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

SPRINT COMMUNICATIONS COMPANY, L.P.,	)	
Complainant,	)	**File Nos. E-95-032, E-95-036, E-95-037, E-95-041, E-95-042, E-95-043**
v.	)	
BELL ATLANTIC - PENNSYLVANIA, *et al.*,	)	
Defendants	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 11, 2000 **Released: August 21, 2000**

By the Commission:

1. In this Memorandum Opinion and Order, we deny an application for review filed by Sprint Communications Company, L.P. (Sprint).[1] Sprint challenges a Bureau order resolving six formal complaints filed by Sprint against local exchange carriers (LECs or defendants),[2] pursuant to section 208 of the Communications Act of 1934, as amended (Act).[3] The complaints all similarly allege that the defendant LECs improperly assessed carrier common line (CCL) charges for interstate calls involving certain LEC optional calling services, such as call forwarding and call-waiting.

2. Each of Sprint's complaints raises issues virtually identical to another

[1] *Sprint Communications, L.P. v. Bell Atlantic Pennsylvania, et al*., Application for Review, File Nos. E-95-032, E-95-036, E-95-037, E-95-041, E-95-042, E-95-043 (filed May 30, 2000) (Sprint Application for Review).

[2] The identification of the parties here is based on their corporate status as of the dates the complaints or other pleadings were filed, but does not reflect subsequent mergers. The defendant LECs are: Bell Atlantic - Pennsylvania, Inc., Bell Atlantic - Washington, D.C., Inc., Bell Atlantic - Maryland, Inc., Bell Atlantic - Virginia, Inc., Bell Atlantic - West Virginia, Inc., Bell Atlantic - Delaware, Inc., and Bell Atlantic - New Jersey, Inc.; New England Telephone and Telegraph Company and New York Telephone Company; Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, Ohio Bell Telephone Company, and Wisconsin Bell, Inc.; BellSouth Telecommunications, Inc.; US West Communications, Inc., The Malheur Telephone Company, and El Paso County Telephone Company; Southwestern Bell Telephone Company and Pacific Bell and Nevada Bell.

[3] 47 U.S.C. § 208.

group of complaints that were previously filed by AT&T Corporation (AT&T) and MCI Telecommunications Corporation (MCI) against these same LECs. Because of the identical nature of these issues, Sprint agreed to suspend proceedings on these complaints pending final resolution of the earlier-filed AT&T and MCI complaints, and agreed to be bound by the precedents established in the Commission's consolidated order in that proceeding.[4] On December 9, 1998, the Commission released a Memorandum Opinion and Order resolving the liability issues raised in the consolidated AT&T and MCI proceeding (*Liability Order*), and granting those complaints, in part.[5] The Commission subsequently denied petitions for reconsideration of that order filed by both complainants and defendants in that proceeding.[6] Although the Commission's rules specify that "*any . . . person* whose interests are adversely affected by any action taken by the Commission . . . may file a petition requesting reconsideration of the action taken,"[7] Sprint did not petition for reconsideration of the *Liability Order*. On April 28, 2000, the Enforcement Bureau granted Sprint's complaints, in part, and denied them, in part, consistent with our reasoning in the *Liability Order*.[8]

3. In this order, we reject both of the claims that Sprint asserts in its Application for Review.[9] Both claims are direct attacks on the rulings in the *Liability Order*. Under the terms of the abeyance agreement, Sprint agreed to be bound by the *Liability Order* other than for "factual and/or legal issues . . . which differ[ed] from those raised in the AT&T Complaint Proceedings . . . ."[10] This agreement allowed Sprint to only raise new legal arguments or facts which would show that Sprint was in a different position than AT&T or MCI, and, therefore, should be accorded different treatment than that accorded to AT&T or MCI in the *Liability Order*. Sprint has not done so. Rather, Sprint is effectively seeking reconsideration of the *Liability Order* by re-litigating the same legal issues previously decided in the *Liability Order*. To the extent that Sprint found fault with the rulings in the *Liability Order*, it should have sought to address those points through a petition for reconsideration of that order.

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4 The abeyance arrangement constituted a voluntary commitment by the parties to this current proceeding that they would not relitigate issues of law decided in the *Liability Order*. Letter from Heather L. McDowell, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau to Joint Counsel, dated August 1, 1995. *See also* Letter from Sprint Communications Company to John Muleta, Chief, Enforcement Division, Common Carrier Bureau, dated March 29, 1996 (Sprint Abeyance Letter). MCI and the remaining five RBOCs in the MCI complaint series reached a similar agreement. *See* Joint Motion to Hold in Abeyance, filed November 18, 1996 and grant stamped December 13, 1996, Enforcement Division, Common Carrier Bureau.

5 *AT&T Corp., MCI Telecommunications Corp. v. Bell Atlantic, et al.*, 14 FCC Rcd 556 (December 9, 1998).

6 *AT&T Corp., MCI Telecommunications Corp. v. Bell Atlantic, et al.*, 15 FCC Rcd 7467 (April 18, 2000).

7 47 C.F.R. § 1.106(b)(1) (emphasis added).

8 *Sprint Communications, L.P., MCI Telecommunications, Corporation v. Bell Atlantic Pennsylvania, et al*., 15 FCC Rcd 7569 (April 28, 2000).

9 *See* Sprint Application for Review.

10 Sprint Abeyance Letter.

4. In its Application for Review, Sprint argues against the Commission's determination in the *Liability Order* regarding ILEC imposition of inter and intrastate charges on certain services.[11] Although Sprint seeks to distinguish its claims from those addressed in the *Liability Order*, Sprint is attacking the determination made in the *Liability Order.*[12] To have ruled in Sprint's favor on this issue, the Bureau would have had to have overturned the Commission's determination that the imposition of both inter and intrastate charges on the forwarded part of the call is not *per se* unlawful. Sprint also argues that, with regard to certain optional calling services, "[t]he Liability Order distorts the meaning of the word 'use'."[13] Sprint has cited no facts or legal requirements that would lead the Commission to conclude that it should be treated differently than AT&T or MCI with regard to either of these issues. Sprint should have raised its legal arguments regarding the appropriateness of the Commission's determinations in a petition for reconsideration of the *Liability Order*.

5. In any event, having reviewed Sprint's petition, we find no arguments that would lead us to reconsider our conclusion in the *Liability Order*. We have already denied reconsideration of that decision once,[14] and Sprint's arguments do not lead us to alter our previous conclusions. We therefore deny Sprint's Application for Review.

6. Accordingly, IT IS ORDERED pursuant to Sections 1, 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 208 and Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that the above-captioned application for review filed by Sprint Communications Company, L.P. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

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[11] Sprint Application for Review at 9.

[12] *Liability Order* at ¶¶ 47-48.

[13] Sprint Application for Review at 12. Sprint concedes that it had not previously raised this argument before the Bureau. *Sprint Communications Co., L.P. v. BellSouth Telecommunications, Inc., et al.*, Reply to Oppositions to Application for Review, File Nos. E-95-032, E-95-036, E-95-037, E-95-041, E-95-042, E-95-043 (filed June 29, 2000) at 2. *See* 47 C.F.R. 1.115(c) (stating that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.").

[14] *AT&T Corp., MCI Telecommunications Corp. v. Bell Atlantic, et al.*, 15 FCC Rcd 7467 (April 18, 2000).