

Diamond Williams

100177-TP

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Tuesday, May 11, 2010 3:44 PM
To: Filings@psc.state.fl.us
Subject: 100177-TP AT&T Florida's Response to Motion to Consolidate and to Procedural Proposals in Sprint's CMRS' Response to Petition for Arbitration
Importance: High
Attachments: Untitled.pdf

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- B. Docket No. 100177-TP: Petition for Arbitration of Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Spectrum L.P., Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners
- C. BellSouth Telecommunications, Inc. d/b/a AT&T Florida

on behalf of Manuel A. Gurdian
- D. 11 pages total (includes letter, pleading and certificate of service)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response to Motion to Consolidate and to Procedural Proposals in Sprint's CMRS' Response to Petition for Arbitration

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May 11, 2010

Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
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Docket No. 100177-TP: Petition for Arbitration of Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Spectrum L.P., Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response to Motion to Consolidate and to Procedural Proposals in Sprint CMRS' Response to Petition for Arbitration, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Manuel A. Gurdian

cc: All parties of record
Gregory R. Follensbee
Jerry D. Hendrix
E. Earl Edenfield, Jr.

**Certificate of Service
Docket No. 100177-TP**

I HEREBY CERTIFY that a true and correct copy was served via (*) Electronic Mail and First Class U. S. Mail this 11th day of May, 2010 to the following:

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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of Interconnection) Docket No. 100177-TP
Agreement Between BellSouth Telecommunications,)
Inc. d/b/a AT&T Florida and Sprint Spectrum L.P.,)
Nextel South Corp., and NPCR, Inc. d/b/a Nextel)
Partners)
_____) Filed: May 11, 2010

**RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T
FLORIDA TO MOTION TO CONSOLIDATE AND TO PROCEDURAL PROPOSALS
IN SPRINT CMRS' RESPONSE TO PETITION FOR ARBITRATION**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") hereby files, pursuant to Rule 28-106.204, Florida Administrative Code, its Response to Sprint Spectrum, L.P., Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners (collectively "Sprint CMRS") Motion to Consolidate ("Motion") and to procedural proposals in Sprint CMRS' Response to Petition for Arbitration¹. For the reasons set forth below, the Florida Public Service Commission ("Commission") should defer ruling on Sprint CMRS' requests until the parties complete their negotiations at the end of May 2010.²

I. Introduction

AT&T Florida filed its Petition for Arbitration in this matter on April 9, 2010. On May 5, 2010, Respondent Sprint CMRS filed its Response to that Petition ("Response"). Sprint CMRS also filed a Motion to Consolidate this case with Docket No. 100176-TP on May 4, 2010, an arbitration between AT&T Florida and Sprint CMRS' wireline affiliate, Sprint CLEC.³ In the Response and Motion, Sprint CMRS raised an array of matters concerning, among other things, the manner in which the parties' disagreements are displayed on the Decision Point Lists

¹ AT&T Florida is responding to Sprint CMRS' procedural proposals due to same being requests for affirmative relief.

² However, to the extent it would prejudice AT&T Florida's right to have two separate interconnection agreements with Sprint Communications Company L.P. ("Sprint CLEC") and Sprint CMRS, respectively, AT&T Florida requests that the Commission deny the Motion.

³ Sprint CMRS filed the Response and the Motion jointly with Sprint CLEC.

("DPLs") that AT&T Florida filed with its Petitions for Arbitration; whether there should be one interconnection agreement ("ICA") for Sprint CMRS and a separate ICA for Sprint CLEC or whether there should be a single consolidated ICA for Sprint CMRS' wireless operations together with Sprint CLEC's wireline operations; and whether the Commission should require the parties to prepare a consolidated DPL, in a form proposed by Sprint CMRS. In addition, Sprint CMRS identified three "preliminary issues" and set forth a "proposed path forward."⁴

AT&T Florida addresses below each of the matters that Sprint CMRS has raised, and then proposes an alternative path forward. AT&T Florida agrees with Sprint CMRS that the parties need to reduce the number of issues to be arbitrated – and the parties have already had several recent negotiation sessions during which the parties have made real progress toward resolving issues. Negotiations between the parties are continuing, and the parties are using revised negotiation procedures that are designed to promote the resolution of open issues – including long conference calls with active participation of authorized decision-makers, rather than by exchange of redlines. AT&T Florida is optimistic that, with continued productive negotiations and continued diligence on the part of both parties, all resolvable issues can be closed by the end of May, at which point the parties will have a narrowed list of issues that will require Commission resolution. Consequently, at least some of the matters that Sprint CMRS has raised – including, for example, whether to prepare a consolidated wireline/wireless DPL and whether to consolidate the two arbitration dockets – should be resolved. Accordingly, AT&T Florida suggests that the Commission defer decision on those matters while the parties continue to negotiate.

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

⁴ Response at 16-17.

II. Responses to matters raised by Sprint CMRS

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

- A. Sprint CMRS 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 16, 17)

AT&T Florida response: There is no need for the Commission to answer this question, because regardless of the answer, AT&T Florida agrees that the number of issues to be arbitrated can be reduced, and that the parties should engage in additional negotiation to that end.⁵ The parties have scheduled ongoing meetings throughout May, at which point this matter should be ripe for a procedural and scheduling order.

- B. Sprint CMRS contention: Sprint is entitled to identical language in each ICA with any technology-related differences specified within applicable provisions of each ICA. (Response at 9)

AT&T Florida response: The contract language governing Sprint CMRS should differ from the contract language governing Sprint CLEC when there is a cogent reason for the difference. Important differences exist between the laws and regulatory requirements that pertain to CMRS providers and those that pertain to CLECs (for example, CMRS providers are not eligible to obtain UNEs); between CMRS and CLEC networks; and between AT&T Florida's billing systems for CMRS providers and the systems for CLECs, based on the differing products and/or services they purchase. 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 Florida's proposed CMRS language and CLEC language

⁵ 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 CMRS takes AT&T Florida to task for not including this and its other "preliminary issues" in the DPLs it filed, but that criticism is unfounded. The question Sprint CMRS 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.

that AT&T Florida is working with Sprint CMRS to eliminate. At the end of May, instances will remain in which AT&T Florida maintains that sound substantive reasons exist for certain differences between CLEC language and CMRS language.

C. Sprint CMRS contention: Sprint is entitled to one ICA with AT&T. (Response at 4, 8-9)

AT&T Florida response: Sprint's wireless affiliates are separate companies from Sprint CLEC, and there is nothing in the 1996 Act, or in the FCC's implementing regulations, or in any principle of law that entitles Sprint CMRS to enter into an ICA jointly with Sprint CLEC merely because they are affiliates. Sprint CMRS is mistaken – in two ways – when it asserts, “Sprint is entitled to one ICA with AT&T that supports unified interconnection arrangements”⁶ In the first place, Sprint is not entitled to an ICA at all: Each Sprint CMRS provider is, and so is Sprint CLEC, but there is no generic “Sprint” that is entitled to an ICA under the 1996 Act. Furthermore, Sprint CMRS is unable to cite to any legal authority for the proposition that it is entitled to enter into an ICA jointly with its affiliates, because there is no such authority.

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 which provisions will be different, the resulting content can readily be incorporated into two contracts, even if those two contracts are more similar than different. The request for one ICA is simply Sprint CLEC and Sprint CMRS providers' preference for one agreement. No sound reason exists for the Commission to impose a requirement that there be a single ICA.⁷

⁶ Response at 4.

⁷ Sprint CMRS 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

Moreover, if the parties are able to reduce 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. If the Commission does have to decide the matter, though, it should resolve it in favor of AT&T Florida, because of AT&T Florida's legitimate administrative concerns that should be accorded substantial weight. 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, and they impose significant 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 AT&T's ability to locate specific contractual language that applies to a specific type of carrier. Sprint has identified no cogent reason for imposing a single contract on AT&T that would overcome these (and other) legitimate concerns.

- D. Sprint CMRS 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 16, 17-18)

AT&T Florida Response: The parties are working to reach a mutually agreeable resolution of this issue. A Commission order at this time on this issue is premature and unnecessary.

- E. Sprint CMRS contention: This docket should be consolidated with Docket No. 100176. (Response at 17)

same in each contract ...". (Response at 4-5) 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 9).

AT&T Florida response: For reasons elaborated below, the Commission should not address Sprint CMRS' Motion at this time. AT&T Florida anticipates the parties may be able to resolve this issue by the end of May.

- F. Sprint CMRS 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 15, 17)

AT&T Florida response: The Commission will not need to address this question. AT&T Florida 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 Florida 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.

III. AT&T Florida's Proposed Path Forward In Response to Sprint CMRS' Proposed Path

Sprint CMRS asks the Commission to order the following:

- Consolidate Docket Nos. 100176-TP and 100177-TP for all purposes;
- Require the parties to further confer, create and file a Consolidated Joint DPL by a specified date (or such further additional date as may be reasonably necessary and mutually requested by the parties) that includes, among other things, a side-by-side presentation of respectively proposed contract language and positions, and affirmatively identifies all contract language that (a) either party contends should be different as between the Sprint entities based upon the technology used by Sprint in providing its services; and (b) is neither in dispute or have otherwise been resolved;
- Direct the parties to continue good faith negotiations up to the consolidated arbitration hearing date;
- Direct the parties to inform the Commission within forty-five (45) days after the submission of the Consolidated Joint DPL regarding the further resolution of any outstanding issues.⁸

⁸ Response at 2-3 and 17-18.

AT&T Florida suggests a different path forward. At this point, the parties have clearly agreed that continued negotiations must occur – they are well underway – and that the objective of such negotiations is to substantially narrow the issues for Commission resolution. To that end, AT&T Florida has no objection to a Commission Order requiring the parties to continue their negotiations – though AT&T Florida also does not believe such a directive is necessary. At the same time, however, there are certain issues that the parties are unlikely to resolve and that will undoubtedly require Commission resolution. AT&T Florida is unwilling to delay the resolution of significant business-impacting issues that are unlikely to be resolved. In response to Sprint CMRS' proposals, AT&T Florida respectfully requests the Commission issue a procedural and scheduling order as follows:

- | | |
|------------------|--|
| June 3, 2010: | Informal Status Conference and Issue ID with Commission Staff. At this time, the parties can provide Staff with an update of the status of their negotiations and discuss remaining unresolved issues. |
| July 8, 2010: | AT&T Florida pre-files direct testimony |
| August 5, 2010: | Sprint CLEC pre-files rebuttal testimony |
| August 19, 2010: | AT&T Florida pre-files surrebuttal testimony |
| September 2010: | Hearing (AT&T Florida anticipates that a hearing will need to be scheduled for approximately five (5) days.) ⁹ |

AT&T Florida submits that if the Commission establishes the above procedural and scheduling order it will incent both parties to expeditiously resolve such issues as are capable of resolution through negotiation, and it will permit the parties to then proceed to arbitration of the outstanding disputes that are unlikely to be resolved by negotiation.

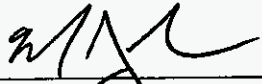
⁹ AT&T Florida respectfully requests that a hearing occur soon after the filing of surrebuttal testimony. AT&T Florida is certainly willing to work cooperatively with Sprint CLEC to reach agreement on proposed region-wide hearing schedule.

AT&T Florida also believes that a Status Conference and Issue ID on June 3, 2010 will serve to keep the Commission informed on the progress of their negotiations and allow the parties to discuss with Staff the remaining unresolved issues. At the Status Conference and Issue ID, the parties can bring revised DPLs to reflect the issues that remain in dispute and that will need to be arbitrated. AT&T Florida does not exclude the possibility that a DPL in a form at least partly like that proposed by Sprint CMRS may be appropriate – but any decision about that should not be made at this time. For example, Sprint CMRS 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 CMRS' 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.

WHEREFORE, AT&T Florida urges the Commission to defer a decision on Sprint CMRS' Motion to Consolidate in order to allow the Parties to finish their negotiations in May 2010 and requests that the Commission adopt AT&T Florida's proposed procedural schedule.

Respectfully submitted this 11th day of May, 2010.

BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T FLORIDA

By:  _____

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