

**STATE OF ILLINOIS**  
**BEFORE THE ILLINOIS COMMERCE COMMISSION**

\*\*\*\*\*

SPRINT COMMUNICATIONS L.P. d/b/a	)	
SPRINT COMMUNICATIONS COMPANY	)	
L.P., SPRINTCOM, INC., WIRELESSCO,	)	
L.P., NEXTEL WEST CORP., and, NPCR,	)	
INC.,	)	
	)	
Complainants,	)	
	)	
	)	Docket No. 07-0629
	)	
vs.	)	
	)	
	)	
ILLINOIS BELL TELEPHONE COMPANY	)	
D/B/A AT&T ILLINOIS	)	
	)	
	)	
Respondent.	)	
	)	

**SUBMISSION OF SUPPLEMENTAL AUTHORITY**

Sprint Communications L.P. d/b/a Sprint Communications Company L.P., SprintCom, Inc. and WirelessCo, L.P. through their agent Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. (collectively "Sprint"), by and through its attorneys, Clark Hill PLC, hereby provides the following supplemental authority – a March 12, 2008 ruling by the Kansas Corporation Commission ("KCC") in a similar complaint. There the KCC issued *Order Of Presiding Officer Determining Commission Has Jurisdiction To Enforce Merger Commitments, Denying SWBT Motion To Dismiss And Ordering SWBT To Port In Kentucky ICA* in a docket entitled *In the*

*Matter of the Complaint of Sprint Communications L.P. , Sprint Spectrum L.P., Nextel West Corp. and NPCR, Inc., Complainants vs. Southwestern Bell Telephone Company d/b/a AT&T Kansas, Respondent*, Docket No. 08-SWBT-602-COM (March 12, 2008) (“Kansas Order”). The Kansas Order finds that the KCC has the jurisdiction to resolve this dispute, denied dismissal of the complaint, and ordered the port in of the Kentucky ICA to all of the Sprint entities. Furthermore, the Presiding Officer rejected Southwestern Bell Telephone Company’s (“SWBT”)<sup>1</sup> request to defer action until the Federal Communications Commission (“FCC”) had issued ruling on AT&T’s FCC petition, because of the uncertainty of when the FCC would take action.

In the Kansas Order, the Presiding Officer found that the KCC “possesses the requisite jurisdiction to enforce AT&T/BellSouth Merger Commitments as they are related to Kansas, denies the Motion to Dismiss of SWBT and orders SWBT to port in Kentucky interconnection agreement as requested by Sprint, consistent with Kansas laws and regulatory requirements.”<sup>2</sup>

Moreover, the KCC found that the port in and adoption of the Kentucky ICA applies for all Sprint entities, which would include the same entities, with the exception of NPCR, Inc. which does not operate in Kansas, that are seeking to port in the Kentucky ICA here. (“Sprint’s Request that SWBT port in and adopt the ICA between BellSouth and Sprint Communications Company L.P. and Sprint Spectrum, as extended and approved in Kentucky, *for all Sprint entities* subject to the feasibility to do so, consistent with the laws and regulatory requirements of Kansas is granted.”)<sup>3</sup>

---

<sup>1</sup> SWBT is an AT&T local exchange carrier company.

<sup>2</sup> Kansas Order, p. 1

<sup>3</sup> *Id.* At p. 13 (italics added).

Respectfully Submitted,

CLARK HILL PLC

By: \_\_\_\_\_

Kenneth A. Schifman  
Director, Government Affairs  
6450 Sprint Parkway  
Mailstop: KSOPHN0212-2A303  
Overland Park, Kansas 66251  
(913) 315-9783  
(913) 523-9827 Fax  
E-Mail: kenneth.schifman@sprint.com

Roderick S. Coy (P12290)  
Haran C. Rashes (P54883)  
212 East Grand River Avenue  
Lansing, Michigan 48906  
(517) 318-3100  
(517) 318-3099 Fax  
E-Mail: rcoy@clarkhill.com  
hrashes@clarkhill.com

Jeffrey M. Pfaff  
Senior Counsel  
6450 Sprint Parkway  
Mailstop: KSOPHN0212-2A553  
Overland Park, Kansas 66251  
(913) 315-9294  
(913) 315-0785 Fax  
E-Mail: jeff.m.pfaff@sprint.com

Attorneys for Sprint Communications L.P.  
d/b/a Sprint Communications Company L.P.,  
SprintCom, Inc. and WirelessCo, L.P.  
through their agent Sprint Spectrum L.P.,  
Nextel West Corp., and NPCR, Inc.

Date: March 18, 2008

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Presiding Officer: Robert L. Lehr

In the Matter of the Complaint of Sprint )  
Communications L.P., Sprint Spectrum L.P., )  
Nextel West Corp and NPCR, Inc., Complainants ) Docket No. 08-SWBT-602-COM  
vs. Southwestern Bell Telephone Company )  
d/b/a AT&T Kansas, Respondent. )

**ORDER OF PRESIDING OFFICER DETERMINING COMMISSION HAS  
JURISDICTION TO ENFORCE MERGER COMMITMENTS,  
DENYING SWBT MOTION TO DISMISS AND ORDERING SWBT TO PORT IN  
KENTUCKY ICA**

NOW, the above-captioned matter comes before the Presiding Officer for consideration and determination. Having examined his files, and being duly advised in the premises, the Presiding Officer concludes that the State Corporation Commission of the State of Kansas (Commission) possesses the requisite jurisdiction to enforce AT&T/BellSouth Merger Commitments as they are related to Kansas, denies the Motion to Dismiss of Southwestern Bell Telephone Company (SWBT) and orders SWBT to port in Kentucky interconnection agreement as requested by Sprint, consistent with Kansas laws and regulatory requirements.

**Findings of Fact**

**Sprint Complaint**

1. Sprint Communications Company L.P., Sprint Spectrum L.P. and Nextel West Corp. (collectively Sprint) filed their joint Complaint on December 26, 2007, against SWBT. Sprint sought resolution of disputes that had arisen out of the interconnection agreement (ICA) by and between the parties and SWBT's violation of the conditions imposed by the Federal Communications Commission (FCC) on the merger between

AT&T and BellSouth (Complaint). Sprint requested an order from the Commission to force SWBT to “execute an adoption amendment to port in and adopt the interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Southeast and Sprint Spectrum L.P., as extended and approved in Kentucky (Kentucky ICA), for all Sprint entities in accordance with merger commitments made by AT&T.” Complaint, p. 1.

2. Sprint contended that the Commission had jurisdiction to take up its complaint pursuant to 47 U.S.C. 252—Procedures for Negotiation, Arbitration and Approval of [Interconnection] Agreements. Sprint also claimed that the Commission had jurisdiction to resolve complaints. Complaint, ¶ 1.

3. Sprint also contended that at issue here are the Merger Commitments ordered by the FCC in its approval of the AT&T/BellSouth merger<sup>1</sup>. In particular, Sprint requested that the Commission force SWBT to comply with Merger Commitment 7.1 which reads:

The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, than an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

4. According to Sprint, it notified AT&T on November 20, 2007, that it intended to exercise its right under the Merger Commitments to port and adopt the Kentucky ICA

---

<sup>1</sup> *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, FCC 06-189, Appendix F (released March 26, 2007) (Merger Commitments).

in Kansas. Complaint, Ex. E. However, AT&T advised Sprint on December 13, 2007, that it would allow certain Sprint entities to adopt the Kentucky ICA but it would not allow all Sprint entities to do so because of a Merger Commitment 7.1 restriction. Complaint, Ex. F. Sprint contended that there was no such restriction to be found in Merger Commitment 7.1. Complaint, ¶ 11.

### **Commission Review**

5. Pursuant to K.A.R. 82-1-221, the Commission reviewed the Complaint and ascertained that the allegations, if true, would establish a *prima facie* case for action by the Commission. Consequently, the Commission filed the Complaint on SWBT, thereby obtaining jurisdiction over the Complaint.

### **SWBT Answer/Motion to Dismiss**

6. SWBT claimed that the FCC explicitly reserved jurisdiction over the AT&T/BellSouth Merger Commitments in Appendix F to the Merger Order, citing the FCC's statement: "For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC. . ." SWBT noted that the Mississippi Public Service Commission agreed by stating, "The Commission finds that the FCC has exclusive jurisdiction over the enforcement of the FCC merger commitments contained in the FCC's Merger Order. . ." SWBT contended that exclusive FCC jurisdiction was sound policy, to avoid conflicting and diverse interpretation of FCC requirements. Motion to Dismiss, ¶¶ 9 – 10.

7. To the extent that the Commission determined that it had jurisdiction concurrent with the FCC concerning the interpretation and enforcement of Merger

Commitments, SWBT claimed the Commission should defer to the FCC. Motion to Dismiss, ¶ 12.

### **Sprint Response to Motion to Dismiss**

8. Sprint criticized SWBT's proposition that the FCC had exclusive jurisdiction of Merger Commitments, contending that the FCC pronouncements made it abundantly clear that the states could enforce Merger Commitments:

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.

Merger Order, Appendix F, at 147. Sprint advised the Commission that the FCC added this language to SWBT's filed proposed language for the purpose of recognizing that the Merger Order would be subject to state commissions' primary jurisdiction over interconnection disputes. Response, p. 4, n. 10.

9. In support of its criticism, Sprint quoted an order of the Public Utility Commission of Ohio, denying AT&T's motion to dismiss:

[W]e conclude that the FCC clarified that the states have jurisdiction over matters arising under the commitments. Even more, states are granted authority to adopt rules, regulations, programs, and policies respecting the commitments.

Ohio Order<sup>2</sup>, p. 13.<sup>3</sup> In addition, according to Sprint, eight of the former BellSouth state commissions confronted with the jurisdictional question determined that state commissions did have the authority to enforce Merger Commitments. Response, p. 11.

---

<sup>2</sup> *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.

10. Sprint also described a merger condition argument in the Bell Atlantic, Corp./ NYNEX merger allegedly similar to the dispute here. MCI, believing that the 6<sup>th</sup> Merger Condition was not being met, petitioned the FCC for relief. However, according to Sprint, the FCC determined that its merger order depended upon state commissions as primary forums of interconnection disputes. Upon appeal, MCI was told by the federal Court of Appeals for the District of Columbia that:

At issue are prices for complex network elements and inputs—and each category would have to be calculated for each of the *seven* jurisdictions, taking into account the unique circumstances in each location. The Commission’s task adjudicating the merits of MCI’s complaint thus would be larger than the task confronting any individual state commission. Contrary to MCI’s assertion, there is no great streamlining to be gained should the FCC adjudicate the issue, as it would have to consider the relevant facts on a state-by-state basis too. The FCC is reasonable in its conclusion that these disputes are as readily resolved in the *section 252* process as in a *section 208* complaint.<sup>4</sup>

Sprint Response to Motion to Dismiss, p. 14.

11. Sprint also noted that the language prefatory to the Conditions in the Verizon/MCI merger order and the language prefatory to the Commitments in AT&T/BellSouth’s merger order are virtually identical:

It is not the intent of these Conditions 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 Conditions, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these Conditions.<sup>5</sup>

---

<sup>3</sup> The Presiding Officer would provide the reader with a more concise citation, but Sprint, contrary to Commission rules, failed to number paragraphs in its Response to Motion to Dismiss.

<sup>4</sup> *MCI Worldcom Network Services et al. v. FCC*, 274 F.3d 542 (D.C. Cir.) (emphasis in original).

<sup>5</sup> *Verizon Communications, Inc. and MCI, Inc. Applications for Approval and Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005).

The only difference is that the Verizon/MCI order used “Conditions” while the AT&T/BellSouth order used “Commitments”. The significance of the virtually identical language, according to Sprint, is that upon appeal by MCI with regard to additional merger conditions imposed by the Virginia State Corporation Commission, the U.S. Virginia District Court, Eastern District, said:

[T]he FCC’s use of the disjunctive “or” in the above-quoted clause means that it intended the states to have authority over all matters reserved to the states by the Communications Act, as amended, as well as over matters which are not reserved to the states by the Act, but which do appear in the Conditions.<sup>6</sup>

### **SWBT Reply**

12. In its Reply, SWBT insisted that there is nothing in §252 of the federal Telecommunications Act of 1996 (Act) that remotely contemplates that state commissions will resolve disputes about the meaning or application of FCC merger commitments. Reply, ¶ 5. SWBT also noted that the MCI/Verizon merger order did not contain the “for avoidance of doubt” provision contained in the AT&T/BellSouth merger order.

13. SWBT concluded with the proposition that it did not contend that the FCC should interpret questions of state law in connection with the porting ICAs; rather, it did contend that only the FCC should decide the meaning of the FCC Merger Commitments, including, for example, what is and what is not “state-specific pricing” within the meaning of that commitment. Response, ¶ 19.

### **Sprint Supplement to Response to Motion to Dismiss**

14. On February 27, Sprint filed its Supplement in Response to Motion to

---

<sup>6</sup> *MCIMetro Access Transmission Services of Virginia Inc. v. Christie*, Civil Action No. 3:06CV7490, 2007 U.S. Dist. Lexis 21708 (E.D. Va. March 27, 2007). Sprint failed to advise the Commission that this decision was not published.

Dismiss. After the filing of a complaint and an answer, the Commission customarily permits the complainant to respond to the answer and the respondent to reply to plaintiff's response only, subject to an order permitting otherwise. Sprint did not file for Commission approval to file additional pleadings. Sprint's supplement filing exceeds the customary filing bounds, is duplicative in its narrative and not relevant as to its FCC filing. Therefore, the Presiding Officer will not consider Sprint's supplement filing.

### **SWBT Response to Sprint Supplemental Pleading**

15. In like manner, the Presiding Officer will not consider SWBT's Response to Sprint's Supplemental Pleading.

### **Discussion and Conclusions of Law**

16. Sprint overstated the significance of the AT&T and MCI complaints to the FCC and the subsequent MCI appeal in the Bell Atlantic/NYNEX merger. The FCC did impose nine conditions in the approval of the merger. The sixth condition, the performance of which was disputed by MCI, dealt with pricing requirements:

6. To the extent Bell Atlantic/NYNEX proposes rates, including in interconnection negotiations and arbitrations, for interconnection, transport and termination, or unbundled network elements, including both recurring and non-recurring charges, any such proposal shall be based upon the forward-looking, economic cost to provide those items.<sup>7</sup>

The FCC dismissed the AT&T and MCI complaints because each of the state commissions in the Bell Atlantic/NYNEX jurisdictions at issue followed pricing

---

<sup>7</sup> *In the Application of NYNEX Corporation, Transferor and Bell Atlantic Corporation Transferee for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, FCC 97-286, 12 FCC Rcd 19985 (released August 14, 1997).

standards consistent with the theory of forward-looking cost methodology.<sup>8</sup> In its dismissal of the complaints, the FCC never hinted, let alone “made clear” (Sprint Response, p. 13), that “its merger order intended to, and in fact did, rely on the state commissions’ statutorily prescribed role as the primary forum for resolution of interconnection disputes.” *Id.* The complaints dealt solely with forward-looking, economic-cost pricing which, according to the FCC, the states successfully adopted:

Put another way, the substance of the pricing methodology that the state commissions have employed (and must continue to employ) in section 252 proceedings wholly subsumes the substance of the merger condition at issue here.<sup>9</sup>

17. Sprint similarly overstated the significance of the U.S. D.C. District Court of Appeals’ determination of MCI’s appeal<sup>10</sup>. Sprint contended that, from the following pronouncement of the Court, it was evident that the appropriate process for addressing the multi-jurisdictional effects of a merger order is for each state commission to resolve the effects of the order specific to its own state:

At issue are prices for complex network elements and inputs—and each category would have to be calculated for each of the *seven* jurisdictions, taking into account the unique circumstances in each location. . .The FCC is reasonable in its conclusion that these disputes are as readily resolved in the section 252 process as in a section 208 complaint.

Sprint Response, at pp. 13 -14. It is difficult for the Presiding Officer to share Sprint’s enthusiasm for the D.C. Court’s observation because it dealt solely with the lawfulness of

---

<sup>8</sup> *In the Matter of AT&T Communications Corporation and MCI Metro Access Transmissions Services, Inc. Complainants, v. Bell Atlantic Corporation, Defendant*, FCC 00-303. 15 FCC Rcd 17066, 17069-70 (released August 18, 2000).

<sup>9</sup> *Id.*, at 17071.

<sup>10</sup> *MCI Worldcom Network Services et al. v. FCC*, 274 F.3d 542 (D.C. Cir. 2001) (MCI).

the FCC's dismissal of the AT&T and MCI complaints.

18. Although *MCIMetro*<sup>11</sup> is important in another application, the Presiding Officer believes that it is not on point in Sprint's discussion relative to virtually identical language prefatory to the list of "Conditions" (Verizon/MCI Merger Order) and "Commitments" (AT&T/BellSouth Merger Order). There was no "for avoidance of doubt" provision in the Verizon/MCI Merger Order. Thus, the *MCIMetro* court did not address conflicting provisions in the Verizon/MCI Merger Order as they exist in the AT&T/BellSouth Merger Order.

19. In fact, the "for avoidance of doubt" provision has never been used in any prior major telecommunications merger order where the merging entities offered additional conditions or commitments.<sup>12</sup> There are two obvious inferences that the Presiding Officer may draw from this first-time use of the provision. One, the FCC determined to end the parallel jurisdiction and comity that had existed for years between the FCC and the states in major telecommunications mergers. Two, because the provision first appeared in the Commitment attachment to AT&T's e-mail dated December 28, 2006, to the FCC offering the Commitments<sup>13</sup>, it is possible that the FCC inadvertently cut and pasted AT&T's entire Commitment attachment page, leaving the controversial AT&T-authored provision in the Merger Commitment list without

---

<sup>11</sup> *MCIMetro Access Transmission Services of Virginia, Inc. v. Christie*, Civil Action No. 3:06CV740, 2007, WL 951853 (E.D. Va. Mar. 27, 2007) (unpublished) (*MCIMetro*).

<sup>12</sup> *See*, Verizon/MCI, WC Docket No 05-75, Nov. 17, 2005; SBC/AT&T, WC Docket No. 05-65, Nov. 17, 2005; GTE/Bell Atlantic, CC Docket No. 98-184, June 16, 2000; Ameritech/SBC, CC Docket No. 98-141, Oct. 8, 1999.

<sup>13</sup> Attachment to FCC News Release, December 29, 2006. AT&T advised the FCC in its submission that it offered the additional Commitments in the interest of facilitating the speediest possible approval of the merger by the FCC.

intending to establish exclusive jurisdiction in the enforcement of the AT&T/BellSouth Merger Commitments. The Presiding Officer finds that it is highly unlikely that the FCC would undertake the extraordinary action of taking exclusive jurisdiction over a major telecommunications merger, for the first time, without any explanation whatsoever. It makes more sense that the “for the avoidance of doubt” provision was left in by error. The Presiding Officer, therefore, concludes that the FCC did not intend to reserve exclusive jurisdiction over the merger to itself. This conclusion is buttressed by the fact that the AT&T-authored “for the avoidance of doubt” provision includes: “all conditions and commitments proposed *in this letter*” (emphasis added). There is no letter within Appendix F. The FCC would not have referenced a non-existent letter. “This letter” is the e-mail sent to the FCC by AT&T, with the Commitment page attached. Clearly the AT&T-authored “for the avoidance of doubt” provision was inadvertently included with the Merger Commitments.

20. The Presiding Officer believes that the opinion of the Public Utilities Commission of Ohio (Ohio PUC) cited by Sprint, although certainly not binding on the Commission, is worth noting with respect to the authority of state commissions to enforce the AT&T/BellSouth Merger Commitments:

[T]he FCC promulgated the Merger Commitments in Appendix F of the Memorandum Opinion and Order. At the outset, the FCC stated the following:

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.

From this language, we conclude that the FCC clarified that the states have jurisdiction over matters arising under the commitments. Even more, states are granted authority to adopt rules, regulations, programs, and policies respecting the commitments.<sup>14</sup>

The Ohio PUC continued, finding the provision “for the avoidance of doubt” provision as a means by which the FCC removed any doubt about its own jurisdiction by specifically stating that it retained concurrent authority to enforce all conditions and commitments.<sup>15</sup>

21. SWBT disparaged the Ohio PUC’s determination on two counts—misreading of the FCC’s intent not to change or alter state jurisdiction and ignoring the axiom that an order by an agency is always within the jurisdiction of that agency. SWBT Reply, ¶ 15. SWBT contended that, contrary to the Ohio PUC’s analysis, the FCC preserved state jurisdiction over the subject matters addressed in the Merger Commitments but not to interpret or enforce the Merger Commitments themselves. SWBT’s position is at odds with *MCIMetro*. In that case, the State Corporation Commission of Virginia imposed additional conditions on the merged entity in the Verizon/MCI merger. Upon appeal by MCI, the Court found:

The FCC’s use of the disjunctive “or” in the above-quoted clause means that it intended the states to have authority over all matters reserved to the states by the Communications Act, as amended, as well as over matters which are not reserved to the states by the Act, but which do appear in the Conditions.

*MCIMetro*, at \*6.<sup>16</sup> Thus, contrary to SWBT’s contentions, the Court determined that the states did have the authority to interpret and enforce the conditions or commitments

---

<sup>14</sup> *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., Complainants, v. The Ohio Bell Telephone Company dba AT&T Ohio, Respondent, Relative to the Adoption of an Interconnection Agreement*, Finding and Order, entered Feb. 5, 2008, ¶ 25.

<sup>15</sup> *Id.*

contained in merger orders. With respect to SWBT's axiom, and as discussed above, it would be exceedingly strange that the FCC would add the AT&T-authored "for avoidance of doubt" provision, unless it was erroneously included with the Commitments. The Presiding Officer finds SWBT's arguments unavailing.

22. The Presiding Officer is charged with construing FCC provisions *in pari materia*, to reconcile the different provisions so as to make them consistent, harmonious and sensible.<sup>17</sup> The AT&T/BellSouth Merger Order, Appendix F first acknowledges the AT&T-offered voluntary Merger Commitments and then reads:

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.

Then, the Merger Commitments are listed, prefaced by the AT&T-authored provision that reads:

For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.

The AT&T-authored "for the avoidance of doubt" provision that followed is contradictory to the first provision. In order to make these provisions consistent,

---

<sup>16</sup> *MCIMetro* is not reported in F.Supp.2d, 2007 WL 951853 (E.D. Va.). Unpublished decisions are not precedential, but may be cited for their persuasive value. 10<sup>th</sup> Cur. R. 32.1. *MCIMetro* is particularly persuasive because it is a federal court interpreting the intent of the FCC with respect to the Merger Conditions.

<sup>17</sup> *State, ex rel. Morrison v. Oshman Sporting Goods for Kansas*, 275 Kan. 763. *syl.* #2, 69 P.3d 1087 (2003).

harmonious and sensible, the Presiding Officer concludes that the FCC did not take exclusive jurisdiction over the Merger Commitments. Rather, if the “for the avoidance of doubt” provision was not erroneously 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.

23. The Presiding Officer, therefore, concludes that the Commission may enforce Merger Commitment 7.1 and order SWBT to port the Kentucky ICA into Kansas, subject to Kansas law and regulatory requirements.

24. SWBT requested that, if the Commission determined it could enforce the Merger Commitments, the Commission defer action until the FCC had ruled upon the AT&T ILECs’ expedited Petition for Declaratory Ruling. Because there is no estimation of when the FCC action would become final in this regard, the Presiding officer concludes that the request should be denied.

**IT IS, THEREFORE, ORDERED BY THE PRESIDING OFFICER THAT:**

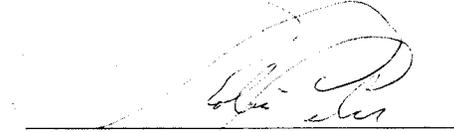
A. Sprint’s request that SWBT port in and adopt the ICA between BellSouth and Sprint Communications Company L.P. and Sprint Spectrum, as extended and approved in Kentucky, for all Sprint entities, subject to the feasibility to do so, consistent with the laws and regulatory requirements of Kansas, is granted.

B. The parties have fifteen days within which to file a petition for reconsideration by the Commission from the service of this Order. If this Order is mailed, service is complete upon mailing and the parties may add three days to the 15-day suspense period. All petitions for reconsideration must be served on the Commission’s Executive Director.

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such additional orders as it deems necessary.

**BY THE PRESIDING OFFICER IT IS SO ORDERED.**

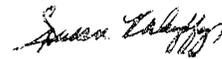
Dated: MAR 12 2008



Robert L. Lehr, Presiding Officer

ORDER MAILED

MAR 13 2008



Executive  
Director