. Sprint’s Complaint is at the state commission and not to federal court. Rather than limiting state commission review of

interconnection disputes, *Core* more aptly stands for the proposition that state commissions play an important and necessary role in promoting local competition through interconnection. *Core*, 393 F.3d at 343 (“Rather than placing the entire scope of regulatory authority in the federal government, Congress enlisted the aid of state public utility commissions to ensure that local competition was implemented fairly and with due regard to the local conditions and particular historical circumstances of local regulation under the prior regime.”) Nevertheless, *Core* does not limit Sprint; since Sprint does not ask for a federal court determination before state commission action. Instead, Sprint seeks Commission resolution of a complaint that AT&T Missouri has not followed the merger conditions to allow for the adoption of an interconnection agreement that would be implemented in Missouri. The Commission erred because federal law does not constrain state commission consideration of Sprint’s complaint.

10. Notably, the Commission already has exercised its authority of approving interconnection agreements to enforce a merger commitment made by AT&T. In Case No. TC-2008-0150, Verizon Wireless entities filed a complaint against AT&T Missouri seeking the Commission to enforce Merger Commitment 7.4 relating to AT&T’s promise in the Merger Commitments to extend existing interconnection agreements for a period of three years. AT&T initially resisted Verizon Wireless’ efforts but eventually relented and agreed to extend the subject interconnection agreements. The Commission approved the amendment in Case No. IK-2008-0222 on February 13, 2008 and the Order became effective on February 23, 2008.

11. Moreover, federal law does not prohibit state commission consideration of interconnection related disputes. Federal law, in fact, explicitly grants state commissions

powers to enforce state requirements. 47 U.S.C. § 261(c) provides: “Nothing 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 requirements are not inconsistent with this part or the Commission’s regulations to implement this part.” Resolving an interconnection dispute complaint arising out of AT&T’s Merger Commitments is not inconsistent with federal law and Sprint contends that such resolution will further competition in Missouri. The Commission erred in interpreting the authority granted to it by federal law.

12. The Commission’s Order further ignores the precedent from other state Commissions in the legacy SBC states asserting jurisdiction over similar complaints filed by Sprint in those states. In fact, the only two State Commissions to squarely address the issue, Ohio and Kansas, have ruled that they do have authority to enforce the Merger Commitments.¹ The Ohio Commission explicitly concluded that “the FCC clarified that the states have jurisdiction over matters arising under the commitments.”² In Kansas, the Presiding Officer “concludes that the FCC did not take exclusive jurisdiction over the Merger Commitments. Rather, if the ‘avoidance of doubt’ provision was not erroneously

¹ *In the Matter of the Carrier-to-Carrier Complaint and Request for Expedited Ruling of Sprint Communications Company L P, Sprint Spectrum L P, Nextel West Corp, and NPCR, Inc v The Ohio Bell Telephone Company d/b/a AT&T Ohio*, Case No. 07-1136-TP-CSS, Finding and Order (Feb 5, 2008)(“Ohio Order”); *In the Matter of the Complaint of Sprint Communications LP, Sprint Spectrum LP, Nextel West Corp and NPCR, Inc, Complainants vs Southwestern Bell Telephone Company d/b/a AT&T Kansas*, Docket No 08-SWBT-602-COM, Order Of Presiding Officer Determining Commission Has Jurisdiction To Enforce Merger Commitments (March 12, 2008) (“Kansas Order”) (Reconsideration granted on other grounds).

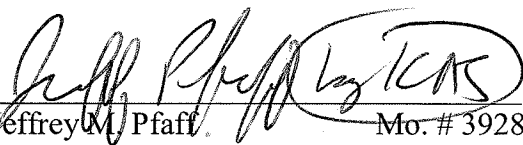
² Ohio Order at 13.

placed with the Merger Commitments by the FCC, then the FCC meant only to advise the readers that it stood prepared to enforce the Commitments along with the states.”³

13. Moreover, the Commission’s dismissal of the Complaint will not eliminate this dispute. Sprint can simply open an arbitration window under section 252 and the Commission will be forced to confront the dispute of whether AT&T Missouri will live up to the Merger Commitments by resolving an arbitration.⁴ In fact, while Sprint believes it is unnecessary under the law and without prejudice to its positions taken in this Motion for Rehearing, Sprint is sending AT&T Missouri a letter requesting negotiations under Section 252 whereby Sprint will be able to file for arbitration in 135 days. The Commission, however, should not reward AT&T Missouri by granting further delay of its duties to implement the Kentucky ICA in Missouri. Instead it should grant rehearing.

14. WHEREFORE, for all of the reasons stated above, Sprint seeks rehearing of the Commission’s Order. The Order is unlawful as the Commission clearly has the authority under state and federal law to consider Sprint’s Complaint to enforce the Merger Commitments.

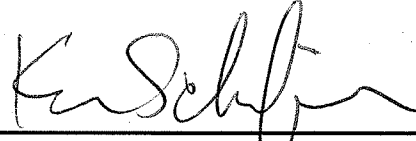
Respectfully submitted,


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³ Kansas Order at 13.

⁴ Sprint believes that the Merger Commitments do not require an arbitration process to implement, as this seems counterintuitive to a commitment intended to reduce transaction costs.

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SPRINT COMMUNICATIONS
COMPANY L.P.
SPRINT SPECTRUM L.P.
NEXTEL WEST CORP.

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 1st day of July, 2008, to:

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