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May 19, 2010

VIA COURIER

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: Petition of Cricket Communications, Inc. for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky
PSC 2010-00131

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are original and five (5) copies of AT&T Kentucky's Initial Brief on Threshold Issues.

Should you have any questions, please let me know.

Sincerely,

Mary K. Keyer

Enclosures

cc: Parties of Record

814635

CERTIFICATE OF SERVICE – PSC 2010-00131

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof via U.S. Mail, this 19th day of May 2010.

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF PETITION OF CRICKET COMMUNICATIONS, INC. FOR ARBITRATION OF RATES, TERMS AND CONDITIONS OF INTERCONNECTION WITH BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T KENTUCKY	))))))	CASE NO. 2010-00131

AT&T KENTUCKY'S INITIAL BRIEF ON THRESHOLD ISSUES

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") respectfully submits its Initial Brief on Threshold Issues. On May 5, 2010, the Parties filed a Joint Motion to Consider Threshold Issues and Proposed Briefing/Procedural Schedule. The Commission granted that motion by Order dated May 18, 2010, and thus directed the Parties to brief two threshold issues:

(1) Whether the Commission has jurisdiction in this proceeding to adjudicate whether the current term of Cricket's interconnection agreement with AT&T Kentucky shall be extended pursuant to Merger Commitment 7.4 and, if so, whether the ICA shall be extended pursuant to Merger Commitment 7.4; and

(2) Whether AT&T Kentucky must provide transit traffic service to Cricket for intrastate traffic pursuant to terms and conditions in the ICA arbitrated in this proceeding.

For the reasons stated herein, the Commission should find that the answers to these threshold issues are "No."

INTRODUCTION

Pursuant to section 252(b)(1) of the Telecommunications Act of 1996 ("1996 Act" or "Act"), Cricket Communications, Inc. ("Cricket"), a provider of commercial mobile radio service ("CMRS"), filed on March 26, 2010, its Petition for arbitration of rates, terms and conditions of an interconnection agreement ("ICA") with AT&T Kentucky. The Petition, and its attached Disputed Issues Matrix, set forth 21 issues for arbitration, including the threshold issues that are the subject of this brief.

AT&T Kentucky filed its Response to the Petition on April 20, 2010, pursuant to section 252(b)(3) of the 1996 Act, and attached a revised Disputed Issues Matrix, reflecting, among other things, the Parties' resolution of four of the 21 issues Cricket had set forth for arbitration.

In this brief, AT&T Kentucky demonstrates that (1) the 1996 Act does not authorize the Commission to arbitrate the question whether Merger Commitment 7.4 entitles Cricket to extend its existing ICA; (2) Merger Commitment 7.4 does not in any event entitle Cricket to extend its existing ICA; and (3) transit service is not governed by section 251(b) or (c) of the 1996 Act, so AT&T Kentucky cannot properly be required to include rates, terms, or conditions for transit service in the ICA being arbitrated here.

ARGUMENT

I. THE 1996 ACT DOES NOT AUTHORIZE THE COMMISSION TO ARBITRATE THE QUESTION OF CRICKET'S ENTITLEMENT TO EXTEND ITS EXISTING ICA PURSUANT TO MERGER COMMITMENT 7.4.

The jurisdictional question presented in this case is not whether this Commission has authority generally to enforce Merger Commitment 7.4. The question is narrower: Did Congress, in section 252(b) of the Act, authorize state commissions to enforce FCC merger commitments when they arbitrate the terms and conditions of an interconnection

agreement? The answer is "No." The only issues section 252(b) authorizes state commissions to arbitrate are disagreements concerning the substantive duties Congress imposed in the 1996 Act – disagreements about matters that are the subject of mandatory negotiation under the 1996 Act and that can be resolved by reference to the Act and the FCC's implementing regulations – and that does not include FCC merger commitments.

A. The Commission's Assertion Of Jurisdiction In Case No. 2007-00180 Is Not Controlling Here.

In Case No. 2007-00180, this Commission found it had jurisdiction to arbitrate the question whether Sprint was entitled to extend its ICA with AT&T Kentucky pursuant to Merger Commitment 7.4.[1] In that case, however, AT&T Kentucky's principal argument was that the FCC had asserted exclusive jurisdiction to enforce the merger commitments, thus pre-empting such authority as this Commission might otherwise have. The Commission focused on that argument, and concluded it shared with the FCC concurrent jurisdiction to enforce the merger commitments.[2]

AT&T Kentucky is not making here the exclusive jurisdiction argument it made in Case No. 2007-00180. Rather, AT&T Kentucky's sole jurisdictional contention here is that the Commission cannot entertain Cricket's request to extend its ICA *in this proceeding*, because this is an arbitration under section 252(b) of the 1996 Act, and Congress did not authorize state commissions in section 252(b) to enforce FCC merger commitments.

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[1] *In the Matter of: Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration of Rates, Terms and conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast*, Case No. 2007-00180, Order, Sept. 18, 2007, at 5-10.
[2] *Id.* at 7-9.

The Commission's discussion of jurisdiction in Case No. 2007-00180, while devoted primarily to the exclusive jurisdiction issue, did include some observations that Cricket might argue support the exercise of jurisdiction in this case. Any such argument is without merit. First, the Commission stated that it "is charged by statute with overseeing the rates, terms and conditions of service provided by and between utilities operating in Kentucky."[3] The statute to which the Commission referred, however, was a Kentucky statute,[4] and a Kentucky statute cannot authorize the Commission to arbitrate under the federal Act an issue that section 252(b) does not authorize the Commission to arbitrate.

The Commission also stated, "The Telecommunications Act of 1996 has been interpreted to confer upon the state commissions the authority to oversee the implementation of, and to enforce the terms of, interconnection agreements they approve."[5] That is true, but it has no bearing here, because Cricket is not asking the Commission to oversee the implementation of or to enforce the terms of an ICA – it is asking the Commission to order AT&T Kentucky to extend an ICA pursuant to an FCC merger commitment.

Cricket may also point to the Commission's statement that it has "maintained jurisdiction over previous arbitration matters concerning the commencement and termination dates of carrier-to-carrier contracts."[6] Any reliance on that statement is misplaced, because it ignores the difference between arbitrating the duration of a new ICA, *e.g.*, considering whether a term of two years, three years or five years is most

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[3] *Id.* at 6.
[4] *Id.* at 6, n.10
[5] *Id.* at 6.
[6] *Id.* at 9.

reasonable, and deciding whether or not Merger Commitment 7.4 permits Cricket to extend its existing ICA by three years. This crucial distinction is further discussed below, at pages 10-11.

Finally, the Commission stated in Case No. 2007-00180, based on *BellSouth Telecomms. v. Cinergy Commc'ns Co.*, 297 F. Supp. 2d 946, 952 (E.D. Ky. 2003), "The 1996 Telecommunications Act gives suitable room for the promulgation of state regulations, orders and requirements of state commissions as long as they do not prevent the implementation of federal statutory requirements."[7] The room that *Cinergy* held state commissions have, however, is room to impose *substantive* requirements, not room to provide state commissions with *jurisdiction* to arbitrate under section 252(b) issues that Congress did not authorize them to arbitrate.

As demonstrated below, the only issues a state commission may arbitrate under section 252(b) are terms and conditions to fulfill the substantive requirements set forth in sections 251(b) and 251(c), and that does not include the requirement to extend ICAs set forth in Merger Commitment 7.4. Nothing in the Commission's decision in Case No. 2007-00180 warrants a contrary conclusion.

B. The 1996 Act Does Not Authorize State Commissions To Enforce Merger Commitment 7.4.

In its present form, AT&T Inc. ("AT&T"), AT&T Kentucky's indirect parent, is the product of a 2006 merger of AT&T with BellSouth Corp. ("BellSouth"). In order to merge, AT&T and BellSouth needed FCC approval. The FCC's responsibility to evaluate and approve telecommunications mergers pre-dates the 1996 Act by more

[7] *Id.* at 7.

than 60 years; that authority is found in sections 214 and 310 of the Communications Act of 1934 (47 U.S.C. §§ 214, 310).

As a condition to obtaining FCC approval of their merger, AT&T and BellSouth made a number of commitments to the FCC, including Merger Commitment 7.4, which provides in pertinent part:

> 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.[8]

The FCC issued an order approving the merger, requiring compliance with the merger commitments, including Merger Commitment 7.4, and stating that it would enforce the merger commitments.[9]

Neither the FCC's approval of the merger nor the FCC's requirement that AT&T and BellSouth comply with the merger commitments was an exercise of the FCC's authority under the 1996 Act. The 1996 Act does not permit a requesting carrier to extend an existing ICA for a period of three years, as Merger Commitment 7.4 does. The 2006 FCC merger commitments were not pursuant to, but rather exceeded anything required by, the 1996 Act. They were an exercise of the FCC's authority not under the 1996 Act, but under sections 214, 303(r) and 310 of the 1934 Communications Act.

The 1996 Act identifies the matters that are subject to mandatory negotiation and arbitration under the 1996 Act, and the merger commitments that AT&T made to the

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[8] This commitment is referred to as Merger Commitment 7.4 because it is the fourth commitment in the seventh category of commitments AT&T and BellSouth made. *See* **Exhibit 1** hereto (excerpts from the FCC's voluminous Memorandum Opinion and Order approving the AT&T/BellSouth Merger) at 150 (item 4 at top of page).

[9] Exhibit 1 at 112, second Ordering Clause, and at 147 ("commitments . . . are enforceable by the FCC").

FCC are not among them. Section 252(b) of the Act authorizes state commissions to arbitrate "open issues" that arise from negotiations under the 1996 Act, and the only matters that must be negotiated are those identified in section 251(c) of the Act, namely, "the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection [(c)]." That includes, for example, the duties to provide number portability (§ 251(b)(2)), dialing parity (§ 251(b)(3)), access to rights-of-way (§ 251(b)(4)), interconnection (§ 251(c)(2)), unbundled network elements (§ 251(c)(3)) and services for resale (§ 251(c)(4)). The duty to extend interconnection agreements imposed by Merger Commitment 7.4 is not a duty described in the 1996 Act, and is therefore not subject to mandatory negotiation or arbitration under the 1996 Act.

The federal courts have consistently recognized that the only matters subject to arbitration under section 252(b) are those that section 251(c) requires ILECs to negotiate. In *Southwestern Bell Tel., L.P. v. Kansas Pub. Serv. Comm'n*, 461 F. Supp.2d 1055 (E.D. Mo. 2006), *aff'd* 530 F.3d 676 (8th Cir. 2008), for example, the district court reversed an arbitration order of the Missouri Public Service Commission that imposed on an ILEC a certain network element unbundling obligation *not* pursuant to § 251(c)(3), but pursuant to § 271 of the 1996 Act, and explained,

> Section 252 provides that the state commission's duty in arbitrating and approving agreements is limited to ensuring that the agreement 'meets the requirements of section 251,' and does not mention any role for the state commission under § 271. . . . *[T]he statute limits state commission arbitration and rate-setting authority to items required under § 251.*

Id. at 1067, 1068 (emphasis added).[10] The Eighth Circuit affirmed on other grounds, 530 F.3d 676, and noted in its description of the 1996 Act, "if an agreement cannot be negotiated, the Act requires *unresolved § 251 disputes* be submitted to arbitration." *Id.* at 680 (emphasis added). Here, the Parties' disagreement about Cricket's request to extend its ICA pursuant to Merger Commitment 7.4 is not an "unresolved § 251 dispute." It is an unresolved dispute about a merger commitment that goes beyond anything required by section 251.

Other federal courts agree that state commission arbitration authority under the 1996 Act is limited to the matters enumerated in section 251(c)(1) that are subject to mandatory negotiation. *See, e.g.*, *Qwest Corp. v. Ariz. Corp. Comm'n*, 567 F.3d 1109 (9th Cir. 2009) ("*[A]ll state commission arbitration authority under Section 252 is inextricably tied to the duties imposed under Section 251*) (emphasis added); *Qwest Corp. v. PUC of Colo.*, 479 F.3d 1184, 1197 (10th Cir. 2007) ("state commissions cannot create a duty to provide services not required by the statute, so *their arbitration power cannot extend beyond the four corners of § 251*") (emphasis added). Accordingly, arbitration is not available to resolve issues other than those concerning the duties imposed by section 251. *See also*, *MCI Telecomm's Corp. v. BellSouth Telecomm's Inc.*, 298 F.3d 1269, 1274 (11th Cir. 2002) (concluding that a state commission's arbitration authority is coextensive with the ILEC's duty to negotiate the terms and conditions necessary to fulfill section 251 duties, and that an opposing view

[10] Given that section 252(b) of the 1996 Act does not authorize state commissions to arbitrate duties imposed by section 271 of the 1996 Act – a provision in the same statute – it necessarily follows that it does not authorize them to arbitrate duties that are not imposed by the 1996 Act at all, including the duty to extend ICAs imposed by Merger Commitment 7.4 pursuant to the FCC's authority under sections 214, 303(r) and 310 of the 1934 Communications Act.

"is contrary to the scheme and the text of [the 1996 Act], which lists only a limited number of issues on which incumbents are mandated to negotiate").

Other provisions in the 1996 Act corroborate that arbitration is limited to the duties set forth in sections 251(b) and (c). Congress, having authorized state commissions to arbitrate issues concerning an ILEC's duties under those provisions, gave state commissions a standard for resolving those issues. Specifically, Congress provided, in section 252(c)(1), that in resolving arbitration issues, a state commission shall "ensure that such resolution . . . meet[s] the requirements of section 251, including the regulations prescribed by the [FCC]" and must "establish any rates for interconnection, services or network elements according to subsection [252](d)." Congress thus ensured that for every issue a state commission is authorized to arbitrate under section 252(b), an answer – or at least guidance toward an answer – is available in the Act or in the FCC's regulations implementing the Act.[11]

For matters that are *not* encompassed by sections 251(b) and (c) – such as Merger Commitment 7.4 – the 1996 Act and the regulations the FCC promulgated to implement the 1996 Act provide no guidance. This confirms that a state commission cannot properly arbitrate such matters under section 252(b), because if it undertakes to do so, it will be unable to resolve them in accordance with the *mandatory* arbitration standard set forth in section 252(c).

The duty to extend interconnection agreements that Cricket has asked the Commission to arbitrate is not imposed by the 1996 Act, but by Merger Commitment 7.4. Section 251(c) of the 1996 Act did not require AT&T Kentucky to negotiate with

[11] This is so even for arbitration issues that a state commission resolves by determining what is just and reasonable, because sections 251(c)(2), (c)(3) and (c)(6) require terms and conditions for interconnection, UNEs and collocation to be "just, reasonable and nondiscriminatory."

Cricket concerning Cricket's extension request, because the duty imposed by Merger Commitment 7.4 is not a duty described in section 251(b) or (c). The Parties' disagreement about Cricket's request is not an "*unresolved § 251 dispute*" (*Southwestern Bell*, 530 F.3d at 680), and therefore is not subject to arbitration under section 252(b).

Cricket may argue that its extension request concerns the duration of the Parties' ICA, and that state commissions routinely arbitrate the duration of ICAs. That argument fails, because it ignores the difference between arbitrating the duration of a new ICA, *e.g.*, considering whether a term of two years, three years or five years is most reasonable, and deciding whether or not Merger Commitment 7.4 permits Cricket to extend its existing ICA by three years. That distinction is as crucial as it is obvious. To be sure, state commissions have authority to arbitrate the duration of a new or replacement ICA if negotiating Parties cannot agree on it: The 1996 Act requires ILECs to provide interconnection and access to unbundled network elements on "rates, terms and conditions that are just, reasonable and nondiscriminatory" (47 U.S.C. §§ 251(c)(2)(d), 251(c)(3)), and that includes a just, reasonable and nondiscriminatory term. Thus, if a CLEC or CMRS provider negotiating a new ICA proposes a two-year term and the ILEC wants a five-year term, that disagreement can become a subject for arbitration. And when the state commission resolves the issue, it must do so pursuant to the "just, reasonable and nondiscriminatory" standard in the 1996 Act, because section 252(c)(1) requires it to "ensure that such resolution [of the issues] . . . meet[s] the requirements of section 251."

But that is not what is happening here. If the Commission were to adjudicate Cricket's extension request, it would not do so by "ensur[ing] that [its] resolution . . . meets the requirements of section 251," as the 1996 Act requires it to do when it arbitrates an issue that is subject to arbitration under the 1996 Act. Rather, the Commission would seek to ensure that its resolution meets the requirements of Merger Commitment 7.4. Section 252(c)(1) of the 1996 Act *requires* state commissions to decide arbitration issues in accordance with certain standards, and those standards simply do not apply to Cricket's ICA extension request.

In a recent section 252(b) arbitration in Kansas, the CLEC, Global Crossing, like Cricket here, asked the Commission to enforce an FCC merger commitment – not Merger Commitment 7.4, but Merger Commitment 7.1, which allows a requesting carrier to port an ICA from one state to another. The ILEC, AT&T Kansas, argued, among other things, that the porting request was not subject to arbitration because "the only AT&T duties that are subject to arbitration are the duties imposed by the Act, which does not include a porting duty."[12] The Arbitrator agreed with AT&T Kansas and rejected in no uncertain terms Global Crossing's attempt to enforce the merger commitment in a section 252(b) arbitration, stating, "If Global Crossing believes that its intervening action can magically transform a merger condition into a 251 or 252 duty under the Act, it sorely misunderstands the law."[13] That is equally true here, and the Commission should therefore decline to arbitrate Cricket's ICA extension request.

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[12] Arbitrator's Determination of Unresolved Interconnection Issues Between AT&T and Global Crossing, *Petition of Sw. Bell Tel. Co. d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Service, Inc. and Global Crossing Telemanagement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996* (Kansas Corp. Comm'n April 23, 2010) (excerpts attached as **Exhibit 2** hereto), at ¶ 108.

[13] *Id.* ¶ 119.

II. MERGER COMMITMENT 7.4 DOES NOT ENTITLE CRICKET TO EXTEND ITS ICA.

If the Commission reaches the question, which it should not, Cricket's ICA is not eligible for extension under Merger Commitment 7.4 for two separate reasons. *First*, Merger Commitment 7.4 only permitted carriers to extend the ICAs to which they were parties when the merger commitment went into effect on December 29, 2006 – what the merger commitment calls "current interconnection agreements." Cricket was not a party to the ICA it now seeks to extend on December 29, 2006. It did not become a party to that ICA until almost two years later, when it adopted Sprint's ICA under section 252(i) of the 1996 Act.[14] *Second*, the merger commitment permits any given ICA to be extended only once, and Cricket's ICA was already extended once, by Sprint, before Cricket adopted it. As explained below, Cricket's view that a single ICA can be extended more than once, as long as the extensions are by different carriers, leads to absurd results that no one can possibly have intended when the merger commitments were offered and accepted.

Merger Commitment 7.4 went into effect on the Merger Closing Date, December 29, 2006.[15] It provides:

> 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

[14] 47 U.S.C. § 252(i) provides, "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

[15] *See* Exhibit 1 at 147.

terminated pursuant to the agreement's "default" provisions. (Emphases added.)

Cricket entered into its ICA with AT&T Kentucky on September 5, 2008[16] – almost two years after the merger commitment went into effect – when it adopted the ICA between AT&T Kentucky and Sprint, dated January 1, 2001 (the "Sprint ICA").[17]

When Cricket adopted the Sprint ICA on September 5, 2008, it adopted it in its entirety, including all of its amendments.[18] One of those amendments, entered into by AT&T Kentucky and Sprint in October, 2007, extended the Sprint ICA to December 28, 2009, pursuant to Merger Commitment 7.4.[19]

A. Cricket May Not Extend Its ICA Because It Was Not A Party To The ICA When Merger Commitment 7.4 Went Into Effect.

A federal district court explained the plain meaning of Merger Commitment 7.4 when it remanded a decision of the Connecticut Department of Public Utility Control that erroneously permitted Sprint to extend its Connecticut ICAs. The court stated:

> I think maybe it might be helpful to begin with my plain reading of the merger commitment 7.4 . . . .
>
> Merger commitment 7.4 says, in effect, as I read it, that AT&T . . . shall permit a requesting telecommunications carrier to extend its current interconnection agreement, "current" meaning as of the date of the merger closing, then current interconnection agreement for a period of up to three years from the merger closing date subject to amendment, et cetera.
>
> . . . . I don't understand how the current interconnection agreement can depend upon what the parties do after the merger closing date. I can't imagine that anybody expected that AT&T could, after the merger closing date, terminate an agreement and then argue, well, you didn't request that it would be extended for three years soon enough so that provision doesn't apply. Nor can I imagine that an ILEC [sic, should say "CLEC"] could wait around 41

[16] *See* **Exhibit 3** hereto.
[17] *Id.*
[18] *Id.*
[19] *See* **Exhibit 4** hereto.

> and-a-half months and then demand a three-year extension. *It seems to me that we have here a national policy that everywhere ILECs are going to get three years from the merger close date.* That's how I read it.[20]

In other words, when Merger Commitment 7.4 went into effect on December 29, 2006, and stated that a carrier may extend its "current interconnection agreement," it meant the ICA to which the carrier was then (currently) a party. Accordingly, the court concluded, December 29, 2006 was the start date for three-year ICA extensions under Merger Commitment 7.4, and December 28, 2009, was the end date.

This Commission read Merger Commitment 7.4 the same way in Case No. 2007-00180, when it ruled that Sprint's extension of its ICA (the ICA that Cricket now seeks to extend again) necessarily commenced on December 29, 2006, and rejected alternative views of when the ICA extension began.[21]

On December 29, 2006, Cricket was not a party to the interconnection agreement it now seeks to extend. Differently stated, Cricket seeks to extend an ICA that was not its "current" ICA on that date. If Cricket had an effective ICA with AT&T Kentucky as of December 29, 2006, it had a right to extend *that* ICA under Merger Commitment 7.4, but Cricket has no right to extend the ICA it now seeks to extend.[22]

B. Cricket May Not Extend Its ICA Because The ICA Was Already Extended Once, By Sprint.

There is a second, independent, reason that Cricket may not extend its ICA. Merger Commitment 7.4 provides that an ICA may be extended "for ***a*** period of ***up to three years***" (emphases added) – one three-year period, not multiple three-year

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[20] Excerpts of Transcript of Feb. 18. 2010 Motion Hearing (**Exhibit 5** hereto), at p. 3, line 23 – p. 5, line 6 (emphasis added).

[21] Order, Case No. 2007-00180 (Sept. 18, 2007), at 11-12.

[22] Also, if Merger Commitment 7.4 did somehow allow Cricket to extend the ICA to which it is now a party, the logic of the Commission's decision in Case No. 2007-00180 (*see supra* n. 21), and of the Connecticut district court, would compel the conclusion that that extension ended on December 28, 2009.

periods. The ICA Cricket seeks to extend was extended by Sprint in October of 2007,[23] and Cricket has enjoyed the benefit of that extension. Indeed, the Sprint ICA would not even have been available for Cricket to adopt in September of 2008 if Sprint had not extended it the previous year pursuant to Merger Commitment 7.4. Cricket cannot extend the same ICA a second time pursuant to that same merger commitment.

It stands to reason that an ICA cannot be extended under Merger Commitment 7.4 by a carrier in Cricket's position, because otherwise, what the merger commitment intended as an extension for "a period for up to three years" could be converted into an extension lasting decades. Assume, for example, that as of December 30, 2006, CLEC X was a party to an ICA that was scheduled to expire six months later, but CLEC X extends it to December 28, 2009, pursuant to Merger Commitment 7.4. Then, according to Cricket's apparent view of the world, taking it to the extreme, the following events could ensue:

1. A month later, on January 30, 2007, CLEC Y adopts CLEC X's ICA, with its December 28, 2009 expiration date.

2. A month after that, on February 28, 2007, CLEC Y extends its ICA three years, to December 28, 2012.

3. On March 30, 2007, CLEC Z adopts CLEC Y's ICA, with its December 28, 2012 expiration date.

4. On April 30, 2007, CLEC Z extends its ICA three years, to December 28, 2015.

5. Etcetera.

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[23] *See supra* at 12-13 & n.19.

With that pattern continuing until the merger commitments themselves expire in June 2010,[24] the ICA would wind up being extended to the year 2078. And on top of that, each CLEC along the way could, at the appropriate times, adopt and then readopt the continually extended ICA, so that all of them – effectively, every CLEC in Kentucky – could have this one ICA for the next 68 years. That is not what AT&T intended when it tendered the merger commitment, and it is not what the FCC intended when it ordered AT&T to comply with the merger commitment.

For the foregoing reasons, the Commission should find that Cricket is not entitled to an extension of its ICA for three more years under Merger Commitment 7.4.

III. AT&T KENTUCKY CANNOT LAWFULLY BE REQUIRED TO PROVIDE TRANSIT SERVICE TO CRICKET PURSUANT TO TERMS AND CONDITIONS IN AN ARBITRATED INTERCONNECTION AGREEMENT.

Two provisions in section 251 of the 1996 Act deal with interconnection – sections 251(a)(1) and 251(c)(2). Section 251(a)(1) requires all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Direct interconnection occurs when two carriers physically connect their network equipment to each other in order to exchange calls, while indirect interconnection involves passing traffic through an intermediate carrier.

Section 251(c)(2) addresses interconnection in a more specific and limited way, in that it applies only to incumbent LECs and only to direct interconnection. Specifically, section 251(c)(2) gives any requesting carrier the right to directly interconnect its network "with the [ILEC's] network" for the mutual exchange of traffic between the CLEC's and ILEC's end-user customers.

[24] *See* Exhibit 1 at 147 (merger commitments apply for 42 months from Merger Closing Date).

When two carriers are indirectly interconnected, so that traffic from one to the other passes through an intermediate carrier, that carrier is providing "transit service" (or "transiting"). Thus, AT&T Kentucky provides transit service when an originating carrier delivers traffic to AT&T Kentucky to be passed through AT&T Kentucky's tandem switch and on to a terminating carrier. Traffic that AT&T Kentucky transits does not originate or terminate with AT&T Kentucky end-users. Indeed, it does not involve an AT&T Kentucky end-user at all.

The threshold transit question in this proceeding is whether AT&T Kentucky must provide transit traffic service to Cricket for intrastate traffic pursuant to terms and conditions in the ICA arbitrated in this proceeding. The 1996 Act makes no mention of transiting, so the issue turns on whether a transiting duty that is subject to mandatory negotiation and arbitration under the 1996 Act can be inferred from the interconnection requirements in the 1996 Act. As we demonstrate below, the answer to that question is "No." The FCC has repeatedly declined to treat transiting as interconnection. Moreover, transiting does not involve the mutual exchange of traffic with the ILEC's end user customers, which is the core characteristic of interconnection. Rather, transiting is the transport of traffic, which the FCC has expressly excluded from the definition of interconnection. Finally, even if transit service did qualify as interconnection, it still would not be subject to mandatory inclusion in an ICA, because it is a function not of direct interconnection under section 251(c)(2), but of indirect interconnection under section 251(a)(1), and section 251(a) requirements are not subject to mandatory negotiation or arbitration under the 1996 Act.

A. Transiting Is Not Encompassed By The Interconnection Requirement Of Section 251(c)(2) Of The 1996 Act.

The FCC has repeatedly ruled that nothing in the 1996 Act or its rules or orders requires it to treat transiting as part of interconnection under section 251(c)(2). *Application of Qwest Commc'ns Int'l, Inc.*, 18 FCC Rcd. 7325, n.305 (2003) ("we find no clear Commission precedent or rules declaring such a duty" to provide transiting under section 251(c)(2)); *Application of BellSouth Corp.*, 17 FCC Rcd. 25828, ¶ 155 (2002) (same); *Joint Application by BellSouth Corp., et al.*, 17 FCC Rcd. 17595, n.849 (2002) (same). The FCC therefore held that incumbent LECs satisfied their duty to provide interconnection under section 251(c)(2) regardless of whether they provided transit service, and there is no "duty to provide transit service at TELRIC rates" in order to comply with section 251(c)(2). *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5)*, 17 FCC Rcd. 27039, ¶ 117 (Wireline Competition Bureau, 2002) ("*Virginia Arbitration Order*"); *Application of BellSouth*, ¶ 155; *Application of Qwest*, n.305.

In light of these decisions, the FCC's Wireline Competition Bureau has found it is improper for a state commission to decide in the first instance whether transiting ought to be treated as interconnection under section 251(c)(2). Ruling in an arbitration where it stood "in the shoes" of a state commission,[25] the Bureau, recognizing the FCC's repeated statements that there is no "clear Commission precedent or rules declaring such a duty," held that it would be improper, when acting "on delegated authority" as a state commission, "to determine for the first time" that transiting was required under section 251(c)(2). *Virginia Arbitration Order*, ¶ 117. *See also USTA II,* 359 F.3d at 564-

[25] When a state commission declines to arbitrate an interconnection agreement under section 252, the FCC may take the case. 47 U.S.C. § 252(e)(5). In such instances, the FCC typically assigns the case to its Wireline Competition Bureau, which stands in for the state commission.

68 (vacating FCC decision that unlawfully sub-delegated to state commissions authority to decide scope of ILEC duties under section 251(c)). Following this decision, a district court affirmed another state commission's refusal to treat transiting as section 251(c)(2) interconnection, finding that "TELRIC pricing is not required for transit service rates. . . . Therefore, as a legal matter, the [state commission] was correct in holding that it was not required to apply TELRIC rates." *WorldNet Telecomms., Inc. v. Telecomms. Regulatory Bd. of Puerto Rico*, 2009 WL 2778058, *28 (D.P.R. 2009).

It is not surprising that the FCC has concluded that section 251(c)(2) does not require transit service. Indeed, that conclusion is compelled by the FCC's definition of "interconnection" under section 251(c)(2).

The FCC has defined "interconnection" under section 251(c)(2) as "the linking of two networks for the mutual exchange of traffic," and has explicitly ruled that interconnection "does not include transport and termination of traffic." 47 C.F.R. § 51.5; *Local Competition Order*, ¶ 176.[26] In addition, the interconnection described in section 251(c)(2) refers only to a direct connection of a requesting carrier's network "with the [incumbent LEC's] network" for the mutual exchange of traffic "with [the] incumbent LEC[]." 47 U.S.C. § 251(c)(2); *Local Competition Order*, ¶ 172. Transit service, in contrast, (i) does *not* involve "the linking of" a competing carrier's network to the ILEC's network "for the mutual exchange of traffic," and (ii) *is* the "transport . . . of traffic."

A close examination of the FCC's discussion of interconnection in the *Local Competition Order* forecloses any plausible argument that section 251(c)(2) encompasses or requires transit service. In the Notice of Proposed Rulemaking that

[26] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996) (subsequent history omitted) ("*Local Competition Order*").

raised the questions that the FCC answered in the *Local Competition Order*, the FCC sought comment on the relationship between "interconnection" and "transport and termination."[27] Some commenters argued that "interconnection" in section 251(c)(2) refers only to the physical linking of facilities, while others argued that it also must include the transport and termination of traffic across that link.[28] One commenter, CompTel, contended that "it would make no sense for Congress to require an incumbent LEC to engage in a physical linking with another network without requiring the incumbent LEC to route and terminate traffic from the other network."[29] This is essentially the argument Cricket makes here when it contends that the interconnection requirement in section 251(c)(2) necessarily implies that AT&T Kentucky will route and terminate to Cricket traffic originated by third parties.

The FCC, as noted above, ruled that "the term 'interconnection' under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic," and does not include the transport or termination of traffic. When it made that ruling, the FCC explained why it rejected CompTel's argument:

> We . . . reject CompTel's argument that reading section 251(c)(2) to refer only to the physical linking of networks implies that incumbent LECs would not have a duty to route and terminate traffic. That duty applies to all LECs and is clearly expressed in section 251(b)(5).[30]

That last sentence is critically important, because it says that the duty to route traffic under the 1996 Act is imposed *not* by section 251(c)(2), but by section 251(b)(5). And section 251(b)(5) has nothing to do with transit traffic. Rather, it requires LECs to enter into reciprocal compensation arrangements – arrangements, as section 252(d)(2)

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[27] *Id.* ¶ 174.
[28] *Id.*
[29] *Id.*
[30] *Id.* ¶ 176.

explicitly states, for the "reciprocal recovery by each carrier of costs associated with the transport and termination *on each carrier's network facilities of calls that originate on the network facilities of the other carrier.*" (Emphasis added.) As applied here, in other words, AT&T Kentucky's *only* duty under the 1996 Act to route traffic to or from Cricket is its duty with respect to traffic the Parties exchange directly between each other. The FCC could not have made more clear that section 251(c)(2) imposes no transit duty on AT&T Kentucky.

B. The FCC's Refusal To Treat Transiting as Interconnection Under Section 251(c)(2) Preempts Any State Commission From Doing So.

The Commission should conclude, based on the foregoing discussion, that transit is not required by section 251(c)(2) and therefore cannot properly be imposed on the Parties' interconnection agreement over AT&T Kentucky's objection. Even if the Commission is inclined to conclude otherwise, however, it is preempted from doing so.

The 1996 Act dramatically changed the regulation of local telecommunications. In an effort to bring about local service competition, Congress vested the FCC with authority over many aspects of the interaction between local carriers – particularly including interconnection under section 251(c)(2). Congress gave the FCC authority to establish the regulations and requirements necessary to implement the local competition requirements of the 1996 Act.[31] Thus, as the Supreme Court stated, "[w]ith regard to the matters addressed by the 1996 Act," Congress and the FCC "unquestionably" have "taken the regulation of local telecommunications competition away from the States."[32] And as the FCC explained, "[t]he Act establishes – and courts

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[31] 47 U.S.C. § 251(d)(2); *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 564-68 (D.C. Cir. 2004) ("*USTA II*").

[32] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378-79 n.6 (1999).

have confirmed – the primacy of federal authority with regard to several of the local competition provisions in the 1996 Act . . . including, of course, unbundling and other issues addressed by section 251," such as interconnection.[33] The FCC's "prerogatives" in those areas therefore "supersede state jurisdiction."[34]

When state commissions arbitrate ICAs under section 252(b) of the 1996 Act and approve or reject ICAs under section 252(e), they are acting as "'deputized' federal regulators" and "are confined to the role that the Act delineates."[35] State commissions therefore have a "limited mission" under the Act, *i.e.*, "to apply federal law and regulations as arbitrators and ancillary regulators within the federal system and on behalf of Congress."[36] The 1996 Act also contains so-called "savings" clauses, but these merely reflect the established law of conflict preemption, allowing states to take action only if it is consistent with and does not undermine or impede the goals and policy of the 1996 Act and the FCC's implementation of the Act.[37]

Given that the FCC has purposefully declined to treat transiting as an implied requirement of the interconnection duty imposed in section 251(c)(2), this Commission is preempted from doing so on its own, for to do so would undermine and conflict with federal law and policy. This is consistent with the established law of conflict preemption, including cases under the 1996 Act. Where a federal agency "consciously has chosen not to mandate" particular action, its decision preempts states from mandating that very thing. *Fidelity Fed. Sav. & Loan v. De la Cuesta*, 458 U.S. 141, 155

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[33] *BellSouth Telecomms., Inc. Request for Declaratory Ruling*, 20 FCC Rcd. 6830, ¶ 22 (2005) ("*FCC Preemption Order*").
[34] *Id.*
[35] *Pacific Bell v. Pac-West Telecomms, Inc.*, 325 F.3d 1114, 1126 (9th Cir. 2003), quoting *MCI Telecomms. Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 344 (7th Cir. 2000).
[36] *AT&T Commc'ns v. BellSouth Telecomms., Inc.*, 238 F.3d 636, 646 (5th Cir. 2001).
[37] *See* 47 U.S.C. §§ 251(d)(3), 261(c).

(1982); *see Geier v. American Honda Motor Co., Inc.*, 529 U.S. 861, 874-75 (2000) (where federal agency "deliberately provided the manufacturer with a range of choices" among safety devices, state could not require airbags in all cars or contend that "the more airbags . . . the better"). The FCC's decision not to treat transit service as part of interconnection constitutes "a ruling that no such regulation is appropriate or approved pursuant to the policy of the [federal] statute" and therefore preempts inconsistent state action. *Bethlehem Steel v. New York Labor Relations Bd.*, 330 U.S. 767, 774 (1947); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 171-72, 178 (1978) (states must follow federal agency choices if a federal agency "has either promulgated [its] own tug requirement . . . or has decided that no such requirement should be imposed at all.").

These principles apply with special force here, for with respect to matters covered by the 1996 Act, Congress has "precluded all other regulation except on its terms," *MCI*, 222 F.3d at 343, and left it to the FCC to draw "the lines" to which state commissions "must hew." *AT&T Corp.*, 525 U.S. at 378-79 n.6. When a state commission decides to treat as interconnection something that the FCC has declined to treat as interconnection, it is doing exactly what the FCC "determined was not required by the Act," and thereby "exceed[s] the reservation of authority [to the states]" under the Act. *FCC Preemption Order*, ¶ 27. "[S]tate decisions that impose such an obligation are inconsistent with and substantially prevent the implementation of the Act and the [FCC]'s . . . rules and policies." *Id.*, ¶ 1; *Illinois Bell Tel. Co. v. Box*, 548 F.3d 607, 611-13 (7th Cir. 2008). And state commission action that "interferes with the methods by which the [1996 Act] was designed to reach [its] goal" is "preempted." *Verizon North,*

Inc. v. Strand, 309 F.3d 935, 940 (6th Cir. 2000), citing *Gade v. National Solid Waste Mgmt. Ass'n*, 505 U.S. 88, 103 (1992).

C. If Transit Service Is Encompassed By The Interconnection Requirement In Section 251(a) Of The 1996 Act, It Is Not Subject To Mandatory Negotiation Or Arbitration Under Section 252.

Cricket may argue that even if a transit requirement is not implicit in section 251(c)(2), it is implicit in the indirect interconnection requirement of section 251(a)(1). Even if that is correct – and AT&T Kentucky by no means concedes that it is – that does not help Cricket here, because the requirements that section 251(a) imposes on all telecommunications carriers are not subject to mandatory negotiation or arbitration under the 1996 Act.

As discussed above, section 251(c)(1) enumerates the matters that an incumbent LEC has a duty to negotiate: "the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection [(c)]." Significantly, there is no mention of the duties described in subsection (a) of Section 251. Congress, having imposed those duties on all telecommunications carriers, carefully excluded them from its enumeration of duties that an ILEC must negotiate.

Simply stated, if a requesting carrier asks an incumbent to negotiate an interconnection agreement under section 252(a), the incumbent must negotiate the duties set forth in sections 251(b) and 251(c), but *not* the duties set forth in section 251(a). Accordingly, if the requesting carrier specifically asks to negotiate terms and conditions for transit service on the theory that transit service is encompassed by section 251(a), the ILEC may appropriately decline. And since arbitrations under section 252(b) are confined to the resolution of open issues resulting from the parties'

negotiations, the terms and conditions governing transit service as a section 251(a)(1) requirement are not subject to arbitration under section 252(b) – and cannot properly be imposed on an interconnection agreement over the ILEC's objection.

For all of these reasons, the Commission should rule that transit service is not required by section 251(b) or 251(c) of the 1996 Act, and that AT&T Kentucky is not required to provide transit service to Cricket pursuant to rates, terms or conditions in the ICA being arbitrated in this proceeding.[38]

CONCLUSION

For the reasons set forth above in Section I, the Commission should determine that it is without authority to arbitrate in this proceeding under section 252(b) of the 1996 Act the question whether Merger Commitment 7.4 entitles Cricket to extend its ICA for three years. If the Commission does address that question, it should answer it in the negative for the reasons set forth in Section II. Finally, the Commission should rule that AT&T Kentucky is not required to include rates, terms, or conditions governing transit service in the Parties' section 251/252 ICA, but is instead free to negotiate with Cricket a separate agreement governing transit, upon such terms as the Parties may agree.

[38] In Case No. 2004-00044, the Commission rejected a BellSouth argument "that it is only obligated to negotiate and arbitrate issues contained in Section 251(b) and (c) and that transit traffic is not included," and stated, "The Commission has previously required third-party transiting by the ILEC based on efficient network use. The Commission will continue to require BellSouth to transit such traffic." Order, Case No. 2004-00044 (March 14, 2006). That Order did not identify (and AT&T Kentucky has been unable to find) the previous determination on which the Commission stated it was relying, and also did not address the arguments AT&T Kentucky has presented here. Accordingly, the Commission should consider anew the question whether transit service is a mandatory requirement in an ICA.

Respectfully submitted this 19th day of May, 2010.

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
AT&T Inc. and BellSouth Corporation	)	WC Docket No. 06-74
Application for Transfer of Control	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 29, 2006 **Released:** March 26, 2007

By the Commission: Chairman Martin and Commissioner Tate issuing a joint statement; Commissioners Copps and Adelstein concurring and issuing separate statements; Commissioner McDowell not participating.

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from two to one in the number of competitors with direct connections to 31 buildings where other competitive entry is unlikely. We find, however, that AT&T's voluntary commitment to divest at least eight fiber strands in the form of ten-year IRUs for these two-to-one buildings where entry is unlikely, which we accept and make an express condition of our approval of this merger, adequately remedies this potential special access harm.[615]

224. We also find potential public interest benefits from the proposed merger that, taken as a whole, outweigh the relatively limited possible public interest harms. These public interest benefits relate to: accelerated broadband deployment; enhancements to MVPD and programming competition; national security, disaster recovery, and government services; unification of Cingular's ownership; efficiencies related to vertical integration; economies of scope and scale; and cost savings.

225. We therefore conclude that, on balance, the positive public interest benefits likely to arise from this transaction are sufficient to support the Commission's approval of AT&T's and BellSouth's application under the public interest test of sections 214 and 310(d) of the Communications Act.

IX. ORDERING CLAUSES

226. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and Executive Order No. 10530, the applications for the transfer of control of licenses and authorizations from BellSouth to AT&T as discussed herein and set forth in Appendix B ARE GRANTED subject to the conditions stated below.

227. IT IS FURTHER ORDERED that as a condition of this grant AT&T and BellSouth shall comply with the conditions set forth in Appendix F of this Order.

228. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses and authorizations from BellSouth to AT&T filed by Access Point, Inc. *et al.*, the Center for Digital Democracy, Clearwire Corporation, COMPTEL, the Concerned Mayors Alliance, Consumer Federation *et al.*, Earthlink and Time Warner Telecom, Inc. ARE DENIED for the reasons stated herein.

229. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), and sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, the request by AT&T for a 120 day waiver of section 64.1801 of the Commission's rules, 47 C.F.R. § 64.1801, effective as of the merger closing date, IS GRANTED.

230. IT IS FURTHER ORDERED that pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Memorandum Opinion and Order IS EFFECTIVE upon adoption. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days of the date of public notice of this Order.

[615] *See* Appendix F.

APPENDIX F

Conditions

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them. Unless otherwise specified herein, the commitments described herein shall become effective on the Merger Closing Date. The commitments described herein shall be null and void if AT&T and BellSouth do not merge and there is no Merger Closing Date.

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.

MERGER COMMITMENTS

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 and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.

Repatriation of Jobs to the U.S.

AT&T/BellSouth[1] is committed to providing high quality employment opportunities in the U.S. In order to further this commitment, AT&T/BellSouth will repatriate 3,000 jobs that are currently outsourced by BellSouth outside of the U.S. This repatriation will be completed by December 31, 2008. At least 200 of the repatriated jobs will be physically located within the New Orleans, Louisiana MSA.

Promoting Accessibility of Broadband Service

1. By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (*i.e.*, Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory.[2] To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). AT&T/BellSouth will make available broadband Internet access service to the remaining living units using alternative technologies

[1] AT&T/BellSouth refers to AT&T Inc., BellSouth Corporation, and their affiliates that provide domestic wireline or Wi-Max fixed wireless services.

[2] As used herein, the "AT&T/BellSouth in-region territory" means the areas in which an AT&T or BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i). "AT&T in-region territory" means the area in which an AT&T operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i), and "BellSouth in-region territory" means the area in which a BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.[3]

2. AT&T/BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, between July 1, 2007, and June 30, 2008, replace their AT&T/BellSouth dial-up Internet access service with AT&T/BellSouth's ADSL service and elect a term plan for their ADSL service of twelve months or greater.

3. Within six months of the Merger Closing Date, and continuing for at least 30 months from the inception of the offer, AT&T/BellSouth will offer to retail consumers in the Wireline Buildout Area, who have not previously subscribed to AT&T's or BellSouth's ADSL service, a broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of $10 per month.

Statement of Video Roll-Out Intentions

AT&T is committed to providing, and has expended substantial resources to provide, a broad array of advanced video programming services in the AT&T in-region territory. These advanced video services include Uverse, on an integrated IP platform, and HomeZone, which integrates advanced broadband and satellite services. Subject to obtaining all necessary authorizations to do so, AT&T/BellSouth intends to bring such services to the BellSouth in-region territory in a manner reasonably consistent with AT&T's roll-out of such services within the AT&T in-region territory. In order to facilitate the provision of such advanced video services in the BellSouth in-region territory, AT&T /BellSouth will continue to deploy fiber-based facilities and intends to have the capability to reach at least 1.5 million homes in the BellSouth in-region territory by the end of 2007. AT&T/BellSouth agrees to provide a written report to the Commission by December 31, 2007, describing progress made in obtaining necessary authorizations to roll-out, and the actual roll-out of, such advanced video services in the BellSouth in-region territory.

Public Safety, Disaster Recovery

1. By June 1, 2007, AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster.

2. In order to further promote public safety, within thirty days of the Merger Closing Date, AT&T/BellSouth will donate $1 million to a section 501(c)(3) foundation or public entities for the purpose of promoting public safety.

[3] For purposes of this commitment, a low income living unit shall mean a living unit in AT&T/BellSouth's in-region territory with an average annual income of less than $35,000, determined consistent with Census Bureau data, *see* California Public Utilities Code section 5890(j)(2) (as added by AB 2987) (defining low income households as those with annual incomes below $35,000), and a rural area shall consist of the zones in AT&T/BellSouth's in-region territory with the highest deaveraged UNE loop rates as established by the state commission consistent with the procedures set forth in section 51.507 of the Commission's rules. 47 C.F.R. § 51.507.

Service to Customers with Disabilities

AT&T/BellSouth has a long and distinguished history of serving customers with disabilities. AT&T/BellSouth commits to provide the Commission, within 12 months of the Merger Closing Date, a report describing its efforts to provide high quality service to customers with disabilities.

UNEs

1. The AT&T and BellSouth ILECs shall continue to offer and shall not seek any increase in state-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. For purposes of this commitment, an increase includes an increased existing surcharge or a new surcharge unless such new or increased surcharge is authorized by (i) the applicable interconnection agreement or tariff, as applicable, and (ii) by the relevant state commission. This commitment shall not limit the ability of the AT&T and BellSouth ILECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.

2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.

3. AT&T/BellSouth shall cease all ongoing or threatened audits of compliance with the Commission's EELs eligibility criteria (as set forth in the *Supplemental Order Clarification*'s significant local use requirement and related safe harbors, and the *Triennial Review Order*'s high capacity EEL eligibility criteria), and shall not initiate any new EELs audits.

Reducing Transaction Costs Associated with Interconnection Agreements

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 provided, 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.

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 telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

3. The AT&T/BellSouth ILECs shall allow a requesting telecommunications carrier to use its pre-existing interconnection agreement as the starting point for negotiating a new agreement.

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.

Special Access

Each of the following special access commitments shall remain in effect until 48 months from the Merger Closing Date.

1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act ("AT&T/BellSouth BOCs")[4] will implement, in the AT&T and BellSouth Service Areas,[5] the Service Quality Measurement Plan for Interstate Special Access Services ("the Plan"), similar to that set forth in the SBC/AT&T Merger Conditions, as described herein and in Attachment A to this Appendix F. The AT&T/BellSouth BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T/BellSouth BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T and BellSouth Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and BellSouth section 272(a) affiliates, (ii) their BOC and other affiliates, and (iii) non-affiliates.[6] The AT&T/BellSouth BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T/BellSouth BOCs shall implement the Plan for the first full quarter following the Merger Closing Date. This commitment shall terminate on the earlier of (i) 48 months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth files its 16th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

2. AT&T/BellSouth shall not increase the rates paid by existing customers (as of the Merger Closing Date) of DS1 and DS3 local private line services that it provides in the AT&T/BellSouth in-region territory pursuant to, or referenced in, TCG FCC Tariff No. 2 above their level as of the Merger Closing Date.

3. AT&T/BellSouth will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a)

[4] For purposes of clarity, the special access commitments set forth herein do not apply to AT&T Advanced Solutions, Inc. and the Ameritech Advanced Data Services Companies, doing business collectively as "ASI."

[5] For purposes of this commitment, "AT&T and BellSouth Service Areas" means the areas within AT&T/BellSouth's in-region territory in which the AT&T and BellSouth ILECs are Bell operating companies as defined in 47 U.S.C. § 153(4)(A).

[6] BOC data shall not include retail data.

THE STATE CORPORATON COMMISSION OF THE STATE OF KANSAS

In the Matter of the Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Service, Inc. and Global Crossing Telemanagement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996.	)	Docket No. 10-SWBT-419-ARB

ARBITRATOR'S DETERMINATION OF UNRESOLVED INTERCONNECTION AGREEMENT ISSUES BETWEEN AT&T AND GLOBAL CROSSING

The above-captioned matter comes on before the Arbitrator duly appointed by the State Corporation Commission of the State of Kansas (Commission) for determination of unresolved interconnection agreement (ICA) issues between Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) and Global Crossing Local Service, Inc. and Global Crossing Telemanagement, Inc. (collectively, Global Crossing).

Jurisdiction

1. The Commission determined that it had jurisdiction to arbitrate the disputed issues in this docket. Order Finding Jurisdiction and Appointing Arbitrator, ¶ 7 (Jan. 20, 2010).

AT&T Petition for Arbitration

2. AT&T noted that the current ICA between it and Global Crossing was approved by the Commission on October 23, 2007, in the 338 Docket.[1] On September

[1] *Id.* ¶ 4, referencing *In the Matter of the Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement under the Telecommunications Act of 1996 with Global Crossing Local Services, Inc. & Global Crossing Telemanagement, Inc.*, Docket No. 08-SWBT-338-IAT (338 Docket).

29, 2008, AT&T provided written Notice of Expiration to Global Crossing of their ICA and requested negotiations for a replacement ICA.

3. Section 252(b)(2)(A) of the Act, requires the Petitioner to provide all relevant documentation associated with "(i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties." To comply with subsections (i) and (ii), AT&T placed unresolved issues in a Decision Point List (DPL) attached to the Petition as Attachment B. The DPL provided (a) a statement of each unresolved issue, referenced to the proposed successor ICA by attachment and section number; (b) AT&T's proposed contract language; (c) AT&T's position on the issue; (d) Global Crossing's proposed contract language; and (e) Global Crossing's position on the issue, as perceived by AT&T. Petition, ¶¶ 10–11. To comply with subsection (iii) of § 252(b)(2)(A), AT&T provided a copy of the General Terms and Conditions of the successor ICA to most of which the parties had agreed. The successor ICA also contained unresolved language—bolded and underlined for AT&T proposed language and bolded and italicized for Global Crossing proposed language for the unresolved issue. *Id.* ¶ 12.

4. AT&T listed six issues in its DPL: (a) What is the appropriate compensation for VoIP? (b) Under what circumstances is AT&T obligated to combine network elements? (c) Under what circumstances is AT&T required to perform commingling? (d) Is AT&T obligated to commingle Section 271 network elements that are not subject to unbundling under Section 251(c)(3)? (e) Should Global Crossing be permitted to obtain more that 25% of AT&T's available Dark Fiber? And, should Global Crossing be allowed to hold onto Dark Fiber that it has ordered from AT&T indefinitely, or should

AT&T be allowed to reclaim unused Dark Fiber after a reasonable period so that it will be available for use by other carriers? (f) Which Routine Network Modification (RNM) costs are not being recovered in existing recurring and non-recurring charges?

Global Crossing Answer

5. Global Crossing filed its Response to Petition to Arbitration (Answer) on January 13, 2010. Global Crossing included its DPL in its Answer, adding a seventh issue—Global Crossing's right to port the BellSouth/Global Crossing ICA to Kansas—and its position on each issue. Answer, ¶¶ 3–4.

6. AT&T and Global Crossing agreed that Issues 1 - 4 and 7 were legal issues that would not be addressed by their respective witnesses. (Arbitrator's Order Setting Procedural Schedule, ¶ 4). On March 4th, Global Crossing filed its Motion to Cancel Hearing and to Admit Prefiled Testimony. Global Crossing represented that AT&T agreed with the Motion. The Commission granted the Motion on March 8, 2010.

Issue One
VoIP Compensation

7. The parties agreed that Switched Access Traffic is subject to interstate and intrastate switched access charges and that switched access traffic is traffic that originates from an end user physically located in one local exchange and delivered for termination to an end used physically located in a different local exchange (excluding traffic between exchanges sharing a common mandatory local calling areas). The parties also agreed that local IP-to-PSTN (voice traffic that originates in Internet Protocol format and transmitted to the public switch telephone network) and PSTN-to-IP traffic should be treated as local traffic. AT&T DPL, p. 1; Global Crossing DPL, p. 1.

without the CLEC request for a shelf, a repeater or other equipment to accommodate its needs, AT&T would not incur the costs associated with the shelf, repeater or other equipment.

103. The Arbitrator instructs AT&T to include with its comments the charges it would assess Global Crossing for RNMs, whether AT&T would recover the cost of the RNMs on a non-recurring or recurring basis, or whether AT&T would recover the cost by some other recovery mechanism.. In this manner, Global Crossing will be fully advised of the RNM charges and the Commission may judge if the RNM charges are reasonable.

104. The Arbitrator concludes that AT&T has demonstrated that its RNM charges will not be double-recovered because these charges are not contained in the long-run incremental cost study for AT&T's network.

105. Subject to AT&T's compliance with the Arbitrator's instructions *supra* ¶ 103, the Arbitrator awards the RNM issue to AT&T and directs that AT&T's proposed language associated with this issue be adopted into the parties' interconnection agreement.

Issue 7
Arbitration of Porting BellSouth/Global Crossing ICA

106. Global Crossing believed that the porting of its ICA with BellSouth to Kansas could be arbitrated in these proceedings. AT&T, on the other hand, disagreed, maintaining that the porting question was not negotiated by the parties.

107. Neither party proposed language in its DPL regarding porting of the BellSouth/Global ICA to Kansas. Global Crossing took the position that it had the right to port the ICA it has with BellSouth. Further, Global Crossing noted that the Commission had previously held [that] such porting is appropriate and that the

Commission held the authority to enforce the Merger Conditions. Global Crossing DPL, pp. 18 – 19. AT&T's DPL did not contain a position statement on Global Crossing's porting position.

AT&T Reply to Global Crossing's Response to Arbitration[24]

108. AT&T claimed that porting of the BellSouth/Global Crossing ICA was not subject to arbitration because (1) as a matter of controlling federal law, the only matters subject to arbitration are "open issues" from the parties' negotiations; according to AT&T there were no negotiations on porting; (2) Global Crossing had never requested the port by AT&T; and (3) the only AT&T duties that are subject to arbitration are the duties imposed by the Act, which does not include a porting duty. *Id.* at ¶ 3.

Global Crossing Surreply

109. Global Crossing maintained that it raised the issue of porting the BellSouth ICA during negotiations with AT&T. When AT&T refused to include the same language that was in the BellSouth ICA with regard to intercarrier compensation, Global Crossing inquired of AT&T whether the parties might just port the BellSouth ICA. *Id.* at ¶ 2.

Global Crossing Direct

110. Global Crossing witness Mickey Henry said that he had raised the porting issue during the first part of November. According to Mr. Henry, during the negotiations with AT&T, Global Crossing had proposed language pertaining to 6.14 (Compensation) that was the same language contained in the BellSouth/Global Crossing ICA. After AT&T's rejection of the proposed language, Mr. Henry broached the notion of porting

[24] Because Global Crossing begins that portion of its Initial Brief addressing porting with a summary of its Surreply to AT&T's Reply to [Global Crossing's] Response to Petition for Arbitration, the Arbitrator finds that fairness to the parties' presentations requires a summary of AT&T's Reply along with Global Crossing's Surreply.

the current BellSouth/Global Crossing. An AT&T representative subsequently advised Mr. Henry that the parties would need to start anew and redline the BellSouth/Global Crossing ICA to make it applicable to Kansas. When Mr. Henry reported this to Global Crossing's legal counsel, he was informed that AT&T's "response was an incorrect interpretation of the FCC's porting order and that AT&T had effectively denied [Global Crossing's] request to port." Mr. Henry reported that he did not press the issue any further. *Id.* p. 6, line 16 – p. 7, line 16.

AT&T Rebuttal

111. AT&T witness Ms. Fuentes Niziolek alleged that Mr. Henry's Direct Testimony confirmed that there was no porting issue for the Commission to resolve. *Id.* p. 9, lines 1 – 11. Ms. Fuentes Niziolek referenced the Sprint Docket[25] to confirm that ported ICAs are subject to state-specific pricing and performance plans and technical feasibility. *Id.* , p. 11, lines 12 – 16.

AT&T Direct

112. AT&T witness Ms. Fuentes Niziolek explained that AT&T's position in large part is that Global Crossing did not submit a request to port the BellSouth/Global Crossing ICA. *Id.* p. 11, lines 3 – 7. Ms. Fuetes Niziolek further explained that Global Crossing, or any other CLEC, must first request to port a particular ICA by completing and submitting a Porting Request Form found in the CLEC On Line Handbook. *Id.* p.12, lines 8 – 12.

Global Crossing Rebuttal

113. Global Crossing's rebuttal testimony did not address the porting issue.

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[25] *In the Matter of the Complaint of Sprint Communications Company L.P., Sprint Spectrum L.P. Nextel West Corp. and NPCR, Inc,. Complaints vs. Southwestern Bell Telephone Company d/b/a AT&T Kansas, Respondent*, Docket No. 08-SWBT-602-COM (Sprint Docket).

Global Crossing Initial Brief

114. Global Crossing explained that the legal requirement that AT&T port ICAs arose from AT&T's merger with BellSouth. To prompt the FCC to approve the merger, AT&T and BellSouth agreed to be subject to a set of Merger Conditions. Global Crossing further explained that the porting requirement was contained in Merger Condition 1[26] which provided:

> The AT&T/BellSouth [Incumbent Local Exchange Carriers] shall make available to any requesting telecommunications carrier any entire effective Interconnection Agreement, whether negotiated or arbitrated, that AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory. . .

Global Crossing stated it was seeking porting of its interconnection agreement with BellSouth to Kansas and that the Commission had previously held such porting was appropriate and that it had the power to enforce the Merger Commitments.[27] Referencing Mr. Henry's Direct Testimony at 6 – 7, Global Crossing insisted that it had made the request for porting in a manner that did not run afoul with the BellSouth merger order. Global Crossing.

AT&T Reply Brief

115. AT&T accused Global Crossing of trying to mislead the Commission when it purposefully omitted the portion of Merger Condition 7.1 which reads:

> . . .provided, further, than AT&T/BellSouth ILEC shall not

[26] There are no numbers "assigned" to principal Merger Commitments; but, "Reducing Transaction Costs Associated with Interconnection Agreements: was the seventh listed Merger Commitment and the obligation to make available to any requesting telecommunications carrier any entire effective interconnection agreement was the first item of Merger Commitment 7—thus, Merger Commitment 7.1.

[27] Global Crossing referenced *In the Matter of the Complaint of Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp. and NPCR, Inc., Complainants vs. Southwestern Bell Telephone Company d/b/a AT&T Kansas, Respondent*, Docket No. 08-SWBT-602-COM, Order of March 12, 2008.

> 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.

AT&T also accused Global Crossing of further attempting deception by stating that a "'ported agreement is subject to state-specific pricing'" when there are numerous modifications, other than pricing, that need to be made to comport the ported ICA with Kansas law and regulatory requirements. Such other modifications include providing for access charges on interexchange traffic. AT&T Reply Brief, ¶¶ 39 – 42. In addition, AT&T maintained that there is a "marked difference between inquiring about a possible port and requesting a port, and while Global Crossing's brief-writers are apparently willing to stretch the truth by asserting that Global Crossing requested a port, Mr. Henry—who [was] the only Global Crossing representative with first-hand knowledge of what was said—was not. Mr. Henry's account is in agreement with AT&T's Ms. Allen-Flood's, who averred that 'there was no request to port—orally, in writing or otherwise'" (Response to Global Crossing's Surreply to AT&T's Reply, at p. 3, n.3). AT&T Reply Brief, ¶¶ 43 – 44. Lastly, AT&T asserted that the Commission should not, as Global Crossing proposes, require it to port the BellSouth/Global ICA if the Commission "for whatever reason disagrees with Global Crossing on the merits of issues 1 through 6 in this proceeding. (Global Crossing Initial Brief, ¶ 50). AT&T Reply Brief, ¶ 45.

AT&T Initial Brief

116. AT&T asserted that Global Crossing could port the BellSouth/Global Crossing ICA, subject to the conditions and limitations contained in Merger Condition 7.1, but not in an arbitration setting. There was no dispute between the parties about

Global Crossing's ability to port an ICA, and, therefore, there is no dispute to resolve. Moreover, according to AT&T, the only matters subject to arbitration under § 252(b) of the Act are the incumbent LEC's duties under subsections 252(b) and 251(c) of the Act. AT&T cited the 10th Circuit's decision in *Qwest Corp. v. PUC of Colo.*, 479 F.3d 1184 (10th Cir. 2007) which held, at 1197, that state commissions' "arbitration power cannot extend beyond the four corners of § 251." AT&T Initial Brief, ¶¶ 33 – 35.

117. In addition, AT&T cited *Coserv LTD. Liability Co. v. Sw. Bell Tel. Co.*, 350 F.3d 482 (5th Cir. 2003) which held at 484 that "only issues voluntarily negotiated by the parties pursuant to § 252(a) are subject to the compulsory arbitration process." AT&T stated that it was undisputed that, while Global Crossing mentioned the possibility of a port during the course of the negotiations, the parties did not negotiate a porting request because Global Crossing made no such requests. AT&T Initial Brief, pp. 33 – 34.

Global Crossing Reply Brief

118. Global Crossing insisted that porting the BellSouth/Global Crossing ICA was one of the subjects of the parties' ICA negotiations. Further, Global Crossing stated, "The decision concerning to port the parties' BellSouth ICA determines what terms will govern services AT&T provides to Global Crossing in Kansas—an issue that is central to Sections 251 and 252 of the Act." *Id.* ¶ 21.

Arbitrator's Determination

119. If Global Crossing believes that its intervening action can magically transform a merger condition into a 251 or 252 duty under the Act, it sorely misunderstands the law. The Arbitrator finds Global Crossing's request that, should the

Commission disagree with Global Crossing on the merits of Issues 1 though 6, the Commission order AT&T to port the BellSouth/Global Crossing ICA to be untenable.

120. The Arbitrator concludes that there is no dispute about Global Crossing's ability to port the BellSouth/Global Crossing ICA, making Issue VII unarbitrable. The Arbitrator further concludes that there were no negotiations between the parties with respect to the porting the BellSouth/Global Crossing ICA to Kansas.

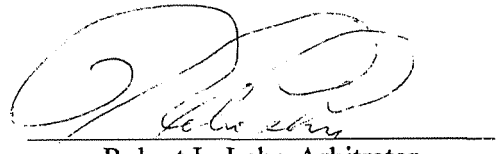
121. The Arbitrator awards Issue VII to AT&T.

Summary

122. In summary, the Arbitrator awards Issue 1 to AT&T; Issue 2 to AT&T, subject to AT&T's modification of 6.1.3.5 as described in paragraph 44 above; Issue 3 to Global Crossing and rejects AT&T's proposed language; Issue 4 to AT&T; Issue 5(A) and Issue 5(B) to AT&T; Issue 6 to AT&T, subject to AT&T presenting with its comments the prices attendant to the RNMs and whether AT&T intends to recover those costs by recurring or non-recurring charges or any other cost recovery mechanism; and, Issue 7 to AT&T.

Miscellaneous

123. Comments on these determinations are due on or before May 17, 2010.



Robert L. Lehr, Arbitrator

APR 23 2010

ORDERED MAILED

APR 23 2010

EXECUTIVE DIRECTOR

AT&T Kentucky
601 W. Chestnut Street
Room 407
Louisville, KY 40203
T: 502.582.8219
F: 502.582.1573
mary.keyer@att.com

September 25, 2008

Ms. Stephanie Stumbo
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Filing of Agreement

Dear Ms. Stumbo:

Enclosed for filing is a CD-ROM containing the following Agreement. The document has been electronically filed with the Commission.

Cricket Communications, Inc.
Interconnection Agreement
Case No. 00417

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Mary K. Keyer
General Counsel/Kentucky

Enclosure

721036

at&t WHOLESALE AGREEMENT

Customer Name: Cricket Communications, Inc.

CLEC Agreement with:

Cricket Communications, Inc.

ADOPTION AGREEMENT

This Agreement, which shall be effective as of September 5, 2008 ("Effective Date"), is entered into by and between Cricket Communications, Inc. ("Cricket"), a Delaware corporation on behalf of itself, and BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky ("AT&T Kentucky"), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, pursuant to Section 252(i) of the Act, Cricket has requested that AT&T make available the interconnection agreement by and between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership and Sprint Communications Company L.P. (collectively referred to as "Sprint CLEC") and Sprint Spectrum L.P. and SprintCom, Inc., the two foregoing entities jointly d/b/a Sprint PCS ("Sprint PCS") Interconnection Agreement ("the Kentucky Agreement"),dated January 1, 2001 for the state of Kentucky.

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, Cricket and AT&T hereby agree as follows:

1. Cricket and AT&T Kentucky shall adopt in its entirety the Kentucky Agreement, as defined above, dated January 1, 2001, and any and all amendments to said agreement, executed and approved by the appropriate state regulatory commission, as of the date of the execution of this Agreement. The Kentucky Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference. The adoption of the Kentucky Agreement with amendment(s) consists of the following:

ITEM	NO. PAGES
Table of Contents – Cricket	1
Title Page – Cricket	1
Adoption Papers – Cricket	4
Sprint Agreement	809
Amendment dated 05/07/03	2
Amendment dated 08/26/03	4
Amendment dated 12/03/03	18
Amendment dated 06/03/04	2
Amendment dated 08/23/04	2
Amendment dated 01/19/05	3
Amendment dated 02/02/05	20
Amendment dated 02/02/05	12
Amendment dated 04/27/06	293

Amendment dated 10/16/06	4
Amendment dated 10/30/07	3
Amendment dated 12/04/07	3
TOTAL	1181

2. The term of the adopted Agreement by and between Cricket and AT&T Kentucky ("the Cricket Agreement") shall be from the Effective Date, as set forth above, and shall expire on December 28, 2009, consistent with the amendment to the Kentucky Agreement that was effective as of October 30, 2007.

4. Cricket and AT&T Kentucky shall accept and incorporate into the Cricket Agreement any amendments to the Kentucky Agreement that are executed by AT&T Kentucky and Sprint CLEC and Sprint PCS prior to the Effective Date of this Agreement as a result of any final judicial, regulatory, or legislative action.

5. AT&T Kentucky is executing this Adoption Agreement pursuant to the Kentucky Public Service Commission Order in Case No. 2008-00331 (the "KPSC Order"). In entering into this Adoption Agreement, the Parties acknowledge and agree that neither Party waives, and each Party expressly reserves, any of its rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in this Adoption Agreement (including intervening law rights asserted by either Party via written notice as to the Separate Agreement), with respect to the KPSC Order and any other orders, decisions, legislation or proceedings and any remands by the FCC, state utility commission, court, legislature or other governmental body including, without limitation, any such orders, decisions, legislation, proceedings, and remands which were issued, released or became effective prior to the Effective Date of this Adoption Agreement, or which the Parties have not yet fully incorporated into this Agreement or which may be the subject of future government regulation or other action.

6. For purposes of this Adoption Agreement, every notice, consent or approval of a legal nature, required or permitted by this Adoption Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid, or e-mail if an e-mail address is listed below, addressed to:

AT&T
Contract Management
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four AT&T Plaza
Dallas, TX 75202-5398
Fax Number: 214-464-2006

and

Cricket Communications, Inc.

Mr. Dan Graf
Director of Interconnection
10307 Pacific Center Court
San Diego, CA 92121
Phone: 858-882-9193
Email: dgraf@cricketcommunications.com

Second Notice Contact:
General Counsel
10307 Pacific Center Court
San Diego, CA 92121
Phone: 858-882-6000

Notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails. Notice by e-mail shall be effective on the date sent.

For purposes of the Cricket Agreement, every notice, consent or approval of a legal nature, required or permitted by that agreement shall be consistent with the Notice provision of that agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky	Cricket Communications, Inc.
By: Kathy Wilson-Chu	By:
Name: Kathy Wilson-Chu	Name: Colin Holland
Title: Director	Title: SVP Corp. Trans Ops
Date: 7/11/08	Date: 7/08/08

Version: 04/26/07

CCCS 6 of 6

at&t

AT&T Kentucky
601 W. Chestnut Street
Room 407
Louisville, KY 40203

T: 502.582.8219
F: 502.582.1573
mary.keyer@att.com

October 30, 2007

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast
PSC 2007-00180

Dear Ms. O'Donnell:

Enclosed for filing in this case is the Amendment to the Interconnection Agreement between Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum, L.P., ("Sprint") and BellSouth Telecommunications, Inc., d/b/a/ AT&T Kentucky, ("AT&T Kentucky") dated January 1, 2001. In accordance with the Commission's September 18, 2007, Order in this case, the commencement date for the new Sprint-AT&T interconnection agreement is December 29, 2006, for a fixed 3-year term.

Five (5) copies of this filing are enclosed for filing in this case. Thank you for your assistance. If you have any questions, please let me know.

Sincerely,

Mary K. Keyer

Enclosures

cc: Party of record

694853

Amendment to

Interconnection Agreement

between

Sprint Communications Company Limited Partnership

Sprint Communications Company L.P.

Sprint Spectrum, L.P.

and

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky

Dated January 1, 2001

Pursuant to this Amendment (the "Amendment") Sprint Communications Company Limited Partnership and Sprint Communications Company L.P., (collectively referred to as "Sprint CLEC"), a Delaware Limited Partnership, and Sprint Spectrum L.P., a Delaware limited partnership, as agent and General Partner for WirelessCo. L.P., a Delaware limited partnership, and SprintCom, Inc., a Kansas corporation, all foregoing entities jointly d/b/a Sprint PCS ("Sprint PCS") (Sprint CLEC and Sprint PCS collectively referred to as "Sprint"), and BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T"), a Georgia corporation, hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Interconnection Agreement between the Parties dated January 1, 2001 ("the Agreement").

WHEREAS, Sprint and AT&T are amending the Agreement to modify provisions pursuant to the Kentucky Public Service Commission's Order dated September 18, 2007, Case No. 2007-00180;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sprint and AT&T hereby covenant and agree as follows:

1. The Parties agree to delete Section 2, General Terms and Conditions – Part A in its entirety and replace it with the following:

2. Term of the Agreement

2.1 This Agreement is extended three years from December 29, 2006 and shall expire as of December 28, 2009. Upon mutual agreement of the Parties, the term of this Agreement may be extended. If, as of the expiration of this Agreement, a Subsequent Agreement (as defined in Section 3.1 below) has not been executed by the Parties, this Agreement shall continue on a month-to-month basis.

2.2 During the term of December 29, 2006 to December 28, 2009, this Agreement may be terminated only via Sprint's request unless terminated pursuant to a default provision within this Agreement.

2. All other provisions of this Agreement, as amended, shall remain in full force and effect including, without limitation, the provisions set forth in Section 18.3 and 18.4 of the General Terms and Conditions – Part A.

3. Either or both of the Parties are authorized to submit this Amendment to the Kentucky Public Service Commission ("Commission") for approval subject to section 252(e) of the Federal Telecommunications Act of 1996.

4. This Amendment shall be filed with and is subject to approval by the Commission and shall be effective upon the date of the last signature of both Parties.

[Signatures continued on next page]

Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.
d/b/a AT&T Kentucky

By: _____

Name: Kristen E. Shore

Title: Director

Date: _____

Sprint Communications Company Limited Partnership

By: _____

Name: Craig T. Cowden

Title: Vice President

Date: 10.26.2007

Sprint Communications Company L.P.

By: _____

Name: Craig T. Cowden

Title: Vice President

Date: 10.26.2007

Sprint Spectrum L.P.

By: _____

Name: Craig T. Cowden

Title: Vice President

Date: 10.26.2007

[CCCS Amendment 3 of 3]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - - x

SOUTHERN NEW ENGLAND TELEPHONE : No. 3:09CV-1672 (SRU)
: 915 Lafayette Boulevard
vs. : Bridgeport, Connecticut
:
: February 18, 2010
ANTHONY J. PALERMINO, ET AL :

- - - - - - - - - - - - - - - - - - x

MOTION HEARING

B E F O R E:

THE HONORABLE STEFAN R. UNDERHILL, U. S. D. J.

A P P E A R A N C E S:

FOR THE PLAINTIFF:

HINCKLEY ALLEN SNYDER LLP
20 Church Street
Hartford, Connecticut 06103
BY: AMY E. DREGA, ESQ.

MAYER BROWN, LLP - IL
71 South Wacker Drive
Chicago, Illinois 60606
BY: DENNIS G. FRIEDMAN, ESQ.

FOR THE DEFENDANTS:

OFFICE OF THE ATTORNEY GENERAL - NB
10 Franklin Square
New Britain, Connecticut 06051
BY: MARK F. KOHLER, AAG

ROBINSON & COLE
One Commercial Plaza
280 Trumbull Street
Hartford, Connecticut 06103-3597
BY: BRADFORD S. BABBITT, ESQ.

(Continued)

WILTSHIRE & GRANNIS LLP
1200 18th Street, NW
Washington DC 20036
BY: JOSEPH C. CAVENDER, ESQ.

Susan E. Catucci, RMR
Official Court Reporter
915 Lafayette Boulevard
Bridgeport, Connecticut 06604
Tel: (917)703-0761

(2:20 O'CLOCK, P. M.)

THE COURT: Good afternoon. I apologize for the delay. We're here in the matter of the Southern New England Telephone Company v. Anthony J. Palermino and others. Could I have appearances, please?

MS. DREGA: Good afternoon, Your Honor. Amy Drega from Hinckley Allen & Snyder here for the plaintiff, Southern New England Telephone Company. With me is Dennis Friedman from Mayer Brown, who has been admitted before this court pro hac vice.

THE COURT: Very good.

MR. FRIEDMAN: Good afternoon.

MR. KOHLER: Mark Kohler, appearing on behalf of the state defendants.

THE COURT: Thank you.

MR. BABBITT: Good afternoon, Your Honor. Bradford Babbitt on behalf of the Sprint defendants. And with me is Joseph Cavender of Wiltshire & Grannis, who will be making the argument this afternoon.

THE COURT: Very good, thank you.

Let me start by telling you that I've read through the papers and have a pretty good sense of the issues. And I think maybe it might be helpful to begin with my plain reading of the merger commitment 7.4 which seems to be different from anybody else's reading,

notwithstanding I think it's a plain reading, and let me tell you what I think it says.

The merger commitments as set forth at the beginning of the Appendix F shall become effect on the merger closing date, and those merger commitments, unless otherwise expressly stated to the contrary, apply for a period of 42 months from the merger closing date and automatically are set thereafter.

Merger commitment 7.4 says, in effect, as I read it, that AT&T Bell South shall permit a requesting telecommunications carrier to extend its current interconnection agreement, "current" meaning as of the date of the merger closing, then current interconnection agreement for a period of up to three years from the merger closing date subject to amendment, et cetera.

The language, which expressly provides for a period of up to three years, seems to expressly state a contrary period to the 42 month period otherwise applicable and, therefore, seems to override the 42 months, but I don't understand how the current interconnection agreement can depend upon what the parties do after the merger closing date. I can't imagine that anybody expected either that AT&T could, after the merger closing date, terminate an agreement and then argue, well, you didn't request that it would be extended for three

years soon enough so that provision doesn't apply. Nor can I imagine that an ILEC could wait around 41 and-a-half months and then demand a three year extension. It seems to me we have here a national policy that everywhere ILECs are going to get three years from the merger close date. That's how I read it.

But, and significantly, I'm not sure we've reached that issue in this case for the following reason. It's not apparent to me that I have federal jurisdiction to hear this case because it's not apparent to me that the DPUC had jurisdiction to do what it did and, therefore, I want to focus on the jurisdictional issue first.

The merger commitments are to be enforced by the FCC, not by the DPUC, and the proceeding below appears to be an effort by Sprint to enforce the merger commitment. The DPUC, as I understand it, is entitled and authorized, delegated, if you will, the responsibility to arbitrate disputes among carriers relating to interconnection agreements. But it's not at all apparent to me that's what has happened below. The proceeding in this court does not appear to be an appeal of an arbitration ruling but, rather, appears to be an effort to seek an, in effect, a different enforcement of the merger commitment than the DPUC ordered.

So, before we proceed to the merits, it seems to

C E R T I F I C A T E

I, Susan E. Catucci, RMR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/S/ Susan E. Catucci

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