

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

* * * * *

Sprint Communications L.P. d/b/a Sprint)	
Communications Company L.P.)	
)	
Petition for Consolidated Arbitration with)	Case No. 05-0402
Certain Illinois Incumbent Local Exchange)	
Carriers pursuant to Section 252 of the)	
Telecommunications Act of 1996.)	
)	
<u>Plaintiff,</u>)	

RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

COMES NOW Sprint Communications L.P. d/b/a Sprint Communications Company L.P. ("Sprint"), by its attorneys, pursuant to Part 200.190 of the Commission's Rules of Practice,¹ and hereby files this Response in Opposition to Respondents' Motion to Dismiss and respectfully requests that the Illinois Commerce Commission ("Commission") deny the Motion, in its entirety. In opposition to the Motion, Sprint states as follows:

On June 29, 2005, Sprint filed its Petition for Arbitration with this Commission, seeking, pursuant to Section 252 of the Federal Telecommunications Act of 1996² (the "Act"), arbitration of Interconnection Agreements with the following ten Illinois rural incumbent local exchange carriers ("RLECs"):

Cambridge Telephone Company	Henry County Telephone Company
C-R Telephone Company	Marseilles Telephone Company
The El Paso Telephone Company	Metamora Telephone Company
Geneseo Telephone Company	Mid Century Telephone Cooperative
Harrisonville Telephone Company	Reynolds Telephone Company

¹ 83 Ill. Admin Code § 200.190.

In doing so, Sprint chose to file a single Petition, rather than administratively burden the Commission with ten separate, but identical petitions. In its Petition, Sprint noted:

The Federal statutes and the Illinois administrative rules are unclear as to whether an individual arbitration petition should be filed for each company with which an interconnection agreement is sought when the issues presented for arbitration are identical for each RLEC. Because the filing of ten substantially identical individual arbitration petitions would unnecessarily burden the Commission, Sprint respectfully requests the Commission to treat this filing as a consolidated petition for arbitration with respect to each RLEC identified above and to consider it in one docket. The Commission has the authority to consolidate its review of these arbitrations within a single proceeding under § 252 of the Act. Alternatively, if the Commission believes that consolidation is improper, or if issues arise during the course of the arbitration that are unique to one or more RLECs, the Commission could sever each affected RLEC's proceeding into a separate docket. In any case, the petition and the proposed form of agreement for each RLEC would be the same with the exception of the reciprocal compensation transport and termination rate for such RLEC.³

On July 1, 2005, Respondent RLECs, Cambridge Telephone Company, C-R Telephone Company, The El Paso Telephone Company, Geneseo Telephone Company, Henry County Telephone Company, Mid Century Telephone Company, and Reynolds Telephone Company (Jointly the "Movants"), moved for dismissal of Sprint's Petition on the grounds that they believe that "it is inappropriate for a Petitioner to file a single, consolidated arbitration."⁴ Yet the

² 47 U.S.C. § 252.

³ Petition, p. 2.

⁴ Motion, p 17. The Movants also moved for dismissal because they believed that Sprint was not a telecommunications carrier. That count of the Motion was denied by Administrative Law Judges Albers and Yoder in an oral ruling from the bench on July 13, 2005 in light of the Commission's July 13, 2004 Order in ICC Docket Nos. 05-0259, *et al.* For appellate purposes, Sprint incorporates by reference, its filings in ICC Docket Nos. 05-0259, *et al.*, in response to the Movants' argument that Sprint was not a telecommunications carrier.

Movants do not, and cannot not, cite any language prohibiting a filing of a single Petition for Arbitration against multiple carriers under Section 252 of the Act of 1996.⁵

As the Movants correctly point out, there is statutory and administrative code language that permit the Commission to consolidate arbitrations. The Act provides:

(g) CONSOLIDATION OF STATE PROCEEDINGS.--Where not inconsistent with the requirements of this Act, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this Act.⁶

Section 761.330 of the Commission's Rules for Arbitrations, provides:

Consolidation and Severance

a) Where not inconsistent with the requirements of the Communications Act of 1934, the Commission or Hearing Examiner may, to the extent practical, order the consolidation of two or more proceedings under Section 252(b) of the Communications Act of 1934 in order to reduce administrative burdens on telecommunications carriers and the Commission in carrying out its responsibilities under Section 252 of the Communications Act of 1934.

b) Where not inconsistent with the requirements of the Communications Act of 1934, the Commission or Hearing Examiner may, to the extent practical, order the severance of two or more proceedings previously consolidated under subsection (a) of this Section in order to reduce administrative burdens on telecommunications carriers and the Commission in carrying out its responsibilities under Section 252 of the Communications Act of 1934 or order the severance of issues from a proceeding in those instances where the issues need not be decided within the time limit set in the Communications Act of 1934 for the Commission's decision on the arbitration.

⁵ 47 U.S.C. § 252.

⁶ 47 U.S.C. § 252(g).

Section 252 of the Act implies that a Petition for Arbitration may be filed against multiple parties. In Section 252(b)(2)(B), Congress specifically stated:

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party *or parties* not later than the day on which the State commission receives the petition.

The Movants however would ignore this latter language and extrapolate from the language permitting the Commission to consolidate arbitrations a prohibition on filing single arbitrations against multiple carriers. Such a result is contrary to the many filings made throughout the country seeking arbitration with multiple carriers. Among the states in which this has been done includes Kansas,⁷ Maine,⁸ New Hampshire,⁹ New York,¹⁰ Washington,¹¹ and

⁷ *E.g.*, Application of United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas And United Telephone Company of Southeastern Kansas (Sprint) for Approval of a Commercial Mobile Radio Services Interconnection Agreement Under the Telecommunications Act of 1996 With Dobson Cellular Systems, Inc., Sygnet Communications, Inc. and American Cellular Corporation, Kan.C.C. Docket No. 02-4TDT-650-1AT.

⁸ *E.g.*, Verizon Maine: Petition for Consolidated Arbitration, Me.P.U.C.

⁹ *E.g.*, Petition of Verizon New Hampshire for Consolidated Arbitration for an Amendment to the Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers, N.H.P.U.C. Docket No. DT 04-018.

¹⁰ *E.g.*, Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, N.Y.P.U.C., Case No. 05-C-0170, *see also*, Petition of Verizon New York, Inc. for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the Triennial Review Order, N.Y.P.U.C. Case 04-C-0318

¹¹ *E.g.*, Petition of Verizon Northwest for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers, Wash.U.T.C. Docket No. UT-043013.

West Virginia.¹² In Illinois, carriers have filed single Petitions for Arbitration against commonly owned carriers¹³ and multiple carriers have filed a single Petition against an incumbent carrier.¹⁴

In issuing its July 13, 2005 Order in Consolidated Dockets 05-0259 *et al*, the Commission effectively ratified Sprint's filing of a single Petition against multiple carriers by moving the issues from Dockets 04-0259 into "the newly-initiated arbitration between Sprint and Petitioners in Docket No. 05-0402."¹⁵

The Movants ask this Commission to dismiss the Petition because they believe that "Sprint improperly included all of the RLECs in a single Petition for Arbitration."¹⁶ Such a dismissal, if granted would greatly delay Sprint's ability to enter into competitive service in the Respondent RLEC's service territories and set into doubt the statutory timelines under which Sprint, the Respondent RLECs, and this Commission have in which to resolve the Interconnection Agreement disputes. "The use of a [Commission's] inherent power to dismiss . . . is perceived as a draconian measure."¹⁷

Even if this Commission believes that Sprint should not have filed a single petition for arbitration against the Movants, the Commission has other remedies at its disposal, far short of dismissal. As Sprint suggested, in its Petition:

¹² *E.g.*: Petition of Verizon Northwest for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers, W.Va.P.S.C. Docket No. UT-043013.

¹³ *E.g.*, *Petition of Global NAPs Illinois, Inc. for Arbitration with Verizon North, Inc., f/k/a GTE North Incorporated and Verizon South, Inc., f/k/a GTE South Incorporated.*, Il.C.C. Docket No. 02-0803.

¹⁴ *E.g.*, *Petition of AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago for Arbitration with Illinois Bell Telephone Company (SBC Illinois)*, Il.C.C. Docket No. 03-0239.

¹⁵ Order, ICC Docket Nos. 05-0259 *et al.*, p. 13-14

¹⁶ Motion, p. 17.

¹⁷ *Dotson v. Bravo*, 321 F.3d 663, 667 (7th Cir., 2003)

if the Commission believes that consolidation is improper, or if issues arise during the course of the arbitration that are unique to one or more RLECs, the Commission could sever each affected RLEC's proceeding into a separate docket. In any case, the petition and the proposed form of agreement for each RLEC would be the same with the exception of the reciprocal compensation transport and termination rate for such RLEC.¹⁸

WHEREFORE, for the above stated reasons, Sprint Communications L.P. d/b/a Sprint Communications Company L.P. respectfully requests that this Commission deny the Motion to Dismiss.

Respectfully submitted,

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Dated: July 15, 2005

¹⁸ Petition, p. 2.

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Case No. 05-0402

NOTICE OF FILING

To: Parties of Record

You are hereby notified that on July 15, 2005, I filed, via the electronic e-docket system, with the Chief Clerk of the Illinois Commerce Commission, a Response in Opposition to Motion to Dismiss, on behalf of Sprint Communications L.P. d/b/a Sprint Communications Company L.P., in the above-captioned docket.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response in Opposition to Motion to Dismiss, in the above-captioned proceeding, were served upon the parties on the attached service list via Electronic Mail on July 15 , 2005.

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Petition of Sprint Communications L.P. d/b/a Sprint Communications Company L.P.'s for
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Docket No. 05-0402

Service List
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