

Ruth Nettles

From: Woods, Vickie [vf1979@att.com]
Sent: Thursday, July 26, 2007 4:06 PM
To: Filings@psc.state.fl.us
Subject: 070249-TP AT&T's Opposition to Request for Oral Argument
Importance: High
Attachments: 070249.pdf

ORIGINAL

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- B. Docket No. 070249-TP
 Petition of Sprint Communications Company Limited Partnership and Sprint Spectrum
 Limited Partnership 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. BellSouth Telecommunications, Inc.
 on behalf of James Meza III
- D. 5 pages total (includes letter, certificate of service and pleading)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Opposition to Request for Oral Argument

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FPSC-COMMISSION CLERK

JAMES MEZA III
General Counsel - Florida

BellSouth Telecommunications, Inc.
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July 26, 2007

ORIGINAL

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

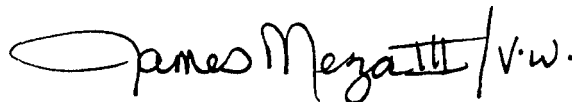
Re: Docket No. 070249-TP (Sprint Arbitration)

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc., d/b/a AT&T Florida's Opposition to Request for Oral Argument, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Handwritten signature of James Meza III in cursive script, followed by the initials "/v.w." to the right.

James Meza III

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

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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 26th day of July, 2007 to the following:

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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: July 26, 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 REQUEST 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 Present Oral Argument (“Motion”). For the foregoing reasons, the Florida Public Service Commission (“Commission”) should deny the Motion.

1. Sprint filed its Petition for Arbitration 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 (“Response”) on May 15, 2007.

2. Sprint effectively concedes that it did not timely request oral argument under recently adopted Rule 25-24.0022, F.A.C. See Motion at 2. This Rule expressly states that “[o]ral argument must be sought by separate written request filed concurrently with the motion on which argument is requested, or no later than 10 days after exceptions to a recommended order are filed. Failure to timely file a request for oral argument *shall* constitute a waiver thereof.” Rule 25-24.0022, F.A.C. (emphasis added).

3. Pursuant to this Rule, Sprint had to submit its request for oral argument at the time it filed its Opposition to AT&T Florida’s Motion to Dismiss – May 15, 2007. Sprint did

not comply with this requirement. Instead, Sprint waited until after the Staff issued its recommendation on the Motion to Dismiss and a few days prior to the July 31, 2007 agenda conference to request oral argument. There is no dispute that Sprint has failed to comply with Rule 25-24.0022, F.A.C. Accordingly, under the express wording of the Rule, Sprint has no right to request oral argument.

4. Assuming *arguendo* that Sprint's request was timely (which it is not), the Motion still does not comply with Rule 25-24.0022, F.A.C., because Sprint has failed to establish why oral argument is necessary. Specifically, other than the generic statement that the issue is a "matter of first impression" (Motion at 3), Sprint fails to explain why its 23-page detailed Response does not adequately present the Commission with the ability to understand and evaluate the issues to be decided or why oral argument is necessary. See Order No. PSC-05-0549-PCO-WU (finding under previous oral argument rule, which also required that a request for oral argument be filed with the pleading that it relates to, that the request for oral argument was untimely because it was filed 13 days after the underlying pleading was filed and because the movant's argument were adequately contained in the pleading).

5. Finally, AT&T Florida responds to Sprint's new argument that, in no event should its Petition be dismissed with prejudice. 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 Petition that Sprint cannot cure the defect, because in no event can the purported enforcement of a merger condition contained in an FCC Order become an "open issue" to be arbitrated under Section 251 of the Telecommunications Act.

Respectfully submitted this 26th day of July, 2007.

AT&T Florida

 James Meza III /v.w.

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