

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS BELL TELEPHONE COMPANY)	
D/B/A AT&T ILLINOIS D/B/A AT&T)	
WHOLESALE AND SPRINTCOM, INC.)	
WIRELESSCO. L.P., NPCR, INC. D/B/A)	Docket No. 13-0443
NEXTEL PARTNERS AND NEXTEL WEST)	
CORP.)	
)	
Joint Petition Regarding Approval of)	
Interconnection Agreement pursuant to 47 U.S.C.)	
§ 252)	

**AT&T ILLINOIS' RESPONSE IN OPPOSITION TO LEVEL 3
COMMUNICATIONS, LLC, PEERLESS NETWORK OF ILLINOIS, LLC,
AND TW TELECOM OF ILLINOIS LLC'S PETITION TO INTERVENE
AND MOTION FOR LEAVE TO FILE COMMENTS *INSTANTER***

Illinois Bell Telephone Company (“AT&T Illinois”), by its counsel, respectfully urges the Commission to deny Level 3 Communications, LLC, Peerless Network of Illinois, LLC, and tw telecom of illinois llc’s Petition to Intervene and Motion for Leave for Leave to File Comments *Instanter*. The Movants¹ have failed to identify an interest in this proceeding that would justify intervention, as required by 83 Ill. Admin. Code § 762.210.

Moreover, intervention would be futile, because the purported reason for the intervention is that the Movants seek to argue that certain provisions of the interconnection agreement that is the subject of this proceeding are inconsistent with section 251 of the Telecommunications Act of 1996 (“1996 Act”). But the Commission, in the underlying arbitration proceeding (Docket No. 12-0550), has already determined that those provisions are consistent with section 251 of the

¹ We refer to Level 3 Communications, LLC, Peerless Network of Illinois, LLC, and tw telecom of illinois llc as “Movants.”

1996 Act. In making that determination, the Commission considered and rejected the same arguments, then made by Sprint, that Movants now seek to make in this proceeding. As the Commission has recognized, the arbitrated provisions of an interconnection agreement should be found to comply with section 251 of the 1996 Act and, should therefore be approved, if those provisions are “consistent with the Commission’s directives in the underlying arbitration proceeding.”² Here, it is undisputed that the provisions to which the Movants object were expressly approved by the Commission and, therefore, are fully consistent with its directives in Docket No. 12-0550.

AT&T Illinois further states as follows:

Background

1. The interconnection agreement (“ICA”) that is the subject of this docket was jointly filed on July 18, 2013, by SprintCom, Inc., Wireless Co. L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp. (collectively, “Sprint”) and AT&T Illinois.³

2. As the Joint Petition states (at 1), some portions of the ICA were adopted through negotiations between AT&T Illinois and Sprint, and other portions were the result of an arbitration the Commission conducted in Docket No. 12-0550 pursuant to the 1996 Act.

3. One of the issues that Sprint and AT&T Illinois arbitrated was whether the ICA should require AT&T Illinois to provide IP-to-IP interconnection to Sprint, *i.e.*, to provide interconnection between Sprint equipment that uses Internet Protocol (“IP”) technology and

² Order, Docket No. 03-0778 (Feb. 4, 2004) (approving ICA filed by AT&T Illinois and Sage Telecom, Inc.).

³ Joint Petition Regarding Approval of Interconnection Agreement Between Sprint and AT&T Illinois (“Joint Petition”).

equipment on AT&T Illinois' network that uses IP technology (the "IP Issue").⁴ This is the issue that is the subject of the Movants' proposed intervention.

4. In the arbitration, AT&T Illinois argued, among other things, that because there is no equipment on its network that uses IP technology, AT&T Illinois cannot lawfully be required to provide IP-to-IP interconnection to Sprint. AT&T Illinois also argued that the interconnection requirement in the 1996 Act does not extend to IP-to-IP interconnection in any event – but urged the Commission not to decide that question one way or the other, because (i) the Federal Communications Commission ("FCC") is considering the issue, and the Commission should not get out in front of the FCC; (ii) there is no reason to decide whether the 1996 Act would require AT&T Illinois to establish IP-to-IP interconnection with Sprint if AT&T Illinois had an IP network, because AT&T Illinois has no IP network; and (iii) Sprint was not asking for IP-to-IP interconnection as of the Effective Date of the new ICA in any event, but was instead asking for language that would allow it to negotiate terms for IP-to-IP interconnection during the term of the ICA.⁵

5. Sprint argued, among other things, that the 1996 Act does require IP-to-IP interconnection. All told, Sprint devoted 141 pages of its filings to its attempt to convince the Commission that the parties' ICA should reflect that purported requirement⁶ – the same point the Movants now seek to argue.

⁴ See Arbitration Decision, Docket No. 12-0550 (June 26, 2013) ("Arbitration Decision"), at 31-34.

⁵ See Docket No. 12-0550, AT&T Illinois' Initial Post Hearing Brief (March 22, 2013), at 75-92; AT&T Illinois' Post-Hearing Reply Brief (April 2, 2013), at 42-48.

⁶ Docket No. 12-0550, Verified Written Statement of James Burt (Dec. 5, 2012) (Sprint Exh. 1), at 16-46; Supplemental Verified Written Statement of James Burt (Feb. 12, 2013) (Sprint Exh. 4.0), at 2-36; Sprint's Post-Hearing Brief (March 22, 2013), at 67-89; Sprint's Post-Hearing Reply Brief (April 2, 2013), at 39-50; Sprint's Statement of Positions and Proposed Commission Analysis (April 8, 2013), at 27-35; Sprint's Brief on Exceptions (May 6, 2013), at 47-73.

6. Sprint failed. Commission Staff, consistent with AT&T Illinois' position, urged the Commission not to rule one way or the other on whether the 1996 Act requires IP-to-IP interconnection. Staff correctly noted that Sprint had proposed little in the way of specifics and was instead proposing that the details of IP-to-IP interconnection be determined at a later date. Accordingly, Staff recommended that the Commission require the parties to include a provision in the ICA that would allow Sprint to develop and propose language governing IP-to-IP interconnection at a later date.⁷

7. AT&T Illinois proposed contract language to implement Staff's recommendation, and Staff advised that "AT&T's proposal follows precisely the recommendation of Staff."⁸

8. Accordingly, the Commission, while making clear that it was not deciding whether the 1996 Act does or does not require IP-to-IP interconnection, adopted AT&T Illinois' proposed language, *i.e.*, the "language contained in AT&T witness Albright's Rebuttal testimony."⁹

9. The ICA that Sprint and AT&T Illinois have now filed for the Commission's review in this docket includes precisely the language that Staff recommended and that the Commission's Arbitration Decision directed the parties to include in the ICA.¹⁰

10. The Movants seek to intervene in this docket so that they can file comments arguing that, because "the Interconnection Agreement does not provide for a method for IP Interconnection," it "violates Sections 47 U.S.C. § 251(c) and 252(e)."¹¹

⁷ See Arbitration Decision at 32-34.

⁸ *Id.* at 34.

⁹ *Id.*

¹⁰ As Sprint and AT&T Illinois averred in the Joint Petition (at 2), "AT&T Illinois and Sprint believe that the arbitrated terms of the Agreement comply with the Commission's rulings in the Arbitration Decision."

The Movants are not Entitled to Intervene

11. Under Illinois law, the Movants would have standing to seek intervention only if they had

an “enforceable or recognizable right,” and more than a general interest in the subject matter of the proceedings. An interest that is speculative or hypothetical is insufficient to support intervention. Moreover, where the interest, if favorably resolved, could merely be advantageous to the intervenor at some future date, it is insufficient to support intervention.¹²

12. If the Movants passed that test (which they do not), the question would then be whether they have an actual right to intervene. The answer to that question would depend on the sufficiency of their interest and on whether Sprint, in its litigation of the IP-to-IP interconnection issue, adequately represented their point of view, in which case the Movants would not have a right to intervene.¹³

13. Here, the Movants have no standing to seek intervention under the test set forth above in paragraph 11. At most, they may have a general interest in the subject matter of this proceeding, but the law is clear that that is not enough. The *only* purported interest the Movants assert is that they have deployed IP technology and exchange traffic with AT&T Illinois (Petition ¶ 7),¹⁴ and that, “This arbitration proceeding will address whether, and on what terms, Illinois

¹¹ Petition at 3, ¶ 10. The Movants do not actually mean that the ICA violates 47 U.S.C. § 252(e), because an ICA cannot possibly violate that provision. What they mean is that they would like to argue that the ICA should be rejected under 47 U.S.C. § 252(e)(2)(B) because the ICA does not comply with 47 U.S.C. § 251(c)(2).

¹² *Argonaut Ins. Co. v. Safway Steel Prods.*, 822 N.E.2d 79, 85 (Ill. App. 2004) (citations omitted).

¹³ *Id.* If the Movants had standing to seek intervention but were not entitled to intervene as a matter of right, the Commission would have discretion to allow them to intervene nonetheless. The Movants’ petition, however, does not offer even a hint of a reason for the Commission to exercise its discretion to allow the Movants to intervene.

¹⁴ Note that Movants do not say that they exchange traffic with AT&T Illinois in IP format. No carrier exchanges traffic with AT&T Illinois in IP format. See Docket No. 12-0550, AT&T Illinois’ Initial Post Hearing Brief (March 22, 2013), at 79-80 (“AT&T Illinois does have wholesale customers that carry traffic in IP format, but AT&T Illinois does not have IP-to-IP interconnection with any of those customers; rather, those carriers convert their IP traffic to TDM before they deliver the traffic to AT&T Illinois.”).

Bell will be required to provide IP interconnection to Sprint, and thus will form the basis of Illinois Bell's negotiations with other carriers, including Intervenors" (*id.* ¶ 9).

14. That comes nowhere close to constituting the required "enforceable or recognizable right" of the Movants that would give them standing to seek intervention. The Commission's approval of the ICA that Sprint and AT&T Illinois have filed in this docket will affect only Sprint and AT&T Illinois; it will have no bearing on the Movants' rights. The Movants contend that the approval of the Sprint/AT&T Illinois ICA will "form the basis of Illinois Bell's negotiations" with the Movants. This is exactly the sort of flimsy, speculative interest that the case law holds is insufficient. The Movants' purported interest is that, when and if they find themselves negotiating an ICA with AT&T Illinois,¹⁵ AT&T Illinois' negotiation position will be based on what its ICA with Sprint looks like – *and*, therefore, that it could be advantageous to the Movants if Sprint had fared better than it did on the IP Issue. The court's statement, quoted above, that "where the interest, if favorably resolved, could merely be advantageous to the intervenor at some future date, it is insufficient to support intervention" reads as if it were written with the Movants in mind.

15. For the foregoing reasons, the Movants do not even have standing to seek intervention.¹⁶ And if they did, they still would not be entitled to intervene, both because of the flimsiness of their asserted interest and because Sprint adequately represented the Movants' point of view in its 141 pages of arbitration submissions concerning the IP-to-IP interconnection issue.¹⁷

¹⁵ The Movants say nothing about whether or when that might happen.

¹⁶ *See supra*, ¶ 11.

¹⁷ *See supra* ¶ 12.

Intervention and Filing of Movants' Comments Would be Futile

16. The Movants wish to argue that the ICA that Sprint and AT&T Illinois filed in this docket violates the 1996 Act – specifically, 47 U.S.C. § 251(c)(2) – because it does not provide a method for IP-to-IP interconnection.¹⁸ Any such argument would be futile.

17. The Commission – based on the recommendations of Staff and the ALJs – decided in Docket No. 12-0550 that it need not and would not decide whether 47 U.S.C. § 251(c)(2) requires IP-to-IP interconnection. The Commission stated:

[T]he legal question of whether IP Interconnection can be compelled pursuant to Section 251 has not been decided by the FCC. Also, the Commission has not determined any rates, terms, or conditions under which IP interconnection would occur, consistent with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it. While the Commission might or might not have the authority to order IP interconnection, this decision cannot be made until it is presented with an IP-to-IP interconnection proposal of sufficient detail to allow it to assess whether such a plan is technically feasible or otherwise comports with the requirements of the 1996 Act.¹⁹

18. Given that rationale, the Commission's resolution of the issue – and the resulting ICA – cannot possibly violate section 251(c)(2). Even if section 251(c)(2) did require IP-to-IP interconnection, there can be no argument that the Commission somehow violated federal law by declining to decide that legal issue when Sprint failed, as the Commission concluded it did, to present the Commission with a proposal sufficiently specific for the Commission to assess.

19. The argument the Movants seek to advance would be futile not only for that reason, but also because the Commission has already decided, by means of its resolution of the IP Issue, that the ICA's provisions relating to the IP Issue satisfy the requirements of the 1996 Act, including section 251(c)(2). When it arbitrated the IP Issue, the Commission was acting

¹⁸ Petition ¶ 11.

¹⁹ Arbitration Decision at 34.

pursuant to section 252(c)(1) of the 1996 Act, which required the Commission to “ensure that [its] resolution . . . meet[s] the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251.”²⁰

20. The Commission was well aware of this requirement when it rendered the Arbitration Decision, and it specifically held that its Arbitration Decision satisfied the requirement. The Commission stated,

[S]ubsection 252(c)(1) directs the state commissions to “ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251.” In this arbitration, the Commission has directed the parties to include provisions in their interconnection agreement that fully comport with Section 251 requirements and FCC regulations.²¹

21. Thus, the argument the Movants would make if they were allowed to intervene is exactly the same argument the Commission rejected just one month ago in Docket No. 12-0550. In other words, the Movants want to urge the Commission to overrule a decision it just made based on a voluminous record and the advice of Staff and the ALJs in the arbitration. Plainly, this would be futile.

22. Staff has effectively agreed with the foregoing point. Specifically, Staff has reasoned that because the Commission must ensure that the language it orders parties to include in an arbitrated ICA comports with the requirements of the 1996 Act, the arbitrated provisions in an ICA necessarily comply with the 1996 Act as long as they conform to the Commission’s arbitration decision. Staff stated:

[T]o determine whether an arbitrated agreement is in compliance with Section 251 of [the 1996 Act] the agreement must be consistent with the Commission’s arbitration decision in the underlying arbitration proceeding.

²⁰ 47 U.S.C. § 252(c)(1).

²¹ Arbitration Decision at 84.

Staff finds nothing in the Agreement that would cause it [to] believe that it is not fully consistent with the Commission's directives in the underlying arbitration proceeding and therefore concludes that the Agreement is in compliance with Section 251.²²

23. That same logic, applied here, compels the conclusion that the arbitrated provisions of the ICA filed by Sprint and AT&T Illinois, including the provisions relating to the IP Issue, is in compliance with Section 251.

Conclusion

24. The Movants' petition for intervention and motion to file comments should be denied. The Movants lack standing to seek intervention; they would not be entitled to intervention even if they had standing to ask for it; and the argument Movants seek to make is futile in any event.

Dated: July 25, 2013

Respectfully submitted,

By: /s/ James A. Huttenhower

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²² Order, Docket No 03-0778 (Feb. 4, 2004) (approving ICA filed by AT&T Illinois and Sage Telecom, Inc.).

CERTIFICATE OF SERVICE

I, James A. Huttenhower, an attorney, certify that a copy of the foregoing AT&T Illinois Response in Opposition to Level 3 Communications, LLC, Peerless Network of Illinois LLC, and TW Telecom of Illinois LLC's Petition to Intervene and Motion for Leave to File Comments *Instantly* was served on the following parties of Docket No. 13-0443 by U.S. Mail and/or electronic transmission on July 25, 2013.

/s/

James A. Huttenhower

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