

MILLER & MARTIN RECEIVED
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ATTORNEYS AT LAW

1200 ONE NASHVILLE PLACE
150 FOURTH AVENUE, NORTH
NASHVILLE, TENNESSEE 37219-2433
(615) 244-9270
FAX (615) 256-8197 OR (615) 744-8466

T.R.A. DOCKET ROOM

Melvin J. Malone

Direct Dial (615) 744-8572
mmalone@millermartin.com

August 14, 2007

HAND DELIVERY

Honorable Eddie Roberson, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

**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 WITH
BELL SOUTH TELECOMMUNICATIONS, INC. D/B/A/ AT&T
TENNESSEE D/B/A AT&T SOUTHEAST, TRA Docket No. 07-00132**

Dear Chairman Roberson:

Enclosed for filing are the original and thirteen (13) copies of *Sprint's Response to AT&T Tennessee's August 2, 2007, Filing*. An additional copy of the foregoing is attached to be "file-stamped" for our records.

If you have any questions or require additional information, please let me know.

Respectfully submitted,

Melvin Malone

c: Parties of Record

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

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 BELL SOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T TENNESSEE D/B/A AT&T SOUTHEAST	
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Docket No. 07-00132

**SPRINT'S RESPONSE TO AT&T TENNESSEE'S
AUGUST 2, 2007, FILING**

Sprint Communications Company L.P. and Sprint Spectrum L.P. (collectively, "Sprint") hereby respectfully submits this Response to BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee's ("AT&T") August 2, 2007, Filing.

I. INTRODUCTION

On or about April 6, 2007, Sprint filed a Petition for Arbitration before the Florida Public Service Commission ("FPSC") substantially similar to the Petition for Arbitration pending in TRA Docket No. 07-00132. On August 2, 2007, AT&T submitted a letter to the TRA notifying the Authority that the FPSC "voted unanimously to approve its Staff's recommendation to grant AT&T's Motion to Dismiss" Sprint's (Florida) Petition for Arbitration. In its letter, AT&T commented that, in granting AT&T's Motion to Dismiss, "[t]he Florida PSC determined that Sprint's Petition seeks

enforcement of an alleged right under the AT&T/BellSouth merger commitments, as opposed to an open issue concerning Section 251.”¹ Attached to AT&T’s letter is a copy of the FPSC’s Vote Sheet regarding its decision to grant AT&T’s Motion to Dismiss. With an aim towards ensuring the completeness of the official record in TRA Docket No. 07-00132, Sprint submits this response to *AT&T’s August 2, 2007, Filing*.²

II. BACKGROUND

On May 18, 2007, Sprint filed a Petition for Arbitration (“*Petition*”) with the Authority pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the “Act”). Sprint’s *Petition* seeks to implement an amendment to convert and extend its current month-to-month Interconnection Agreement (“ICA”) with AT&T to a fixed 3-year term. The amendment at issue arises from an AT&T, Inc. and BellSouth Corporation proposed “Merger Commitment” that became a “Condition” of approval by the Federal Communications Commission (“FCC”) of the AT&T/BellSouth merger and subsequent negotiations regarding the same.

As a Condition of its grant of authority to complete the merger between BellSouth Corporation and AT&T, Inc., the FCC ordered that the merged entity and its ILEC affiliates are required to comply with their Merger Commitments.³ Hence, the

¹ *AT&T’s August 2, 2007, Filing*, TRA Docket No. 07-00132, p. 1.

² For ease of administrative burden, Sprint will attempt not to repeat in full the facts submitted and arguments made in both its Petition for Arbitration and its Response to AT&T Tennessee’s Motion to Dismiss and Answer in TRA Docket No. 07-00132. With the foregoing in mind, Sprint’s Petition for Arbitration and its Response to AT&T Tennessee’s Motion to Dismiss and Answer are incorporated herein by reference.

³ *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, Ordering Clause ¶ 227 at page 112, WC Docket No. 06-74 (Adopted:

interconnection-related Merger Commitments constitute a standing offer by AT&T which, as of December 29, 2006, became part of any new or ongoing AT&T negotiations with any carrier regarding interconnection under the Act.

The specific Condition at issue here is that AT&T “shall permit a requesting telecommunications carrier to extend its current interconnection agreement ... for a period of up to three years”⁴ This is the offer that AT&T was required to make as a matter of law, and this is the offer that was accepted by Sprint during the Parties’ statutory Section 251-252 negotiations for a new agreement. The *Petition* makes it clear that the single issue pertaining to the amendment is the establishment of essential ICA terms related to the 3-year extension, with the specific disputed term being when the 3-year extension commences.

On June 12, 2007, AT&T filed a Motion to Dismiss (“*Motion*”) and its interrelated Answer (“*Answer*”) to the *Petition*. Because the source of the 3-year extension offer is a voluntary Merger Commitment upon which the FCC conditioned its merger approval, AT&T contends, among other things, that the *Petition* seeks an

December 29, 2006, Released: March 26, 2007) (“*AT&T/BellSouth*” or “*FCC Order*”).

⁴ The Merger Commitment representing AT&T’s voluntarily offered 3-year ICA extension is identified in the *FCC Order* as “Reducing Transaction Costs Associated with Interconnection Agreements” paragraph No. 4, which expressly 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 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.”

FCC Order at 150, APPENDIX F (emphasis added).

“interpretation of a merger commitment” that is a non-arbitrable issue unrelated to Section 251 of the Act.⁵ According to AT&T, the FCC has “the sole authority to interpret, clarify, or enforce any issue involving merger conditions”⁶

III. THE DECISION OF THE FPSC MUST BE CONSIDERED IN THE ENTIRETY

In order to protect the public interests of Tennessee consumers, the FPSC decision relied upon herein by AT&T must be considered, if at all, in the entirety. Although AT&T submitted the Vote Sheet with respect to the action taken by the FPSC, its August 2, 2007, filing failed to provide the Authority with the underlying rationale of said decision – the Florida Staff’s Public Recommendation.⁷

The Florida Staff articulated the issue as follows:

The dispositive question placed before the Commission . . . is whether the issue Sprint seeks to arbitrate is an ‘open issue’ arising out of the negotiations within the framework of Section 251 and 252. If so, the Commission’s jurisdiction under Section 252 is properly invoked; if not, the Commission’s jurisdiction is not properly invoked[.]⁸

In recommending that Sprint was not seeking arbitration of an open Section 251 issue, the Florida Staff summarily concluded that “Sprint . . . offers no legal support for why the Merger Commitments ‘must’ be viewed as a ‘standing offer’ that automatically

⁵ See *Motion* at 1-2.

⁶ *Id.* at 3.

⁷ A copy of the Memorandum of Florida Staff, in FPSC Docket No. 070249-TP (July 19, 2007), is attached hereto as **Exhibit A** (“*Florida Staff Memorandum*”). See also *AT&T’s August 2, 2007, Filing*, p. 1 (“[T]he Florida Public Service Commission . . . voted unanimously to **approve its Staff’s recommendation** to grant AT&T’s Motion to Dismiss.”) (emphasis added).

⁸ See *Florida Staff Memorandum*, p. 5.

became inserted into Sprint's negotiations with AT&T.”⁹ It appears that neither the Florida Staff nor the Florida Commission considered in their analysis the fact that Sprint alleged, and AT&T admitted, that the Merger Commitment at issue actually became a part of the Parties' interconnection discussions and negotiations. Rather, notwithstanding the record, the Merger Commitment was viewed by the Florida Commission as standing alone and not as a part of any Section 251-252 discussions.

IV. THE FPSC FAILED TO CONSTRUE THE PETITION IN FAVOR OF THE PETITIONER

As noted by the Florida Staff, a motion to dismiss admits the truth of all relevant and material averments contained in the petition.¹⁰ Further, in considering a motion to dismiss “courts should construe the complaint liberally in favor of the plaintiff, taking all allegations of fact as true.”¹¹

Like the Petition for Arbitration that was pending before the Florida Commission, the *Petition* before the Authority alleges, among other things, the essential operative facts that establish the existence of a single arbitrable issue within the Authority's jurisdiction under Section 252(b)(1) of the Act.¹² As they both did in Florida, Sprint has alleged and AT&T has affirmatively admitted in Tennessee as follows:

⁹ *Id.* at 6.

¹⁰ *Id.* at 3 (“In order to sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted.”). *See also, Bell v. Icard*, 986 S.W.2d 550, 554 (Tenn. 1999).

¹¹ *Bell*, 986 S.W.2d at 554.

¹² *See Petition*.

1. On July 1, 2004, Sprint sent AT&T a request for negotiation of a subsequent interconnection agreement (“RFN”) pursuant to Sections 251, 252 and 332 of the Act. Following the RFN, Sprint and AT&T conducted negotiations toward a comprehensive subsequent interconnection agreement. Accordingly, the Parties agreed to several extensions of the arbitration window in order to continue negotiations. AT&T and Sprint have met on many occasions during the negotiation period both telephonically and in person to discuss issues in dispute between the Parties. (*Petition* ¶ 8; *Answer* ¶ 12).

2. Soon *after* the FCC approved Merger Commitments were publicly announced on December 29, 2006, the Parties considered the impact of the Merger Commitments upon their pending Interconnection Agreement negotiations. AT&T acknowledged that, pursuant to Interconnection Merger Commitment No. 4, Sprint can extend its current Interconnection Agreement for three years. (*Petition* ¶ 13; *Answer* ¶ 17) (emphasis added).

Hence, notwithstanding the action of the Florida Commission and AT&T’s submission of the afore-referenced Vote Sheet in Tennessee, AT&T cannot credibly contend, particularly in support of its motion to dismiss, that the Parties were not involved in Section 251-252 negotiations or that the Merger Commitments were not a part of such negotiations.

In its Florida petition, which fairly mirrors the *Petition* before the Authority, Sprint clearly set forth sufficient facts to demonstrate, at a minimum, that the Merger Commitments were a part of the ongoing negotiations between Sprint and AT&T. With respect to the motion to dismiss, such facts, as pled before the Florida Commission, should have been taken as true in Florida and must be taken as true in Tennessee. Therefore, for the purposes of the motion to dismiss, it cannot be reasonably said that Issue 1, as pled in Florida and as set forth in the *Petition*, does not constitute an open, arbitrable issue under Section 252.

Having admitted that Sprint is entitled to a 3-year extension of the Parties' current ICA and that Sprint took the requisite action within its power to request such an extension, there is no cognizable legal basis upon which AT&T can legitimately maintain, as it does by its *August 2, 2007, Filing*, that Issue 1, as articulated by Sprint, is not an arbitrable issue. Though it failed to construe the petition in the light most favorable to the petitioner, the Florida Staff expressly acknowledged that certain circumstances, like those present in Tennessee, would warrant finding that the Merger Commitments were inextricably intertwined with open, arbitrable issues.¹³

V. THE NORTH CAROLINA COMMISSION'S APPROACH

A Petition for Arbitration similar to the petitions submitted in Florida and Tennessee was submitted by Sprint in North Carolina as well. Mindful of the legal standard applicable to motions to dismiss, and recognizing Sprint's observation that Merger Commitment No. 4 was a part of the parties' negotiations, the North Carolina Commission determined that "[a]fter careful study of the pleadings . . . good cause exists to schedule an evidentiary hearing, to be immediately followed by an oral argument" on, among other issues, "whether, provided the Commission has . . . jurisdiction, Interconnection Merger Commitment No. 4 should be construed in Sprint's favor[.]"¹⁴

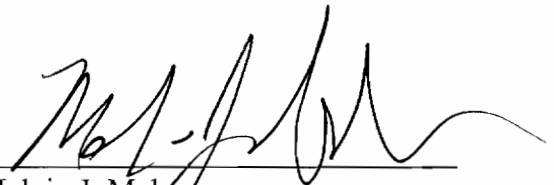
¹³ See *Florida Staff Memorandum*, p. 6 ("There may be situations in which such interpretation and enforcement are inextricably intertwined with open issues being arbitrated under either Section 252 or [state law], or both. In those situations it would be within the Commission's subject matter jurisdiction to arbitrate the conflicting views.").

¹⁴ *Order Scheduling Hearing and Oral Argument*, NCUC Docket No. P-294, SUB 31 (June 20, 2007). A copy of this order is attached hereto as **Exhibit B**.

VI. CONCLUSION

In order to ensure that the Authority has a complete record before it in TRA Docket No. 07-00132, Sprint respectfully submits this *Response to AT&T Tennessee's August 2, 2007, Filing*.

Respectfully submitted this 14th day of August, 2007.

A handwritten signature in black ink, appearing to read 'Melvin J. Malone', written over a horizontal line.

Melvin J. Malone
Miller & Martin PLLC
1200 One Nashville Place
150 Fourth Avenue, North
Nashville, TN 37219
Phone (615) 744-8572
Fax (615) 256-8197
mmalone@millermartin.com

Attorneys for Sprint

EXHIBIT A

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 19, 2007

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Wiggins, Mann)
Division of Competitive Markets & Enforcement (Pruitt, King)

RE: Docket No. 070249-TP - 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 Florida, d/b/a AT&T Southeast

AGENDA: 07/31/07 – Regular Agenda – Motion to Dismiss – Oral Argument Not Requested

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\070249.RCM.DOC

Case Background

On April 6, 2007, Sprint Communications Company L.P. and Sprint Spectrum L.P., d/b/a Sprint PCS (Sprint) filed a Petition for Arbitration (Petition) of a single issue in its Interconnection Agreement (ICA) with BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) under Section 252(b) of the Telecommunications Act of 1996 (Act). Section 252 (b)(1) of the Act sets forth the procedures for petitioning a state commission to arbitrate “any open issues.” Section 251 provides the framework for negotiation or arbitration of ICAs.

In its Petition Sprint stated that the single issue, a three-year extension of its ICA, involves the voluntary Merger Commitments filed with the Federal Communications Commission (FCC) that were incorporated into the FCC's approval of the AT&T Inc. and BellSouth Corporation Application for Transfer of Control. The merger closed on December 29, 2006, and on March 26, 2007, the FCC released its Order, FCC 06-189, authorizing the merger.

On May 1, 2007, AT&T filed a Motion To Dismiss and Answer (Motion to Dismiss). In its Motion to Dismiss, AT&T argued that the matter in dispute between it and Sprint was not one that arose as an issue subject to arbitration by this Commission under Section 252 and that the FCC has sole jurisdiction over the Merger Commitments.¹

On May 2, 2007, Sprint filed an unopposed request for an extension of time to file its response to the Motion to Dismiss. The request was granted. On May 15, 2007, Sprint timely filed its Response to AT&T's Motion to Dismiss (Response). Sprint opined that this Commission has concurrent jurisdiction under the Act and Section 364.162, Florida Statutes, to arbitrate the commencement date of the three-year extension.

This matter now is before the Commission solely for purpose of resolving AT&T's Motion to Dismiss.

¹ AT&T's Motion to Dismiss and Answer also pleads denials, an affirmative defense, and alternative issues to be determined by the Commission. These aspects of the pleading are not germane to the Motion to Dismiss and are not addressed in this recommendation.

Discussion of Issues

Issue 1: Should the Commission grant AT&T's Motion To Dismiss?

Recommendation: Yes. The Commission should grant AT&T's Motion to Dismiss because Sprint is requesting the Commission enforce an allegedly known right (the Merger Commitments as interpreted by Sprint) under an FCC order as opposed to arbitrating an "open" issue concerning Section 251 obligations. (WIGGINS)

Staff Analysis:

I. STANDARD OF REVIEW

Under Florida law the purpose of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). In order to sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted. In re Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc., 95 FPSC 5:339 (1995); Varnes, 624 So. 2d at 350. When "determining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side." Id.

In its motion AT&T alleges that the Commission lacks subject matter jurisdiction to arbitrate, because the Merger Commitment at issue is not a "Section 251 Arbitration Issue." Lack of subject matter jurisdiction may be properly asserted in a motion to dismiss. See Fla. R. Civ. P. 1.140(b). Florida courts regularly review arguments concerning subject matter jurisdiction on motions to dismiss. See, e.g., Bradshaw v. Ultra-Tech Enters., Inc., 747 So. 2d 1008, 1009 (Fla. 2d DCA 1999) (affirming dismissal of complaint based on ERISA preemption of state law); Doe v. Am. Online, Inc., 718 So. 2d 385, 388 (Fla. 4th DCA 1998) (rejecting the argument that a federal preemption defense constituted an affirmative defense that should have been raised in an answer, not on a motion to dismiss); Bankers, 697 So. 2d at 160 (addressing an issue raised in defendant's motion to dismiss regarding federal preemption of plaintiff's claims).

AT&T argues that interpretation and enforcement of the Merger Commitments is within the exclusive purview of the FCC. This is a preemption argument. Staff notes that Florida courts, including the Florida Supreme Court, have held that the issue of federal preemption is a question of subject matter jurisdiction. Boca Burger, Inc. v. Richard Forum, 2005 Fla. LEXIS 1449; 30 Fla. Law Weekly S 539 (Fla. July 7, 2005); citing Jacobs Wind Elec. Co. v. Dep't of Transp., 626 So. 2d 1333, 1335 (Fla. 1993); Bankers Risk Mgmt. Servs., Inc. v. Av-Med Managed Care, Inc., 697 So. 2d 158, 160 (Fla. 2d DCA 1997); Fla. Auto. Dealers Indus. Benefit Trust v. Small, 592 So. 2d 1179, 1183 (Fla. 1st DCA 1992).

In sum, in ruling on the Motion to Dismiss this Commission does have jurisdiction to determine whether it has subject matter jurisdiction, and this may include a review of the Merger Commitments as established by the FCC Order.

II. ARGUMENTS

A. Sprint's Argument

Sprint's Petition identifies the issue to be arbitrated by the Commission as follows:

ISSUE 1: May AT&T Southeast effectively deny Sprint's request to extend its current Interconnection Agreement for three full years from March 20, 2007, pursuant to Interconnection Merger Commitment No. 4? [Petition, p. 8.]

Sprint's Response provides a useful summary of its Petition and the elements of the claim for relief.

Sprint's Petition seeks to implement an amendment to convert and extend its current month-to-month Interconnection Agreement ("ICA") with AT&T to a fixed 3-year term. The amendment arises from Sprint's acceptance of an AT&T, Inc. and BellSouth Corporation proposed "Merger Commitment" that became a "Condition" of approval by the Federal Communications Commission ("FCC") of the AT&T/BellSouth merger when the FCC authorized the merger. [Response, pp. 1, 2].

Sprint further argues that,

The interconnection-related Merger Commitments must be viewed as a standing offer by AT&T which, as of December 29, 2006, became part of any new or ongoing AT&T negotiations with any carrier regarding interconnection under the Act. The specific condition at issue here is that AT&T "shall permit a requesting telecommunications carrier to extend its current interconnection agreement . . . for a period of up to three years." . . . This is the offer that AT&T was required to make as a matter of law and this is the offer that was accepted by Sprint during the parties' statutory 251-252 negotiations for a new agreement. Sprint's Petition makes it clear that the single issue pertaining to the amendment is establishment of essential ICA terms related to the 3-year extension, with the specific disputed term being when the 3-year extension commences. [Response, pp. 2, 3]

B. AT&T's Argument

AT&T argues that "(t)he merger commitment is not a requirement of Section 251." [Motion to Dismiss, p. 2] Consequently, the issue raised by Sprint is "not a Section 251 Arbitration Issue." AT&T also argues that the "merger commitment" issue "was not discussed in the context of the parties' negotiations of a new interconnection agreement." AT&T states that "Sprint's attempt to frame the merger commitment as an arbitrable issue is an affront to the

plain, clear, and unambiguous language contained in the Act. Given that Sprint's Petition contains solely this one non-arbitrable issue, Sprint's issue should be dismissed."

AT&T also contends that the petition should be dismissed because the Commission allegedly has no jurisdiction to address the meaning of the Merger Commitment. According to AT&T, "(t)he FCC has the sole authority to interpret, clarify or enforce any issue involving Merger Commitments set forth in its Merger Order." [Motion to Dismiss, p. 2] AT&T adds that this approach ensures a "uniform regulatory framework" for handling post-merger issues.

III. ANALYSIS

Section 251 of the Telecommunications Act, *inter alia*, imposes upon ILECs certain duties of interconnection and resale. Section 252(a) provides for establishing interconnection agreements through negotiation. Section 252(b) provides the framework for establishing interconnection agreements through compulsory arbitration, as opposed to negotiation. Simplifying, under Section 252(b)(1) a carrier "may petition a State commission to arbitrate any *open issues*" (emphasis added) while under Section 252(c), the commission must, *inter alia*, ensure that its decisions "meet the requirements of Section 251" and regulations prescribed pursuant to that section. Thus, this Commission has jurisdiction to arbitrate any open issues properly brought before it relating to the interconnection agreements created under Section 252 to meet the duties of ILECs under Section 251.

The dispositive question placed before the Commission in the instant dispute is whether the issue Sprint seeks to arbitrate is an "open issue" arising out of the negotiations within the frameworks of Sections 251 and 252. If so, the Commission's jurisdiction under Section 252 is properly invoked; if not, the Commission's jurisdiction is not properly invoked and the petition must be dismissed.

The nature of the remedy sought in an action often reveals the nature of the issue presented and the jurisdiction invoked. In this case, the remedy sought by Sprint is the enforcement of an FCC order as Sprint interprets it. Specifically, Sprint seeks to enforce through arbitration one of the Merger Commitments. By analogy to civil suit, Sprint is like a third-party beneficiary seeking to enforce a contract between AT&T and the FCC as memorialized in the FCC's order. Thus, the nature of the remedy is an enforcement of an allegedly *known right*, not a determination of an *open issue* to comport with the requirements of Section 251. For this reason, Sprint is not seeking arbitration of an open Section 251 issue, and thus its petition should be dismissed.

Sprint's theory for treating the enforcement of the particular Merger Commitment as an arbitration of an open Section 251 issue is, at best, awkward. Sprint argues as follows:

The interconnection-related Merger Commitments must be viewed as a standing offer by AT&T which, as of December 29, 2006, became part of any new or ongoing AT&T negotiations with any carrier regarding interconnection under the Act. [Response, p. 2]

Sprint, however, offers no legal support for why the Merger Commitments “must” be viewed as a “standing offer” that automatically became inserted into Sprint’s negotiations with AT&T. As suggested above, one could see the Merger Commitments as establishing a third-party’s rights to an extension, which is different than establishing a negotiable offer under Section 251. Moreover, even if one treats the Merger Commitments as an offer, AT&T says it offered something different than Sprint accepted. This is a classic “meeting-of-the-minds” contract formation problem, which as presented is not a Section 251 issue either.

In rejecting Sprint’s attempt to arbitrate the Merger Commitments as pled, staff does not suggest that interpreting and enforcing the Merger Commitments are off limits to the Commission in all circumstances. There may be situations in which such interpretation and enforcement are inextricably intertwined with open issues being arbitrated under either Section 252 or Section 364.162, Florida Statutes, or both. In those situations it would be within the Commission’s subject matter jurisdiction to arbitrate the conflicting views. Moreover, staff also stresses that it takes no position on the merits of the competing interpretations of the particular Merger Commitment. Staff’s recommendation is simply that Sprint’s petition should be dismissed because it seeks to enforce the particular Merger Commitment as a known right, not arbitrate it as an open, Section 251 issue.

IV. CONCLUSION

For the reasons provided above, staff recommends that Sprint’s petition be dismissed for failure to state a claim for which relief may be granted by this Commission. More specifically, as pled by Sprint, the Commission does not have jurisdiction to enforce Sprint’s putative right to a certain extension under the Merger Commitments through arbitration as though it were an “open issue” within the meaning of Section 252(b) of the Telecommunications Act. Staff acknowledges that under some circumstances enforcement of an FCC order or regulations may be inextricably intertwined with determining matters normally subject to this Commission’s jurisdiction and thus permissible. Moreover staff stresses that it expresses no opinion on the merits of the competing interpretations of the particular Merger Commitment.

Docket No. 070249-TP

Date: July 19, 2007

Issue 2: Should this docket be closed?

Recommendation: Yes. Staff recommends that if the Commission approves staff's recommendation in Issue 1, this docket should be closed because the matter has been dismissed and no other issues need to be addressed by the Commission. (WIGGINS)

Staff Analysis: Staff recommends that if the Commission approves staff's recommendation in Issue 1, this docket should be closed because the matter has been dismissed and no other issues need to be addressed by the Commission.

EXHIBIT B

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-294, SUB 31

Petition of Sprint Communications Company)	
L.P. and Sprint Spectrum L.P. d/b/a Sprint)	ORDER SCHEDULING
PCS for Arbitration with BellSouth)	HEARING AND
Telecommunications, Inc. d/b/a AT&T North)	ORAL ARGUMENT
Carolina d/b/a AT&T Southeast)	

BY THE PRESIDING COMMISSIONER: On April 17, 2007, Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint) filed for arbitration of rates, terms, and conditions of interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina d/b/a AT&T Southeast (AT&T). Sprint characterized the sole issue before the Commission in arbitration as the following: *May AT&T deny Sprint's request to extend its current interconnection agreement for three full years from March 20, 2007, pursuant to Interconnection Commitment No. 4?*

The provision referenced by Sprint was among the voluntary merger commitments that AT&T and BellSouth Telecommunications agreed to which were approved by the Federal Communications Commission (FCC) on December 29, 2006. The Merger Commitment identified as "Reducing Transaction Costs Associated with Interconnection Agreements," Paragraph No. 4, provides as follows:

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.

AT&T Motion to Dismiss and Answer

On May 25, 2007, AT&T filed a Motion to Dismiss and Answer in response to Sprint's filing. In support of its Motion to Dismiss, AT&T argued that the issue that Sprint raised is not a Section 251 arbitration issue and the Commission can only arbitrate non-251 issues to the extent they are required for implementation of the interconnection agreement. Thus, Sprint's issue is not an arbitrable issue pursuant to the Act, nor was the issue that Sprint raises in the Petition discussed in the context of the parties' negotiations of a new interconnection agreement. Moreover, it is the FCC that has sole jurisdiction over AT&T's merger commitments. For example, in Appendix F, p. 147 of the Merger Order the FCC wrote provided that "[f]or the

avoidance of doubt, unless otherwise 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 for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter." Accordingly, the Commission lacks jurisdiction over the subject matter of the issue Sprint has raised.

However, AT&T noted that under Section 252 of the Act, the non-petitioning party to a negotiation may respond to the other party's petition and provide such additional information as it wishes. AT&T represented that in fact the parties had reached consensus on virtually every issue within the Agreement. Indeed, the Agreement was all but consummated when Sprint filed its Petition setting forth its single (non-arbitrable) issue. Therefore, AT&T characterized the appropriate additional issue as: *Should Attachments 3A and 3B [attached to AT&T's filings collectively as Exhibit C] be incorporated into the new interconnection agreement as "Attachment 3"?*

Thus, in its Answer, AT&T submitted what it believes to be the final agreement of the parties reached through the General Terms and Conditions (Negotiated GT&Cs) and all attachments except Attachment 3 (Negotiated Attachments). AT&T contended that, when Sprint withdrew from its negotiations with AT&T, the only issues that were still under discussion and that were subject to agreement pending acceptable language proposals were several issues in Attachment 3. AT&T attached to its filing its generic Attachment 3A pertaining to wireless interconnection services and 3B pertaining to wireline interconnection services and asked that the Commission adopt these two Attachments as Attachment 3 along with the Negotiated GT&Cs and the Negotiated Attachments in order to finalize the new agreement. AT&T recognized that this was a rather unorthodox means of placing disputed issues before the Commission, but it was forced to do this by Sprint's filing of the arbitration without finalizing a disputed issues list.

Sprint Response to AT&T Motion

On June 12, 2007, Sprint filed a Response to AT&T's Motion to Dismiss and Answer. Among other points, Sprint argued that State commissions enjoy concurrent jurisdiction with the FCC to construe and enforce provisions relating to merger conditions. Sprint furthermore observed that, during the parties' negotiations prior to the filing of the arbitration petition, AT&T had in fact made the required standing offer pursuant to Interconnection Merger Commitment No. 4, which would have allowed Sprint to extend its current interconnection agreement for three years, but had refused to implement the requested amendment based upon a dispute between the parties as to when the accepted three-year extension commences.

With respect to AT&T's proposed Issue No. 2, Sprint argued that this issue should be dismissed because it is irrelevant and seeks Commission authorization for AT&T to prospectively breach its merger commitments and the Act. AT&T's Attachment 3 represents an entirely new contract section which the parties never discussed.

WHEREUPON, the Presiding Commissioner reaches the following

CONCLUSIONS

After careful study of the pleadings in this docket, the Presiding Commissioner concludes that good cause exists to schedule an evidentiary hearing, to be immediately followed by an oral argument on the following issues: (1) Whether the Commission enjoys concurrent jurisdiction with the FCC to construe and enforce Interconnection Commitment No. 4 of the AT&T/BellSouth merger conditions; (2) whether, provided the Commission has such jurisdiction, Interconnection Merger Commitment No. 4 should be construed in Sprint's favor; and, if so, (3) when such three-year extension should commence. It is the Presiding Commissioner's intent that the evidentiary hearing and oral argument shall be completed on the same day.

IT IS, THEREFORE, ORDERED as follows:

1. That an evidentiary hearing be scheduled to begin on Monday, July 2, 2007, at 1:30 p.m. in Commission Hearing Room 2115, Dobbs. Building, 430 North Salisbury Street, Raleigh, North Carolina. The evidentiary hearing will be immediately followed by an oral argument on the issues set out above.
2. That cross-examination of each witness by the other side(s) shall not exceed 20 minutes. Redirect examination shall not exceed 10 minutes.
3. That the Public Staff be requested to participate in this docket.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of June, 2007.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

DI062007.01

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2007, a true and correct copy of the foregoing has been served on the parties set forth below, via the method(s) indicated below:

Steve L. Earnest
Regulatory Counsel
AT&T Legal Department
675 West Peachtree St., N.E., Suite 4300
Atlanta, Georgia 30375-0001
(404) 335-0711
Fax: (404) 614-4054
stephen.earnest@bellsouth.com

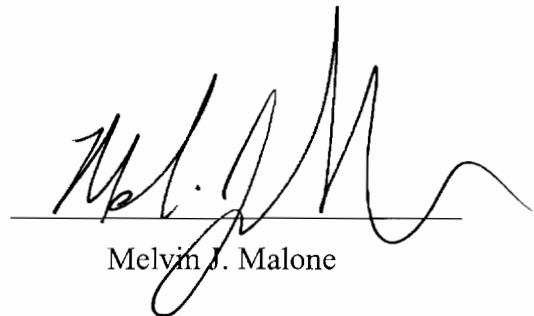
US Mail and Electronically

Guy M. Hicks
BellSouth Telecommunications, Inc.
d/b/a AT&T Tennessee
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
guy.hicks@bellsouth.com

US Mail and Electronically

E. Earl Edenfield, Jr.
John T. Tyler
675 West Peachtree St., N.E., Suite 4300
Atlanta, Georgia 30375-0001
(404) 335-0711
Fax: (404) 614-4054
john.tyler@bellsouth.com

US Mail and Electronically



Melvin J. Malone