

**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 NEXTEL PARTNERS AND NEXTEL)	
WEST CORP.)	Docket No. 13-0443
)	
Joint Petition Regarding Approval of Interconnection)	
Agreement pursuant to 47 U.S.C. § 252)	
)	
)	

**LEVEL 3 COMMUNICATIONS, LLC, PEERLESS NETWORK OF ILLINOIS, LLC, AND
TW TELECOM OF ILLINOIS LLC’S REPLY IN SUPPORT OF THEIR PETITION TO
INTERVENE AND MOTION FOR LEAVE TO FILE COMMENTS *INSTANTER***

Level 3 Communications, LLC (“Level 3”), Peerless Network of Illinois, LLC (“Peerless”) and tw telecom of illinois llc (“tw telecom”) (collectively, “Intervenors”), by their attorney, hereby submit this Reply in support of their Petition To Intervene And Motion For Leave to File Comments *Instanter* (the “Petition”) and in response to AT&T Illinois’ Response In Opposition to the Petition (Illinois Bell’s “Response”). Despite the express provisions of the Commission’s Rules that allow intervention in this proceeding, 83 Ill. Admin. Code Part 762.210, Illinois Bell argues that Intervenors’ Petition should be denied. Illinois Bell is wrong. The Commission should grant Intervenors’ Petition.

I. Intervening Pursuant to Part 762.210 To Submit Comments To The Commission Is Not “Futile”

The issues raised by Intervenors are arbitrated issues, which Illinois Bell admits. Response, ¶ 3. The language adopted in the Proposed Arbitration Agreement therefore is subject to Commission rejection or approval pursuant to Section 252(e)(2)(B) of the Act.¹ As Intervenors’ proposed Comments

¹ The non-arbitrated portion of the Proposed Arbitrated Agreement is considered a “negotiated agreement” because those provisions were never subject to arbitration. The non-arbitrated terms of the Proposed Arbitrated Agreement are subject to the Commission’s approval pursuant to the standards detailed in Section 252(e)(2)(A) of the Act. *See, e.g., Grafton Telephone Co. and United States Cellular*

point out, the Commission has authority to accept or reject the Proposed Arbitrated Agreement's language despite the findings in the Arbitration Decision pursuant to Section 252(e).²

Section 252(e)(2)(B) expressly provides that the Commission may reject portions of a proposed agreement if:

- (1) the proposed language does not meet the requirements of Section 251 of the Act or regulations promulgated pursuant to Section 251, or
- (2) the proposed language does not meet the pricing standards of Section 252(d).

Intervenors' proposed Comments urge the Commission to reject certain language in the Proposed Arbitrated Agreement under these standards.³

Intervenors' proposed Comments demonstrate that the Arbitration Decision and the Proposed Arbitrated Agreement do not comply with federal requirements. The language targeted by Intervenors in the Proposed Arbitrated Agreement *affirmatively prohibits* Sprint from interconnecting to Illinois Bell in IP format regardless of technical feasibility during the entire term of the Proposed Arbitrated Agreement unless Illinois Bell decides to let Sprint interconnect. The language targeted by Intervenors in the Proposed Arbitrated Agreement rejects a competitive carrier's right to interconnect with an incumbent carrier under Section 251 and 252 of the Act based solely on the type of facility used to interconnect. This language is contrary to federal law and decisions and should be rejected by the Commission.

In response, Illinois Bell argues that the Commission's Arbitration Decision renders all Comments about IP-to-IP interconnection agreement "futile" either because the Commission has already decided the issue during the part 761 arbitration, or because a Commission decision which merely

Operating Company of Chicago, LLC, et al., Order, Illinois Commerce Commission Docket No. 13-0251, 2013 WL 3366210 (Jun. 26, 2013).

² The "Arbitrated Decision" refers to the Commission's Order in *In Re SprintCom, Inc., Wireless Co., L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp. Petition For Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Arbitration Decision, Illinois Commerce Commission Docket No. 12-0550 (Jun. 26, 2013) (the "Arbitration Decision"), which was the final order in the parties' 47 U.S.C. §252(b) arbitration.

³ The impermissible sections of the Proposed Arbitration Agreement are located at the General Terms and Conditions, Sections 3.11.2.2, 3.11.2.2.1 and 3.11.2.2.2.

declines to resolve an open issue cannot violate federal law. Response, ¶¶ 18-19. Illinois Bell is wrong on both counts.

First, the Commission should not rely solely on the findings in the Arbitration Decision, but must examine the Proposed Arbitrated Agreement in the context of comments submitted by the industry during this proceeding, including Intervenors' proposed Comments. Relying solely on findings in the Arbitration Decision would render meaningless the Commission's long-standing determination that, while third-party carriers cannot participate during the arbitration phase of an arbitration proceeding under 47 U.S.C. § 252, "interested carriers have the opportunity to participate under proposed part 762 which allows intervention in the proceedings for approval of agreements adopted by arbitration" *See 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)).

Further, if the Commission deferred to a part 761 arbitration decision during a Section 252(e) / part 762 proceeding, that deference would effectively exclude Intervenors and all interested parties' ability to participate or submit comments at any phase of the Commission's examination of arbitration agreements. All carriers submit Section 252(b) arbitration disputes to the Commission under the provisions of 83 Ill. Admin. Part 761. It is established that Intervenors and interested parties may not submit proposed comments prior to issuance of the Arbitration Decision during the part 762 phase of the arbitration.⁴ After issuance of the Arbitration Decision, carriers are then required to submit the arbitrated portions of a proposed agreement to the Commission for acceptance or rejection under the provisions of 83 Ill. Admin. Part 762. Part 762 expressly permits (1) intervention by interested carriers at 83 Ill. Admin. Section 762.210 and (2) the filing of comments at 83 Ill. Admin. Section 762.120. If the Commission had to defer to a part 761 arbitration decision, as Illinois Bell argues, these Commission Rules would be meaningless.

⁴ *See* 83 Ill. Admin. Code Section 761.30; *In Re SprintCom, Inc., Wireless Co., L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp. Petition For Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone*

In addition, given the important nature of the Commission's evaluation of a carrier's interconnection rights under federal law and the fact that Illinois Bell will use the Proposed Arbitrated Agreement as a model for other carriers, including Intervenors, Intervenors should be permitted to submit additional authority on the question before the Commission renders a final decision on the question.

Second, Illinois Bell is wrong that adoption of an arbitration agreement cannot violate federal law by declining to recognize a federal legal finding. As explained in Intervenors' proposed Comments, federal law and decisions require Illinois Bell and other incumbent LECs to interconnect with competitive carriers regardless of the type of facility used to interconnect. The Proposed Arbitrated Agreement's language to the contrary rejects federal findings and law. However, even if the Commission accepts Illinois Bell's position that the Proposed Arbitrated Agreement merely does not provide for a *method* for IP-to-IP interconnection (*see* Response, ¶ 16), the Commission cannot just decide to "decline" to resolve Sprint's request to have the option of IP-to-IP interconnection in the Proposed Arbitrated Agreement. *See* 47 U.S.C. §252(b)(4)(C) ("The State Commission shall resolve each issue set forth in the petition and the response. . ."). The Commission must expressly accept or reject Sprint's demand for the option to interconnect with Illinois Bell in IP format.

Lastly, Illinois Bell argues that Intervenors' proposed Comments assert "exactly the same argument the Commission rejected" during the part 761 arbitration. Response, ¶ 21. Illinois Bell is wrong again. Even a cursory review the proposed Comments reveals different authority and arguments than those that Sprint presented in the part 761 arbitration. In addition, Intervenors represent a different cross-section of industry, as competitive LECs and alternative tandem providers. Intervenors' interest in the Commission's treatment of IP-to-IP interconnection comes from a different perspective than Sprint's wireless perspective. The Commission should grant the Petition and consider Intervenors' arguments in their proposed Comments before ruling on the Proposed Arbitrated Agreement.

Company, Notice of Administrative Law Judge's Ruling, Illinois Commerce Commission Docket No. 12-0550 (May 6, 2013).

II. Intervenor’s Have A Stated Interest In The Commission’s Decision In This Docket

Intervenors’ Petition clearly states that Intervenors have an interest in the Commission’s determination of IP-to-IP interconnection in this docket. The Petition states that Intervenors have deployed IP technology throughout their network in Illinois, and use IP technology to provide services to Illinois customers. Petition, ¶7. The Petition further states that Intervenors exchange telecommunications calls with Illinois Bell, including local, long distance, directory assistance, operator services and enhanced 911 calls, and that the Proposed Arbitrated Agreement will form the basis of Illinois Bell’s negotiations with other carriers, including Intervenors. *Id.* at ¶¶ 7, 9. The Commission’s decision in this docket will address whether, and on what terms, Illinois Bell will be required to provide IP interconnection to Sprint and Intervenors.

Despite this clear statement of interest, stated in accordance with the requirements Section 762.210(a)(2) of the Commission’s Rules, Illinois Bell mounts a standing attack against Intervenors’ Petition to intervene. Illinois Bell’s point fails to stand up to scrutiny.

The Commission’s sole requirement for statements of interest to intervene in a part 762 proceeding is located at Section 762.210(a)(2) of the Commission’s Rules: “Petitions to intervene shall contain: . . . A plain and concise statement of the nature of such petitioner’s interest”. As demonstrated above, Intervenors have satisfied this requirement by providing a plan and concise statement of their interest in this proceeding. Illinois Bell argues that Intervenors must raise an “enforceable or recognizable right” to be allowed to intervene. (Response, ¶¶11-12). Illinois Bell is again mistaken. Illinois Bell cites to no Commission authority applying such a standard for intervening in any docket and Intervenors have been unable to locate any Commission decision applying such a standard.

The Commission should apply the same standard to Section 762.210(a)(2) that it applies to Section 200.200(a)(2) of the Commission’s Rules because the language of Section 200.200(a)(2) mirrors the language in Section 762.210(a)(2). Section 200.200(a)(2) provides that “Petitions to intervene shall contain: . . . A plain and concise statement of the nature of such petitioner’s interest”.

In *In Re Illinois Municipal Electric Agency*, 1992 WL 421302, *2 (Ill.C.C. Dec. 9, 1992), the Commission examined the language in Section 200.200(a)(2) and rejected a challenge to an Illinois Power Company (“Illinois Power”) petition to intervene where Illinois Power stated as its plain and concise statement of the nature of its interest “as being related to the facilities and services Illinois Power has and provides in [the area].” The Commission does not require an “enforceable or recognizable right” to intervene as Illinois Bell argues, but employs a more relaxed standard. And, even if the Commission were inclined to impose a more stringent standard, Intervenors would urge the Commission to adopt a more typical Commission intervention standard which examines whether the Intervenors are “in the same position as either the complainant or the respondent in the proceeding in which it is attempting to intervene” rather than applying a completely new intervention standard. 83 Ill. Admin. Section 766.20(a).

Here, Illinois Bell cannot seriously argue that Intervenors would not be impacted by the Commission’s decision in this docket, or that Intervenors are not in the same position as Sprint with respect to either desire to establish IP-to-IP interconnection with Illinois Bell under Section 251 and 252 of the Act. Both Sprint and Intervenors *want* the option to interconnect with Illinois Bell under Section 251 and 252 of the Act, and Illinois Bell and the Proposed Arbitrated Agreement disputes their right to obtain this option. Intervenors should be permitted to exercise their rights under the Rules and allowed to submit their proposed Comments before the Commission renders its decision on the issue.

In passing Illinois Bell argues that Intervenors “do not say that they exchange traffic with AT&T Illinois in IP format” as part of their standing argument. Response, fn. 14. But this argument proves Intervenors’ point on why Intervenors should be permitted to intervene. Federal law and decision require Illinois Bell to interconnect under Section 251 and 252 regardless of the technology used. Intervenors want the option of interconnecting with Illinois Bell in IP format but Illinois Bell refuses to recognize its obligations to interconnect under federal law. The Proposed Arbitrated Agreement improperly adopts Illinois Bell’s position and excludes IP-to-IP interconnection as an option for Sprint. The Commission

should therefore grant the Petition and consider Intervenor's arguments in their proposed Comments before ruling on the Proposed Arbitrated Agreement.⁵

For the foregoing reasons and reasons stated in the Petition, Intervenor respectfully requests that this Commission grant their Petition to Intervene, and accept their proposed Comments (attached to the Petition as Appendix A) *instanter*.

Dated: July 30, 2013

Respectfully Submitted,

By: 

One of its attorneys

Henry T. Kelly
Michael R. Dover
KELLEY DRYE & WARREN LLP
333 West Wacker Drive, Suite 2600
Chicago, Illinois 60606
Telephone: (312) 857-7087
HKelley@KelleyDrye.com
MDover@KelleyDrye.com

*Counsel for Level 3 Communications, LLC,
Peerless Network of Illinois, LLC and tw
telecom of illinois llc*

⁵ In addition, as Illinois Bell acknowledges, the Commission has the discretionary power to grant Intervenor's Petition. Response, fn. 13. For all the reasons articulated in the Petition and this Reply, the Commission should exercise its discretion and permit Intervenor to submit their proposed Comments.

**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 NEXTEL PARTNERS AND NEXTEL)
WEST CORP.)

Docket No. 13-0443

Joint Petition Regarding Approval of Interconnection)
Agreement pursuant to 47 U.S.C. § 252)
)
)

NOTICE OF FILING

Please take notice that on July 30, 2013, I caused to be filed via the Illinois Commerce Commission e-Docket, **Level 3 Communications, LLC, Peerless Network of Illinois, LLC, and tw telecom of illinois llc's Reply In Support Of Their Petition To Intervene and Motion For Leave To File Comments *Instante***. A copy of the foregoing document is hereby served upon you.



Henry T. Kelly, attorney for
Level 3 Communications, LLC, Peerless
Network of Illinois, LLC, and tw telecom of illinois
llc

CERTIFICATE OF SERVICE

I, Henry T. Kelly, an attorney, on oath state that I served a copy of **Level 3 Communications, LLC, Peerless Network of Illinois, LLC, and tw telecom of illinois llc's Reply In Support Of Their Petition To Intervene and Motion For Leave To File Comments *Instanter***. on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on July 30, 2013.



Henry T. Kelly

Henry T. Kelly
Michael R. Dover
KELLEY DRYE & WARREN LLP
333 West Wacker Drive
Suite 2600
Chicago, IL 60606
(312) 857-7070