

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for)	DOCKET UT-073031
Arbitration of an Interconnection)	
Agreement Between)	ORDER 02
)	
SPRINT COMMUNICATIONS)	
COMPANY L.P.)	ORDER DENYING WHIDBEY
)	TELEPHONE COMPANY'S
with)	MOTION TO DISMISS FOR
)	LACK OF JURISDICTION
WHIDBEY TELEPHONE COMPANY)	
)	
Pursuant to 47 U.S.C. Section 252(b).)	
.....)	

- 1 **NATURE OF PROCEEDING:** On October 17, 2007, Sprint Communications Company L.P. (Sprint) filed with the Washington Utilities and Transportation Commission (Commission) a request for arbitration pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996) (Act). The petition was served on Whidbey Telephone Company (Whidbey).

- 2 **MOTION TO DISMISS.** On Friday, November 2, 2007, Whidbey filed a Motion for an Order of Dismissal for Lack of Jurisdiction (Motion to Dismiss). Whidbey's motion presented four separate potential grounds for dismissing Sprint's petition: (a) untimely filing with the Commission; (b) untimely service on Whidbey; (c) failure to verify the petition; and (d) lack of Commission jurisdiction due to the absence of voluntary negotiations between the two parties.

- 3 On Tuesday, November 6, 2007, the Commission served a Notice on the parties indicating that Sprint's Response to Whidbey's Motion to Dismiss would be due on Tuesday, November 13, 2007.

- 4 On Tuesday, November 13, 2007, Sprint filed its Response to Whidbey's Motion to Dismiss. Sprint's Response addressed each of the grounds advanced by Whidbey and argued for denial of the requested relief in each instance.

- 5 **TIMELY FILING OF SPRINT’S PETITION.** Whidbey first contends that §252(b) of the Telecommunications Act provides state commissions with jurisdiction to arbitrate interconnection disputes only when petitions are filed between the 135th and 160th day after a request to negotiate an interconnection agreement (ICA) has been delivered. Whidbey argues that the counting of days in this case should begin on May 3, 2007, when Whidbey received from Sprint a request for local number portability (LNP), not on May 11, 2007, when Whidbey received from Sprint a request to negotiate an ICA. Although Sprint did not supply any draft of an ICA until May 11, 2007, Whidbey relies on a July 27, 2007, letter from Sprint confirming LNP as an included topic under its request for negotiation of an ICA as the basis for measuring the time period from May 3, 2007, rather than May 11, 2007.
- 6 According to Whidbey’s theory, when Sprint filed its petition with the Commission on October 17, 2007, 167 days had elapsed since Sprint first delivered to Whidbey its request to negotiate an ICA on May 3, 2007. Therefore, under §252(b) of the Act, Sprint’s petition was untimely and the Commission had no jurisdiction to entertain it.
- 7 Whidbey’s argument distorts the nature of Sprint’s communications, characterizing a request for LNP as equivalent to a request to negotiate an ICA. The Act’s timelines are not triggered until a request to negotiate an ICA is delivered. Sprint’s LNP letter did not request negotiation of an ICA with Whidbey. Therefore, that letter did not trigger the Act’s timelines. Subsequent clarifications to include LNP issues within the scope of negotiations regarding an ICA can not convert Sprint’s LNP letter into a request to negotiate an ICA.
- 8 Sprint delivered to Whidbey a request to negotiate an interconnection agreement, clearly labeled as such, on May 11, 2007. This action is what triggered the Act’s timelines in this matter. 159 days later, on October 17, 2007, Sprint filed with the Commission its petition seeking arbitration of the ICA. Thus, under §252(b) of the Act, Sprint timely filed its petition with the Commission between the 135th and 160th day after Whidbey received Sprint’s request to negotiate an ICA.

9 **TIMELY SERVICE OF SPRINT’S PETITION ON WHIDBEY.** Whidbey next argues that Sprint’s petition, initially served on Whidbey’s attorney Robert Snyder on October 17, 2007, and then later served on Whidbey’s Vice President, Julia DeMartini on October 25, 2007, demonstrates that Sprint failed to properly serve Whidbey in a timely fashion. Although Whidbey acknowledges that Mr. Snyder had been serving as counsel for Whidbey and was its “point of contact” for purposes of negotiations of the requested ICA, Whidbey contends that Mr. Snyder was not authorized to accept service of process on the company’s behalf. Therefore, Whidbey argues that Sprint failed to comply with §252(b) of the Act and WAC 480-07-630(4)(c)¹ which both require delivery of a copy of the petition to the “other party” to the negotiation on the same day that the petition is filed with the commission.

10 Whidbey likens the requirement to serve the petition on the other party to the negotiation to the commencement of a proceeding in Superior Court but provides no support for this position.² The strictures of the Superior Court Civil Rules are not applicable in this forum. Under the Act and under Commission regulations, service of a petition for arbitration on the other party to the negotiations on the same day it is filed with the Commission is satisfactory.

11 In a letter dated June 5, 2007, Ms. DeMartini designated Mr. Snyder as Whidbey’s point of contact for negotiations of the ICA, requesting only that Sprint furnish her with a copy of any correspondence between Sprint and Mr. Snyder. Mr. Snyder assumed this role and became the “other party” to the negotiations between Sprint and Whidbey.³

¹ Whidbey’s Motion to Dismiss, ¶ 23, incorrectly refers to WAC 480-07-630(6)(c), which addresses the filing and service of an answer to a petition for arbitration, not the petition itself.

² Although Whidbey’s Motion to Dismiss, ¶ 25, makes reference to WAC 480-07-150, that rule regarding service of documents in adjudicative proceedings does not apply in this instance involving a petition for arbitration. Further, WAC 480-07-150(3) addresses an obligation for the Commission to serve its orders on party representatives; this rule does not address any requirements for litigants delivering documents to each other.

³ For instance, on August 10, 2007, in a letter to Sprint’s legal contact, Jeffrey Pfaff, Mr. Snyder indicates he is in a position to “resolve any remaining areas of difference” with regard to a non-disclosure agreement. Later, on October 9, 2007, in an e-mail to Mr. Pfaff, Mr. Snyder supplied a draft extension agreement in response to Sprint’s query as to the possibility of extending the window within which a request for arbitration might be filed under the Act. Finally, on October 16, 2007, in another e-mail to Mr. Pfaff, Mr. Snyder discusses in detail the timeframes regarding Sprint’s filing of a petition for arbitration and Whidbey’s associated deadlines to file a response.

12 Over a period of four months, Mr. Snyder was Whidbey's sole representative in the negotiations regarding the ICA. Therefore, Sprint's service of its petition on Mr. Snyder on October 17, 2007, was timely and proper because Mr. Snyder was the "other party" to the ICA negotiations. Sprint's later delivery of a copy of the petition to Ms. DeMartini was a courtesy but not required by §252(b) of the Act or by WAC 480-07-630(4)(c).

13 **VERIFICATION OF SPRINT'S PETITION.** Whidbey also notes that Sprint's petition was not verified, nor submitted by affidavit or declaration, when it was submitted to the Commission on October 17, 2007. Whidbey argues that under the Commission's rules governing arbitration proceedings held pursuant to the Act, Sprint's unverified documents were fatally incomplete.

14 Whidbey is incorrect. WAC 480-07-630(8) requires petitions, answers, and all documentation filed in telecommunications arbitrations to be "verified as provided by WAC 480-07-395, or submitted by affidavit or declaration." In its entirety, WAC 480-07-395(2) states:

Verification. All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion must be dated and signed by at least one attorney or representative of record in his or her individual name, stating his or her address, or by the party, if the party is not represented. *Parties who are not represented by an attorney must include a statement in any pleading that the facts asserted in the pleading are true and correct to the best of the signer's belief.* Parties who bring certain complaints under RCW 80.01.110 or 71.04.110 that challenge the reasonableness of the rates or charges of jurisdictional utilities must provide additional verification as specified in those statutes. (*emphasis added*)

Put simply, this rule states that an attorney's signature and address are sufficient to verify a petition for arbitration filed with the Commission.

15 Whidbey expends nine paragraphs over nearly six pages of its Motion to Dismiss expounding on the importance of a verified petition. Given the simplicity of the rule

quoted above, it appears that Whidbey failed to read WAC 480-07-395(2). Sprint's petition for arbitration was signed by an attorney. This satisfied the rule. Whidbey's suggestions as to why Sprint may have wished to avoid verification are immaterial and do not provide any basis to reject Sprint's petition for arbitration.

16 **COMMISSION JURISDICTION TO ENTERTAIN PETITIONS FOR
ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996.**

Finally, Whidbey contends that the Commission's jurisdiction to arbitrate this matter can only be triggered by "voluntary negotiations" entered into under §252(a)(1) of the Act. Whidbey states that it "has manifested its willingness to enter into such negotiations, subject to two threshold issues being adequately addressed," but claims that no such negotiations have yet occurred between Sprint and Whidbey due to the failure of Sprint to resolve those threshold issues.

17 In essence, Whidbey claims the ability to avoid entering into negotiations regarding an ICA until its own preconditions have been met, permitting Whidbey to delay the commencement of such negotiations. Whidbey offers no authority for its unilateral ability to determine when negotiations can begin, nor does Whidbey provide any justification for why "threshold issues" could not be taken up during negotiations regarding the ICA.

18 Sprint correctly points out in its Response to the Motion to Dismiss that this Commission has previously determined that one party's refusal to negotiate can not prevent the other party from requesting the Commission to arbitrate the dispute.⁴ Whidbey's argument to the contrary is without merit. The Commission has jurisdiction to entertain Sprint's petition in this matter and, in accordance with the Act and its own regulations, will do so in a timely fashion.

⁴ See Sprint's Response, ¶ 21, citing to Docket UT-023043, *In the Matter of the Petition for Arbitration of an Interconnection Agreement between Level 3 Communications and Century Tel of Washington*.

ORDER

THE COMMISSION ORDERS:

19 Whidbey's Motion for an Order of Dismissal for Lack of Jurisdiction is denied.

DATED at Olympia, Washington, and effective November 30, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge