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February 7, 2008

VIA HAND DELIVERY

Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

RE: Case No. 2007-00255 – Adoption by Nextel West Corp. of the Existing Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P.

Case No. 2007-00256 – Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P.

Dear Beth:

The purpose of this letter is to notify the Commission that on February 5, 2008, the Public Utilities Commission of Ohio ("Ohio PUC") issued an Order in a proceeding involving a complaint filed by Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. to port and adopt the Sprint-AT&T Kentucky interconnection agreement (the "Sprint ICA") as extended for 3 years by the Kentucky Public Service Commission. Subsequent to the filing of Sprint's complaint, AT&T Ohio filed a Motion to Dismiss, which asserted, among other things, that the FCC had exclusive jurisdiction over the AT&T-BellSouth merger and the merger commitments. In its Order, the Ohio PUC specifically found and ordered that "Sprint shall be permitted to port to Ohio the BellSouth ICA, subject to state-specific modifications" and that "AT&T's motion to dismiss is denied".

A copy of the Ohio PUC decision is attached. As indicated in the first paragraph of the Ohio PUC decision, the use of the term "Sprint" in that decision collectively means "Sprint Communications Company L.P. (Sprint CLEC), Sprint Spectrum L.P. (Sprint Spectrum), Nextel West Corp., and NPCR, Inc." It should also be noted that the Ohio PUC also refers to the Sprint ICA in its decision as "the BellSouth ICA". Accordingly,

under the Ohio PUC decision, Nextel West Corp. and NPCR, Inc. are allowed to adopt the same Sprint ICA that the Kentucky Commission also determined by its December 18, 2007 Orders could be adopted by Nextel West Corp. and NPCR, Inc. Nextel [NPCR, Inc.] submits and relies upon the Ohio PUC decision as further authority in support of its January 3, 2008 Response to AT&T Kentucky's Motion for Reconsideration of the Commission's December 18, 2007 Order approving Nextel's [NPCR, Inc.'s] adoption of the Sprint ICA.

Attached with this original for filing purposes are five additional copies.

Submitted by:

John N. Hughes
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Frankfort, KY 40601

Counsel for Nextel

cc: John Tyler
Mary Keyer

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Carrier-to-Carrier Complaint and Request for Expedited Ruling of Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc.,	)	
Complainants,	)	
v.	)	Case No. 07-1136-TP-CSS
The Ohio Bell Telephone Company dba AT&T Ohio,	)	
Respondent,	)	
Relative to the Adoption of an Interconnection Agreement.	)	

FINDING AND ORDER

The Commission finds:

(1) On October 26, 2007, Sprint Communications Company L.P. (Sprint CLEC),[1] Sprint Spectrum L.P.[2] (Sprint Spectrum), Nextel West Corp.,[3] and NPCR, Inc.[4] (collectively Sprint) filed a complaint against AT&T Ohio (AT&T). In the complaint, Sprint alleges that it wishes to adopt the interconnection agreement between, on the one hand, BellSouth Telecommunications, Inc. dba AT&T Kentucky dba AT&T Southeast and, on the other hand, Sprint CLEC and Sprint Spectrum. Sprint contends that AT&T must permit the adoption of the interconnection agreement pursuant to federal

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1 Sprint CLEC is authorized to provide local and interexchange telecommunication services in Ohio under certificate number 90-9015.

2 Sprint Spectrum is an agent and general partner of WirelessCo, L.P. and SprintCom, Inc. The companies provide commercial mobile radio services in Ohio and conduct business under the name Sprint PCS.

3 Sprint states in its application that Nextel West Corp. is authorized by the Federal Communications Commission to provide wireless services in Ohio.

4 Sprint states in its application that NPCR, Inc. is authorized by the FCC to provide wireless services in Ohio.

merger commitments made by AT&T Inc. and BellSouth Corporation as approved by the FCC in *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control,* Memorandum Opinion and Order, FCC 06-189 (released March 26, 2007) (FCC Merger Order).[5] Sprint also requests that the Commission issue an expedited ruling.

(2) Sprint alleges and AT&T agrees that, effective January 1, 2001, Sprint CLEC and Sprint PCS entered into an interconnection agreement with BellSouth Telecommunications, Inc. The agreement covered nine states, including the State of Kentucky (BellSouth ICA). The parties have amended the agreement various times subsequent to its execution.

(3) By letter dated August 21, 2007, AT&T notified Sprint that it intended to terminate its existing interconnection agreements with Sprint in various states, including Ohio. Sprint CLEC and Sprint PCS responded to the notification on August 31, 2007, and agreed to establish an arbitration window beginning on January 12, 2008. Nonetheless, Sprint alleges that it reserved the right to enforce a merger commitment that would permit it to port an interconnection agreement from another state.

(4) Sprint states that on July 10, 2007, it notified AT&T of its intent to adopt and port the BellSouth ICA to Ohio. On September 18, 2007, the Kentucky Public Service Commission issued an order extending the BellSouth ICA for a fixed three-year term

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5 There are four merger commitments. They appear in Appendix F attached to the FCC Merger Order under the title "Reducing Transaction Costs Associated with Interconnection Agreements." Merger Commitments 1 and 2 appear as follows:

Merger Commitment 1: The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provide, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

Merger Commitment 2: The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunication carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

beginning on December 29, 2006.[6] On October 9, 2007, AT&T notified Sprint that the BellSouth ICA had expired and that the agreement was not eligible for adoption.

(5) Sprint states that negotiations for a new interconnection agreement with AT&T have failed. Instead of initiating an arbitration proceeding, Sprint has opted to file a carrier-to-carrier complaint. Ultimately, Sprint seeks to adopt the BellSouth ICA and port it to Ohio.

(6) Sprint states that there are no factual issues and that there is only one legal issue: whether Sprint may port the BellSouth ICA, as extended three years from December 29, 2006, into Ohio pursuant to Merger Commitment 1. Noting the absence of material factual disputes, the Commission shall forego a hearing in this matter and shall decide the issue based on the law and the arguments asserted by the parties.

(7) On November 2, 2007, AT&T filed an answer to the complaint and a separately filed motion to dismiss. In summary, AT&T argues that the Commission has no jurisdiction over the complaint. Even assuming that the Commission has jurisdiction over the complaint, AT&T contends that it would be better for the Commission to defer to the FCC. In addition, AT&T asserts that the complaint is premature. Problematic, according to AT&T, is that the interconnection agreement that Sprint seeks to port cannot be ported "as is" because the agreement requires Ohio-specific modifications. Procedurally, AT&T opposes Sprint's request for streamline treatment of the complaint. AT&T believes that the complaint is not legally eligible for streamlined treatment. Similarly, AT&T opposes Sprint's request for expedited treatment because such treatment is unavailable under the Commission's rules.

(8) Sprint filed a memorandum contra AT&T's motion to dismiss on November 19, 2007. In its memorandum contra, Sprint proclaims that the Commission has concurrent jurisdiction with the FCC and may interpret and apply federal law to resolve interconnection disputes and to enforce the merger commitments. Moreover, Sprint believes that it would be more

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6 *Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. dba Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. dba AT&T Kentucky dba AT&T Southeast,* Case No. 2007-00180 (Order issued September 18, 2007).

appropriate for the Commission to exercise its jurisdiction rather than defer to the FCC. Further challenging AT&T's assertions, Sprint contends that the complaint is not premature, that it may be ported "as is," and that this matter is eligible for a streamlined procedure. Sprint urges the Commission to exercise jurisdiction, deny AT&T's motion to dismiss, and order AT&T to port Sprint's Kentucky interconnection agreement.

(9) Factually, AT&T explains that in the spring of 2007 Sprint sought to extend the BellSouth ICA for three years in each of the nine states in which the BellSouth ICA had been in effect. On September 18, 2007, the Kentucky Commission granted the extension. AT&T believes that the September 18, 2007, decision is unlawful because it misinterprets Merger Commitment 4.[7] AT&T discloses that it may appeal the Kentucky Commission's September 18, 2007, ruling.[8] Thus, if the Ohio Commission were to approve Sprint's application and AT&T were to prevail in overturning the Kentucky Commission's decision, AT&T argues that it would have a basis to invalidate the BellSouth ICA through the change in law provision in the agreement.

(10) As a basis for dismissing the complaint, AT&T believes that the Kentucky Commission's September 18, 2007, decision is unlawful because it encroaches upon the exclusive jurisdiction of the FCC over the merger and the merger commitments. To support its position, AT&T points out that the FCC in its merger order did not contemplate any other forum but itself to interpret, clarify, or enforce the merger commitments. To AT&T, it makes sense that the FCC would retain exclusive jurisdiction to ensure a uniform regulatory framework without conflicting interpretations. Even if the Ohio Commission were to find that it has concurrent jurisdiction, AT&T contends that the Commission should exercise restraint to avoid conflicting results within AT&T's 22-state region.

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7 Merger Commitment 4: The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.

8 In its November 29, 2007, reply, AT&T noted that it has decided not to appeal the Kentucky Commission's order and that there is no further need to discuss this issue.

As additional support for its position, AT&T points out that the public service commissions in the states of Mississippi and Florida have recognized that the FCC has exclusive jurisdiction. Similarly, the states of South Carolina and Louisiana have deferred to the FCC.

(11) Disagreeing with AT&T's assertion that the FCC has exclusive jurisdiction over the enforcement of merger issues, Sprint, in its memorandum contra, points to Appendix F of the FCC Merger Order to support its contention that the Commission has concurrent jurisdiction. Focusing on language in Appendix F, Sprint highlights that the merger commitments "may" be enforced by the FCC. From this, Sprint concludes that the FCC is not the exclusive forum to enforce merger commitments. Taking into consideration other passages in Appendix F, Sprint further concludes that the FCC intended dual jurisdiction for the states and the FCC, with the FCC playing a secondary role. For statutory support, Sprint refers to Section 4905.04(B), Revised Code, and 47 U.S.C. §153[9] as grounds to support a state commission's assertion of jurisdiction.

Looking to other cases for guidance, Sprint argues that the FCC has a long-standing practice of establishing concurrent jurisdiction in merger, interconnection, and arbitration proceedings. Sprint raises as an example the "cooperative federalism" that grants states the authority to adjudicate interconnection disputes under Sections 251 and 252 of the Telecommunications Act of 1996 (the 1996 Act).

Looking outside of Ohio, Sprint finds that other states claim jurisdiction. According to Sprint, of the nine states that have addressed the enforcement of merger commitments, only Mississippi has decided that it does not have jurisdiction to enforce merger commitments.

(12) Going beyond mere recognition of jurisdiction, Sprint urges the Commission to exercise its jurisdiction. In so urging, Sprint argues that the Commission should not defer the matter to the FCC. Sprint contends that there is no concern for conflicting

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9 Chapter 47 U.S.C. §153 contains the definitions for the Communications Act of 1934. In particular, Sprint refers to 47 U.S.C. §153(41) which defines "state commission" as a "commission, board, or official (by whatever name designated) which under the laws of any state has regulatory jurisdiction with respect to intrastate operations of carriers."

and diverse results, as AT&T suggests. According to Sprint, AT&T already abides by state-specific requirements for interconnection. Citing a pending case in Louisiana, Sprint relates that the administrative law judge has recognized that holding the matter in abeyance has begun to cause problems and may lead to "collateral problems."

(13) Sprint states that it is not the only carrier to file for the enforcement of AT&T's merger commitments. In Michigan, XO Communications Services, Inc. has filed an application against AT&T Michigan. In Missouri, Verizon Wireless filed a complaint against Southwestern Bell Telephone Company dba AT&T Missouri. Sprint finds it to be an appropriate matter for state commissions when merger commitments are inextricably intertwined with interconnection matters.

(14) AT&T filed a reply in support of its motion to dismiss on November 29, 2007. AT&T maintains its position that the FCC has exclusive jurisdiction over the enforcement of merger commitments. AT&T asserts that Sprint mistakenly confuses the enforcement of Sections 251 and 252 of the Act with jurisdiction to enforce the FCC merger commitments. AT&T states that the FCC's Merger Order has no relation to the 1996 Act. While recognizing a scheme of implicit cooperative federalism in the realm of interconnection agreements, AT&T emphasizes that nothing in the Act implies that state commissions have authority to enforce merger commitments. The FCC's authority to approve mergers and enforce commitments, AT&T declares, arises from Sections 214 and 303(r) of the Communications Act of 1934 (the 1934 Act), not the 1996 Act. Moreover, argues AT&T, Sprint can point to no statute that grants a state commission authority to enforce merger commitments.

AT&T strongly rejects Sprint's assertion that Section 4905.04(B), Revised Code, grants the Commission authority to enforce merger commitments. AT&T states that Section 4905.04(B), Revised Code, is limited by 47 U.S.C. §153, which does not include enforcement of merger commitments. That Section 4905.04(B), Revised Code, was enacted the same year as 47 U.S.C. §153 makes the limitation clear. AT&T emphasizes that 47 U.S.C. §153(41) only encompasses arbitration, approval and enforcement of interconnection agreements, approval of

statements of generally available terms (SGATs), and consultation with the FCC concerning Bell operating companies' (BOCs) Section 271 applications. Consequently, AT&T concludes that Section 4905.04(B), Revised Code, does not authorize the Commission to enforce merger commitments. Without an authorizing statute, AT&T argues that Sprint's complaint must be dismissed. AT&T notes that other states, unlike Ohio, may have authorizing statutes.

Even if the Commission were to conclude that it has jurisdiction to enforce merger commitments, AT&T believes that the Commission should defer to the FCC. AT&T emphasizes that the issue in this case is not whether the Commission is better positioned than the FCC to determine appropriate interconnection arrangements in Ohio. Instead, the issue is about the interpretation of Merger Commitment 1. To AT&T, the FCC is the most appropriate forum. To avoid conflicting results, AT&T argues that the Commission must defer to the FCC. If 22 state commissions interpret and enforce the merger commitments, AT&T predicts that there will be conflicting and diverse opinions.

(15) In its motion to dismiss, AT&T argues that Sprint's complaint must be dismissed because it is premature. AT&T notes that the complaint is its first notice of Sprint's desire to port the agreement between AT&T Kentucky and Sprint. In support of its argument that the complaint is premature, AT&T explains that Sprint filed its complaint on October 26, 2007. On October 30, 2007, AT&T and Sprint filed the amendment that constitutes the contract extension that Sprint seeks to port. Consequently, AT&T argues that the agreement Sprint seeks to port did not come into existence until four days after Sprint filed its complaint. The filing of the complaint before the existence of the subject agreement, according to AT&T, makes the complaint premature. Moreover, AT&T points out that the agreement has yet to be approved by the Kentucky Commission. AT&T, therefore, concludes that the agreement is not legally effective.

(16) In its memorandum contra, Sprint rejects AT&T's assertion that its complaint is premature. Sprint points out that by letter dated July 10, 2007, it requested that AT&T port to Ohio the Kentucky version of a multi-state agreement between BellSouth

and Sprint. AT&T Kentucky and Sprint were parties to the Kentucky interconnection agreement. In a letter dated October 9, 2007, AT&T acknowledged receipt of the request to port the agreement between BellSouth and Sprint. Sprint notes that the BellSouth ICA is, effectively, the same as the Kentucky interconnection agreement. BellSouth conducts business in Kentucky as AT&T Kentucky.

Sprint also rejects that its complaint is premature because of AT&T's right to appeal the Kentucky Commission's order that extended the BellSouth ICA. AT&T argues that a court could overturn the commission's decision, rendering the agreement ineffective for porting. It is Sprint's contention that the agreement is effective until or unless AT&T obtains a preliminary injunction blocking the enforcement of the Kentucky decision. Sprint notes that AT&T has neither sought an appeal nor filed for injunctive relief.[10]

In its reply, AT&T maintains that the complaint is premature because the interconnection agreement that Sprint wants to port did not exist prior to the filing of the complaint in this matter. AT&T explains that Sprint filed its complaint on October 26, 2007. On October 30, 2007, Sprint and AT&T filed the amendment that extended the contract that Sprint seeks to port. The Kentucky Commission did not approve the amendment until November 7, 2007, rendering the amendment "effective." AT&T emphasizes that Merger Commitment 1 only allows the porting of "effective" agreements. AT&T, therefore, concludes that it was not required to port the agreement at that time. Making a distinction between the multi-state BellSouth agreement and the AT&T Kentucky agreement, AT&T points out that Sprint did not request to port the Kentucky version of the multi-state agreement nor the current form of the Kentucky agreement. Because there was no effective agreement to port at the time Sprint filed the complaint, AT&T concludes that the complaint must be dismissed.

(17) AT&T emphasizes, in its motion to dismiss, that the BellSouth ICA cannot lawfully be ported to Ohio "as is." Focusing on language in Merger Commitment 1, AT&T highlights that

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10 *Supra* note 8.

when an agreement is determined to be eligible for porting it must be reviewed against Ohio pricing and performance plans, technical feasibility in Ohio, and for consistency with Ohio laws and regulatory requirements. Recognizing these requirements, AT&T argues that the most the Commission can do, if it were to decide that it has jurisdiction, is rule that an agreement may be ported to Ohio subject to modifications.

(18) Rejecting AT&T's assertion, Sprint believes the AT&T Kentucky interconnection agreement with Sprint may be ported "as is." Sprint contends that AT&T never raised issues concerning Ohio-specific pricing, technical feasibility, or consistency of laws and regulatory requirements. If such issues exist, Sprint believes that AT&T should have raised the issues months ago in response to Sprint's July 10, 2007, request to port the agreement.

Sprint claims that the AT&T Kentucky interconnection agreement already identifies state-specific provisions within itself. Nevertheless, even in those circumstances where Ohio law impacts the agreement, Sprint states that the agreement could be modified quickly. For example, the agreement identifies state-specific interconnection rates for some of the BellSouth states. As a solution, the parties could insert a table containing the Ohio-specific rates.

In reply, AT&T declares that the AT&T Kentucky agreement cannot be ported "as is." According to AT&T, Merger Commitment 1 requires state-specific modification. Moreover, AT&T points out that Sprint admits that the AT&T Kentucky agreement would need to be modified by adding a table of Ohio-specific rates.

(19) AT&T asserts that this matter is not eligible for streamlined treatment or an expedited ruling. Guideline XVIII.C.2 of the Commission's Local Service Guidelines (Guidelines)[11] provide for a streamlined procedure for certain complaint cases. AT&T contends that the streamlined procedure is not available here. AT&T highlights that Guideline XVIII.C.2 only applies to complaints involving implementation of interconnection

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11 *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI (Entry on Rehearing issued February 20, 1997, Appendix A).

agreements filed pursuant to Section 4905.26, Revised Code. To AT&T's understanding, the provision only applies to existing interconnection agreements. By contrast, Sprint's complaint seeks to replace an agreement. The underlying intent of Guideline XVIII.C.2, according to AT&T, is to avoid undue delay in putting an interconnection agreement into place and to expedite competition. AT&T declares that no such considerations are at issue in this complaint proceeding. AT&T advises the Commission to be reluctant to adopt a schedule that forecloses the parties' ability to identify and resolve disagreements.

(20) Disagreeing with AT&T, Sprint affirms that this matter is eligible for a streamlined procedure. Sprint concedes that Rule 4901:1-7-28, Ohio Administrative Code (O.A.C.), was not effective at the time it filed its motion and has decided that there is no reason to discuss its applicability to this proceeding. Sprint, nevertheless, reserves its right to petition for application of the rule after it becomes effective. According to AT&T's interpretation, Guideline XVIII.C.2 provides for a streamlined complaint process to resolve disputes concerning the terms of an existing interconnection agreement. Sprint rejects this interpretation. First, Sprint points out that the Local Service Guidelines do not define the term "interconnection arrangement." In some circumstances, Sprint finds that the term does not connote an interconnection "agreement." According to Sprint, the streamlined complaint procedure is available to parties that have identified how to interconnect their networks but cannot reach an agreement to implement the arrangements. Sprint claims this conclusion comes from the plain reading of the Guidelines.

AT&T rejects Sprint's assertion that the streamlined procedure is available when parties have determined how to interconnect their networks but encounter disagreement in implementing arrangements. If Sprint's assertion were true, argues AT&T, then arbitrations under Section 252(b) of the 1996 Act would be subject to the streamlined procedure.

(21) AT&T urges the Commission to reject Sprint's request for an expedited ruling. First, AT&T notes that Rule 4901:1-7-28, O.A.C., which provides for expedited treatment, has been adopted but was not in effect when Sprint filed its complaint.

Even if the rule were in effect, AT&T proclaims that it would not be applicable. AT&T states that the rule applies only when the "dispute directly affects the ability of a telephone company to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality or network element under an interconnection agreement." By virtue of Sprint operating under existing agreements, AT&T concludes that Sprint is barred from invoking Rule 4901:1-7-28, O.A.C. Moreover, AT&T contends that Sprint has failed to state specific circumstances that affect its ability to provide uninterrupted service, thereby justifying an expedited ruling.

(22) In its memorandum contra, Sprint conceded that Rule 4901:1-7-28, O.A.C., was not yet effective, rendering a discussion of its applicability unnecessary. Moreover, Sprint concluded that a further discussion of Rule 4901:1-7-28, O.A.C., would be unnecessary because the streamlined complaint procedure is available. Nevertheless, Sprint claimed a right to petition for the application of Rule 4901:1-7-28, O.A.C., after it becomes effective.

Noting that Sprint conceded that an expedited ruling is not available under Rule 4901:1-7-28, O.A.C., AT&T addresses the issue of whether the streamlined procedure in Guideline XVIII.C.2 is applicable. AT&T asserts that the streamlined procedure is not available. AT&T stresses that Guideline XVIIIC.2 applies only to complaints filed under 4905.26, Revised Code, involving the implementation of interconnection arrangements. AT&T emphasizes the distinction between the "implementation" of an interconnection arrangement and the "making" of an interconnection arrangement. Arguing plain meaning, AT&T contends that an arrangement must exist prior to implementation. Sprint's complaint, argues AT&T, involves the making of an interconnection arrangement, not an implementation.

(23) On November 20, 2007, the Commission issued an entry in the following cases: *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI, *In the Matter of the Review of Chapter 4901:1-5, Ohio Administrative Code*, Case No. 05-1102-TP-ORD, and *In the Matter of the Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD. The entry

vacated the Local Service Guidelines and replaced them with new carrier-to-carrier rules that are set forth in Chapters 4901:1-6 and 4901:1-7 of the Ohio Administrative Code. Because the instant case was filed while the Local Service Guidelines were in effect, this case shall be governed by the Local Service Guidelines.

(24) A threshold issue in this proceeding is whether this case involves the implementation of an interconnection arrangement. Guideline XVIIIC.1. governs carrier-to-carrier complaints that do not involve the implementation of interconnection arrangements. Local Service Guideline XVIIIC.1. reads as follows:

> Under its authority pursuant to Section 4905.26, Revised Code, the Commission will consider carrier-to-carrier complaints. In carrier-to-carrier complaints concerning issues other than implementation of interconnection arrangements, the Commission will issue a procedural entry in these cases within 30 calendar days of the filing of the complaint, and will endeavor to conclude the case within 180 calendar days.

The parties, to this point, have adhered to Guideline XVIIIC.2. Guideline XVIIIC.2. sets forth the streamlined procedure for carrier-to-carrier complaints involving the implementation of interconnection agreements filed pursuant to Section 4905.26, Revised Code. This matter does not involve the implementation of an interconnection arrangement. There is no dispute concerning the terms or conditions of a negotiated, arbitrated, or existing interconnection agreement. Instead, at issue is whether a particular interconnection agreement is available for adoption and porting pursuant to a merger commitment approved by the FCC. Upon consideration of the facts and the arguments asserted by the parties, the Commission finds that this proceeding should be conducted pursuant to the provisions in Guideline XVIIIC.1.

(25) The parties agree that a key issue is whether this Commission has jurisdiction to enforce merger commitments. In *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74 (Memorandum

Opinion and Order released March 26, 2007), the FCC promulgated the Merger Commitments in Appendix F of the Memorandum Opinion and Order. At the outset, the FCC stated the following:

> It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

From this language, we conclude that the FCC clarified that the states have jurisdiction over matters arising under the commitments. Even more, states are granted authority to adopt rules, regulations, programs, and policies respecting the commitments.

Immediately after, and before setting forth the commitments, the FCC states the following: "For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC...." From this, we gather that the FCC sought to make clear that it retains jurisdiction over matters that could otherwise be considered exclusively within the jurisdiction of the states. In other words, the FCC, at first, establishes that states retain jurisdiction. To remove any doubt about its own jurisdiction, the FCC specifically states that it retains concurrent authority to enforce all conditions and commitments.

To shed additional light on the issue of jurisdiction, it is noteworthy that in Merger Commitment 1 the FCC mandated that interconnection agreements be subject to state-specific pricing, performance plans, and technical feasibility. To us, the existence of state-specific standards suggests that the states would be better qualified than the FCC to determine whether interconnection agreements adhere to unique state standards. Concluding that the FCC has specifically carved out a place for state jurisdiction in the enforcement of merger commitments, it

would be contrary to the FCC's policy aims to defer this matter to the FCC, as AT&T would urge us to do.

(26) AT&T argues that Sprint's complaint is premature, having been filed prior to the time that the interconnection agreement sought to be ported became "effective." AT&T draws a distinction between the AT&T Kentucky interconnection agreement with Sprint and the BellSouth ICA. AT&T emphasizes that the AT&T Kentucky interconnection agreement became effective after the complaint. Sprint, on the other hand, considers the BellSouth ICA and the AT&T Kentucky interconnection agreement to be the same.

In Sprint's July 10, 2007, letter, Sprint specifies that it wishes to port to the State of Ohio the agreement between BellSouth Telecom, Inc. (AT&T) and Sprint Communication Co., L.P. and Sprint Spectrum L.P. in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. AT&T responded to the port request by letter dated October 9, 2007. In a footnote, AT&T states that BellSouth Telecommunications, Inc. does business in Kentucky as "AT&T Kentucky."

AT&T's distinction between the two agreements appears to be an emphasis of form over substance. Based on AT&T's correspondence and Sprint's arguments, we agree with Sprint that the BellSouth ICA and the AT&T Kentucky agreement are the same. Hence, AT&T received notice of Sprint's intent to port the agreement when AT&T received Sprint's July 10, 2007, letter, not when AT&T received Sprint's October 26, 2007, complaint.

AT&T argues that the interconnection agreement that Sprint seeks to port was not legally effective when Sprint filed the complaint. Because Sprint filed the complaint during the absence of a contract extension, AT&T concludes that the complaint is premature. The flaw that AT&T points to is addressed by Merger Commitment 4.[12]

This provision would allow Sprint to extend its ported agreement notwithstanding that the agreement had expired

12 *Supra* note 7.

within a prior three-year period. During such three-year period, assuming that neither party notified the other to terminate or renegotiate, the interconnection agreement should be regarded as "effective." Owing to the extended "effective" period, Sprint's complaint is not premature.

(27) The parties dispute whether the Kentucky interconnection agreement may be ported "as is." We agree with AT&T that Sprint effectively concedes that the agreement may require a modification of rates to suit Ohio standards. Such a modification, however, is contemplated by merger commitment 1. That an agreement may be subject to state-specific pricing is not a bar to its portability.

(28) Based on our findings and conclusions, AT&T's motion to dismiss should be denied. Moreover, we find that we have concurrent jurisdiction with the FCC over this matter and that we have authority to interpret the FCC's Merger Commitments. In reviewing the facts of this matter along with the Merger Commitments, we conclude that it is consistent with the FCC's Merger Commitments that Sprint be allowed to port the interconnection agreement subject to state-specific modifications.

It is, therefore,

ORDERED, That Sprint shall be permitted to port to Ohio the BellSouth ICA, subject to state-specific modifications. It is, further,

ORDERED, That AT&T's motion to dismiss is denied. It is, further,

ORDERED, That a copy of this Finding and Order be served upon the parties, their respective counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

LDJ/vrm

Entered in the Journal

FEB 05 2008

Reneé J. Jenkins
Secretary