

Ruth Nettles

From: Smith, Debbie N. [ds3504@att.com]
Sent: Thursday, August 16, 2007 10:03 AM
To: Filings@psc.state.fl.us
Cc: Meza, James; Woods, Vickie; Tyler, John; Tracy Hatch; Follensbee, Greg; Holland, Robyn P
Subject: Florida Docket No. 070249-TP
Importance: High
Attachments: pleading.pdf

ORIGINAL

- A. Debbie Smith
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- B. Docket No. 070249-TP: In the Matter of: Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P.,
d/b/a Sprint PCS for Arbitration of Rates, Terms, and Conditions of Interconnection with BellSouth Telecommunications, Inc.,
d/b/a AT&T Florida, d/b/a AT&T Southeast.
- C. AT&T Southeast
on behalf of John T. Tyler
- D. 6 pages total in PDF format
- E. Cole letter, Certificate of Service, and AT&T Florida's Opposition to Motion for Leave to File Amended Petition and Motion
for Oral Argument

<<pleading.pdf>>

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Please note my new email address is debbie.n.smith@att.com

DOCUMENT NUMBER DATE
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8/16/2007

JOHN T. TYLER
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August 16, 2007

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

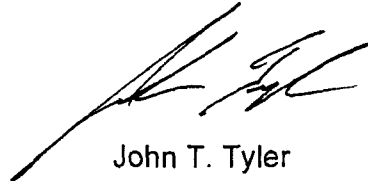
Re: Docket No. 070249-TP (Sprint Arbitration)

Dear Ms. Cole:

Enclosed is AT&T Florida's Opposition to Motion for Leave to File Amended Petition and Motion for Oral Argument, 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,

A handwritten signature in black ink, appearing to read "John T. Tyler", is written over a horizontal line.

John T. Tyler

cc: All Parties of Record
Jerry Hendrix
E. Earl Edenfield, Jr.
James Meza

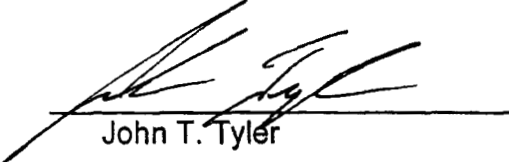
CERTIFICATE OF SERVICE
Docket No. 070249-TP

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail
and First Class U. S. Mail this 16th day of August, 2007 to the following:

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:)	
)	DOCKET NO. 070249-TP
Petition of Sprint Communications)	
Company L.P. and Sprint Spectrum L.P.,)	Filed: August 16, 2007
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)	

**AT&T FLORIDA'S OPPOSITION TO
MOTION FOR LEAVE TO FILE AMENDED PETITION AND
MOTION FOR ORAL ARGUMENT**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") respectfully submits this Opposition to Sprint Communications Company Limited Partnership's and Sprint Spectrum Limited Partnership's (collectively, "Sprint") Motion for Leave to File Amended Petition and Motion for Oral Argument ("Motion"). For the reasons set forth below, the Florida Public Service Commission ("Commission") should deny the Motion.

1. Sprint filed its initial Petition for Arbitration in this matter on April 6, 2007. AT&T Florida filed a Motion to Dismiss and Answer on May 1, 2007, and Sprint filed a Response to the Motion to Dismiss on May 15, 2007.

2. On July 31, 2007, the Commission voted unanimously to approve its Staff's recommendation to grant AT&T Florida's Motion to Dismiss. In doing so, the Commission determined that Sprint's petition should be dismissed because it sought enforcement of an alleged right under the AT&T/BellSouth merger commitments under an FCC Order, as opposed to an open issue concerning Section 251 of the Telecommunications Act of 1996 (the "Act").

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3. On August 9, 2007, Sprint filed a Motion for Leave to File Amended Petition and what Sprint purports to be an *Amended Petition*.¹ In its Motion, Sprint “seeks leave to file an Amended Petition in order to revise the statement of issue for which it seeks arbitration” and to purportedly make it clear that the enforcement of an FCC order, independent and unrelated to any 251 obligation, somehow became part of a Section 252 arbitration proceeding. Motion, p. 2.

4. In its initial Petition for Arbitration Sprint stated its issue as: **“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.

5. In its Amended Petition Sprint states its issue as: **“ISSUE 1: When should the agreed-upon three year extension of Sprint’s current Interconnection Agreement become effective?”** Amended Petition, p. 13.

6. The issue Sprint raises in its Amended Petition is substantively identical to the issue the Commission unanimously dismissed on July 31, 2007. Indeed, the issue in the Amended Petition still erroneously attempts to arbitrate the exact same FCC merger commitment that AT&T Florida argued, and the Commission agreed, cannot be an open issue under Section 251.

7. AT&T Florida concedes that Section 120.569(2)(c) provides for the right to amend, “unless it conclusively appears from the face of the petition that the defect cannot be cured.” See Section 120.569(2)(c). Here, it is clear, based on the face of Sprint’s Amended Petition that Sprint cannot cure the defect, because, as previously determined by the

¹ It should be noted that **the Act does not provide for the filing of an Amended Petition**. Thus, a fundamental question exists as to whether Sprint’s Motion is procedurally appropriate under the structures of Section 252 of the Act.

Commission, the purported enforcement of a merger condition contained in an FCC Order is not an “open issue” to be arbitrated under Section 251 of the Telecommunications Act.

8. For these reasons, AT&T Florida also submits that oral argument is not necessary to resolve the Motion.

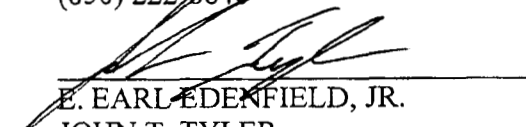
9. Finally, in the event that the Commission grants Sprint’s request for leave to file an Amended Petition, AT&T Florida intends to file a response to the Amended Petition. Although the Act does not address in any regard the right to file an amended petition for arbitration, the Act specifically allows a party 25 days to respond to a Petition for Arbitration under Section 252 of the Act. *See* 47 U.S.C. 252(a)(3). Accordingly, AT&T Florida requests that the Commission grant it time to file a response to the Amended Petition in the event the Commission grants Sprint’s Motion for Leave to File Amended Petition.

Respectfully submitted this 16th day of August, 2007.

AT&T Florida



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