

DIRECT TESTIMONY
OF
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TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

DOCKET NO. 07-0629

MARCH 25, 2008

1 **Introduction**

2

3 **Q. Please state your name and business address.**

4 A. My name is Jeffrey H. Hoagg. My business address is 527 East Capitol
5 Avenue, Springfield, Illinois 62701.

6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed as the Principal Policy Advisor in the Telecommunications
9 Division of the Illinois Commerce Commission

10

11 **Q. Please briefly describe your educational background and work
12 experience.**

13

14 A. I have been employed by the Illinois Commerce Commission in the
15 Telecommunications Division from 2000 to the present. During this time,
16 I have conducted analyses and provided policy recommendations on a
17 wide range of telecommunications issues, and have provided testimony on
18 behalf of Staff of the Illinois Commerce Commission in various docketed
19 proceedings. Prior to this, I held the positions of Telecommunications
20 Tariffs and Rates Analyst, Telecommunications Policy Analyst, and
21 Special Assistant to the Deputy Chair of the Commission at the New York
22 Public Service Commission. I performed economic and policy analyses

23 of industry and regulatory issues, and formulated recommendations for
24 Commission members and other decision-makers. In 1993-94 I served
25 as Special Advisor to Commissioner Barrett of the Federal
26 Communications Commission. I provided analyses and policy
27 recommendations on a wide range of telecommunications issues. Among
28 other activities, I prepared testimony, speeches and presentations for
29 delivery to Congress and various regulatory and industry groups, and
30 drafted informal and formal documents for issuance.

31
32 I hold a Master of Arts degree in Economics from Cornell University, and
33 completed all requirements but dissertation for the Ph.D. in Economics
34 from Cornell. My major field of graduate study was Industrial Organization
35 and Regulation.

36

37 **Overview**

38

39 **Q. What is the purpose of your testimony?**

40 A. I first provide the reasons why I believe the Commission should adjudicate
41 this complaint. I then address the issue of which Sprint entities properly
42 may seek to import the Kentucky ICA (interconnection agreement) into
43 Illinois. Finally, I provide a recommended framework for the Commission's
44 deliberations concerning reciprocal compensation and interconnection

45 facilities cost allocation. I believe these issues are at the heart of the
46 dispute between the two parties in this proceeding.

47 **The Commission Should Adjudicate this Complaint**

48
49 **Q. AT&T argues the FCC has exclusive jurisdiction to enforce the**
50 **AT&T/SBC merger commitments at issue in this proceeding. It**
51 **further argues that, in the event this Commission determines it has**
52 **concurrent jurisdiction regarding these merger commitments, it**
53 **should defer to the FCC. Please discuss.**

54 **A.** According to AT&T:

55 the FCC has exclusive jurisdiction to enforce the merger
56 commitments. Alternatively, if the Commission concludes
57 that it has jurisdiction concurrent with the FCC's, it would be
58 most appropriate for the Commission to voluntarily stay its
59 hand and defer to the FCC, as two other state commissions
60 recently did in parallel cases¹

61
62
63 AT&T further states:

64
65 The FCC has exclusive jurisdiction to interpret FCC Merger
66 Commitment 7.1. In particular, the FCC has exclusive
67 jurisdiction to decide the questions that AT&T posed in its
68 February 5, 2008, Petition for Declaratory Ruling, one of
69 which concerns the meaning of language in that merger
70 commitment and the other of which is whether the merger
71 commitment is to be applied in a manner consistent with
72 FCC Rule 51.809(b).

73
74 In light of the short schedule the FCC established for
75 comments on AT&T's Petition, AT&T Illinois hopes and
76 expects that the FCC will decide those questions promptly.

¹ Docket No. 07-0629, *Motion to Dismiss*, January 8, 2008 at page 14.

77 The FCC’s determinations may render unnecessary any
78 further proceedings in this docket²

79
80
81 I am not an attorney, so I cannot address any jurisdictional questions from
82 a legal standpoint. However, from a policy standpoint, I believe this
83 Commission is best equipped to determine what constitutes “state-
84 specific” pricing for purposes of potential importation of the Kentucky ICA.
85 It is my understanding that this is the central question at issue in this
86 proceeding. Accordingly, I see no reason why the Commission should
87 not adjudicate this proceeding.

88
89 **Q. Please provide your opinion concerning the significance of FCC**
90 **Docket WC 08-23 with respect to the instant proceeding.**

91 A. FCC Docket WC 08-32 was initiated by an AT&T petition seeking, among
92 other things, a declaratory ruling that the FCC has jurisdiction over the
93 AT&T/ BellSouth merger order, and hence the merger conditions at issue
94 here. As pointed out by AT&T, the FCC has set a speedy initial schedule
95 for comments and replies in FCC Docket WC 08-23. However, there is no
96 assurance FCC rulings will be forthcoming in a similarly timely fashion.
97 Parties are aware they can wait many months - if not years – for FCC
98 rulings, regardless of the nature of an initial schedule for comments and
99 reply comments. I am advised by counsel that there is no statutory

² Docket No. 07-0629, *Response to Supplemental Submission in Opposition to Motion to Dismiss*, March 7, 2008 at 2.

100 deadline by which the FCC must act in a declaratory ruling proceeding
101 such as Docket WC 08-23.

102

103

104 Even if the FCC issues a ruling in Docket WC 08-23 in a timely fashion, it
105 is not clear this would moot any determinations made by this Commission
106 in the instant docket. The FCC might defer to state commissions for
107 proper application of Merger Commitment 7.1 regarding state-specific
108 pricing and feasibility determinations. The FCC also might arrive at
109 identical or similar determinations to any issued by this Commission. It is
110 not a foregone conclusion that a Commission ruling in this docket would
111 be mooted by subsequent FCC action. That is possible, but neither
112 inevitable nor certain. In my view, this Commission should defer to the
113 FCC only if it concludes the possibility a decision in this docket might be
114 mooted by FCC action sufficiently warrants such deferral. In my view, it
115 does not; accordingly I believe the Commission should adjudicate this
116 complaint.

117

118 **Which Sprint Entities Potentially May Import the ICA?**

119

120 **Q. AT&T contends that only one CLEC and one CMRS provider jointly**
121 **may seek to import the Kentucky ICA into Illinois; it argues that a**

122 “consortium” of one CLEC and multiple CMRS providers may not.

123 Please provide your assessment of AT&T’s position.

124 A. According to AT&T:

125 Merger Commitment 7.1 would permit the BellSouth
126 Kentucky ICA to be ported jointly by one CLEC and one
127 CMRS provider, but not by a consortium consisting of one
128 CLEC and multiple CMRS providers. This is because the
129 BellSouth Kentucky ICA is an arrangement between an ILEC
130 and one CLEC and one CMRS provider, and in order for it to
131 remain the same contract (subject only to state-specific
132 modifications contemplated by the merger commitment), it
133 must remain an arrangement between an ILEC and one
134 CLEC and one CMRS provider. For instance, a deviation
135 from the BellSouth Kentucky arrangement would surely
136 impact the balance of traffic assumptions that were
137 predicates for the trunking and reciprocal compensation
138 arrangements in the BellSouth Kentucky ICA. To the extent
139 that Sprint/Nextel seek in effect to convert an ICA between
140 an AT&T ILEC and one CLEC and one CMRS provider into
141 an ICA between an AT&T ILEC and one CLEC and multiple
142 CMRS providers, Sprint/Nextel are improperly attempting to
143 convert a merger commitment whose sole purpose was to
144 reduce the transaction costs associated with negotiating an
145 interconnection agreement (see *supra* n.3) into an illicit
146 arbitrage opportunity. Accordingly, AT&T’s letter stated, once
147 Sprint/Nextel inform AT&T which of the Sprint/Nextel CMRS
148 providers is to be a party to the agreement, AT&T Illinois will
149 accept and will process the porting request by Sprint CLEC
150 and the designated CMRS provider.³ [emphasis added]
151

152 To my knowledge, AT&T thus far has not provided justification for its
153 position beyond that contained in the above paragraph. There is no
154 support for AT&T’s proposed limitation in the plain language of FCC
155 Merger Commitment 7.1. This Merger Commitment requires AT&T to

³ Docket No. 07-0629, *Verified Answer to Verified Complaint and Request for Declaratory Ruling*, January 8, 2008, pages 4-5.

156 offer “any requesting telecommunications carrier any entire effective
157 Interconnection Agreement ... that an AT&T/BellSouth ILEC entered into
158 in any state in the AT&T/BellSouth 22-state ILEC operating territory[.]” To
159 my understanding, AT&T thus is obliged to offer *any* agreement to *any*
160 CLEC, subject of course, to the specific requirements contained in Merger
161 Commitment 7.1. It is difficult to see how this provision does not oblige
162 AT&T to offer the Kentucky ICA to each of the Sprint entities individually or
163 all of them collectively. Based upon the record to date, the Commission
164 should reject AT&T’s proposed limitation.

165

166 AT&T’s concern that importation of the Kentucky ICA by multiple Sprint
167 entities represents an “illicit arbitrage opportunity” (with respect to trunking
168 and reciprocal compensation arrangements) is properly addressed
169 through the “state-specific” pricing requirement of FCC Merger
170 Commitment 7.1. That is the appropriate venue for examination of this
171 AT&T concern and objection to importation.

172

173 **FCC Merger Commitment 7.1**

174

175 **Q. Please provide your general understanding of FCC Merger**
176 **Commitment 7.1 as it pertains to this proceeding.**

177 A. FCC Merger Commitment 7.1 provides as follows:

178 The AT&T/BellSouth ILECs shall make available to any
179 requesting telecommunications carrier any entire effective
180 Interconnection Agreement, whether negotiated or arbitrated,
181 that an AT&T/BellSouth ILEC entered into in any state in the
182 AT&T/BellSouth 22-state ILEC operating territory, subject to
183 state-specific pricing and performance plans and technical
184 feasibility, and provided, further, that an AT&T/BellSouth ILEC
185 shall not be obligated to provide pursuant to this commitment
186 any interconnection arrangement or UNE unless it is feasible to
187 provide, given the technical, network, and OSS attributes and
188 limitations in, and is consistent with the laws and regulatory
189 requirements of, the state for which the request is made.⁴
190

191 I understand this language to obligate AT&T to offer the Kentucky ICA in
192 its entirety to Sprint for execution in Illinois unless one of the enumerated
193 requirements prevents such an offering.

194

195 **Q. In your opinion, how are these enumerated requirements properly**
196 **applied?**

197 A. Appropriate application of the “technical feasibility” requirement seems
198 plain enough. If a specific circumstance *in Illinois* renders any provision of
199 the Kentucky ICA technically infeasible to provide, AT&T is not obligated
200 to offer that provision. Application of the “general feasibility” condition
201 seems similarly straightforward:

202 AT&T/BellSouth ILEC shall not be obligated to provide
203 pursuant to this commitment any interconnection
204 arrangement or UNE unless it is feasible to provide, given
205 the technical, network, and OSS attributes and limitations in,
206 and is consistent with the laws and regulatory requirements
207 of, the state for which the request is made

⁴ *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*,
Memorandum Opinion and Order at 113, WC Docket No. 06-74 (rel. Mar. 26, 2007).

208

209 If, for example, legal or regulatory circumstances *in Illinois* render any
210 provision of the Kentucky ICA infeasible to provide from a legal or
211 regulatory standpoint, AT&T is not obligated to offer that provision.

212

213

214 In my view, appropriate application of the condition most directly at issue
215 in this proceeding - “*subject to state-specific pricing and performance*
216 *plans*” – also is straightforward, at least conceptually. If performance plan
217 terms in the Kentucky ICA differ from performance plan terms that have
218 been or would be approved by the Illinois Commerce Commission, such
219 terms require replacement with Commission-approved provisions prior to
220 execution of the contract in Illinois. Likewise, if the Kentucky ICA contains
221 prices that differ from prices that have been or would be approved by the
222 Illinois Commerce Commission, such prices require replacement with
223 Commission-approved prices prior to execution of the contract in Illinois.

224

225 **Q. Why do you focus on the role of the Illinois Commerce Commission**
226 **in applying the requirements contained in Merger Commitment 7.1?**

227 A. In my opinion, these requirements properly are applied from the
228 perspective of the “importing” rather than the “originating” state. From a
229 policy standpoint, conditions surrounding the ICA in the “originating” state

230 of Kentucky, at least to the extent they involve pricing, performance plans
231 or feasibility issues, are not germane to proper application of Merger
232 Commitment 7.1 in Illinois. This is readily apparent when considering
233 proper application of the “technical feasibility” condition. Presumably, all
234 provisions of the Kentucky ICA are “technically feasible” in Kentucky, or
235 they would not have found their way into the ICA in the first instance. The
236 issue is whether a specific circumstance *in Illinois* would render any
237 provision of the Kentucky ICA technically infeasible to provide in Illinois.
238 Similarly, the “general feasibility” condition makes clear by its very terms
239 that analysis of conditions in “the state for which the request is made” (i.e.,
240 Illinois) is required for proper application of Merger Commitment 7.1. For
241 example, the laws and regulations of Illinois must be examined and
242 applied – not those of Kentucky.

243

244 **Q. In your opinion, how should the “state-specific” pricing**
245 **requirements contained in Merger Commitment 7.1 be applied?**

246 A. These “state-specific” pricing requirements also should be applied from
247 the perspective of the “importing” state. While perhaps less obvious, it is
248 no less true that appropriate application of the “state-specific” pricing
249 requirement of Merger Commitment 7.1 will turn on Illinois-specific pricing
250 and pricing policies. Any prices, price structures or pricing provisions not
251 consistent with, in conformance with, or in accordance with Illinois-specific

252 prices and pricing policies must be altered prior to importation of the ICA
253 into Illinois. I believe this is the intent of the “state-specific” pricing
254 requirement of FCC Merger Commitment 7.1, and that it is appropriate
255 application of that requirement.

256

257 **Q. Has either party to this dispute expressed similar opinions**
258 **concerning appropriate application of the “state-specific” pricing**
259 **requirement contained in FCC Merger Commitment 7.1?**

260 A. Yes. According to AT&T:

261 A commitment that AT&T made to the Federal Communications
262 Commission (“FCC”) allows the Kentucky agreement to be
263 ported to Illinois...only after it has been modified, consistent
264 with the terms of that commitment, to conform with Illinois
265 pricing, Illinois performance measures and remedy plans, and
266 other applicable Illinois legal and regulatory requirements.⁵
267 [emphasis added]

268

269

270 AT&T anticipates the following major areas of potential “state-specific”

271 modification:

272 • All Kentucky pricing must be changed to Illinois pricing. The
273 pricing for reciprocal compensation in the BellSouth
274 Kentucky ICA is bill-and-keep. This will need to be changed
275 to Illinois reciprocal compensation rates.

276

277

278 • The interconnection trunking requirements and network
279 interconnection methods in the BellSouth ICA must be
280 conformed with Illinois requirements and methods. One
281 notable example: The BellSouth Kentucky ICA includes a
282 50/50 facility sharing factor pursuant to which the parties to

⁵ Docket No. 07-0629, *Verified Answer to Verified Complaint and Request for Declaratory Ruling*, January 8, 2008 at page 2.

283 the ICA share equally the cost of entrance facilities. That
284 facility sharing factor is inconsistent, at least for CLECs, with
285 current Illinois law governing cost responsibility for entrance
286 facilities, and will have to be modified accordingly. In
287 addition, even if the facility sharing factor were not
288 inconsistent with Illinois law, the 50/50 facility factor in the
289 BellSouth Kentucky ICA could not properly be ported to
290 Illinois, absent an appropriate showing of all the parties'
291 usage of the subject facilities in Illinois.

- 292
- 293 • Kentucky performance measures and remedy plan must be
294 changed to Illinois performance measures and remedy plan.
 - 295
 - 296 • OSS, which includes Preordering, Ordering, Provisioning,
297 Maintenance and Billing, varies from region to region. AT&T
298 Illinois anticipates that the terms of the BellSouth Kentucky
299 ICA governing OSS, especially Ordering and Provisioning,
300 will need to be significantly modified for Illinois.⁶
 - 301

302 It appears Sprint also may recognize that importation of the Kentucky ICA
303 pursuant to Merger Commitment 7.1 requires that the ICA prices be
304 revised, where necessary, to conform to Illinois prices and pricing policies:

305 Sprint files this Complaint and exercises its rights under
306 Merger Commitment 7.1 to port and adopt the Kentucky ICA
307 in Illinois, subject to state-specific pricing, and requests that
308 the Commission acknowledge and implement Sprint's
309 request to adopt the Kentucky ICA and direct AT&T to
310 execute an appropriate adoption amendment.⁷
311 [emphasis added]
312

313 **Q. In your opinion, is a reciprocal compensation rate “state-specific”**
314 **pricing, as that term is used in FCC Merger Commitment 7.1?**

315 **A. Yes. Rates for the transport and termination of local traffic transmitted by**

⁶ Docket No. 07-0629, *Verified Answer to Verified Complaint and Request for Declaratory Ruling*, January 8, 2008 at page 7.

316 one carrier to another have been established in Illinois Commerce
317 Commission tariffs, as well as approved by this Commission in
318 interconnection agreements between carriers. These are state-specific
319 rates. AT&T has Illinois reciprocal compensation rates set forth in its
320 tariffs. These are displayed in Attachment 1 below.

321

322 **Q. In your opinion, is a bill-and-keep reciprocal compensation regime**
323 **“state-specific” pricing, as that term is used in FCC Merger**
324 **Commitment 7.1?**

325 A. Yes. Under bill-and-keep, each carrier’s reciprocal compensation rate is
326 set at zero (for application by both parties to the traffic exchange), rather
327 than a positive value for that rate. Each carrier thus provides transport
328 and termination services for the other carrier’s local traffic at no charge.
329 This eliminates the need to account for, bill for, collect or pay reciprocal
330 compensation charges.

331

332 **Q. In your opinion, are “traffic balance” considerations, as a component**
333 **of (or potential condition for) bill and keep reciprocal compensation,**
334 **“state-specific” pricing, as that term is used in FCC Merger**
335 **Commitment 7.1?**

⁷ Docket No. 07-0629, *Verified Complaint and Request for Declaratory Ruling*, December 28, 2007, at paragraph 54.

336 A. Yes. Relative traffic flows, and whether these flows are approximately
337 “balanced” (i.e. roughly equal between the two carriers involved), has
338 been and remains central to any consideration of bill-and-keep reciprocal
339 compensation. This is true generally, and is true specifically in Illinois.
340 Relative traffic flows effectively are a “term or condition” directly
341 accompanying bill-and-keep reciprocal compensation pricing.

342

343 In this regard, Section 51.713 of FCC Rules impacts Illinois-specific
344 pricing for bill and keep reciprocal compensation:

345 (b) A state commission may impose bill-and-keep
346 arrangements if the state commission determines that the
347 amount of telecommunications traffic from one network to
348 the other is roughly balanced with the amount of
349 telecommunications traffic flowing in the opposite direction,
350 and is expected to remain so, and no showing has been
351 made pursuant to §51.711(b).

352

353

354

355 (c) Nothing in this section precludes a state commission from
356 presuming that the amount of telecommunications traffic
357 from one network to the other is roughly balanced with the
358 amount of telecommunications traffic flowing in the opposite
359 direction and is expected to remain so, unless a party rebuts
360 such a presumption.

361

362

363 **Q. In your opinion, what would Sprint need to show in order to prevail**
364 **on the reciprocal compensation pricing issues in this proceeding?**

365 A. Fundamentally, Sprint needs to show either: a) traffic exchanged between
366 the parties to this ICA would be roughly balanced, if the ICA is imported
367 into Illinois, or: b) in Illinois, if one party to local traffic exchange objects to
368 bill and keep reciprocal compensation pricing, approximate traffic balance
369 is not a condition for imposition of bill and keep (over such objection). It
370 appears to me that Sprint has not yet shown either of these in this
371 proceeding.

372

373 **Q. In your opinion, does similar analysis apply to the issue of allocation**
374 **of interconnection facilities costs between carriers?**

375 A. Yes. To prevail, Sprint needs to show either: a) traffic exchanged
376 between the parties to this ICA would be roughly balanced, if the ICA is
377 imported into Illinois, or b) the Illinois Commerce Commission approves a
378 50%/50% allocation of interconnection facilities costs with no reference to
379 approximate balanced tariff exchange, and that the ICC imposes such
380 allocation, over one party's objection, in the absence of balanced traffic
381 exchange. It appears to me that Sprint has not yet shown either of these
382 in this proceeding.

383

384 **Q. Does this conclude your testimony?**

385 A. Yes.

ILLINOIS BELL
TELEPHONE COMPANY

SBC
Tariff

ILL. C.C. NO. 20
PART 23 SECTION 2

PART 23 - Interconnection Service for Local
Telecommunications Carriers
SECTION 2 - Ameritech End Office Integration
Service

5th Revised Sheet No. 3
Cancels
3rd Revised Sheet No. 3

3. COMPENSATION

3.1 Reciprocal Compensation

Each party agrees to compensate the other for terminated
Section 251(b)(5) Traffic^{1/} originated on its network. The following (C)
rates apply for Section 251(b)(5) Traffic originated on a carrier's (C)
network and terminated on the Company's network.^{2/}

End Office Local Termination	\$0.003746 per MOU
Tandem Switching	0.001072 per MOU
Tandem Transport Termination	0.000201 per MOU
Tandem Transport Facility Mileage	0.000013 per MOU per Mile

/3/

- /1/ Section 251(b)(5) Traffic is traffic within Usage Bands A and B (C)
originating and terminating exchange combinations or Flat Rate Local
Calling Areas as specified in Part 4, Section 2 of this Tariff,
excluding ISP-Bound Traffic. On or about June 16, 2003, SBC Illinois (N)
made an offer to exchange all Section 251(b)(5) Traffic and ISP-Bound
Traffic in the State of Illinois on and after September 1, 2003 at the
capped rates established for ISP-Bound Traffic in the FCC's Order on
Remand and Report and Order in CC Dockets No. 96-98 and 99-68, In the
Matter of the Local Competition Provisions in the Telecommunications
Act of 1996; Intercarrier Compensation for ISP-Bound Traffic ("FCC's
Compensation Order") and the associated terms and conditions set forth
in such order. The capped rate established in the FCC's Compensation
Order as of the effective date of this tariff page is \$0.0007 per MOU.
If the telecommunications carrier has not accepted SBC Illinois' offer,
then the rates, terms and conditions prescribed in Section 3.1 above
shall apply to Section 251(b)(5) Traffic and the rates for ISP-Bound
Traffic and associated terms and conditions specified in the FCC's
Compensation Order shall apply to ISP-Bound Traffic.
Telecommunications carriers that wish to accept SBC Illinois' offer to
exchange Section 251(b)(5) and ISP-Bound Traffic at the capped rates
established for ISP-Bound Traffic in the FCC's Compensation Order and
on terms and conditions consistent with these rates must do so in
accordance with the procedure documented on the CLEC Online website or
communicated via accessible letter. (N)
- /2/ Calls that are neither Section 251(b)(5) Traffic nor ISP-Bound Traffic (C)
terminating on the Company's network are subject to Switched Access
Service charges as found in Ameritech companies' Tariff F.C.C. No. 2,
Section 6, or Illinois Bell Telephone Company ILL. C.C. No. 21,
Section 6. (C)

/3/ Material now appears on Original Sheet 3.01 in this Section. (D)

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By Rhonda J. Johnson, Vice President - Regulatory Affairs
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