

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

CAMBRIDGE TELEPHONE COMPANY	)	05-0259
C-R TELEPHONE COMPANY	)	05-0260
THE ELPASO TELEPHONE COMPANY	)	05-0261
GENESEO TELEPHONE COMPANY	)	05-0262
HENRY COUNTY TELEPHONE COMPANY	)	05-0263
MID CENTURY TELEPHONE COMPANY	)	05-0264
REYNOLDS TELEPHONE COMPANY	)	05-0265
METAMORA TELEPHONE COMPANY	)	05-0270
HARRISONVILLE TELEPHONE COMPANY	)	05-0275
MARSEILLES TELEPHONE COMPANY	)	05-0277
<b>VIOLA HOME TELEPHONE COMPANY</b>	)	<b>05-0298</b>
	)	(Cons.)
Petition for Declaratory Relief and/or	)	
Suspension or Modification Relating to	)	
Certain Duties Under Sections 251(b) and (c)	)	
of the Federal Telecommunications Act,	)	
pursuant to Section 251(f) (2) of that Act; and	)	
for any other necessary or appropriate relief.	)	

**APPLICATION FOR REHEARING AND RECONSIDERATION**

NOW COMES VIOLA HOME TELEPHONE COMPANY (“Viola”), by its attorney, Gary L. Smith, of Loewenstein, Hagen, & Smith, P.C, and pursuant to 220 ILCS 5/10-113, hereby moves the Commission to reconsider its order of July 13, 2005 and served on July 14, 2005, and amended on July 19, 2005 (“Order”), and prays that the Commission enter an amended order on rehearing and in support thereof sets forth the following errors:

1. The Commission erred as a matter of law in concluding that Viola has a duty under 47 USC 251(a) to interconnect pursuant to with Sprint Communications, L.P., d/b/a Sprint Communications Company, L.P. (“Sprint”). While the Commission ruled that 251(a) contains no restrictions on who may interconnect with whom, the parties admit that there is already indirect interconnection between Viola and Sprint. Therefore, the Commission erred in finding a duty to negotiate any further terms and conditions of interconnection with Sprint.

2. The Commission erred as a matter of law in concluding that Sprint is a “telecommunications carrier” pursuant to 47 USC section 153 (44), and the Commission’s decision is contrary to the decision in *Virgin Island Telephone Corp. v. FCC*, 198 F3d 921 (D.C. Cir. 199). The Commission’s conclusion that Sprint will be a telecommunications carrier as the result of the services MCC will provide to the public is categorically contrary to the holding of *Virgin Islands Telephone Corp. v. FCC*, 198 F3d 921 (1999) (*Virgin Islands*). Sprint is providing its service to MCC under a private, proprietary contract, and Sprint does not meet the critical element of the definition of telecommunications carrier, *i.e.*, that it serves a significant market segment “indifferently” or “indiscriminately.” Because Sprint is not a “telecommunications carrier”, this Commission has no jurisdiction to order Viola to arbitrate under 47 USC 252 for the duties in 251(a) and (b) that apply only to telecommunications carriers.

3. The Commission erred as a matter of law in concluding that Sprint is a telecommunications carrier because it indiscriminately offers its services to a class of users so as to be effectively available to the public. Sprint describes its business relationship with MCC and with other “competitive service providers. It is MCC (or some other competitive service provider)—not Sprint—that will have the end user customer relationship, thus answering the central question about who will be providing service to the public. The affidavit Mr. Burt filed with Sprint where he stated, “Service will be provided in MCC’s name. MCC is responsible for marketing and sales and end user billing, customer service and the ‘last mile’ portion of the network which includes MCC hybrid coax facilities, the same facilities it uses to provide video and broadband Internet service.” *See* Affidavit of James R. Burt at par. 3. These facts eliminate Sprint as a telecommunications carrier under *Virgin Islands*, and the Commission has no jurisdiction to

order Viola to arbitrate under 47 USC 252 for the duties in 251(a) and (b) that apply only to telecommunications carriers.

4. The Commission has failed to consider the public confusion its order will entail. All local exchange carriers must follow the Commission's rules with regard to local service including 83 Ill.Admin.Code parts 730, 732, and 735. Since MCC will perform marketing, sales, and billing, customers will be led to believe that their local exchange carrier is MCC, but, because Sprint will do the switching, it is unclear whether Sprint or MCC is the competitive local exchange carrier for purposes of 251(a) and (b) or local exchange carrier for purposes of 83 Ill.Admin.Code parts 730, 732, and 735.

5. The Commission erred in finding that Viola has an obligation to negotiate with Sprint under 47 USC 251(b) and arbitrate under 47 USC 252. The Commission erred as a matter of law in concluding that Viola's duty to negotiate the obligations of 47 USC Sec. 251(b) do not arise from 47 USC Sec. 251(c). Petitioners have an exemption under Sec. 251(f)(1)(a) that alleviate any duty they would have to negotiate the obligations of Sec. 251(b), and the Commission erred by not so holding.

6. The Commission erred in assuming that Sprint's IP enabled services are telecommunications services or are local exchange service. Sprint's services are entirely interstate in nature, and the Commission has no jurisdiction over interstate matters beyond that set forth in 47 USC Sec. 252. The question of the proper classification of VoIP and IP enabled services as either telecommunications services or information services is filled with regulatory uncertainty and Viola should not be required to arbitrate with Sprint while this issue is unresolved by the Federal Communications Commission. Sprint admits it utilizes Voice over Internet Protocol ("VoIP") technology (*See*, Sprint Petition at p. 16), and the FCC has declared

VoIP to be an *interstate* service,<sup>1</sup> and has reiterated that Congress has given it exclusive jurisdiction over all interstate communications and all persons engaged in such communications. See Generally, FCC Memorandum Opinion and Order, *In the Matter of Vonage Holdings Corporation*, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211, Adopted: November 9, 2004 Released: November 12, 2004 (“*Vonage Order*”). *Vonage Order* at p. 9, par. 16.

7. Recently by the United States Supreme Court *National Cable & Telecommunications Association v. Brand X Internet Services*, Slip Op. No. 04-277 (S. Ct. June 27, 2005). The Commission erred when it refused to consider the impact of the recent decision by the United States Supreme Court *National Cable & Telecommunications Association v. Brand X Internet Services*, Slip Op. No. 04-277 (S. Ct. June 27, 2005).

8. The Commission’s order is against the manifest weight of the evidence.

9. The Commission’s order denied Viola a hearing on a contested matter in violation of the Administrative Procedure Act, 5 ILCS 100/10-25 and 100/10-65, the Public Utilities act, 220 ILCS 5/10-101 and the due process clauses of the Illinois and United States Constitutions.

10. In further support of Viola’s Application for Rehearing, Viola hereby concurs in and adopts the arguments and objections set forth in the Petition for Reconsideration filed by Cambridge Telephone Company, et al. in 05-0259-05-0265 in this consolidated docket.

WHEREFORE, Viola Home Telephone Company respectfully prays that the Commission enter an order on rehearing providing the following relief:

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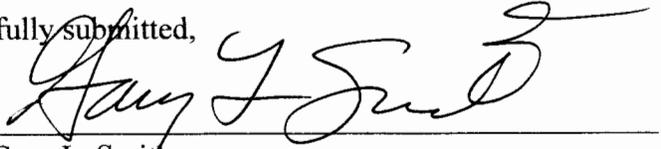
<sup>1</sup> Furthermore, the FCC in the *Vonage Order* specifically asserted jurisdiction over the decision whether to classify IP-Enabled Services, including VoIP, as either “telecommunications services” or “information services” to itself as part of its pending rulemaking proceeding involving IP-Enabled Services. See FCC Notice of Proposed Rulemaking, In the Matter of IP-Enabled Services, WC Docket No. 04-36, Adopted: February 12, 2004, Released: March 10, 2004, 19 FCC Red 4863 (IP-Enabled Services Proceeding.

A. Enter an amended order on rehearing declaring that Sprint Communications, L.P., d/b/a Sprint Communications Company, L.P. is not a telecommunications carrier.

B. Alternatively, that a rehearing of this matter be held and an amended order be entered consistent with the matters set forth in this application; and

C. For such other and further relief as the Commission deems just.

Respectfully submitted,

By:   
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Gary L. Smith

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**VERIFICATION**

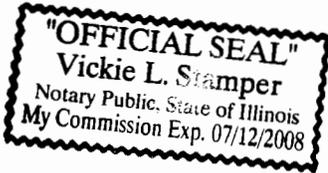
STATE OF ILLINOIS            )  
  )  
COUNTY OF SANGAMON        )        SS:

Gary L. Smith, being first duly sworn on oath, deposes and states that he has read the above and foregoing Application and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Gary L. Smith

Subscribed and sworn to before me this 11<sup>th</sup> day of August, 2005.

  
\_\_\_\_\_  
Notary Public



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NOTICE OF FILING

To: Service List Attached

You are hereby notified that I have this 11th day of August, 2005, filed with the Chief Clerk of the Illinois Commerce Commission the Application for Rehearing and Reconsideration of Intervenor Viola Home Telephone Company.



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