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100176-TP

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Docket No. 100177-TP

In re: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Spectrum L.P., Nextel South Corp., and NPCR, Inc. d/b/a Nextel Partners

Docket No. 100176-TP In re: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Communications Company Limited Partnership

The name of the party on whose behalf the document is filed:

Sprint Spectrum L.P., Nextel South Corp., and NPCR, Inc. d/b/a Nextel Partners and Sprint Communications Company Limited Partnership

The total number of pages in the attached document: 12**A brief but complete description of each attached document:**Motion of Sprint Spectrum, L.P., d/b/a Sprint PCS, Nextel South Corp., NPCR, Inc. d/b/a Nextel Partners and Sprint Communications Company, Limited Partnership to Consolidate Arbitration Petitions
and

Request for Oral Argument

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:)
Petition for Arbitration of)
Interconnection Agreement Between) Docket No. 100177-TP
BellSouth Telecommunications, Inc.)
d/b/a AT&T Florida)
and Sprint Spectrum L.P., Nextel South)
Corp., and NPCR, Inc. d/b/a Nextel Partners)

In re:)
Petition for Arbitration of)
Interconnection Agreement Between) Docket No. 100176-TP
BellSouth Telecommunications, Inc.)
d/b/a AT&T Florida and Sprint) Filed: May 4, 2010
Communications Company Limited)
Partnership)

**MOTION OF SPRINT SPECTRUM, L.P. D/B/A SPRINT PCS,
NEXTEL SOUTH CORP., NPCR, INC. D/B/A NEXTEL PARTNERS, AND
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP
TO CONSOLIDATE ARBITRATION PETITIONS**

Pursuant to Section 252(g) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS"), Nextel South Corp. ("Nextel"), NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), and Sprint Communications Company Limited Partnership (collectively "Sprint") respectfully move the Florida Public Service Commission ("FPSC" or "Commission") to consolidate the two above-captioned arbitration petitions filed by BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T" or "AT&T Florida") on April 9, 2010. In support of its Motion, Sprint respectfully sets forth the arguments below.

BACKGROUND AND SUPPORT

On April 9, 2010, AT&T filed a petition for arbitration against Sprint Spectrum, L.P. d/b/a Sprint PCS, Nextel South Corp., and NPCR, Inc. d/b/a Nextel Partners, which was assigned Docket No. 100177-TP. On that same date, AT&T filed a petition for arbitration against Sprint Communications Company Limited Partnership, which was assigned Docket No. 100176-TP. For ease of reference, the petition for arbitration in Docket No. 100177-TP will be informally referred to herein as the *Wireless Petition*, and the petition for arbitration in Docket No. 100176-TP will be referred to herein as the *Wireline Petition*.¹ The *Wireless Petition* and the *Wireline Petition* involve both substantially overlapping subject matter and substantially overlapping disputed issues as set forth in detail in Sprint's Joint Response filed today.²

Section 252(g) of the Act grants the Commission the express authority to consolidate arbitration proceedings "in order to reduce administrative burdens on telecommunications carriers, other parties to the proceeding and the State commission in carrying out its

¹ See and cf. *Petition For Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Spectrum L.P., Nextel South Corp., and NPCR, Inc., d/b/a Nextel Partners*, FPSC Docket No. 100177-TP ("*Wireless Petition*") and *Petition For Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Communications Company L.P.*, FPSC Docket No. 100176 ("*Wireline Petition*").

² *Joint Response of Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel South Corp., NPCR, Inc. d/b/a Nextel Partners, and Sprint Communications Company Limited Partnership to BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Duplicative Petitions for Section 252(b) Arbitration*, FPSC Docket Nos. 100176-TP and 100177-TP (May 4, 2010) ("*Joint Response*") See also *In Re: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners*, AT&T Kentucky's Response to Motion to Consolidate and to Procedural Proposals in Sprint CMRS's Response to Petition for Arbitration, Kentucky Pub. Serv. Commission Case No. 2010-00061, p. 6 (Mar. 29, 2010) ("AT&T Kentucky hopes to be able to agree to consolidation after the parties' renewed negotiations have run their course."); and *In Re: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Communications Company L.P.*, AT&T Kentucky's Response to Motion to Consolidate and to Procedural Proposals in Sprint CLEC's Petition for Arbitration, Kentucky Pub. Serv. Commission Case No. 2010-00062, p. 6 (Mar. 29, 2010) ("AT&T Kentucky hopes to be able to agree to consolidation after the parties' renewed negotiations have run their course.").

responsibilities under the Act.”³ The Commission has long recognized, and often employed, this authority.⁴ Section 120.80(13)(d), Florida Statutes, authorizes the Commission to employ procedures consistent with the Act, while Rule 28-106.211, Florida Administrative Code, provides the presiding officer broad discretion to issue any orders necessary “to prevent delay, and to promote the just, speedy and inexpensive determination of all aspects of the case. . . .” In addition, Rule 26-106.108, Florida Administrative Code, specifically authorizes consolidation of “separate matters which involve similar issues of law or fact, or identical parties” if it seems that “consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.” The instant arbitration proceedings meet all of these criteria.

Given the materially overlapping nature of the *Wireless Petition* and the *Wireline Petition*, consolidating these petitions into one proceeding will, among other things, dramatically preserve the FPSC’s valuable resources, allow for immeasurable efficiencies and lessen the likelihood of unintended regulatory inconsistencies. The resources of the Commission and the

³ 47 U.S.C. § 252(g) (“Where not inconsistent with the requirements of this Act, a State Authority may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State Authority in carrying out its responsibilities under this Act.”).

⁴ See, e.g., Order Granting Consolidation of Docket Numbers 040301-TP AND 041338-TP, and Denying Motion for Partial Final Summary Order and Motion for Reconsideration (Order No. PSC-05-0157-PCO-TP), Docket Nos. 040301-TP and 041338-TP (February 8, 2005) (consolidating arbitration docket with a generic docket because both involve rates, terms and conditions for UNE-P to UNE-L conversion “due to the fact that administrative efficiencies would be gained by a single proceeding”); Order Granting Motion to Consolidate and Denying Motion to Bifurcate and Expedite (Order No. PSC-00-0990-PCO-TP), Docket Nos. 000500-TP and 000501-TP (May 19, 2000) (consolidating two arbitration petitions by one CLEC against two ILECs to arbitrate the same subject – the rates, terms and conditions for line sharing); Order Consolidating Dockets, Establishing Procedure, Denying Request for Oral Argument, and Establishing Tentative List of Issues (Order No. PSC-97-1303-PCO-TP), Docket Nos. 960833-TP, 960846-TP, 960757-TP, and 971140-TP (October 21, 1997)(consolidating CLEC arbitration petitions against single ILEC into one proceeding due to common issues involving unbundled network elements); Order on Consolidation and Procedure (Order No. PSC-96-1039-PCO-TP), Docket Nos. 960833-TP and 960846-TP (August 9, 1996)(consolidating arbitration petitions filed by two CLECs involving common issues of fact, law and policy even though some issues were unique to each CLEC); and Order Consolidating Proceedings (Order No. PSC-96-1138-PCO-TP), Docket Nos. 960833-TP, 960846-TP and 960916-TP) (consolidating a third arbitration proceeding with two previously-consolidated proceedings where all proceedings shared common issues to be resolved).

parties that would be expended to litigate and resolve two separate, potentially massive and overlapping arbitrations are extensive, to say the least, and the Commission's and parties' investment in substantially duplicative efforts is simply unwarranted under the circumstances presented.

Sprint is entitled to one ICA with AT&T that supports unified interconnection arrangements and the exchange of all interconnection traffic (telecommunications and information services traffic exchanged over the same arrangements⁵ – be it wireless, wireline and/or IP-enabled traffic) between Sprint and AT&T. Even if the parties were to ultimately use the “form” of two contracts Sprint is still entitled to consistent and non-discriminatory terms and conditions in any ICA(s) it enters into with AT&T, except in very limited areas where either Sprint may consent to (or the FCC has expressly provided for) disparate treatment based upon “wireless” or “wireline” telecommunications concepts. Whether one or two contracts are used, the vast majority of the language in each contract should be the same so that Sprint is still able to have unified interconnection arrangements under which it can exchange all interconnection traffic with AT&T.

However, AT&T's *Wireline Petition* and *Wireless Petition* and their accompanying decision point lists (“DPLs”) are not consistent in how they present competing language, in some places showing competing language as “stacked” (resulting in competing provisions being visually separated, thereby hindering comparison to confirm either accuracy or substantive differences between provisions), and in other sections showing differences only through “inter-lineated” text comparison. Neither AT&T approach provides a simple side-by-side comparison of competing language *in context*. Additionally, neither AT&T DPL expressly identifies all of

⁵ See 47 C.F.R. § 51.100(b) (“A telecommunications carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement so long as it is offering telecommunications services through the same arrangement as well.”)

the provisions where affirmative resolution appears to exist based on either party's acceptance of the other's proposed language or position. Further, the inconsistencies in AT&T's DPLs are not limited to problems of mere presentation of disputed language or lack of identification of resolved language. Even a cursory review of AT&T's separate DPLs confirms that AT&T takes inexplicably inconsistent positions as to *the same Sprint-proposed contract language even in the absence of any potential wireless vs. wireline concerns.*

For the purposes of this Motion, it is unnecessary and inefficient for Sprint to expend the resources to outline each and every overlapping disputed issue of fact and law and each instance of inconsistent treatment by AT&T in the *Wireless Petition* and the *Wireline Petition*. Still, by way of example, Sprint notes that when each Sprint issue is mapped/traced to its respective location in the AT&T Wireline and AT&T Wireless DPLs, it is clear that almost every one of Sprint's issues is present in both Docket No. 100176-TP and 100177-TP.⁶ The following is a list of examples of various actions that AT&T appears to have taken/not taken as to Sprint issues, which demonstrates the need for all of Sprint's issues to be addressed in one proceeding to ensure consistency in issue-specific considerations and ultimate resolution:

- AT&T does not acknowledge and include the following Sprint-identified and unresolved Preliminary Issues in either of AT&T's DPLs:
 1. Have the parties had adequate time to engage in good faith negotiations?
 2. When can AT&T require Sprint Affiliated entities to have different contract provisions regarding the same Issues, or even entirely separate Agreements, based upon the technology used by a given Sprint entity?

⁶ See, e.g., **SPRINT EXHIBIT 1** (attached to *Joint Response*), General Terms and Conditions ("GTC") Part B collective definitions Issue 32, such as "Interconnection Facilities" which cross-reference identifies same definitional dispute to exist in both AT&T Wireless and Wireline DPLs; and substantive issues, such as **SPRINT EXHIBIT 1**, Attachment 3, Issue 4 regarding "Methods of Interconnection" which cross-reference maps the same Issue to AT&T Wireless Attachment 3, Issues 3 and 4, and AT&T Wireline Attachment 3, Issue 4.

3. Should defined terms not only be consistent with the law, but also consistently used through the entire Agreement?

- As to various definitions and contract provisions, AT&T appears to have accepted Sprint's proposed language or deletions, but does not note such items as "Resolved" in its DPLs.⁷ Instead, AT&T appears to have intended to show such language in plain text in its proposed contract documents. The problem is that without a clear DPL indication as to what is "Resolved," ambiguities arise as to whether plain text language truly reflects agreed to "Resolved" language or not, as demonstrated by further categories below.
- There are numerous instances where, if a term may ultimately be determined to be necessary, in light of Sprint's position that it is entitled to unified interconnection arrangements, such terms need to be included in the parties' ultimate contract(s) whether one contract or two may be used, but AT&T only includes a given provision in either its Wireline or Wireless DPL/proposed language, but not in both.⁸
- AT&T takes inconsistent positions between its two DPLs as to Sprint language.⁹
- AT&T fails to accurately depict Sprint language in one of its DPLs.¹⁰

If the Commission were to proceed to consider and adjudicate two separate arbitration proceedings and compile two separate evidentiary records, the Commission would risk the very real possibility of inadvertently rendering inconsistent determinations with regard to the same subject matter, the same contract language at issue and the same or related parties. To avoid the

⁷ See, e.g., **SPRINT EXHIBIT 1**, definition of "Shared Facility Factor" and Sprint Attachment 3, Issue 15. This Sprint Issue referred to two items, Dialing Parity and AT&T's "Attachment 3a – Out of Exchange-LEC". AT&T's plain text reflects the Dialing Parity language, but the Attachment 3a issue is still disputed.

⁸ See, e.g. **SPRINT EXHIBIT 1** GTC, Part B, collective definitions Issue 32, such as "IntraMTA" or "InterMTA Traffic" as to which AT&T includes the term in its wireless DPL but not in its wireline DPL.

⁹ See, e.g. **SPRINT EXHIBIT 1**, Attachment 3, Issue 3 Section 2.1 language regarding AT&T providing Interconnection at any Technically Feasible point *and cf.* AT&T wireless Attachment 3 Issue 3 which disputes Sprint Section 2.1 language and AT&T wireline Attachment 3 which accepts the same Sprint Attachment 3 Section 2.1 language.

¹⁰ **SPRINT EXHIBIT 1**, Attachment 3, Issues 16 and 17 regarding whether there need to be two or more "Authorized Service traffic categories" and, depending on the answer to that question, how to describe the necessary categories, and *see and cf.* AT&T Wireless Attachment 3 Issue 14 and Wireline Attachment 3 Issue 14, but note that the Wireline DPL Issue 14 does not accurately depict Sprint's language.

foregoing, which would only lead to further petitions, motions, hearings and decisions, and for administrative efficiency and judicial economy as provided for in 47 U.S.C. Section 252(g), the Commission should consolidate AT&T's petitions.

Sprint has conferred with counsel for AT&T and represents that AT&T objects to this motion.

CONCLUSION

For the foregoing reasons, and consistent with Section 252(g) of the Act and FPSC precedent, Sprint respectfully requests that the Commission consolidate Docket Nos. 100176-TP and 100177-TP at the outset and without delay in order to immediately capture the efficiencies and benefits at risk. Both petitions share common issues of fact and law, and consolidation will promote the just, speedy, and inexpensive resolution of the proceedings without any prejudice to AT&T. Further, consolidating these petitions will preserve the FPSC's and the parties' resources, allow for immeasurable efficiencies compared to proceeding with separate wireline and wireless arbitrations and lessen the likelihood of unintended regulatory inconsistencies.

PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth above, Sprint respectfully requests:

- a) that AT&T's arbitration petitions in FPSC Docket Nos. 100176-TP and 100177-TP be consolidated without delay for all purposes into Docket No. 100176-TP; and
- b) that the Commission grant such other and further relief as it deems just and proper.

Respectfully submitted this 4th day of May, 2010.

/s/ Marsha E. Rule

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by electronic and First Class Mail on the following this 4th day of May, 2010:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:)
Petition for Arbitration of)
Interconnection Agreement Between) Docket No. 100177-TP
BellSouth Telecommunications, Inc.)
d/b/a AT&T Florida)
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In re:)
Petition for Arbitration of)
Interconnection Agreement Between) Docket No. 100176-TP
BellSouth Telecommunications, Inc.)
d/b/a AT&T Florida and Sprint) Filed: May 4, 2010
Communications Company Limited)
Partnership)

**REQUEST FOR ORAL ARGUMENT
ON MOTION CONSOLIDATE ARBITRATION PETITIONS**

Pursuant to Rule 25-22.022, Florida Administrative Code, Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint PCS”), Nextel South Corp. (“Nextel”), NPCR, Inc. d/b/a Nextel Partners (“Nextel Partners”), and Sprint Communications Company Limited Partnership (collectively “Sprint”) respectfully request the Florida Public Service Commission to grant oral argument on their Motion to Consolidate Arbitration Petitions filed contemporaneously with this request.

Oral argument would aid the Commissioners in understanding and evaluating the issues to be decided, and in particular, on the extent of the overlap between the matters to be determined in the above-referenced dockets and the inconsistent treatments thereof in AT&T’s petitions for arbitration. Oral argument thus would assist the Commission's deliberations. Sprint requests 10 minutes per side for oral argument.

WHEREFORE, Sprint respectfully requests the Commission to grant oral argument on its Motion to Consolidate Joint CLECs’ Partial Motion to Dismiss.

Respectfully submitted this 4th day of May, 2010.

/s/ Marsha E. Rule

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