

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

SPRINTCOM, INC., WIRELESSCO, L.P.,)	
NPCR, INC. D/B/A NEXTEL PARTNERS, AND)	
NEXTEL WEST CORP.)	
)	
Petition for Arbitration, Pursuant to Section)	Docket No. 12-0550
252(b) of the Telecommunications Act of 1996, to)	
establish an Interconnection Agreement With)	
)	
Illinois Bell Telephone Company d/b/a AT&T)	
Illinois)	

**CBEYOND COMMUNICATIONS, LLC, LEVEL 3 COMMUNICATIONS, LLC,
PEERLESS NETWORK OF ILLINOIS, LLC, AND TW TELECOM OF ILLINOIS,
LLC’S REPLY IN SUPPORT OF THEIR PETITION TO INTERVENE**

Cbeyond Communications, LLC (“Cbeyond”), Level 3 Communications, LLC (“Level 3”), Peerless Network of Illinois, LLC and tw telecom of illinois llc (“tw telecom”), (collectively, “Intervenors”), by their attorney, hereby files this Reply In Support Of Their Petition to Intervene (“Petition”). Intervenors state as follows in support of their Petition.

ARGUMENT

The Hearing Examiner should grant Intervenors’ Petition over the objections of the Staff of the Commission (“Staff”) and Illinois Bell Telephone Company d/b/a AT&T Illinois (“Illinois Bell”) for at least two reasons.

The Hearing Examiner is authorized to permit intervention in this proceeding. While Illinois Bell and Staff correctly note that this proceeding is a Section 252(b) arbitration subject to Part 761 of the Commission’s Rules, 83 Ill. Admin. Code Part 761, neither objection

addresses the express grant of authority to the Hearing Examiner to waive any provision in Part 761 upon request. 83 Ill. Admin. Code Part 761.20.

Waiver of Part 761's exclusion of Intervenors should be granted. This arbitration may make determinations on whether Internet Protocol ("IP") interconnection is subject to Section 251(c) of the Act and on the conditions for IP-to-IP interconnections with incumbent LECs in Illinois, issues of first impression for the Commission that will affect all Illinois carriers. Intervenors intend to limit their participation to this issue (Issue No. 1 in the Arbitration). Intervenors will be directly affected by this issue of first impression because (1) the Commission's findings will form the basis of Illinois Bell's negotiations with other carriers, including Intervenors, on this issue, and (2) AT&T's goal is to create a wireline IP network covering 75% of all customer locations in the next year and a half.¹ The Hearing Examiner therefore should permit Intervenors to present its comments on the Proposed Order before issuance of the final Arbitration Decision.

In the alternative, should the Hearing Examiner deny intervention at this time, the Hearing Examiner should rule now that Intervenor's are permitted intervention in the Section 252(e) proceeding. In the issuance of the final Arbitration Decision, the Hearing Examiner will direct the parties to submit the arbitrated Agreement to the Commission pursuant to Section 252(e), which is governed by Part 762 of the Commission's Rules, 83 Ill. Admin. Code 762. Pursuant to Part 762.210, Intervenors have a right to seek intervention before the Commission approves the arbitrated Agreement and, pursuant to Part 762.120, Intervenors have a right to file comments about the proposed arbitrated agreement. However, Section 252(e) proceedings proceed quickly, and to ensure that Intervenors have the opportunity to comment on the proposed

¹ Hearing Transcript (Feb. 27, 2013), 512:3-8 (Albright); *see also* <http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661&mapcode=corporate|consumer> (last viewed May 3, 2013).

agreement within the context of the Commission's approval of that agreement, Intervenor should be given notice when AT&T and Sprint file their proposed agreement with the Commission for approval, and granted intervenor status in that proceeding.

A. The Hearing Examiner Is Authorized To Permit Intervention And Should Allow Intervention On This Issue Of First Impression.

Part 761 of the Commission's Rules authorizes the Hearing Examiner to grant Intervenor's Petition. 83 Ill. Admin. Code Part 761.20 provides that "any provision of this Part may be waived, suspended or modified by the Commission or an Examiner, either upon their own motion or upon motion by any person." Part 761.20 is not limited to requests by a "party" in the proceeding because the Part specifically uses the "person" terminology.²

The Hearing Examiner should grant Intervenor's Petition because the applicability of Section 251(c) to IP-to-IP interconnection is a question of first impression for the Commission and is of increasing importance as the industry transitions to IP networks. Both Staff and Illinois Bell agree that this question is one of a first impression for the Commission.³

Illinois carriers need immediate clarification on the issue.⁴ AT&T has a stated goal to create a wireline IP network covering 75% of all customer locations in the next year and a half. Further, the FCC states that its "goal is to facilitate the transition to an all-IP network and to promote IP-to-IP interconnection",⁵ and the National Broadband Plan states that "U.S. policy

² Part 762.30 defines "person" as "any individual, partnership, corporation, governmental body or unincorporated association."

³ Proposed Order, pg. 33; Staff of the Illinois Commerce Commission's Initial Brief (filed Mar. 22, 2013) ("Staff Opening Brief"), pg. 31; Illinois Bell's Initial Post-Hearing Brief (filed Mar. 22, 2013) ("Illinois Bell Opening Brief"), pg. 75.

⁴ Hearing Transcript (Feb. 27, 2013) 512:3-8 (Albright); *see also* <http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661&mapcode=corporate|consumer> (last viewed May 3, 2013).

⁵ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17926 ¶783 (2011) ("USF/ICC Transformation Order"), *pets. for review pending sub nom. In re: FCC 11-161, No.*

has embraced competition as the best means to bring the fruits of investment and innovation – including lower prices, new services and features, higher service quality and choice – to the American people.”⁶

If the Commission delays a decision on the applicability of Section 251(c) to IP-to-IP interconnection, the Commission would incent Illinois Bell to delay widespread implementation of IP interconnection with competing carriers, while at the same time permit Illinois Bell to deploy its resources to developing its wireline U-verse IP network (with which Illinois Bell maintains no competing carrier may interconnection).⁷ This result would be contrary to the pro-competitive stance of the Act and directly hinder Illinois carriers’ continued deployment of IP networks. Consequently, it is clear that the question of IP-to-IP interconnection will become increasingly important in the near term for Illinois carriers as they continue their transition to their networks IP infrastructure.

Despite its arguments that Part 761 arbitrations do “not bind a non-party carrier,”⁸ Illinois Bell acknowledges that the final Agreement from this arbitration will be used as a template for its negotiations with other carriers. Illinois Bell argues that “AT&T Illinois’ witnesses encourage the Commission to take into consideration the fact that other carriers may adopt the interconnection agreement that emerges from this proceeding. . . .”⁹ Because the arbitrated Agreement in this matter will be used by AT&T in negotiations with other carriers, Intervenors should be permitted in this instance to intervene and provide the Commission with all possible information on this issue of first impression before the Commission renders a finding.

11-9900 (10th Cir. filed Dec. 8, 2011); see also *USF/ICC Transformation Order*, at 18123, ¶ 1335 (“the Commission has set an express goal of facilitating industry progression to all-IP networks.”).

⁶ *Connecting America: The National Broadband Plan*, 50 CR 1 (FCC Mar. 16, 2010).

⁷ Hearing Transcript (Feb. 27, 2013) 512:3-8, 514:9-16 (Albright).

⁸ AT&T Objections, ¶ 2.

⁹ Hearing Transcript (Feb. 26, 2013), 54:9-13 (discussing dispute and escrow issues).

Additionally, there can be no doubt that Intervenors may face additional hurdles in its negotiations with Illinois Bell as a result of the Arbitration Decision on Issue No. 1. For example, Illinois Bell relies heavily on the Commission’s findings in other “non-binding” Section 252(b) arbitrations to support its arguments in this arbitration. Illinois Bell extensively cites to the “non-binding” Arbitration Decision in Docket No. 04-0469, a Section 252(b) arbitration, to argue that 911 and Equal Access traffic are not Section 251(c)(2) traffic.¹⁰ Illinois Bell further relies on other “non-binding” decisions in Section 252(b) arbitrations in Docket Nos. 02-0253 and 11-0083.¹¹ Moreover, despite the non-binding nature of these Arbitration Decisions, the Proposed Order strives to find consistency with at least one of these prior arbitrations.¹²

The Commission should waive Part 761’s exclusion of Intervenors because the question of IP-to-IP interconnection is one of first impression to the Commission and Illinois Bell will likely use the final Arbitration Decision in this proceeding to either (1) refuse to discuss IP-to-IP interconnection in the context of Section 251(c) or (2) use the final Arbitration Order in this proceeding as “proof” that the Commission does not consider IP-to-IP interconnection subject to Section 251(c). Intervenors will face these additional hurdles as a result of findings rendered on Issue No. 1. Intervenors therefore seek to fully inform the Commission on this issue before the Commission renders its decision.

¹⁰ See, e.g., Illinois Bell Opening Brief, pgs. 20-21, 50, 53-54, 121-22, 138, 151 (citing the Order- Arbitration Decision in *MCI Metro Access Transmission Communications, Inc., et al. Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 04-0469(ICC Nov. 30, 2004)).

¹¹ See Illinois Bell Opening Brief, pgs. 50-51 (citing the Order on Rehearing in *Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc. f/k/a GTE North Incorporated and Verizon South Inc. f/k/a GTE South Incorporated*, Order on Rehearing Docket No. 02-0253 (ICC Nov. 7, 2002); see also Illinois Bell Opening Brief, pgs. 138, 143, 147 (citing the Order-Arbitration Decision in *Petition for Arbitration of Interconnection Agreement with Big River Telephone Company, LLC.*, Order – Arbitration Decision, Docket No. 11-0083 (ICC Jun. 14, 2011)).

¹² See, e.g., Proposed Order, pg. 70.

In addition, with respect to Issue No. 1, the Commission should consider circumstances that were not raised to this arbitration before rendering a decision about the applicability of Section 251(c) to IP-to-IP interconnection. Sprint and Intervenors are not similarly situated. Sprint is a CMRS provider and Intervenors are carriers who currently have complete or partial IP networks carrying wireline small business and residential voice traffic. Intervenors therefore are able to bring a new perspective to the Commission's analysis of Issue No. 1 before it renders a decision affecting all Illinois carriers.

The industry is quickly transitioning to an IP infrastructure and the applicability of Section 251(c) to IP-to-IP interconnection will affect the industry's progression. Intervenors will be directly affected in their negotiations with incumbent local exchange carriers as a result of the Commission resolution of Issue No. 1. Intervenors should therefore be permitted to submit comments on this issue before the Commission renders its findings on this issue of first impression. The Hearing Examiner should grant Intervenors' Petition.

B. The Hearing Examiner Should Permit Intervention So That Intervenors May File Comments During the Section 252(e) Phase Of The Proceeding

In the alternative, the Hearing Examiner should grant Intervenors' Petition to allow them to submit comments during the Section 252(e) phase of the proceeding, and to receive notice when AT&T and Sprint submit their agreement for approval to the Commission.

Once the final Arbitration Decision is issued, the Hearing Examiner will order the Parties to submit their arbitrated Agreement to the Commission pursuant to Section 252(e), which is subject to Part 762 of the Commission's Rules. 83 Ill. Admin. Code 762. Part 762 expressly allows non-Parties to seek intervention before the Commission approves or rejects the

arbitrated Agreement.¹³ Further, Part 762 expressly permits non-parties to file comments on the proposed Agreement before the Commission renders a finding.¹⁴

If the Commission refuses to permit Intervenors to provide comment at this time, Intervenors should be granted intervenor status in the Section 252(e) phase of the proceeding, and be given notice by AT&T and Sprint when they file their petitions to approve the arbitrated agreement. Section 252(e) proceedings move quickly through the Commission. Intervenors should be given sufficient opportunity to ensure the Commission has all available information about the applicability of Section 251(c) of the Act to IP-to-IP interconnections, an issue of first impression for the Commission, before the Commission renders a finding on the proposed contract terms. To allow Intervenors to submit these comments, and to ensure that the Commission is fully informed on this issue, the Hearing Examiner should grant Intervenors' Petition.

CONCLUSION

For the foregoing reasons, Intervenors respectfully requests that this Commission grant this Petition to Intervene.

Respectfully Submitted,

By: 

One of its attorneys

Kelley Drye & Warren LLP
Henry T. Kelly, Esq.
Michael R. Dover, Esq.

¹³ See 83 Ill. Admin. Code Part 762.210; see also *Adoption of 83 Ill. Adm. Code 761 to implement the arbitration provisions of Section 252 of the Telecommunications Act of 1996*, Dkt. No. 96-0297, 1996 WL 33660071 (I.C.C. Sept. 5, 1996) (“interested carriers have the opportunity to participate under proposed part 762 which allows intervention in the proceedings for approval of agreements adopted by arbitration”).

¹⁴ See 83 Ill. Admin. Code Part 762.120.

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NOTICE OF FILING

Please take notice that on May 3, 2013, before the hour of 3:00 P.M., I caused to be filed via the Illinois Commerce Commission's eDocket, **Cbeyond Communications, LLC, Level 3 Communications, LLC, Peerless Network of Illinois, LLC, and tw telecom of Illinois llc's Reply In Support Of Their Petition To Intervene**. A copy of the foregoing document is hereby served upon you.



Henry T. Kelly, attorney for the
Proposed Intervenors

CERTIFICATE OF SERVICE

I, Henry T. Kelly, an attorney, on oath state that I served a copy of **Cbeyond Communications, LLC, Level 3 Communications, LLC, Peerless Network of Illinois, LLC, and tw telecom of Illinois llc's Reply In Support Of Their Petition To Intervene** on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on May 3, 2013.



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