

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
STATE OF INDIANA
and
SPRINT CORPORATION
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WT Docket No.02-55
TAM-12005

ORDER

Adopted: July 10, 2017

Released: July 10, 2017

By the Acting Chief, Policy and Licensing Division Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. Under consideration is the Motion for Stay of Memorandum Opinion and Order or, In the Alternative, Motion to Modify the Daily Call Requirement, (Motion) filed June 7, 2017 by the State of Indiana (Indiana), and the Opposition to Motion to Stay filed June 8, 2017 by Sprint Corporation (Sprint). The Motion seeks to stay the effectiveness of the Policy and Licensing Division’s Memorandum Opinion and Order released May 22, 2017 (Order),¹ to the extent that said Order required the parties to meet once each business day until they reached an agreement consistent with the Order. For the reasons set forth below, we deny Indiana’s stay request but grant the Motion in part by reducing the required meeting interval to weekly.

II. BACKGROUND

2. The Order resolved 14 issues in dispute between the parties and required the parties to meet (by conference call or in person) daily until they reached agreement consistent with the Order’s disposition of those issues.² On June 1, 2017, Indiana filed a timely request for a de novo hearing of the disputed issues before a Commission administrative law judge pursuant to Section 90.677(d) of the Commission’s rules.³ On June 7, 2017, Indiana filed its instant Motion.

III. DISCUSSION

3. Indiana submits that it meets the criteria for a stay enunciated in Virginia Petroleum Jobbers Association v. Federal Power Commission.⁴ It claims that there is a strong likelihood that it will prevail

1 State of Indiana and Sprint Corporation, Memorandum Opinion and Order, DA 17-494 (PSHSB 2017) (Order)

2 Id.

3 Indiana Petition for De Novo Review, Jun. 1, 2017.

4 Motion at page 2. Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F2d 921, 925 (D.C. Cir. 1958) (Virginia Petroleum). To prevail, the proponent of a stay must show: (1) it is likely to prevail on the merits, (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if a stay is granted and (4) the public interest favors grant of the stay. Id. at 925.

in an administrative hearing because there are “valid jurisdictional arguments” to be considered.⁵ Indiana also alleges it would suffer irreparable injury absent a stay because participating in daily meetings would force Indiana to “rearrange its attorney’s calendars.”⁶ With respect to injury being caused to Sprint, Indiana claims that no such injury will occur because Sprint “will not be required to participate in both matters [the hearing and the meetings], and, further, the reconciliation of the rebanding has been ongoing for more than 10 years.”⁷ In terms of the public interest component of the *Virginia Petroleum* test, Indiana argues that “for public policy reasons, it makes sense to allow the State to make the necessary arguments to the Administrative Law Judge and obtain a ruling there before considering any reconciliation efforts.”⁸

4. Should the Commission find that a stay is not warranted, Indiana requests that the meeting schedule be modified to have meetings or calls occur twice a week rather than daily.⁹ Indiana contends that allowing a longer interval between calls would afford the parties sufficient time to review material from prior calls and that its attorneys are otherwise too occupied to participate in daily calls.¹⁰

IV. DECISION

5. We are not persuaded that Indiana meets the accepted criteria for institution of a stay. First, Indiana has failed to show likelihood of success on its jurisdictional claim because it cites no authority for the proposition that the Commission lacks jurisdiction to hear this matter. Indeed, Indiana has submitted itself to Commission jurisdiction in its Frequency Reconfiguration Agreement (FRA) with Sprint and by filing a request for *de novo* review of its case before a Commission administrative law judge.

6. We also reject Indiana’s claim of irreparable injury based on the prospect of interference with its attorneys’ schedules. Scheduling difficulties of counsel do not constitute “irreparable” injury. As was said in the *Virginia Petroleum* case: “The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.”¹¹ Similarly, we reject the claim that Sprint faces no injury from a stay. The fact that the rebanding process has been lengthy does not mean that Sprint would not be harmed by further delay in the process.

7. Finally, we disagree with Indiana’s “public policy” argument that the parties should await the administrative law judge’s opinion before attempting settlement of this matter.¹² It may be some time before this matter comes before an administrative law judge, and in the meantime the public interest is better served by continuing to take steps to encourage the parties to settle this matter in advance of a hearing, which would avoid delay and obviate the expenditure of party and Commission resources in conducting a hearing.

8. While we find that Indiana has not met the criteria for a stay, we find merit in its contention that daily meetings, at this juncture, may not be as productive as less frequent meetings. Accordingly, we modify our prior Order by directing the parties to meet weekly (in person or by telephone) at a time and date mutually convenient, to finalize documentation of relevant expenditures, and to attempt to reach a

⁵ *Id.*

⁶ *Id.* at page 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at page 4.

¹⁰ *Id.*

¹¹ *Virginia Petroleum*, 259 F2d at 925.

¹² Motion at page 3.

settlement of this matter. We retain the discretion to increase the frequency of meetings in the future if, in our judgment, the record indicates that such an increase would facilitate settlement.

V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, that the Motion for Stay of Memorandum Opinion and Order, In the Alternative, Motion to Modify the Daily Call Requirement, filed June 7, 2017, by the State of Indiana is GRANTED IN PART as to the alternative relief sought and in all other respects IS DENIED.

10. IT IS FURTHER ORDERED that representatives of Sprint Corporation and the State of Indiana, each with the authority to bind its principal, shall meet weekly at a mutually agreed date and time to discuss settlement of issues disputed by the parties.

11. IT IS FURTHER ORDERED that the first such meeting shall take place no later than July 17, 2017.

12. This action is taken under delegated authority pursuant to Sections 0.191(a) and 0.392 of the Commission's Rules, 47 CFR §§ 0.191(a), 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Acting Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau