

**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 252(b) of the )  
Telecommunications Act of 1996, to Establish an )  
Interconnection Agreement With )  
Illinois Bell Telephone Company )  
d/b/a AT&T Illinois )  
)  
)  
)**

**Docket No. 12-0550**

**JOINT MOTION TO REOPEN DOCKET  
AND MODIFY ARBITRATION DECISION**

Pursuant to 83 Ill. Admin. Code Section 200.900, Illinois Bell Telephone Company (“AT&T Illinois”) and SprintCom, Inc., WirelessCo, L.P., NPCR, Inc. d/b/a Nextel Partners, and Nextel West Corp. (collectively, “Sprint”) hereby request that the Commission reopen this proceeding and issue an order vacating that portion of the Arbitration Decision, dated June 26, 2013 (“Order”), which contains the “Commission Analysis and Conclusion” for Issue 43, specifically, the language beginning with the first full paragraph of page 45 of that Order through the third full paragraph on page 46.

In support of this request, AT&T Illinois and Sprint (the “Parties”) state that the Commission’s Order on Issue 43 is the subject of appeals brought by both Parties that are currently pending in state and federal court. To resolve the parties’ continuing dispute over Issue 43, thereby enabling the Parties to voluntarily dismiss their appeals regarding this issue, the parties have entered into a settlement agreement, the effectiveness of which is conditioned on the Commission’s entry of an order vacating the portion of the Arbitration Order regarding Issue 43. As part of the settlement agreement, the Parties have agreed to provisions governing the rate for

transit service that will be incorporated into their current interconnection agreement (“ICA”) through an amendment to be filed with the Commission following the entry of an order granting the relief requested herein.

In further support of this Motion, the Parties state as follows:

### **Procedural Background**

1. This proceeding was initiated pursuant to section 252(b) of the Telecommunications Act of 1996 (the “1996 Act”) for the purpose of arbitrating unresolved issues arising out of the negotiation of an interconnection agreement (“ICA”). One of the unresolved issues was Issue 43, which presented the question of what rate AT&T Illinois should charge Sprint for transit service, which is the service AT&T Illinois provides to Sprint when it acts as an intermediary to transport traffic from Sprint to a third party. Sprint argued that Section 251(c)(2) of the 1996 Act requires AT&T Illinois to provide transit service at a TELRIC-based rate, and that AT&T Illinois’ existing rate for transit service did not comply with this standard. AT&T Illinois argued that transit service is not required by Section 251(c)(2) and is not subject to TELRIC pricing. AT&T Illinois offered to provide transit service in the ICA to Sprint at the price in AT&T Illinois’ existing tariff.

2. In addressing Issue 43, the Commission held that “the provision and pricing of transit services at TELRIC is not explicitly required by the 1996 Act or the Illinois Public Utilities Act.” Order at 45. The Commission, however, required AT&T Illinois to conduct and file a TELRIC cost study for transit service so that the Commission could conduct an investigation to determine an updated TELRIC-based transit service rate. *Id.* The Commission further ruled that, pending the outcome of such investigation, AT&T Illinois may charge its current transit rate on an interim basis and rejected proxy rates suggested by Sprint. *Id.* at 45-46.

Finally, the Commission declined to adopt Sprint's position that it should be entitled to receive a "true up" for the interim period between the effective date of the Order and the time when the Commission adopts an updated transit rate. *Id* at 46.

3. On July 18, 2013, the parties filed an ICA containing rates, terms and conditions that conform with the results of the Order. The Commission approved the ICA in Docket 13-0443 on August 14, 2013, and the ICA became effective on August 20, 2013.

4. On September 13, 2013, Sprint filed a complaint in federal district court for the Northern District of Illinois (Case No. 1-13-cv-060565) challenging a number of the Commission's decisions in the arbitration proceeding, including the decision on Issue 43, and the Commission's approval of the related provisions of the conformed ICA in Docket 13-0443.

5. On August 28, 2013, AT&T Illinois filed an appeal with the Illinois Appellate Court, First Judicial District (Case No. 13-2697), challenging the Commission's decision to require AT&T Illinois to prepare and submit to the Commission, for further investigation, a TELRIC cost study for transit service. On September 11, 2013, the Appellate Court granted AT&T Illinois' request for a stay of that requirement pending appeal.

6. On October 17, 2013, the Appellate Court granted Sprint's motion to dismiss AT&T Illinois' appeal on the ground that only the federal court had jurisdiction over AT&T Illinois' claim. To preserve its appeal rights, on October 28, 2013, AT&T Illinois filed a counter/cross claim on the transit cost study issue in Sprint's federal court complaint case. On November 13, 2013, the Commission filed a motion to dismiss AT&T Illinois' counter/cross claim in federal court on the grounds that only the state appellate court has jurisdiction over that claim.

7. On October 30, 2013, AT&T Illinois moved the state appellate court to rescind its dismissal of AT&T Illinois' appeal and to retain jurisdiction of the case until the federal court decides the jurisdictional issue. On December 24, 2013, the appellate court granted AT&T Illinois' motion, vacating the dismissal order and staying AT&T Illinois' appeal pending disposition by the federal court. In addition, the appellate court vacated its order granting a stay of the transit cost study requirement. To date, the federal court has not ruled on the question of whether it has jurisdiction over the transit cost study issue.

#### **The Parties' Agreement and Request**

8. The Parties have entered into a confidential settlement agreement to resolve Issue 43. As a key component of that agreement, the parties have agreed on an ICA amendment that will incorporate into their ICA a new, agreed-upon transit service rate and related terms. The settlement agreement is conditioned upon the Commission's entry of an order vacating that portion of the Order which contains the "Commission Conclusion and Analysis" for Issue 43, specifically, the language beginning with the first full paragraph of page 45 of that Order through the third full paragraph on page 46. Following the entry of such an order, the parties will file the ICA amendment described herein for approval in accordance with the normal rules for filing negotiated agreements, 83 Ill. Admin. Code Part 763.

9. The Parties have further agreed that, upon entry of a Commission order granting this motion and vacating the portions of the Order identified in paragraph 8, above, (a) AT&T Illinois will dismiss its appeal of the Order currently pending before the Illinois Appellate Court in Case No. 13-2697; (b) Sprint will dismiss from its complaint currently pending in federal district court for the Northern District of Illinois in Case No. 1-13-cv-06565 its Count IV and will withdraw its argument that the Commission's decisions challenged in Count I prejudice

Sprint on Issue 43; and (c) AT&T Illinois will dismiss its counter/cross claim in Case No. 1-13-cv-06565. All dismissals will be with prejudice.

10. For the following reasons, the Commission should grant this motion: .

*First*, granting the motion is consistent with the Commission's policy of promoting the settlement of contested matters.

*Second*, granting the motion is consistent with the purpose of an arbitration proceeding, which is to resolve disputes regarding the rates, terms and conditions of an ICA which cannot be resolved by through negotiation. In this case, the dispute over the transit rate remains open because the Commission ordered further proceedings with respect to that rate. In addition, there are pending appeals related to that issue. Issue 43 has now been resolved by the Parties' agreement, so there is no reason for any of these follow-on proceedings to remain open. Certainly, if Issue 43 had been resolved prior to the issuance of a final Arbitration Order, the Commission would not have included the Issue 43 findings in its Order. The result the Parties seek here is to treat Issue 43 as a resolved issue. That result can be achieved by vacating the language of the decision on Issue 43.

*Third*, granting the motion is in the public interest because it will allow the Commission and the Parties to avoid spending additional time and resources to continue litigation of the federal and state court appeals related to Issue 43.

WHEREFORE, AT&T Illinois and Sprint respectfully request that the Commission reopen this docket and issue an order vacating that portion of the Arbitration Decision, dated June 26, 2013, which contains the "Commission Analysis and Conclusion" for Issue 43, specifically, the language beginning with the first full paragraph of page 45 of that Order through

the third full paragraph on page 46, including the requirement that AT&T Illinois file an updated TELRIC cost study for transit services.

Respectfully submitted this 7 day of February 2014.

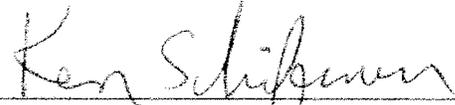
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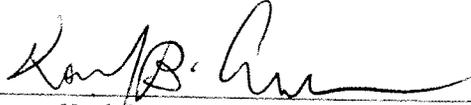
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**CERTIFICATE OF SERVICE**

I, Karl B. Anderson, an attorney, certify that a copy of the foregoing **JOINT MOTION TO REOPEN DOCKET AND MODIFY ARBITRATION DECISION** was served on the following parties by U.S. Mail and/or electronic transmission on February 7, 2014.

  
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Karl B. Anderson

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