

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Carrier-to-Carrier
Complaint and Request for Expedited
Ruling of Sprint Communications
Company L.P., Sprint Spectrum L.P.,
Nextel West Corp., and NPCR, Inc.,

Complainants,

v.

The Ohio Bell Telephone Company dba
AT&T Ohio,

Respondent.

Relative to the Adoption of an
Interconnection Agreement.

Case No. 07-1136-TP-CSS

ENTRY

The Commission finds:

- (1) On October 26, 2007, Sprint Communications Company L.P. (Sprint CLEC),¹ Sprint Spectrum L.P. (Sprint PCS)², Nextel West Corp. (Nextel),³ and NPCR, Inc.⁴ (collectively Sprint) filed a complaint against AT&T Ohio (AT&T). In the complaint, Sprint alleged that it wished to adopt the interconnection agreement between, on the one hand, BellSouth Telecommunications, Inc. dba AT&T Kentucky dba AT&T Southeast and, on the other hand, Sprint CLEC and Sprint Spectrum (the BellSouth interconnection agreement).

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

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

³ Sprint states in its amended complaint that Nextel West Corp. is authorized by the Federal Communications Commission (FCC) to provide wireless services in Ohio.

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

- (2) On February 5, 2008, the Commission issued a finding and order allowing Sprint to port the BellSouth interconnection agreement. Subsequent to a March 4, 2008, application for rehearing filed by AT&T and an April 2, 2008, Commission entry denying the application for rehearing, Sprint filed a motion for declaratory ruling on June 25, 2008. Sprint sought to compel AT&T to execute the interconnection agreement that the Commission allowed Sprint to port, notifying the Commission that AT&T had refused to execute the agreement because of unresolved issues.
- (3) On July 1, 2008, AT&T moved to dismiss Sprint's motion for declaratory ruling, pointing out that the parties had numerous disagreements concerning modifications to the BellSouth interconnection agreement. Sprint filed a memorandum in opposition on July 8, 2008.
- (4) On December 9, 2008, the attorney examiner issued an entry scheduling a January 15, 2009, prehearing conference to discuss the process for resolving pending disputes. Although the parties did not resolve their disputes, they continued to negotiate with the objective of crafting a successor agreement. On March 25, 2009, Sprint notified AT&T that it wished to extend its current interconnection agreements for a three-year term.
- (5) On July 2, 2009, Sprint filed an amended complaint and a motion to amend its complaint. In a letter dated July 17, 2009, AT&T stated that it did not oppose Sprint's motion to amend its complaint. By entry issued August 9, 2009, the attorney examiner granted Sprint's motion to amend its complaint.
- (6) In its July 2, 2009, amended complaint, Sprint explains that it no longer seeks to port the Kentucky interconnection agreement that was the subject of the initial complaint. Because of the passage of time, Sprint states that the advantage of porting the Kentucky interconnection agreement has been lost. The Kentucky interconnection agreement expired on December 28, 2009. Sprint predicted that a final conformed interconnection agreement would not be approved before the parties would need to negotiate a successor agreement.
- (7) As background, Sprint states that on March 26, 2007, the FCC approved a merger of AT&T's parent corporation and

BellSouth Corporation.⁵ For approval, AT&T made four commitments (Merger Commitments) under the heading "Reducing Transaction Costs Associated with Interconnection Agreements."⁶ The First Merger Commitment reads as follows:

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.

In its original complaint, Sprint sought to port the BellSouth interconnection agreement pursuant to the First Merger Commitment.

- (8) With its amended complaint, Sprint seeks the alternative of renewing its current and existing interconnection agreements⁷ with AT&T for an additional three-year term pursuant to the Fourth Merger Commitment. The Fourth Merger Commitment reads 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

⁵ *In the Matter of AT&T, Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, FCC 06-189 (Released March 26, 2007) (Merger Order).

⁶ The Merger Commitments appear in Appendix F of the Merger Order.

⁷ Sprint refers to interconnection agreements approved by the Commission in Case Nos. 02-2560-TP-NAG, 03-1960-TP-NAG, and 99-964-TP-NAG. Although NPCR, Inc. was a party to the original complaint, it does not seek to extend its interconnection agreement through the amended complaint.

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.

With the intent to renew existing interconnection agreements, Sprint notified AT&T on March 25, 2009, that it elected to renew its interconnection agreements under the Fourth Merger Commitment. According to Sprint, AT&T wrongfully refused to agree to interconnection under the Fourth Merger Commitment. It is Sprint's interpretation that the Fourth Merger Commitment is tantamount to a standing offer by AT&T that allows a carrier to extend, upon request, any existing interconnection agreement.

- (9) Sprint declares that the Commission has resolved whether the Commission has jurisdiction over the FCC's Merger Commitments. Sprint contends that the issue has been exhaustively briefed and that the Commission affirmatively determined in its February 5, 2008, finding and order that it has concurrent jurisdiction with the FCC to enforce the FCC's Merger Commitments. To Sprint, the Commission need only determine whether AT&T must renew Sprint's interconnection agreements for three-year terms under the Fourth Merger Commitment.
- (10) Although AT&T has rejected Sprint's request to extend its interconnection agreements, Sprint points out that AT&T has extended other interconnection agreements pursuant to the Fourth Merger Commitment. Sprint states that AT&T's reason for rejecting Sprint's request is that Sprint failed to comply with the January 15, 2008, deadline contained in AT&T's "Accessible Letter."⁸ Sprint regards AT&T's Accessible Letter as arbitrary and inconsistent with the FCC's Merger Commitments. To Sprint, the only applicable deadline is June 29, 2010, the sunset date of the Merger Commitments. In proceedings before the public service commissions in Missouri and Michigan, Sprint

⁸ A copy of AT&T's Accessible Letter is attached as Exhibit 2 to Sprint's amended complaint. The Accessible Letter was issued on November 16, 2007, and specifies that requests for extension received by AT&T on or after January 15, 2008, can be extended for a period of three years from the expiration date of the interconnection agreement's initial term, provided that AT&T receives the carrier's request prior to the interconnection agreement's initial expiration date.

points out that the commissions allowed Sprint to extend its interconnection agreements pursuant to the Fourth Merger Commitment notwithstanding AT&T's Accessible Letter.

Sprint also claims that AT&T errs in its interpretation that a three-year extension is retroactive to the end of the initial term. The effect of AT&T's interpretation is to render the Fourth Merger Commitment ineffective for agreements that were current and where the initial term expired at least three years prior. The Merger Commitments, according to Sprint, provide that a current interconnection agreement can be extended for three years, regardless of whether its initial term has expired. Sprint cites the Kentucky Service Commission as ruling in its favor on this issue.

- (11) On August 26, 2009, AT&T filed an answer and a motion to dismiss the amended complaint. In AT&T's motion to dismiss it provides a factual account relating to the three interconnection agreements. Relying on the amended complaint, AT&T states that the Commission approved the Nextel interconnection agreement on November 16, 1999, in Case No. 99-964-TP-NAG. The Commission approved the Sprint CLEC interconnection agreement on January 2, 2003, in Case No. 02-2560-TP-NAG, and the Sprint PCS interconnection agreement on December 18, 2003, in Case No. 03-1960-TP-NAG.

AT&T claims that the agreements continued beyond their initial expiration date and were subject to termination upon notice. AT&T states that it provided Sprint notice on August 21, 2007, that it intended to terminate the three contracts. At that time all three contracts had been in place for several years after their initial term. On August 31, 2007, Sprint responded to the termination notice by requesting the negotiation of successor agreements pursuant to Section 252(a) of the Telecommunications Act of 1996 (the Act). AT&T argues that, as of June 30, 2008, the agreements no longer existed as effective contracts. Moreover, in its interpretation of the Fourth Merger Commitment language, AT&T argues that only a "current" interconnection agreement may be extended.

By way of example, AT&T contends that the Fourth Merger Commitment would only extend to February 28, 2011, an agreement that expired on February 28, 2008, whether a party

requested an extension before or after the expiration date. Further clarifying its position, AT&T points out that the Nextel agreement expired in 2001 and the Sprint CLEC and Sprint PCS agreements expired in 2004. Three-year extensions of those agreements, AT&T concludes, would be meaningless. AT&T notes that although Sprint asks to extend the agreements it is noteworthy that Sprint does not indicate the date from which the extension should begin.

- (12) In its review of the facts, AT&T finds that none of the agreements that Sprint seeks to extend is current. AT&T points out that the Nextel agreement did not provide an extended period to negotiate a successor agreement. Consequently, AT&T concludes that the agreement expired under its own terms on September 20, 2007, 30 days after AT&T issued its termination notice. Unlike the Nextel agreement, AT&T states that the Sprint CLEC agreement contained a provision to extend the contract for a 10-month period following a request under Section 252(a). AT&T calculates that the 10-month period expired on June 30, 2008, 10 months after Sprint's August 31, 2007, request to negotiate a new agreement. At that point, concludes AT&T, Sprint CLEC no longer had an interconnection agreement with AT&T. Because the Sprint PCS interconnection agreement had an identical provision, AT&T likewise concludes that the Sprint PCS agreement terminated on June 30, 2008. When Sprint sought to extend the agreements under the Fourth Merger Commitment, AT&T rejected Sprint's request to revive agreements that had terminated.
- (13) In further support of its position, AT&T argues that the interconnection agreements that Sprint seeks to extend were designed to remain in place for less than two years. Sprint's request would grant the agreements effective life spans ranging between 8 and 13 years. AT&T describes such a result as nonsensical. The three-year extension provided by the Fourth Merger Commitment, AT&T declares, begins with the expiration of the stated term of the interconnection agreement. It is AT&T's understanding that an interconnection agreement, even if current, cannot be extended three years beyond the expiration of its initial term.
- (14) AT&T argues that the Commission does not have jurisdiction to enforce the FCC's Fourth Merger Commitment. AT&T

rejects Sprint's argument that AT&T is reasserting its arguments concerning jurisdiction. AT&T clarifies that it is not asserting the same arguments concerning jurisdiction. Instead of raising the jurisdictional arguments that it asserted against the original complaint, AT&T now challenges whether the Commission has jurisdiction to enforce the Fourth Merger Commitment under Section 4905.26, Revised Code. It is AT&T's contention that Section 4905.26, Revised Code, does not authorize the Commission to enforce the Fourth Merger Commitment. In AT&T's analysis of the language of Section 4905.26, Revised Code, it does not find language that would encompass the Merger Commitments.

In addition to AT&T accusing Sprint of assuming that the Commission has jurisdiction, AT&T claims that Sprint errs in seeking an equitable remedy from the Commission. AT&T explains that an order compelling AT&T to execute an interconnection agreement is a matter for a court.

- (15) AT&T anticipates that Sprint may argue that the interconnection agreements are still in effect because the parties are still operating under the terms of the agreements. AT&T claims that it has continued to provide services under the agreements for practical and policy reasons. AT&T recognizes that it could have discontinued the parties' agreement. AT&T chose not to do so because the parties were in the midst of negotiating new interconnection agreements. Nevertheless, AT&T regards the agreements as terminated.
- (16) AT&T warns that Sprint should not be allowed to game the system by extending interconnection agreements long after the expiration date with port requests, negotiations, complaint filings, and requests to extend expired agreements. AT&T urges the Commission to dismiss the amended complaint for lack of jurisdiction or deny Sprint's request for an order directing AT&T to execute amendments extending terminated interconnection agreements.
- (17) On September 10, 2009, Sprint filed a memorandum contra AT&T's motion to dismiss. Sprint argues that the Commission, by previously enforcing a Merger Commitment, has decided that it has authority to enforce the Fourth Merger Commitment. Because AT&T has asserted again that the Commission lacks jurisdiction, Sprint contends that it is compelled to re-litigate

the jurisdiction issue. The only difference between the jurisdictional issue raised in the original complaint and the jurisdictional issue raised in the amended complaint is the Merger Commitment relied upon by Sprint. With respect to the original complaint, Sprint points out that the Commission claimed jurisdiction pursuant to Section 4905.26, Revised Code. Sprint, therefore, rejects AT&T's argument that the Commission's jurisdiction is not properly supported by Section 4905.26, Revised Code. To Sprint, AT&T's practice of rejecting interconnection agreement extension requests is unjust and, therefore, is an appropriate matter for Commission adjudication.

- (18) Sprint claims that it is entitled to extend its current interconnection agreements pursuant to the Fourth Merger Commitment. Analyzing the language of the Merger Commitment, Sprint highlights that being "current" is the only criterion for extending an interconnection agreement. In Sprint's reading of the Fourth Merger Commitment, and contrary to AT&T's position, current agreements can be extended even if their initial terms have expired.

According to Sprint, the Commission must decide whether Sprint's interconnection agreements with AT&T are current. Sprint agrees with AT&T that only current agreements can be extended under the Fourth Merger Commitment. Sprint contends that its interconnection agreements are current and that AT&T refused to extend the agreements because Sprint's request did not comply with the Accessible Letter. Sprint points out that AT&T's April 13, 2009, denial letter does not assert that the interconnection agreements are no longer current. It only claims that the initial terms have expired. By meritless jurisdictional arguments and unfounded delaying tactics, Sprint believes that AT&T is attempting to nullify or obstruct the implementation of the Merger Commitments.

Sprint finds it inconsistent that AT&T would, on the one hand, continue to provide services with the same rates, terms, and conditions as in the interconnection agreements and, on the other hand, claim that the contracts have ceased to exist. To Sprint, AT&T's explanation is insufficient that the interconnection agreements are no longer current because AT&T provided a notice of intent to terminate the agreements.

The contracts have guided the parties' relationship ever since AT&T delivered its notice of intent to terminate the agreements.

In support of its position, Sprint refers the Commission's attention to a Missouri Commission proceeding. Sprint contends that AT&T advanced the same arguments in that proceeding. The arbitrator decided that "current" meant belonging to the present time. The arbitrator, therefore, determined that the agreements were current and could be extended. Because AT&T continues to abide by the terms of the agreements, Sprint urges the Commission to find that the agreements are current and entitled to a three-year extension under the Fourth Merger Commitment.

- (19) Sprint accuses AT&T of attempting to rewrite Merger Commitment 4 in two ways. First, by expressing concern for the duration of the agreements, AT&T claims that current interconnection agreements can only be extended for three years beyond the date of the expiration of the initial term. Sprint rejects this interpretation as being against the clear language of the Merger Commitment, which states that an extension is permissible regardless of whether the initial term has expired. Moreover, Sprint, by pointing to other interconnection agreements, argues that AT&T's position is undermined by its voluntary extension of several agreements in Ohio despite the expiration of the initial term. It is Sprint's contention that interconnection agreements may ultimately be extended until the Merger Commitments sunset date of June 29, 2010.

Sprint argues that the second way that AT&T attempts to rewrite the Fourth Merger Commitment is by imposing a deadline with its Accessible Letter. Sprint condemns the deadline imposed by the Accessible Letter as arbitrary and at odds with the Merger Commitment. To Sprint, the only appropriate deadline is the June 29, 2010, sunset date. Sprint points to an arbitration decision by the Kentucky Public Service Commission that rejected AT&T's argument against extending interconnection agreements beyond the initial term. Like Kentucky, Sprint states that the Missouri and Michigan commissions agreed with Sprint and rejected AT&T's attempt to deny the extension of Sprints interconnection agreements.

Sprint also relies on a Draft Decision issued by the Connecticut Department of Public Utility Control that approves Sprint's extension requests for expired but current interconnection agreements.

- (20) On September 17, 2009, AT&T filed a reply in support of its motion to dismiss. AT&T's first assertion is that the Commission lacks jurisdiction to consider the amended complaint. More pointedly, AT&T asserts that the Commission does not have jurisdiction to enforce Merger Commitment 4. In the original complaint, AT&T claims that the Commission determined that the FCC did not assert exclusive jurisdiction to enforce the Merger Commitments. Against the amended complaint, AT&T raises the issue of whether any Ohio statute authorizes the Commission to enforce the Merger Commitments. AT&T concludes that Sprint has not carried the burden on this issue.

AT&T disputes that Section 4905.26, Revised Code, authorizes the Commission to enforce Merger Commitment 4. AT&T highlights the portion of Section 4905.26, Revised Code, that grants the Commission authority over complaints relating to a "practice affecting or relating to any service furnished by the public utility...that is unjust." AT&T rejects the notion that Merger Commitment 4 is a "practice" within the meaning of Section 4905.26, Revised Code. Resorting to a dictionary definition, AT&T concludes that Merger Commitment 4 lacks the regularity, habitual performance, or customary action that could properly be considered a practice. In contrast, AT&T regards Sprint's extension request as a one-time event.

In addition to "practice," AT&T argues that "service" is an essential component in Section 4905.26, Revised Code. AT&T emphasizes that the Commission's jurisdiction under Section 4905.26, Revised Code, is limited to "service complaints." Relying on court decisions, AT&T concludes that Sprint's request to extend the interconnection agreements lacks any relation to any type of "service" that would be cognizable under Section 4905.26, Revised Code.

AT&T cites a two-prong test that some courts have used to determine the Commission's jurisdiction: (1) whether the Commission's administrative expertise is required to resolve the issue and (2) whether the act complained of constitutes a

"practice" normally authorized by the utility. If the answer to either question is negative, the claim is not under the Commission's jurisdiction. AT&T believes that this test reveals the Commission's lack of jurisdiction over Sprint's request to extend its interconnection agreements. AT&T denies that the Commission's regulatory or telecommunications expertise is needed to interpret the Fourth Merger Commitment. According to AT&T, all that is required is an interpretation of the plain meaning of the Merger Commitment. As discussed above, AT&T rejects any notion that a "practice" is involved that would invoke the Commission's authority. AT&T finds that Sprint mistakenly relied on the Commission's previous finding of jurisdiction and a cursory argument that Sprint's complaint is cognizable as a service under Section 4905.26, Revised Code. Ultimately, AT&T concludes that Sprint did not carry the burden of establishing that the Commission has jurisdiction.

- (21) It is AT&T's position that Merger Commitment 4 does not apply because the interconnection agreements that Sprint seeks to extend are no longer current. Disagreeing with Sprint, AT&T argues that the interconnection agreements are not terminated simply because AT&T provided notice of its intent to terminate the agreements. Adding more detail, AT&T points out that Sprint requested negotiation of successor agreements pursuant to Section 252(a) after receiving AT&T's notice of termination. AT&T states that the agreements provided that the rates, terms, and conditions would continue no longer than 10 months from the receipt of a 252(a) request. According to AT&T, ten months passed, thus nullifying the Sprint CLEC and Sprint PCS agreements on June 30, 2008. AT&T explains that the Nextel agreement terminated on September 20, 2007, because the contract provided termination upon 30 days notice.

AT&T rejects Sprint's argument that the agreements are current because the parties continue to deal with each other under the same terms. AT&T counters that the agreements are terminated as a matter of law and also under the plain language of the agreements. As a contractual matter, AT&T asserts that it could have stopped exchanging traffic with Sprint. It is only for reasons of public policy and the likelihood of the Commission's intervention that AT&T refrained from doing so. AT&T argues that it is not unusual for parties to

conduct affairs without contracts. Legal doctrines such as unjust enrichment ensure just results in the absence of a contract. Furthermore, AT&T rejects the notion that a dictionary can define "current." It is more accurate, argues AT&T, to apply legal principles which lead to the conclusion that the agreements no longer exist and cannot be extended.

AT&T argues that the three-year extension period began when the initial term ended. AT&T rejects as baseless Sprint's argument that an agreement can be extended for three years regardless of whether the initial term has expired. It is AT&T's interpretation that the phrase "regardless of when its initial term expired" suggests that any requested extension commences upon expiration of the initial term, not years after the initial period has expired. Because of its reliance on this and other factors, AT&T dismisses Sprint's criticism of its Accessible Letter as irrelevant.

- (22) From the FCC's language that precedes the Merger Commitments, AT&T concludes that the purpose of the Fourth Merger Commitment is to reduce transaction costs. From AT&T's perspective, Sprint has reduced its transaction costs significantly by extending for six, seven, and ten years three interconnection agreements that were intended to last only two years or less.

Overall, AT&T urges the Commission to dismiss Sprint's amended complaint for lack of jurisdiction or deny Sprint's request for an order compelling AT&T to execute extensions of the interconnection agreements at issue. Minimally, AT&T would recommend that the Commission begin the three-year extension on the day after the termination date of the interconnection agreements.

- (23) Upon review of the arguments and Merger Commitment 4, we conclude that Sprint should be allowed to extend their interconnection agreements with AT&T. At the outset, AT&T claims that the Commission does not have jurisdiction to enforce the Fourth Merger Commitment. As a fallback argument, assuming that the Commission does have jurisdiction, AT&T takes the position that the agreements that Sprint seeks to extend are not current and, therefore, are not eligible for extension. We disagree with AT&T. We, therefore, deny AT&T's motion to dismiss the amended complaint.

- (24) We agree with Sprint. We have decided the jurisdictional issue. The Commission's authority to enforce the Fourth Merger Commitment stems from state statute and the Act. AT&T cites Section 4905.26, Revised Code, as a source for the Commission's authority to enforce a Merger Commitment. AT&T argues that interconnection agreements are not within the scope of practices and services covered by Section 4905.26, Revised Code. We disagree. Interconnection agreements are fundamental to the provision of telecommunications services and reflect and describe ongoing carrier practices. Moreover, disputes arising from interconnection agreements often involve complex telecommunications issues that make it appropriate for the Commission to exercise jurisdiction to lend its expertise. In fact, AT&T has participated in carrier-to-carrier complaints involving interconnection agreements brought before the Commission pursuant to Section 4905.26, Revised Code, in the past. We can add that Section 4927.02, Revised Code, establishes a state policy that promotes availability, diversity, and options for telecommunications services. It is this policy, in conjunction with our regulatory authority under Section 4905.04(B), Revised Code, that grants us the power to enforce a Merger Commitment that aligns with state policy. The Merger Commitments further our state policy by reducing the transaction costs associated with interconnection agreements.

In our February 5, 2008, finding and order in this matter, we stated the grounds for our concurrent jurisdiction with the FCC to enforce the FCC's Merger Commitments. We noted that in Appendix F of the Merger Order the FCC stated the following:

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

From this language, we concluded that the FCC clarified that the states have jurisdiction over matters arising under the commitments. Furthermore, we determined that states are granted authority to adopt rules, regulations, programs, and

policies respecting the commitments. AT&T did not challenge these findings. Nevertheless, those findings apply to all the Merger Commitments, including jurisdiction to enforce the Fourth Merger Commitment.

(25) Whether Sprint may extend its interconnection agreements turns on whether the agreements are current and thus eligible for extension. Sprint contends that they are. AT&T argues that they are not. California,⁹ Connecticut,¹⁰ Kansas,¹¹ Kentucky,¹² Michigan,¹³ and Missouri¹⁴ have considered this question and have decided in favor of Sprint's interpretation of Merger Commitment 4. In our own review of the plain language of the Merger Commitment, we are persuaded by the arguments of Sprint and the decisions and reasoning of our sister states. We, therefore, deny AT&T's motion to dismiss Sprint's amended complaint and find that the subject interconnection agreements are current and eligible for extension pursuant to Merger Commitment 4.

(26) Merger Commitment 4 allows the extension of a "current" agreement. Notwithstanding AT&T's argument that the

⁹ *In the Matter of the Application of Sprint Communications Company L.P.(U5112C) for Commission Approval of an Amendment Extending its Existing Interconnection Agreement for Three Years with the Pacific Bell Telephone Company dba AT&T California pursuant to the Merger Commitment Voluntarily Created and Accepted by AT&T, Inc. (AT&T), as a Condition of Securing Federal Communications Commission Approval of AT&T's Merger with BellSouth Corporation, Application 09-06-006 (Decision Granting Applicant's Motion for Summary Adjudication, January 21, 2010).*

¹⁰ *Application of Sprint Communications Company, L.P., Sprint Spectrum L.P., Nextel Communications of the Mid-Atlantic, Inc. for an Order Compelling the Southern New England Telephone Company to Enter an Interconnection Agreement on Terms Consistent with Federal Communications Commission Orders, Docket No. 07-12-19RE01 (Decision, September 16, 2009).*

¹¹ *Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp. v. Southwestern Bell Telephone Company dba AT&T Kansas, Docket No. 10-SCCC-273-COM (Order Directing AT&T to Extend Sprint's Current Interconnection Agreements Three Years from the Date of Service of this Order, March 10, 2010).*

¹² *Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. dba Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. dba AT&T Kentucky dba AT&T Southeast, Case No. 2007-00180 (Order, September 18, 2007).*

¹³ *In the Matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish Interconnection Agreements with Michigan Bell Telephone Company dba AT&T Michigan, Case No. U-15788 (Decision of Arbitration Panel issued April 22, 2009, adopted by Michigan Public Service Commission on June 2, 2009).*

¹⁴ *In the Matter of the Verified Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp. for Arbitration of Interconnection Agreements with Southwestern Bell Telephone Company, dba AT&T Missouri, Case No. CO-2009-0239 (Order Denying Motion to Dismiss, March 1, 2009).*

agreements with Sprint have expired pursuant to their terms, AT&T acknowledges that both parties continue to abide by the terms of the agreements. We agree with Sprint that it is inconsistent for AT&T, on the one hand, to provide service under the same rates, terms, and conditions as the interconnection agreements and, on the other hand, claim that the contracts have ceased to exist. The passage of an expiration date does not necessarily signify the termination of an agreement. Parties to an agreement, as Sprint and AT&T have done, may choose to continue and maintain the agreement in present effect. We do not find persuasive AT&T's argument that a present and active agreement honored by two parties is not current.

Merger Commitment 4 states that a requesting telecommunications carrier may extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years. We reject any constraints that AT&T would impose by its interpretation that extensions of interconnection agreements begin upon the expiration of the initial term of the agreement. Instead, an interpretation that is more consistent with the clear language of Merger Commitment 4 is that current interconnection agreements may be renewed at any point during the 42-month duration of the Merger Commitments. AT&T's interpretation that requests for extension are tied to the expiration of the initial term of an interconnection agreement, as expressed in its Accessible Letter, is completely at odds with the plain language of Merger Commitment 4. Merger Commitment 4 provides that extensions are permissible even where the initial term has expired.

- (27) Overall, we find that AT&T's motion to dismiss Sprint's amended complaint should be denied. As in our February 5, 2008, finding and order and pursuant to Sections 4905.26, 4905.04(B), and 4927.02, Revised Code, we claim concurrent jurisdiction with the FCC to enforce the Merger Commitments. In the exercise of our jurisdiction, we find that Sprint's agreements with AT&T are current and, therefore, eligible for a three-year extension.

The Merger Commitment does not provide guidance on when extensions should begin. Absent clear guidance or any other

meaningful point from which to begin, we find it reasonable to deem Sprint's March 25, 2009, request to extend the agreements as the beginning date of the three-year term. The parties shall submit within 14 days of this entry executed interconnection agreements that reflect three-year extensions.

It is, therefore,

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

ORDERED, That Sprint's interconnection agreements with AT&T shall be extended for a three-year period, beginning on March 25, 2009, subject to amendments to reflect prior and future changes of law. It is, further,

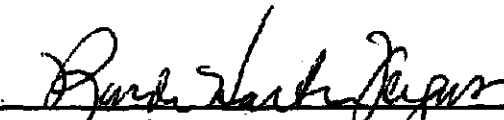
ORDERED, That the parties shall submit executed interconnection agreements reflecting three-year extensions within 14 days of this entry. It is, further,

ORDERED, That copies of this entry be served upon the parties, their counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman


Paul A. Centolella


Ronda Hartman Fergus


Valerie A. Lemmie


Cheryl L. Roberto

LDJ/vrm

Entered in the Journal

MAR 31 2010


Renee J. Jenkins

Renee J. Jenkins
Secretary