

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

IN RE: THE PETITION OF SPRINT)
COMMUNICATIONS L.P. D/B/A SPRINT)
COMMUNICATIONS COMPANY L.P. FOR) Docket No. 05-0402
ARBITRATION UNDER THE TELECOMMUNI-) Docket No. 05-0433
CATIONS ACT TO ESTABLISH TERMS AND) (Consolidated)
CONDITIONS FOR INTERCONNECTION WITH)
VIOLA HOME TELEPHONE COMPANY)
)

**REPLY TO SPRINT'S OPPOSITION TO
VIOLA'S SECOND MOTION TO DISMISS**

NOW COMES, Viola Home Telephone Company ("Viola") by Gary L. Smith of Loewenstein, Hagen & Smith, P.C., and for its reply hereby states as follows:

In its Response, Sprint admits that it is providing Voice Over Internet technology but denies that it is providing an information service. Sprint attempts to distinguish its service from VoIP on the internet, but it fails to establish that its proposed service (in conjunction with MCC) is a telecommunications service. Simply because its calls may or may not be transmitted over the Public Internet is not the distinguishing feature, nor is the argument that its service is static and not nomadic, the litmus test. Sprint does not address the questions of whether the service will be on an intranet

Essentially, MCC and Sprint will be providing the identical service that has the capacity to transmit information over the Public Internet. Sprint has selectively attempted in this proceeding to segregate the same service over the same facilities to claim telecommunications service. Simply limiting the technology to voice services does not lead to the conclusion that Sprint's proposed service is a telecommunications service. Despite its claim to the contrary, Sprint will not be providing "plain old telephone service."

Staff concludes that it is unclear whether or not Sprint's proposed service is an information service or telecommunications service because the FCC has failed to act. The ICC should not require Viola to negotiate or execute an arbitrated interconnection agreement with Sprint unless and until the FCC answers the question whether VoIP service by a cable company is an information service and that reciprocal compensation applies to such service. The ICC may take this action either based on a conclusion that the FCC has not yet determined that VoIP service by a cable company is a telecommunications service, rather than an information service, or by finding that a suspension is necessary to protect the public interest until such time as the FCC makes such a determination. The instant proceeding must be dismissed because there is no presumption that an undefined technology is a telecommunications service. Sprint has the burden of proving, which it cannot do, that its proposed service is an accepted telecommunications service before obligating Viola to any of the duties under 47 USC 251.

WHEREFORE, Viola Home Telephone Company respectfully prays that its Second Motion to Dismiss be granted and for such other and further relief as the Commission deems just.

Respectfully submitted,

VIOLA HOME TELEPHONE COMPANY,

By:

Gary L. Smith
Loewenstein, Hagen & Smith, P.C.
1204 South Fourth Street
Springfield, IL 62703
Telephone: 217/789-0500
Facsimile: 217/522-6047
E-mail: lexsmith@lhoslaw.com

CERTIFICATE OF SERVICE

A copy of Viola Home Telephone Company's Reply was served upon the following persons by e-mail this 26th day of August, 2005.

John Albers
Administrative Law Judge
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
jalbers@icc.state.il.us

Jeff Hoagg
Telecommunications Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
jhoagg@icc.state.il.us

Brandy Bush Brown
Matthew L. Harvey
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
bbrown@icc.state.il.us
mharvey@icc.state.il.us

Jennifer A. Duane
Sprint
401 9th Street NW, Suite 400
Washington, DC 20004
Jennifer.a.duane@mail.sprint.com

Roderick S. Coy
Haran C. Rashes
Brian M. Ziff
Atty. For Intervenor
Clark Hill P.L.C.
212 E. Grand River Ave.
Lansing, MI 48906
rcoy@clarkhill.com
hrashes@clarkhill.com

bziff@clarkhill.com

Monica M. Barone
Sprint
Mailstop: KSOPHN0212-2A303
6450 Sprint Parkway
Overland Park, KS 66251
monica.barone@mail.sprint.com

Kenneth A. Schifman
Sprint
Mailstop: KSOPHN0212-2A303
6450 Sprint Parkway
Overland Park, KS 66251
kenneth.schifman@mail.sprint.com

Karen R. Sistunk
Sprint
401 9th Street NW, Suite 400
Washington D.C. 20004
karen.r.sistrunk@mail.sprint.com

Gary L. Smith