

Decision 10-01-008 January 21, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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 d/b/a 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
(Filed June 8, 2009)

**DECISION GRANTING APPLICANT'S
MOTION FOR SUMMARY ADJUDICATION**

This case arises out of the 2006 merger between Pacific Bell Telephone Company dba AT&T California (AT&T) and BellSouth Corporation. The Federal Communications Commission (FCC) imposed certain conditions on that merger including the condition whose meaning is disputed in this proceeding, Merger Commitment 7.4:

The AT&T/BellSouth ILEC shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of when its initial term

expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law.¹

Although this language plainly grants an interconnecting CLEC an unqualified right to extend an expired interconnection agreement (ICA) for an additional three-year term, AT&T argues that the language should be construed to mean an additional three year term *beyond the original expiration date*. In this case, the original expiration date of the Sprint-AT&T ICA occurred in 2004. Accepting the AT&T interpretation of Merger Commitment 7.4 would mean that Sprint could not extend the term any further.

However, nothing in the FCC's BellSouth order supports AT&T's proposed interpretation. Indeed, the plain language of Merger Commitment 7.4 negates that interpretation. Since it would have been a simple matter for the limiting language that AT&T asks us to imply in the document to have been explicitly set forth therein, and since the language of the Merger Commitment was the product of negotiation between AT&T and the FCC, we conclude that the FCC deliberately omitted such limiting language.

The state utility commissions in Connecticut, Kentucky, Missouri and Michigan have previously considered the meaning of Merger Commitment 7.4 as applied to expired ICAs between local AT&T affiliates and Sprint. All four commissions have concluded that Sprint is entitled to extend its expired ICAs for an additional three years. The reasoning of the recent Connecticut decision is typical. After noting that Sprint and its local AT&T affiliates had been exchanging traffic in accordance with the terms of their expired ICA and that the

¹ *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, W.C. Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189 at ¶ 227.

FCC order imposed the Merger Commitments for a 42-month period ending June 29, 2010, the Connecticut commissioners concluded that:

...Merger Commitment 7.4 permits the 'current' agreement to be extended for a period of up to three years, 'regardless of whether its initial term has expired...' In the instant proceeding, Sprint has requested to extend its existing ICA with the Telco for an additional three year term by its March 30, 2009 letter to AT&T. Since this request has been made within the 42-month period established within the Merger Conditions, the Department finds that the Sprint/Telco ICA should be extended.²

The instant case is on all fours with the Connecticut case. In both, the parties have been exchanging traffic pursuant to the terms of an expired ICA. In both, Sprint has sought a three-year extension within the 42-month time frame established in the BellSouth Merger Conditions. And in neither has AT&T been able to demonstrate that the FCC intended any other result than that reached by the Commissions in Connecticut and three other states. Accordingly, AT&T will be directed to extend its ICA with Sprint for an additional three years from the effective date of this decision.

Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Karl J. Bemederfer in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments are allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were received from the parties on January 4, 2010. Reply comments were received from Sprint Communications Company L.P. on January 11, 2010.

² State of Connecticut Department of Public Utility Control Docket No. 07-12-19REO1 Decision September 16, 2009.

In its opening comments, Sprint corrected two minor errors in the decision. The expiration date of the original term of the parties' interconnection agreement is 2004 rather than 2002. The list of other state commissions that have determined that Sprint has the right to extend an expired interconnection agreement erroneously included Nevada and excluded Michigan. These changes have been adopted.

In its opening comments, AT&T argued that the proposed decision contained legal error because it failed to address AT&T's argument that the expired interconnection agreement is not the current interconnection agreement eligible for extension under the terms of Merger Commitment 7.4. However, this argument is contradicted by AT&T's own conduct in continuing to deal with Sprint pursuant to the allegedly terminated interconnection agreement for more than two years after its purported termination. Further, while Merger Commitment 7.4 does not define what constitutes a current interconnection agreement, AT&T's proposed reading contradicts the purpose of the Merger Commitment which permits extension of an interconnection agreement "regardless of when its initial term expired." AT&T's interpretation of this language would make any expired interconnection agreement ineligible for extension, thus achieving precisely the opposite result to the one intended by the FCC in imposing the merger conditions.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Karl J. Bemesderfer is the assigned ALJ in this proceeding.

Findings of Fact

1. The AT&T/BellSouth Merger Commitments are in effect until June 29, 2010.

2. Merger Commitment 7.4 permits requesting telecommunications carriers to extend their current interconnection agreements, regardless of whether the initial term has expired, for a period of up to three years.

3. Sprint and AT&T have been exchanging traffic on the terms of their expired interconnection agreement from the time of its expiration to date.

Conclusions of Law

1. The expired interconnection agreement is the current interconnection agreement for purposes of applying the BellSouth Merger Commitments.

2. Sprint has made a timely request to extend the current interconnection agreement for three years.

3. The Sprint/AT&T interconnection agreement should be extended for three additional years from the effective date of this decision.

O R D E R

IT IS ORDERED that:

1. Within 15 days of the effective date of this decision, Pacific Bell Telephone Company dba AT&T California shall prepare, execute, and deliver to Sprint Communications Company, L.P. a revised interconnection agreement identical to the current interconnection agreement with an expiration date of three years from the effective date of this decision.

2. Application 09-06-006 is closed.

This order is effective today.

Dated January 21, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN

TIMOTHY ALAN SIMON
Commissioners

