

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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)

Docket No. 070249-TP

Filed: August 9, 2007

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COMMISSION CLERK

SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP
AND SPRINT SPECTRUM LIMITED PARTNERSHIP'S
MOTION FOR LEAVE TO FILE AMENDED PETITION

Sprint Communications Company Limited Partnership and Sprint Spectrum Limited Partnership d/b/a Sprint PCS (collectively, "Sprint"), pursuant to §120.569 (2)(c), Florida Statutes, Rules 28.106.202 and 28-106.204, Florida Administrative Code, and Rule 1.190, Florida Rules of Civil Procedure, file this Motion for Leave to File Amended Petition with the Florida Public Service Commission ("Commission") In support, Sprint states the following:

1. On April 6, 2007, Sprint filed its Petition for Arbitration in this docket, seeking arbitration under 47 U.S.C. Sections 252(b)(1), 252(b)(4)(c), and 252(c)(3) of certain terms and conditions of interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast ("AT&T") for the State of Florida. AT&T filed its Motion to Dismiss

and Answer on May 1, 2007, arguing that the specific issue raised in Sprint's arbitration petition and Answer was not subject to Commission arbitration.

2. On July 19, 2007, Commission Staff filed its Recommendation that the Commission dismiss Sprint's Petition for failure to state a claim for which relief may be granted by the Commission, describing the issue as follows:

1. Sprint Communications Company Limited Partnership and Sprint Spectrum Limited Partnership are also respectively known as "Sprint Communications Company L.P." and "Sprint Spectrum L.P."

CMP
COM
CTR
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The dispositive question placed before the Commission in the instant dispute is *whether the issue Sprint seeks to arbitrate is an 'open issue' arising out of the negotiations within the frameworks of Sections 251 and 252. If so, the Commission's jurisdiction under Section 252 is properly invoked; if not, the Commission's jurisdiction is not properly invoked and the petition must be dismissed.*

Staff Recommendation, page 5, emphasis added. The Recommendation did not, however, state that the issue for which Sprint sought arbitration was beyond the Commission's jurisdiction *per se*; rather, Staff recommended that "as pled by Sprint," the petition did not properly invoke the Commission's jurisdiction. Staff noted that the issues raised in Sprint's Petition are *not* "off limits to the Commission in all circumstances" but in fact "would be within the Commission's subject matter jurisdiction to arbitrate" under some circumstances. (Staff Recommendation, pg. 6). The Commission voted to adopt the Recommendation without amendment during its July 31, 2007 Agenda Conference. No order has yet been issued.

3. Sprint seeks leave to file an Amended Petition in order to revise the statement of issue for which it seeks arbitration; to demonstrate with clarity that such issue was not only discussed, but became the single, determinative "open issue arising out of negotiations within the frameworks of Sections 251 and 252;" and to clearly set forth the basis for the Commission's jurisdiction. Sprint's Amended Petition is attached hereto as Exhibit "A."

4. Pursuant to Rule 28-106.202, Florida Administrative Code, "the petitioner may amend the petition after the designation of the presiding officer only upon order of the presiding officer." This Commission has a longstanding policy to allow free amendment of petitions, holding that "[t]he law is clear that leave to amend pleadings should be freely granted in order to allow disputes to be resolved on their merits." Order No. PSC-05-0283-PCO-EI; ² *see also*

² Docket No. 041291-EI, *In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company.*

Order No. PSC-02-1291-PCO-TP,³ Order No. PSC-03-1305-PCO-TP,⁴ and Order No. PSC-03-0516-PCO-WS.⁵ The Commission's policy of freely permitting amendment of petitions extends to arbitration petitions. In Order No. PSC-01-2268-PCO-TP,⁶ the Commission permitted Florida Digital Network to amend its arbitration petition to add a new arbitration issue after BellSouth had filed its substantive answer, and after the Commission had set the matter for an administrative hearing. Citing Order No. PSC-98-0332-PCO-TP,⁷ the prehearing officer determined that "the Commission has broad discretion to allow amendment of pleadings...and should follow a policy of allowing pleadings to be freely amended, if the privilege to amend has not been abused, in order that disputes may be resolved on the merits."

5. The Commission's policy is based, in part, on, §120.569(2)(c), Florida Statutes, which states that "dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured." The pleading defect noted in Staff's recommendation is not incurable; Sprint has not, for example, asked the Commission to determine liability in a tort claim, sought foreclosure of a mortgage, or requested other relief that

³ Docket No. 020738-TP, *In re: Petition of AT&T Communications of the Southern States, LLC for Suspension and Cancellation of Switched Access Contract Tariff No. FL2002-02 filed by BellSouth Telecommunications, Inc.*

⁴ Docket No. 030746-TP, *In Re: Complaint of Cargill Crop Nutrition, Inc. f/k/a Cargill Fertilizer, a subsidiary of Cargill Corporation, against Verizon Florida Inc. for enforcement of FCC Orders and Florida Public Service Commission decisions eliminating application of tariff changes for complex inside wiring, and request for relief.*

⁵ Docket No. 990374-WS, *In re: Application for staff-assisted rate case in Highlands County by the Woodlands of Lake Placid, L.P., and for deletion of portion of wastewater territory in Certificate No. 361-S held by Highlands Utilities Corporation.*

⁶ Docket No. 010098-TP, *In re: Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996.*

⁷ Docket No. 970730-TP, *In re: Petition by Telenet of South Florida, Inc. for relief under Section 252(i) of the Telecommunications Act of 1996 with respect to rates, terms and conditions for interconnection and related arrangement with BellSouth Telecommunications, Inc.*

is “off limits to the Commission in all circumstances.” Rather, Sprint’s Amended Petition requests the Commission to arbitrate an open issue resulting from interconnection negotiations. Sprint therefore should be permitted to amend its Petition in order to cure the alleged defect noted by Staff.

6. Florida Rule of Civil Procedure 1.190 provides that permission to amend pleadings “shall be given freely when justice so requires.” Further, public policy favors liberal amendment of pleadings, in order that cases may be decided on their merits. *State Farm Fire & Cas. Co. v. Fleet Fin. Corp.*, 724 So. 2d 1218 (Fla. 5th DCA 1998); *Craig v. East Pasco Med. Ctr., Inc.*, 650 So. 2d 179 (Fla. 2d DCA 1995); *Adams v. Knabb Turpentine Co., Inc.*, 435 So. 2d 944 (Fla. 1st DCA 1983). More specifically, Florida courts have held that “all doubts must be resolved in favor of allowing amendment of pleadings,” *Thompson v. Publix Supermarkets, Inc.*, 615 So. 2d 796 (Fla. 1st DCA 1993); and the failure to permit amendment constitutes an abuse of discretion unless it clearly appears the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile. *Carter v. Ferrell*, 666 So. 2d 556 (Fla. 2d DCA 1995). Leave to amend is appropriate where, as here, the amended pleading is based on the same conduct, transaction, or occurrence as the original claim. *Knipp v. Weinbaum*, 351 So. 2d 1081 (Fla. 3d DCA 1977).

7. Sprint has not abused the right to amend. This is Sprint’s first request to amend its petition, and the Commission has, in the past, permitted multiple amendments. See Order No. PSC-99-2511-PCO-TP,⁸ in which the Commission granted a CLEC’s motion for leave amend its arbitration petition a second time.

⁸ Docket No. 990874-TP, *In re: request for arbitration concerning complaint of US LEC of Florida Inc. against BellSouth Telecommunications, Inc. regarding breach of terms of interconnection agreement and request for relief.*

8. Finally, granting Sprint's Motion for Leave to File Amended Petition will not prejudice AT&T's case. AT&T has not propounded discovery to Sprint or filed testimony, and – as set forth in Sprint's Amended Petition – has been aware of the relief sought by Sprint for some time, having negotiated this very issue during the parties' interconnection negotiations. Amendment will not necessitate revision of the schedule in this case, as none has been set.

9. Movant has conferred with counsel for AT&T and states that AT&T Florida opposes this Motion.

WHEREFORE, Sprint respectfully requests that the Commission grant its Motion for Leave to file Amended Petition.

Respectfully submitted this 9th day of August, 2007.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished by U.S. Mail and email to the following parties on this 9th day of August, 2007:

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EXHIBIT
“A”