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March 29, 2010

VIA OVERNIGHT MAIL

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

Re: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Communications Company, L.P.
KPSC 2010-00062

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are the original and five (5) copies of AT&T Kentucky's Response to Motion to Consolidate and to Procedural Proposals in Sprint CLEC's Response to Petition for Arbitration.

Should you have any questions, please let me know.

Sincerely,

Mary K. Keyer

Mary K. Keyer

Enclosures

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

PETITION FOR ARBITRATION OF INTERCONNECTION AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T KENTUCKY AND SPRINT COMMUNICATIONS COMPANY L.P.	)))))	Case No. 2010-00062

AT&T KENTUCKY' S RESPONSE TO MOTION TO CONSOLIDATE AND TO PROCEDURAL PROPOSALS IN SPRINT CLEC'S RESPONSE TO PETITION FOR ARBITRATION

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") filed its Petition for Arbitration in this matter on February 12, 2010. On March 9, 2010, Respondent Sprint Communications Company L.P. ("Sprint CLEC") filed its Response to that Petition ("Response"), and also filed a Motion to Consolidate this case with Case No. 2010-00061, an arbitration between AT&T Kentucky and Sprint CLEC's wireless affiliates ("Motion").[1] In its Response and Motion, Sprint CLEC raised an array of matters concerning, among other things, the manner in which the parties' disagreements are displayed on the Decision Point Lists ("DPLs") that AT&T Kentucky filed with its Petitions for Arbitration; whether there should be one interconnection agreement ("ICA") for Sprint CLEC and a separate ICA for its wireless affiliates (hereinafter "Sprint CMRS") or whether there should be a single consolidated ICA for Sprint CLEC's wireline operations together with Sprint CMRS's wireless operations; and whether the Commission should require the parties to prepare a consolidated DPL, in a

[1] Sprint CLEC filed the Response and the Motion jointly with its wireless affiliates.

form proposed by Sprint CLEC. In addition, Sprint CLEC identified three "preliminary issues" and set forth a "proposed path forward."[2]

AT&T Kentucky addresses below each of the matters that Sprint CLEC has raised, and then proposes an alternative path forward. AT&T Kentucky agrees with Sprint CLEC that the parties need to resume negotiations with a view toward reducing the number of issues to be arbitrated – and the parties have already done so, with initial negotiation sessions on March 24 and March 26 during which the parties made meaningful progress toward narrowing their differences.[3] If the negotiations continue to be productive, at least some of the matters that Sprint CLEC has raised – including, for example, whether to prepare a consolidated wireline/wireless DPL and whether to consolidate the two arbitration dockets – may become non-issues. Accordingly, AT&T Kentucky suggests that the Commission defer decision on those matters while the parties negotiate.

Section I below addresses the concerns and proposals set forth in the Response and Motion, and Section II proposes an alternative path forward.

I. RESPONSES TO MATTERS RAISED BY SPRINT CLEC

The following discussion addresses each of the concerns and issues Sprint CLEC raised in the Response and Motion.

A. Sprint CLEC contention: The Commission should address as an arbitration issue the question, "Have the parties had adequate time to engage in good faith negotiation?" (Response at 12,14,15)

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[2] Response at 14-16.

[3] The parties agreed on revised negotiation procedures that were designed to promote the resolution of disagreements -- including long conference calls with active participation of authorized decision-makers, rather than by exchange of redlines.

AT&T Kentucky response: There is no need for the Commission to answer this question, because regardless of the answer, AT&T Kentucky agrees that the number of issues to be arbitrated can be reduced, and that the parties should engage in additional negotiation to that end.[4]

B. Sprint CLEC contention: There should be no unexplained differences between the contract language that governs Sprint CLEC and the contract language that governs Sprint CMRS; the only permissible differences are those that that are justified by real-world differences between the two. (Response at 6-8, 10-12)

AT&T Kentucky response: AT&T Kentucky agrees that the contract language governing Sprint CLEC should differ from the contract language governing Sprint CMRS only when there is a cogent reason for the difference. But there are important differences between the laws and regulatory requirements that pertain to CLECs and those that pertain to CMRS providers (for example, CMRS providers are not eligible to obtain UNEs); between CLEC and CMRS networks; and between AT&T Kentucky's billing systems for CLECs and CMRS carriers based on the differing products and/or services they purchase, and those differences will drive differences in ICA language. For reasons that are primarily historical, however, there are differences – most of them non-substantive – between AT&T Kentucky's proposed CLEC language and CMRS language that AT&T Kentucky would not seek to justify, but is instead working with Sprint CLEC to eliminate. When the parties' renewed negotiations are complete, there will probably remain instances in which AT&T Kentucky maintains there is a sound

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[4] As framed, the question is meaningless in any event. The parties have had the amount of time Congress provided for arbitration in the Telecommunications Act of 1996 following a request for negotiation. *See* 47 U.S.C. § 251(b)(1). Sprint CLEC takes AT&T Kentucky to task for not including this and its other "preliminary issues" in the DPLs it filed, but that criticism is unfounded. The question Sprint poses is not a disagreement about the content of an ICA, is not an appropriate issue for arbitration, and thus is not appropriately included in a DPL.

substantive reason for a difference between CLEC language and CMRS language and Sprint disagrees, but the parties agree in principle that there should be no differences that cannot be justified.

C. Sprint CLEC contention: There should be a single consolidated ICA that governs AT&T Kentucky's relationship with both Sprint CLEC and Sprint CMRS, rather than separate ICAs for Sprint CLEC and Sprint CMRS. (Response at 4, 6)

AT&T Kentucky response: It is important not to confuse this item with the one just discussed. While the parties may wind up disagreeing about whether a given contract provision should be the same for Sprint CLEC as for Sprint CMRS, that has nothing to do with whether there should be one ICA or two. Once it is determined which provisions will be identical for Sprint CLEC and Sprint CMRS and where there will be differences, the resulting content can readily be incorporated into two contracts, even if those two contracts are more similar than different, or they could be incorporated into one contract – but there is no sound reason for the Commission to impose a requirement that there be a single ICA.[5]

Sprint CLEC is a separate company from its wireless affiliates, and there is nothing in the 1996 Act, or in the FCC's implementing regulations, or in any principle of law that entitles Sprint CLEC to enter into an ICA jointly with Sprint CMRS merely because they are affiliates. Sprint CLEC is mistaken – in two ways – when it asserts, "Sprint is entitled to one ICA with AT&T that supports unified interconnection

[5] Sprint CLEC effectively acknowledges that there is no substantive ground for its expressed preference for a single ICA when it states, "whether one or two contracts are used, the vast majority of the language should be exactly the same in each contract . . ." (Response at 4) and "even if two ICAs were determined by the Commission to be required, Sprint is entitled to identical language in each ICA with any technology-related differences specified within the applicable provisions of each ICA" (*id.* at 7).

arrangements . . . ."[6] In the first place, *Sprint* is not entitled to an ICA at all: Sprint CLEC is and each of its CMRS affiliates is, but there is no "Sprint" that is entitled to an ICA under the 1996 Act. Furthermore, Sprint CLEC is unable to cite to any authority for the proposition that it is entitled to enter into an ICA jointly with its affiliates, because there is no such authority.

If the parties are able to reduce to a minimum the number of disagreements about whether CLEC language and CMRS language should be identical or different (the subject of item B above), they may be able to resolve the disagreement about whether there should be one ICA or two. If the Commission does have to decide the matter, though, it should resolve it in favor of AT&T Kentucky, because of AT&T Kentucky's legitimate administrative concerns that should be accorded substantial weight. AT&T Kentucky will elaborate on those concerns if it appears the Commission must resolve this question. In short, though, AT&T ILECs are parties to more than 3,000 ICAs, and the administration of those ICAs is a daunting task. Consolidated wireline/wireless ICAs are anomalies,[7] and they impose administrative challenges, and costs, on AT&T. For example, AT&T's internal contract management system is set up to house contracts under a specific carrier type (e.g., CLEC, wireless, paging), and Sprint's consolidated ICA requires special handling. Also, AT&T's contract management group is often called upon to search contracts to identify particular language and/or contract terms for a given class of carrier, and Sprint's consolidated ICA complicates that task.

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[6] Response at 4.

[7] The only carriers in Kentucky (or anywhere else in the former BellSouth region) with which AT&T has a consolidated wireline/wireless ICA are Sprint and carriers that have adopted the Sprint ICA.

If Sprint had a persuasive reason for needing a consolidated ICA, these and similar administrative concerns might or might not be weighty enough to overcome that reason. However, Sprint has identified no cogent reason for imposing a single contract.

D. Sprint CLEC contention: The Commission should order the parties to prepare a consolidated wireless/wireline issues matrix (DPL) that includes a side-by-side presentation of proposed contract language and positions, and other specified information. (Response at 8-9)

AT&T Kentucky Response: A DPL in the form Sprint CLEC proposes might or might not add clarity to the identification of the issues to be arbitrated, and the relationship between wireline and wireless issues. One thing is certain, however: The preparation of such a DPL would be an enormous undertaking that would take weeks to accomplish. Furthermore, the parties are making meaningful progress in their renewed negotiations working from the DPLs they already have in hand. To suspend the ongoing negotiations to spend substantial time and energy creating a new DPL meeting Sprint's specifications would be counter-productive – especially because the effort would be a complete waste of time with respect to issues that the parties are capable of disposing of by working with the existing DPLs.[8]

E. Sprint CLEC contention: This case should be consolidated with Case No. 2010-00062. (Response at 12; Motion to Consolidate)

AT&T Kentucky response: For reasons elaborated below, the Commission should not address Sprint's Motion to Consolidate at this time. AT&T Kentucky hopes to be able to agree to consolidation after the parties' renewed negotiations have run their course.

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[8] In fairness, Sprint might well agree at this point that it makes more sense for the parties to push ahead with their negotiations rather than to detour into the preparation of new DPLs.

F. Sprint CLEC contention: The Commission should address as an arbitration issue the question, "Should defined terms not only be consistent with the law, but also consistently used throughout the entire Agreement?" (Response at 13, 14, 15)

AT&T Kentucky response: The Commission will not need to address this question. AT&T Kentucky agrees that when a term is defined in an ICA, the definition should be consistent with law and the term should be used consistently throughout the ICA. As the negotiations continue, AT&T Kentucky will work with Sprint to eliminate any instances in which a defined term is being used inconsistently – and to ensure that all definitions are consistent with law.

II. THE PATH FORWARD

Sprint CLEC asks the Commission to issue an Order that

- Consolidates Case Nos. 2010-00061 and 2010-00062 for all purposes;
- Directs the parties to further confer, create and file a consolidated wireless/wireline issues matrix/decision point list by a specified date that includes a side-by-side presentation of respectively proposed contract language and positions, and affirmatively identifies all contract language that (a) is not in dispute, (b) was in dispute but has been resolved, and (c) either party contends should be different as between the Sprint entities based upon the technology used by Sprint in providing its services ("Consolidated Joint DPL");
- Directs the parties to negotiate for forty-five (45) days following the filing of a Consolidated Joint DPL; and,
- Schedules a subsequent Informal Conference sixty (60) days after the filing of a Consolidated Joint DPL to address further processing of these proceedings with respect to those Consolidated Joint DPL issues that remain unresolved as of that date.[9]

[9] Response at 2.

AT&T Kentucky concurs with some aspects of that proposal, and suggests that the Commission defer consideration of the others. At this point – and again, circumstances have changed in this regard since Sprint CLEC filed its Response and Motion – the Commission's focus should be on ensuring that the parties continue working productively on narrowing their disputes. To that end, AT&T Kentucky has no objection to a Commission Order requiring the parties to continue their negotiations – though AT&T Kentucky also does not believe such a directive is necessary. AT&T Kentucky believes it may be useful for the Commission to require the parties to keep the Commission informed on the progress of their negotiations, and to establish, ideally with the parties' concurrence, a date by which it would expect the negotiations to be completed (unless otherwise agreed by the parties), so that the arbitration can proceed.

Certainly, the parties will need to prepare revised DPLs to reflect the issues that remain to be arbitrated after their negotiations conclude. AT&T Kentucky does not exclude the possibility that a DPL in a form at least partly like that proposed by Sprint CLEC may be appropriate – but any decision about that should not be made at this time. For example, Sprint CLEC proposes that the revised DPL display all language that is not in dispute and all language that was in dispute but has been resolved. If the parties resolve many of the disagreements they had as of the filing of Sprint CLEC's Response, it will of course be important for the parties to have an agreed record of what they have agreed to, but the Commission might find cumbersome a DPL that shows both the remaining disputed issues and all the agreed language. The parties should be able to agree on what revised DPLs should look like as they approach the end of their

negotiations; if they cannot, the Commission can resolve then such disagreements as the parties may have about the format of final DPLs.

Similarly, the Commission should not decide now whether there should be one contract or two, or whether the Sprint CLEC and Sprint CMRS proceedings should be consolidated. As AT&T Kentucky indicated above, the parties may be able to agree on those two matters, particularly if they are able to reduce to a minimum the number of instances in which they disagree about whether Sprint CLEC language and Sprint CMRS language should be identical.[10]

In order to work out the details of how the parties will keep the Commission informed of their progress, when it will be appropriate for the parties to inform the Commission whether there remains a dispute about one ICA or two, consolidation, or the form of a final DPL,[11] AT&T Kentucky suggests that the Commission schedule an informal conference as soon as practicable.

In short, AT&T Kentucky urges the Commission to issue no Order at this time on Sprint CLEC's Motion to Consolidate or on the procedural proposals in Sprint CLEC's Response. Instead, the Commission should schedule an informal conference to address procedures going forward, and should issue an appropriate procedural order reflecting the results of that conference.

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[10] Specifically, it is AT&T Kentucky's hope and expectation that if the parties are able to achieve that, Sprint CLEC and Sprint CMRS will agree to have separate ICAs, and AT&T Kentucky will agree to consolidate the two arbitrations.

[11] If the parties are unable to agree on these matters, AT&T Kentucky does not wish to prolong the Commission's resolution of them unnecessarily. The parties should inform the Commission at some specified point before their negotiations are concluded which of these matters remain in dispute, and to establish a procedure for resolving those matters efficiently.

Respectfully submitted this 29th day of March, 2010.

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CERTIFICATE OF SERVICE

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 29th day of March 2010.

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