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January 21, 2008

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

Re: Docket No. 070368-TP (Nextel Partners)
Docket No. 070369-TP (Nextel)

Dear Ms. Cole:

Enclosed is AT&T Florida's Response in Opposition to Motion for Summary Final Order, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service on this day.

Sincerely,

John T. Tyler

cc: All Parties of Record
Gregory Follensbee
E. Earl Edenfield, Jr.
Lisa S. Foshee

CERTIFICATE OF SERVICE
Docket Nos. 070368-TP and 070369-TP

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 21st day of January, 2008 to the following:

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John T. Tyler

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of the Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001	)	Docket No. 070368-TP
Notice of the Adoption by Nextel South Corp. And Nextel West Corp. (collectively "Nextel") Of the Existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001	)	Docket No. 070369-TP
	)	Filed: January 21, 2008

AT&T FLORIDA'S RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY FINAL ORDER

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") files this response in opposition to the Motion for Summary Final Order ("Motion") filed by Nextel Partners and Nextel (collectively "Nextel"). In its Motion, Nextel moves the Florida Public Service Commission ("Commission") for a Summary Final Order that acknowledges Nextel's adoptions of the interconnection agreement between AT&T Florida and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P. (collectively "Sprint"). However, as is demonstrated below, given the existence of numerous genuine issues of material fact, the Commission should deny Nextel's Motion.

INTRODUCTION

On June 8, 2007, despite the fact that Nextel knew that AT&T Florida disagreed with Nextel's attempt to adopt the interconnection agreement between AT&T Florida and Sprint, Nextel unilaterally filed with the Commission a two-page letter in which it claimed it was notifying the Commission that it had adopted the interconnection agreement between AT&T Florida and Sprint.[1] Notwithstanding the fact that Nextel's June 8, 2007 letter to the Commission was not a complaint or petition, and AT&T Florida had no affirmative duty to respond, on June 28, 2007, AT&T Florida filed a Motion to Dismiss Nextel's Notices of Adoption.

AT&T Florida's Motion to Dismiss raised threshold issues but did not raise, nor was it intended to raise, all substantive issues demonstrating why Nextel's attempted adoptions should be denied. On July 9, 2007, Nextel filed its Response to AT&T Florida's Motion to Dismiss. On October 16, 2007, the Commission entered an Order denying AT&T Florida's Motion to Dismiss and ordering that the dockets remain open "pending further proceedings."[2]

Despite the Commission's express directive that the dockets remain open pending further proceedings, and the fact that to date no further proceedings have taken place, Nextel is now requesting that the contested adoptions be summarily approved and the dockets closed. However, to approve the adoptions without a hearing on the substantive merits would deprive AT&T Florida of its due process rights and would run counter to judicious public policy.

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[1] A copy of Nextel's letter is attached hereto as Exhibit A. On page 2 of the letter, Nextel acknowledges that AT&T disagreed with the purported adoption.

[2] Order Denying Motion to Dismiss, Order No. PSC-07-0831-FOF-TP.

DISCUSSION

A. Nextel's Motion Does Not Meet the Legal Standard

As a preliminary matter, in considering motions for summary final order it is important to consider the procedural posture of the underlying matter. In the case *Re: Application for increase in water rates in Orange County by Wedgefield Utilities, Inc.*; Docket No. 991437-WU ("*Wedgefield Order*") (July 27, 2001), for example, this Commission explained that it was premature to consider a motion for summary final order before the parties had the opportunity to "complete discovery and file testimony." In the present instance, the matter is at a preliminary stage, and the parties have not completed discovery nor have they filed testimony.

Although the parties recently reached agreement on stipulations such that AT&T Florida was able to withdraw its Notice of Rule 1.310(b)(6) Deposition (which was the subject of Nextel's Motion To Quash and for Protective Order filed contemporaneously with its Motion), [3] AT&T Florida has not waived its right to fully complete and perfect the evidentiary record. Given the current procedural posture of this matter, it is obvious that the drastic remedy of a final summary order is not appropriate.

Rule 28-106.204(4), Florida Administrative Code, provides that "any party may move for summary final order whenever there is no genuine issue as to any material fact." Pursuant to Section 120.57(1) (b), Florida Statutes, a summary final order shall be rendered if it is determined from the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, that no genuine issue as to any

[3] As a result of the agreement the parties reached regarding stipulations, AT&T Florida understands that Nextel will dismiss its corresponding Motion To Quash and For Protective Order.

material fact exists and that the moving party is entitled as a matter of law to the entry of a final summary order.

Under Florida law, it is well established that a party moving for summary judgment must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought. *Moore v. Moore*, 475 So. 2d 666,668 (Fla. 1985). A summary judgment cannot be granted unless the facts are so crystallized that nothing remains but questions of law. *Id.*; *McCraney v. Barberi*, 677 So. 2d 355 (Fla. 1st DCA 1996). If the evidence permits different reasonable inferences, it should be submitted as a question of fact. *Id.* The burden is on the movant to demonstrate that the opposing party cannot prevail. *Christian v. Overstreet Paving Co.,* 679 So. 2d 839 (Fla. 2nd DCA (1996). If the record reflects the existence of any issue of material fact, or even raises the slightest doubt that an issue might exist, summary judgment is improper. *Id.*

This Commission, in handling requests for summary orders, has also recognized that policy considerations need to be taken into account. *See* Order No. PSC-98-1353-PCO-WS, issued November 20, 1998. There the Commission recognized that caution must be exercised in granting a summary judgment because it forecloses the litigant from the benefit of and right to a trial on the merits of his or her claim. *Id.*; *See also* Order No. PSC-01-0360-PAA-WS, issued on February 9, 2001.

Moreover, when considering whether it is appropriate to enter final summary orders, Florida administrative decisions show that such motions are rarely granted. *Wedgefield Order and* Consolidated dockets 030867, 030868, 030869, and 030961

("Rate rebalancing docket"), Order No. 03-1469-FOF-TL. In the *Wedgefield* matter, the Commission recognized that:

> the granting of a summary judgment, in most instances, brings a sudden and drastic conclusion to a lawsuit, thus foreclosing the litigant from the benefit of and right to a trial on the merits of his or her claim. *Coastal Caribbean Corp. v. Rawlings,* 361 So.2d 719, 721 (Fla. 4th DCA 1978). It is for this very reason that caution must be exercised in the granting of summary judgment, and the procedural strictures inherent in the Florida Rules of Civil Procedure governing summary judgment must be observed. *Page v. Staley,* 226 So.2d 129, 132 (Fla. 4th DCA 1969); *McCraney v. Barberi,* 677 So.2d 355 (Fla. 1st DCA 1996) (finding that summary judgment should be cautiously granted). The procedural strictures are designed to protect the constitutional right of the litigant to a trial on the merits of his or her claim. They are not merely procedural niceties nor technicalities.

The Commission denied granting summary final order in the *Wedgefield Order*, explaining that "[w]eighing the severity of the remedy sought in the summary final order against the diminutive avoided costs and delay available, we find that the better and more cautious course is to deny the summary final order." This Commission should likewise deny Nextel's Motion – this matter remains at a preliminary stage, summary final orders are rarely granted, and granting Nextel's Motion even if it met the legal standard (which it clearly does not) would fail to meet the policy objectives of avoiding costs and delay.

B. Important Unresolved Genuine Issues of Material Fact

As is further discussed below, all of the underlying substantive issues, necessarily genuine issues of material fact, in this docket remain unresolved, and therefore Nextel's Motion should be denied. For example, in the Nextel adoption letters, Nextel asserts that, in making the adoption, it is relying upon Merger Commitments Nos. 1 and 2 and Section

252(i) of the Telecommunications Act of 1996. However, in each instance, Nextel's attempted adoption is defective and should, therefore, be denied.

I. Nextel's Attempted Adoption Does Not Comply With The Merger Commitments.

In its Petition, Nextel claims to rely on "the interconnection-related Merger Commitments Nos. 1 and 2 ordered by the Federal Communications Commission ("FCC") in the AT&T Inc. and BellSouth Corp. merger proceeding, and Section 252(i) of the Telecommunications Act of 1996 ("Act") …." The merger commitments Nextel refers to read as follows:

> 1. The AT&T/BellSouth ILEC shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.
>
> 2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

Neither of these Merger Commitments supports the adoption requested by Nextel.

The first Merger Commitment applies only when a carrier wants to take an interconnection agreement from one state and operate under that agreement in a different state (which often is referred to as "porting" an agreement from one state into another

state). That is precisely why the commitment contains language such as "subject to state-specific pricing and performance plans and technical feasibility," and "consistent with the laws and regulatory requirements of the state for which the request is made." That language is necessary only when an agreement that was approved in one state is ported into another state.

Notably, prior to this Merger Commitment, carriers did not have the right to port an agreement from one state to another – they only had the right to adopt approved agreements within a given state consistent with the provisions of 47 U.S.C. § 252(i) and the FCC's rules implementing those provisions. That fact further demonstrates that this Merger Commitment does not address the in-state adoption rights carriers *already had*. Instead, this Merger Commitment provides carriers certain state-to-state porting rights that they previously did not have.

In the instant case, Nextel is not seeking to port an agreement from another state into Florida; it is attempting to use the Merger Commitment to adopt the Florida AT&T/Sprint interconnection agreement. *See* Notice of Adoption at 1. Such an adoption was not contemplated under the Merger Commitment and is improper. Therefore, the Commission should deny the adoption request.

Likewise, the second Merger Commitment does not support Nextel's attempted adoption. Although the second Merger Commitment (unlike the first) applies to in-state adoption requests, it has absolutely no bearing on Nextel's request. This Merger Commitment simply states that under specified conditions, AT&T Florida "shall not refuse a request … to opt into an [interconnection] agreement on the ground that the agreement has not been amended to reflect changes of law." AT&T Florida does not

dispute that the Sprint agreement has been amended to reflect changes of law, and AT&T Florida's objection to Nextel's request is not based on any "change of law" issues.

Therefore, this Merger Commitment is entirely inapplicable to this dispute. Nextel's reliance on this Merger Commitment for the attempted adoption is misplaced and should be denied by the Commission.

II. Nextel's Attempted Adoption Does Not Comply With Section 252(i).

Nextel also based its attempted adoption on Section 252(i) of the Act. *See* Notice of Adoption at 1. Section 252(i) provides:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

This provision does not support Nextel's attempted adoption because Nextel is not seeking to adopt the Sprint interconnection agreement "upon the same terms and conditions as provided in the agreement." That is so because the Sprint agreement addresses a unique mix of wireline and wireless items, and Nextel is a solely wireless carrier. Allowing Nextel to adopt the Sprint interconnection agreement would result in an agreement that would be contrary to FCC rulings and internally inconsistent.

First, Nextel cannot avail itself of all of the interconnection services and network elements provided within the Sprint agreement. The Sprint agreement contains negotiated terms and conditions between AT&T Florida and the following Sprint entities: wireline providers Sprint Communications Company Limited Partnership and Sprint Communications Company L.P. (collectively referred to as "Sprint CLEC"); and wireless providers Sprint Spectrum L.P. and SprintCom, Inc. (collectively "Sprint PCS"). The

Sprint interconnection agreement, therefore, addresses a unique mix of wireline and wireless items (such as traffic volume, traffic types, and facility types), and it reflects the outcome of negotiated gives and takes that would not have been made if the agreement addressed only wireline services or only wireless services.

Nextel is not seeking to adopt the Sprint agreement "upon the same terms and conditions as provided in the agreement." The terms and conditions of the Sprint interconnection agreement clearly apply only when the non-ILEC parties to the agreement are providing both facilities-based wireline and wireless services. Nextel, however, does not provide both services in Florida. Nextel is not certificated to provide wireline services in Florida.

AT&T rarely enters into a single interconnection agreement addressing both wireline and wireless services and as noted above, the Sprint interconnection agreement reflects the outcome of negotiated gives and takes that would not have been made if the agreement addressed only wireline services or only wireless services. Attachment 3, Section 6.1 of the Sprint interconnection agreement, for instance, expressly states that "The Parties' agreement to establish a bill-and-keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic."[4] To allow Nextel to adopt the Sprint interconnection agreement, would disrupt the dynamics of the terms and conditions negotiated between AT&T Florida and the parties to the Sprint interconnection agreement and in this case, AT&T Florida would lose the benefits of the bargain negotiated with those parties.

For example, AT&T Florida would be denied the benefit of the bargain it negotiated regarding interconnection compensation. Specifically, Attachment 3, Section

[4] Attachment 3, Section 6.1 of the agreement is attached hereto as Exhibit B.

6.1.1 of the Sprint Agreement establishes a "bill-and-keep" arrangement for usage on CLEC local traffic, ISP-bound traffic, and wireless local traffic. AT&T Florida would not enter into a "bill-and-keep" arrangement in a vacuum with a strictly wireless carrier such as Nextel.

Furthermore, in accordance with Attachment 3, Section 6.1, if the balance of parties to the agreement changes (as would be the case if Nextel as a standalone CMRS provider were allowed to adopt the Sprint Agreement), such disruption triggers termination or renegotiation of reciprocal compensation. [5]

Another example of how AT&T Florida would be denied the benefit of its bargain if forced to allow Nextel to adopt the multi-party Sprint agreement concerns the cost of interconnection facilities. Section 2.3.2 establishes a 50/50 split for the cost of interconnection facilities for wireless traffic, or as the agreement states, "[t]he cost of the interconnection facilities ... shall be shared on an equal basis." In a vacuum, with a sole wireless carrier such as Nextel, AT&T Florida would not likely enter into this particular split for wireless traffic.

Similarly, Section 2.9.5.1 establishes a 50/50 split for the cost of interconnection facilities for handling transit traffic, ISP-bound traffic and intraLATA toll traffic for the Sprint CLEC. This particular split is unusual for CLEC traffic, and AT&T Florida would not likely agree to such an arrangement with a stand-alone CLEC provider. This reinforces the fact that AT&T Florida evaluated the Sprint agreement in totality and entered into the agreement with full consideration of interconnection requirements of all

[5] Such a result, sending the parties right back into contract negotiation, would clearly frustrate the stated goal of "reducing transaction costs" set forth in the Merger Order (*see In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, at page 149, Appendix F), as well as the intended application of Section 252(i) itself.

parties to the agreement, just as the FCC requires in its rules implementing § 252(i) as discussed further below.

III. Granting The Adoption Would Violate FCC Rules.

As explained above, both wireless and wireline carriers are parties to the Sprint interconnection agreement. If Nextel were allowed to adopt the agreement, such adoption would erroneously suggest that Nextel could avail itself of provisions in the agreement that apply only to CLECs. For example, Attachment 2 of the Sprint agreement allows the Sprint CLEC entities to purchase unbundled network elements ("UNEs") from AT&T Florida. Allowing Nextel to adopt the agreement would result in erroneously suggesting that Nextel can purchase UNEs from AT&T Florida. Nextel only provides wireless services in Florida, and in its *Triennial Review Remand Order*, the FCC ruled that:

> Consistent with [the D.C. Circuit Court of Appeal's opinion in] USTA II, we deny access to UNEs in cases where the requesting carrier seeks to provide service exclusively in a market that is sufficiently competitive without the use of unbundling. *In particular, we deny access to UNEs for the exclusive provision of mobile wireless services ....*[6]

Nextel, therefore, cannot purchase UNEs from AT&T Florida.

That is but one example of why granting the adoption would violate the FCC rules. There are various other terms and conditions within the agreement that cannot be applied to Nextel as a stand-alone wireless carrier. However, without waiving argument

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[6] *See* Order On Remand, *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 F.C.C.R. 2533 at ¶ 34 (February 4, 2005) (emphasis added).

regarding those additional impediments to the adoption, AT&T Florida will refrain from discussing each at length within this pleading.[7]

Furthermore, the agreement cannot be revised to address this issue because the FCC has ruled that a carrier is no longer permitted to "pick and choose" the provisions in an approved agreement that it wants to adopt. Instead, the FCC has adopted an "all-or-nothing rule" that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement *in its entirety*, taking *all* rates, terms, and conditions from the adopted agreement.[8]

Allowing Nextel to "adopt" the Sprint interconnection agreement after revising the agreement to clarify which provisions Nextel can and cannot use would be contrary to this FCC ruling. Stated conversely, allowing Nextel to take an agreement where CLEC-only provisions cannot apply is tantamount to allowing Nextel to "pick and choose" only the wireless terms and conditions from the Sprint Agreement—and this cannot legally be done.

In addition, 47 C.F.R. § 51.309(b), makes clear that AT&T Florida is not required to make agreements available for adoption if the incumbent LEC proves to the Commission that:

> (1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement; or
>
> (2) The provision of a particular agreement to the requesting carrier is not technically feasible.

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[7] AT&T Florida will proffer witness testimony to discuss these issues in full at hearing.

[8] *See* Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 F.C.C.R. 13494 at ¶ 1 (July 13, 2004) (emphasis added).

If, for example, AT&T Florida's costs regarding the shared facility factor or bill-and-keep provisions increase as a result of Nextel's adoption, the adoption would violate the FCC's rules. The applicable federal regulations clearly contemplate AT&T Florida having an opportunity to "prove" the above-listed matters; accordingly, a hearing is required in this matter.

CONCLUSION

There are genuine issues of material fact that remain unresolved in this docket and therefore Nextel's Motion should be denied. The Commission should adopt a procedural and scheduling order allowing the submission of evidence and for the parties to be fully heard on the substantive issues. Interpretation of the Merger Commitments should be left to the FCC. The Merger Commitments upon which Nextel relies for its attempted adoption are inapplicable. Nextel's reliance on Section 252(i) is also misplaced, since the agreement cannot be made available to Nextel "upon the same terms and conditions as those provided in the agreement," nor can it be provided to Nextel if it increases AT&T Florida's costs as compared to the carriers "that originally negotiated the agreement." Finally, given that Nextel cannot take the entire agreement, allowing the adoption would violate the FCC's "all-or-nothing rule."

AT&T Florida respectfully requests the Commission to deny Nextel's Motion, deny the adoption requests filed by Nextel in this matter or, in the alternative, the Commission enter a procedural schedule, schedule a hearing on the underlying merits of this matter, and enter a final order based upon evidence to be adduced at hearing.

Respectfully submitted, this 21st day of January, 2008.

BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T FLORIDA

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Douglas C. Nelson
Attorney, State Regulatory Affairs

June 8, 2007

By Electronic Filing

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

Re: Notice of the Adoption by Nextel South Corp. and Nextel West Corp. (collectively "Nextel") of the Existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001.

Dear Ms. Cole:

Nextel South Corp. and Nextel West Corp. (collectively "Nextel") hereby provides notice to the Florida Public Service Commission that effective immediately Nextel has adopted in its entirety, the "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P[1]." dated January 1, 2001 ("Sprint ICA") as amended.[2] The agreement has been filed and approved in each of the 9-legacy BellSouth states, including Florida[3]. Nextel has exercised its right pursuant to the Federal Communications Commission approved Merger Commitment Nos. 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements" as ordered by ("Merger Commitments") in the BellSouth – AT&T merger, WC Docket No. 06-74[4], and 47 U.S.C. § 252(i).

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[1] Sprint Communications Company Limited Partnership, Sprint Communications Company L.P. and Sprint Spectrum L.P. are collectively referred to herein as "Sprint".

[2] BellSouth Telecommunications, Inc. is now registered in Florida as BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and is referred to herein as "AT&T Southeast."

[3] For the purposes of this letter, the 9 legacy BellSouth states means: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. The Sprint ICA was initially approved by the Florida Public Service Commission in Dockets No. 000828-TP and 000761-TP. A true and correct copy of the 1,169 page Interconnection Agreement, as amended, can be viewed at: http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf., and is incorporated fully herein by reference. Due to the size of the file and its general availability, we are not providing a copy of the agreement with this letter, but will provide paper or electronic copies upon request.

[4] Merger Commitment No. 1 states:

> ***The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory,*** subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made." (Emphasis added).

Merger Commitment No. 2 states:

> The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

Exhibit A

All relevant state-specific differences among the 9 legacy BellSouth states are already contained within the Sprint ICA, including Florida. Since the same state-specific terms are applicable to Nextel on a state-by-state basis, there are no "state-specific pricing and performance plans and technical feasibility" issues pursuant to Merger Commitment No. 1. Likewise, since the Sprint ICA is already TRRO compliant and has an otherwise effective change of law provision, there is no issue preventing Nextel from adopting the Sprint ICA in each applicable state, including Florida, pursuant to Merger Commitment No. 2.

The Sprint ICA is current and effective, although Sprint and AT&T Southeast have a dispute regarding the term of the agreement.[5] Sprint believes the term of the agreement ends March 19, 2010 while AT&T Southeast has maintained, among other things, that the term may end no later than December 31, 2007.

Nextel has contacted AT&T Southeast regarding Nextel's adoption of the Sprint ICA, but AT&T Southeast refuses to voluntarily acknowledge and honor Nextel's rights regarding such adoption.

The Sprint ICA adopted today replaces in its entirety the existing interconnection agreement between Nextel and AT&T Southeast.

Should you have any questions regarding Nextel's adoption of the Sprint ICA, please do not hesitate to call.

Sincerely,

Douglas C. Nelson

CC by email unless otherwise noted:
Mr. Eddie A. Reed, Jr., AT&T Director-Contract Management (by US mail)
Ms. Kay Lyon, Lead Negotiator, AT&T Wholesale
Mr. Randy Ham, Assistant Director, AT&T Wholesale
Ms. Lynn Allen-Flood, AT&T Wholesale – Contract Negotiations
Mr. Joseph M. Chiarelli, Counsel for Nextel
Mr. William R. Atkinson, Counsel for Nextel
Mr. Jim Kite, Sprint Nextel Interconnection Solutions

[5] See Docket No. 070249-TP.

Sprint
Together with NEXTEL

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Douglas G. Nelson
Attorney, State Regulatory Affairs

June 8, 2007

By Electronic Filing

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
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Re: Notice of the Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001.

Dear Ms. Cole:

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") hereby provides notice to the Florida Public Service Commission that effective immediately Nextel Partners has adopted in its entirety, the "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P[1]." dated January 1, 2001 ("Sprint ICA") as amended.[2] The agreement has been filed and approved in each of the 9-legacy BellSouth states, including Florida[3]. Nextel Partners has exercised its right pursuant to the Federal Communications Commission approved Merger Commitment Nos. 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements" as ordered by ("Merger Commitments") in the BellSouth – AT&T merger, WC Docket No. 06-74[4], and 47 U.S.C. § 252(i).

---

[1] Sprint Communications Company Limited Partnership, Sprint Communications Company L.P. and Sprint Spectrum L.P. are collectively referred to herein as "Sprint".

[2] BellSouth Telecommunications, Inc. is now registered in Florida as BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and is referred to herein as "AT&T Southeast."

[3] For the purposes of this letter, the 9 legacy BellSouth states means: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. The Sprint ICA was initially approved by the Florida Public Service Commission in Dockets No. 000828-TP and 000761-TP. A true and correct copy of the 1,169 page Interconnection Agreement, as amended, can be viewed at: http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf, and is incorporated fully herein by reference. Due to the size of the file and its general availability, we are not providing a copy of the agreement with this letter, but will provide paper or electronic copies upon request.

[4] Merger Commitment No. 1 states:

> ***The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory,*** subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made." (Emphasis added).

Merger Commitment No. 2 states:

> The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

All relevant state-specific differences among the 9 legacy BellSouth states are already contained within the Sprint ICA, including Florida. Since the same state-specific terms are applicable to Nextel Partners on a state-by-state basis, there are no "state-specific pricing and performance plans and technical feasibility" issues pursuant to Merger Commitment No. 1. Likewise, since the Sprint ICA is already TRRO compliant and has an otherwise effective change of law provision, there is no issue preventing Nextel Partners from adopting the Sprint ICA in each applicable state, including Florida, pursuant to Merger Commitment No. 2.

The Sprint ICA is current and effective, although Sprint and AT&T Southeast have a dispute regarding the term of the agreement.[5] Sprint believes the term of the agreement ends March 19, 2010 while AT&T Southeast has maintained, among other things, that the term may end no later than December 31, 2007.

Nextel Partners has contacted AT&T Southeast regarding Nextel Partners' adoption of the Sprint ICA, but AT&T Southeast refuses to voluntarily acknowledge and honor Nextel Partners' rights regarding such adoption.

The Sprint ICA adopted today replaces in its entirety the existing interconnection agreement between Nextel Partners and AT&T Southeast.

Should you have any questions regarding Nextel Partners' adoption of the Sprint ICA, please do not hesitate to call.

Sincerely,

Douglas C. Nelson

CC by email unless otherwise noted:
Mr. Eddie A. Reed, Jr., AT&T Director-Contract Management (by US mail)
Ms. Kay Lyon, Lead Negotiator, AT&T Wholesale
Mr. Randy Ham, Assistant Director, AT&T Wholesale
Ms. Lynn Allen-Flood, AT&T Wholesale – Contract Negotiations
Mr. Joseph M. Chiarelli, Counsel for Nextel Partners
Mr. William R. Atkinson, Counsel for Nextel Partners
Mr. Jim Kite, Sprint Nextel Interconnection Solutions

[5] See Docket No. 070249-TP.

necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly.

4.8 Nothing in this Agreement shall prohibit Sprint PCS from enlarging its CMRS network through management contracts with third parties for the construction and operation of a CMRS system under the SPCS brand name and license. Traffic originating on such extended networks shall be treated as Sprint PCS traffic under the terms and conditions of this Agreement. All billing for such traffic will be in the name of Sprint PCS, and subject to the terms and conditions of this Agreement.

5. Local Dialing Parity

Each Party shall provide local dialing parity, meaning that each Party's customers will not have to dial any greater number of digits than the other Party's customers to complete the same call.

6. Interconnection Compensation

6.1 Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic is the result of negotiation and compromise between BellSouth, Sprint CLEC and Sprint PCS. The Parties' agreement to establish a bill and keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic. Specifically, Sprint PCS provided BellSouth a substantial cost study supporting its costs. As such the bill and keep arrangement is contingent upon the agreement by all three Parties to adhere to bill and keep. Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between BellSouth and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by BellSouth.

6.1.1 The Parties hereby agree to a bill-and-keep arrangement for usage on CLEC Local Traffic, ISP-bound traffic, and Wireless Local Traffic. Such bill-and-keep arrangement includes any per minute of use rate elements associated with the transport and termination of CLEC Local Traffic, ISP-bound Traffic, and Wireless Local Traffic. Such bill-and-keep arrangement does not include trunks and associated dedicated transport, transit and intermediary traffic, or interMajor Trading Area traffic.

6.1.2 Sprint CLEC charges for dedicated transport and associated facilities of calls on Sprint CLEC's or BellSouth's respective networks are as set forth in Exhibit A to this Attachment. If Sprint CLEC, pursuant to 47 CFR §51.711(b), demonstrates that its costs support different rates for the transport mileage described in this Section, upon approval by the appropriate state commission, such other rates shall

be included within this Agreement to be applied prospectively from the effective date of the Commission approval.

6.1.3 If Sprint CLEC chooses to provide local switching of BellSouth-originated calls through use of a switch located outside the LATA in which the calls originate, any transport charges that BellSouth may owe Sprint CLEC as reciprocal compensation for transporting such calls shall be governed by this Section. BellSouth shall compensate Sprint CLEC at the dedicated transport rates specified in Exhibit A, as is appropriate to the specific circumstances of the individual call. To the extent that BellSouth is required to pay such transport on a distance-sensitive basis, the distance the call is considered transported, for purposes of determining any reciprocal compensation owed, shall not exceed the shortest distance in airline miles between the point BellSouth hands the call off to Sprint CLEC (the appropriate Point of Interconnection where the two networks join in the LATA) and the LATA boundary. If Sprint CLEC, pursuant to 47 CFR §51.711(b), demonstrates that its costs support different rates for the transport mileage described in this Section, upon approval by the appropriate state commission, such other rates shall be included within this Agreement to be applied prospectively from the effective date of the Commission approval.

6.1.4 Neither Party shall represent switched access services traffic (e.g. FGA, FGB, FGD) as Local Traffic for purposes of payment of reciprocal compensation.

6.1.5 For BellSouth and Sprint CLEC traffic, the jurisdiction of a call is determined by its originating and terminating (end-to-end) points, not the telephone number dialed.

6.1.5.1 Further, if Sprint CLEC assigns NPA/NXXs to specific BellSouth rate centers within a BellSouth originating end user's local calling area, and then assigns numbers from those NPA/NXXs to Sprint CLEC end users physically located outside of the BellSouth originating end user's local calling area, Sprint CLEC agrees to identify such traffic to BellSouth and to compensate BellSouth for originating and transporting such traffic to Sprint CLEC at BellSouth's intrastate switched access tariff rates. If Sprint CLEC does not identify such traffic to BellSouth, to the best of BellSouth's ability BellSouth shall determine which whole Sprint CLEC NPA/NXXs on which to charge the applicable rates for originating intrastate switched access service as reflected in BellSouth's Intrastate Access Service Tariff. BellSouth shall make appropriate billing adjustments if Sprint CLEC can provide sufficient information for BellSouth to determine whether said traffic is Local Traffic.

6.1.5.2 Notwithstanding the foregoing, neither Party waives its position on how to determine the end point of ISP traffic and the associated compensation.

6.1.6 Fiber Meet, Design One. Each party will compensate the other for the Local Channels, from the POI to the other Party's switch location within the LATA, ordered on the other Party's portion of the Fiber Meet.

6.2 CLEC Percent Local Use. BellSouth and Sprint CLEC will report to the other a Percentage Local Usage ("PLU"). The application of the PLU will determine the amount of Local minutes to be billed to the other Party. For purposes of developing the PLU, BellSouth and Sprint CLEC shall consider every local call and every long distance call, excluding Transit Traffic. By the first of January, April, July and October of each year, BellSouth and Sprint CLEC shall provide a positive report updating the PLU. Detailed requirements associated with PLU reporting shall be as set forth in BellSouth's Percent Local Use Reporting Guidebook for Interconnection Purchasers, as it is amended from time to time during this Agreement, or as mutually agreed to by the Parties. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PLU factor, shall at the terminating Party's option be utilized to determine the appropriate Local usage compensation to be paid.

6.3 CLEC Percent Local Facility. BellSouth and Sprint CLEC will report to the other a Percentage Local Facility (PLF). The application of PLF will determine the portion of switched transport to be billed per the local jurisdiction rates. The PLF will be applied to Local Channels, multiplexing and Interoffice Channel dedicated transport utilized in the provision of local interconnection trunking. By the first of January, April, July and October of each year, BellSouth and Sprint CLEC shall provide a positive report updating the PLU and PLF. Detailed requirements associated with PLU and PLF reporting shall be as set forth in BellSouth's Percent Local Use/Percent Local Facility Reporting Guidebook for Interconnection Purchasers, as it is amended from time to time during this Agreement, or as mutually agreed to by the Parties.

6.4 CLEC Percentage Interstate Usage. In the case where Sprint CLEC desires to terminate its local traffic over or co-mingled on its Switched Access Feature Group D trunks, Sprint CLEC will be required to provide a projected Percentage Interstate Usage ("PIU") to BellSouth. Detailed requirements associated with PIU reporting shall be as set forth in BellSouth's Percent Interstate Use Reporting Guidebook for Interconnection Purchasers. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU and PLF factors will be used for application and billing of local interconnection. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PIU and PLU factor, shall at the terminating Party's option be utilized to determine the appropriate local usage compensation to be paid.