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August 29, 2002

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

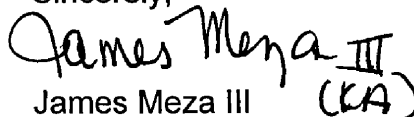
**Re: Docket No.: 020868-TL
Petition for Investigation of Wireless Carriers' Request for
BellSouth Telecommunications, Inc. to Provide
Telecommunications Service Outside BellSouth's Exchange**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Nextel's Motion to Dismiss, or in the Alternative, Hold in Abeyance, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III (KA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER DATE

09172 AUG 29 02

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 020868-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

(*) Electronic Mail and U.S. Mail this 29th day of August, 2002 to the following:

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Staff Counsels
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Investigation of Wireless Carriers') Request for BellSouth Telecommunications, Inc.) To Provide Telecommunications Service) Outside BellSouth's Exchange)	Docket No. 020868-TL Filed: August 29, 2002
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**BELLSOUTH'S RESPONSE TO NEXTEL'S MOTION TO DISMISS, OR IN
THE ALTERNATIVE, HOLD IN ABEYANCE**

On August 22, 2002, Nextel Communications, Inc. ("Nextel") filed its Motion to Dismiss, or in the Alternative, Hold in Abeyance, ("Motion" or "Motion to Dismiss") in response to BellSouth Telecommunications Inc.'s ("BellSouth") August 6, 2002 Petition for the Florida Public Service Commission ("Commission") to conduct an investigation and establish a generic docket to address wireless carriers' requests that BellSouth provide telecommunications service outside of BellSouth's exchange ("Petition"). In its Motion, Nextel generally alleges that the Commission lacks the subject matter jurisdiction to consider the Petition. Alternatively, Nextel requests that the Commission stay the matter pending the resolution of a proceeding before the Federal Communications Commission ("FCC"). For the reasons set forth below, the Commission should deny Nextel's Motion in its entirety.

ARGUMENT

I. Standard for Motion to Dismiss

A motion to dismiss raises as a question of law the sufficiency of the facts alleged in a petition to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief may be

granted. Id. When making the determination, only the petition can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. Id.

Based on this standard, the Commission should strike or not consider the numerous factual allegations Nextel raises in its Motion to Dismiss. Stripped of its improper factual allegations, the simple question raised in the Motion is whether the Commission has the authority to interpret interconnection agreements as well as BellSouth's intrastate tariffs. For the reasons discussed in detail below, the answer to this question is an unequivocal yes.

II. The Commission Has Jurisdiction to Resolve BellSouth's Petition.

In support of its Motion to Dismiss, Nextel makes a number of allegations (many of which conflict with each other or are inaccurate) designed solely to make this issue appear to be more complex than it actually is. Simply put, this dispute between wireless carriers and BellSouth involves a conflict between a state tariff and the limitations on a Commercial Mobile Radio Service ("CMRS") provider's right to establish points of interconnection and assign virtual NXX codes outside of the incumbent local exchange company's ("ILEC") franchised service territory. Although not in the context of CMRS traffic, this Commission has previously determined that it has the jurisdiction to address issues concerning virtual NXX codes and points of interconnection. See FPSC Docket No. 000075-TP. Contrary to Nextel's assertion, the Commission's jurisdiction over these issues extends to CMRS providers as well.

Nextel's contention that the Commission lacks the subject matter jurisdiction to consider this Petition because the FCC has exclusive jurisdiction over LEC-CMRS is without merit. Under Florida law, there is no question that the Commission has the authority to interpret, enforce, and review BellSouth's intrastate tariffs. See Section 364.01(2), Florida Statutes; Florida Interexchange Carriers Assoc., Inc. v. Beard, 624 So. 2d 248 (Fla. 1993) (finding that the

Commission has “exclusive jurisdiction in Section 364.01 to regulate telecommunications . . .” and that the Commission had the authority to review and reclassify GTE’s proposed tariff). As set forth in BellSouth’s Petition, a wireless carrier has requested that BellSouth activate certain NPA/NXXs, which results in the routing of traffic to the NAP/NXXs being established within BellSouth’s service area while the rating of such traffic is established in Northeast Florida Telephone Company, Inc.’s (“Northeast”) service area. See Pet. at ¶ 7. BellSouth has asked the Commission to decide if providing virtual designated service outside of BellSouth’s exchange, as requested by the wireless carriers, violates Section A35 of BellSouth’s intrastate General Subscriber Service Tariff (“GSST”) regarding “Interconnection Services for Mobile Providers.” See Pet. at ¶ 4-5.

Accordingly, resolution of BellSouth’s Petition will requires the Commission to interpret and review BellSouth’s intrastate tariff, which is clearly within the ambit of its authority. For this reason alone, the Commission should deny Nextel’s Motion to Strike.¹

¹ Moreover, the Eleventh Circuit, pending an en banc decision, recently vacated its holding in BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Serv., Inc., 278 F.3d 1223 (11th Cir. 2002), wherein it found that state commissions do not have authority under the Telecommunications Act of 1996 (the "Act") to enforce and interpret interconnection agreements. See BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Serv., Inc., 297 F.3d 1276 (11th Cir 2002) (“IT IS ORDERED that the above causes shall be reheard by this Court en banc. The previous panel’s opinion is hereby VACATED.”) Accordingly, the Commission’s previous findings that it has the authority to enforce and interpret the interconnection agreements that it approves under the Act is still applicable. See In re: MCIMetro Access Transmissions Services, LLC, Order No. PSC-00-2471, 2000 WL 33251863 at *2 (Dec. 21. 2000) (“State commissions retain primary authority to enforce the substantive terms of agreements they have approved pursuant to Sections 251 and 252 of the Act.”). Therefore, to the extent BellSouth’s Petition requires the Commission to resolve a dispute arising out of CMRS interconnection agreement executed pursuant to the Act, the Commission has

In support of its Motion to Dismiss, Nextel also contends that BellSouth has, in the past, allowed NXX codes to be assigned in the manner requested by Nextel. Contrary to Nextel's assertion, BellSouth has never knowingly allowed such NXX arrangements. By way of history, when BellSouth had responsibilities for numbering assignment, BellSouth would not allow NXX codes to be assigned in the manner requested by the wireless carriers' because such an assignment would be contrary to the A35 tariff. However, after the FCC relieved the BellSouth (and the other ILECs) of numbering administration responsibilities in 1998, BellSouth had no control over the assignment of NXX codes.² After BellSouth was relieved of numbering administration responsibilities, the new numbering administrator apparently made NXX assignments that were used by CMRS providers in a manner similar to that proposed by Nextel. BellSouth was unaware of these NXX assignments until Sprint (ILEC) sent an e-mail³ to BellSouth complaining that:

. . . BellSouth (ILEC) has allowed four wireless providers to have a Starke Virtual Rate Center (VRC) on their Type 2A interconnection trunks at the Jacksonville Access Tandem. Further, BellSouth has allowed one CLEC to also have a Starke VRC in the Jacksonville tandem. (This is a violation of Sprint and BellSouth tariffs, because it is taking away access revenue from Sprint and also causing Sprint to incur additional expenses on EAS trunks and toll trunks with no additional compensation).

See Attachment A.

In essence, with their request, wireless carriers are attempting to avoid the expenses of interconnecting with the independent LECs ("ICO") network by leveraging BellSouth's network to achieve a pseudo-presence in the ICO's territory. While the Act allows Nextel to

subject matter jurisdiction over BellSouth's Petition. Thus, the Commission should deny Nextel's Motion for this additional reason.

² In 1998, the FCC chose NeuStar as the numbering administrator.

³ A copy of the March 8, 2000 email from Sprint (ILEC) to BellSouth is attached hereto.

interconnect with an ILEC at any technically feasible point on the *ILEC's network*, it does not allow Nextel (or any CMRS provider) to manipulate the NXX numbering codes in such a manner as to avoid interconnection, and the resulting compensation, with the ICOs.⁴ See First Report and Order, FCC 96-325, ¶1009. As noted above, the Commission has already determined (in the context of wireline traffic) that virtual NXXs cannot be used to avoid toll obligations. Thus, the Commission should not allow Nextel to assign virtual NXX codes outside of BellSouth's service territory.

Finally, in its Motion to Dismiss, Nextel argues that BellSouth has refused to provision the NXX code requests from the CMRS providers. This is not true. To be clear, all of Nextel's numbers in Florida will be loaded with the NXXs designated by Nextel, pending resolution of this Petition. However, because Nextel's routing and rating points associated with the NXXs involve areas in which BellSouth does not provide local service, issues regarding appropriate billing and compensation have arisen. These matters fall within the purview of this Commission and are properly before this Commission through BellSouth's Petition.

III. Nextel's Request for a Stay Should Be Rejected.

Alternatively, Nextel requests that the Commission hold the instant proceeding in abeyance until the FCC rules on Sprint PCS' Petition for Declaratory Ruling pending before the FCC. Motion at 8. The Commission should deny this request because the questions posed by BellSouth invoke the Commission's exclusive authority to resolve intrastate telecommunications

⁴ Nextel's contention that it does not use virtual NXX codes is simply wrong. Because Nextel has not assigned CLLI codes to the cell towers in the ICO's territory, and is not interconnected to a central office in the ICO's territory, Nextel's assignment of an NXX code to that cell tower is, in fact, a virtual NXX code.

issues. Further, Nextel has failed to establish how Sprint PCS' action before the FCC will have any bearing on the instant proceeding.

CONCLUSION

BellSouth will carry traffic and recognize the NXX assignments of Nextel and other CMRS providers that require BellSouth to route traffic in a manner inconsistent with its rating points until such time as the Commission rules on this Petition. Nevertheless, the Commission should note that these arrangements result in, at a minimum, inappropriate intercarrier compensation (including reciprocal compensation, access charges and/or inter-company settlements) and appear to be directly contrary to BellSouth's A35 tariff. When a CMRS provider does not interconnect directly with the ICO and insists that BellSouth arrange for the transmission of these local calls with rate centers within the ICO's calling area and routing points within BellSouth's calling area, then all parties are not compensated correctly for the costs incurred for provision of the service. Thus, the Commission should deny Nextel's Motion to Dismiss as well as its request for a stay and rule on BellSouth's Petition.

Respectfully submitted this 29th day of August 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

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ATTACHMENT A

-----Original Message-----

From: Jack.Burge@mail.sprint.com
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Sent: Wednesday, March 08, 2000 2:28 PM
To: Gene Lunceford
Cc: joanne.fallis@mail.sprint.com;
barbara.green@mail.sprint.com;
stephen.a.harvey@openmail.mail.sprint.com;
al.lubeck@openmail.mail.sprint.com; paul.milhan@mail.sprint.com;
scott.stringer@openmail.mail.sprint.com;
denise.m.vidal@openmail.mail.sprint.com
Subject: Virtual Rate Center Issue between Sprint and BellSouth
in Florida

Gene,

As I discussed with you earlier on the phone, BellSouth (ILEC) has

allowed four wireless providers to have a Starke Virtual Rate Center

(VRC) on their Type 2A interconnection trunks at the Jacksonville Access Tandem. Further, BellSouth has allowed one CLEC to also have a Starke VRC in the Jacksonville tandem. (This is a violation of Sprint and BellSouth tariffs, because it is taking away access revenue from Sprint and also causing Sprint to incur additional expenses on EAS trunks and toll trunks with no additional compensation).

Sprint discovered this when these translation changes were sent via the LERG (Local Exchange Routing Guide) update process. The approximate dates of these inappropriate VRC implementations were:

Alltel Mobile- September 1998

Sprint PCS- April 1999

Powertel-May 1999

Delta Com (CLEC) -???

TSR- March 2000

The BellSouth tariff reference is :

General Subscriber Service Tariff , A35. Interconnection of Mobile Services, A35.1.1.R.2.

The four wireless carriers are Sprint PCS, Alltel Mobile, Powertel and TSR Wireless.

Issues:

Starke has EAS to the ALLTEL (ILEC) exchanges of Waldo and Booker. Waldo and Brooker are in a different LATA than Starke and Jacksonville, therefore ALLTEL does not have any trunk groups that go between Waldo/Booker and Jacksonville. Consequently, land to mobile calls originating from Waldo and Brooker, terminating to one of these Starke VRCs, are routed over the EAS trunks to Sprint's Starke central office. Sprint then routes the calls over the Starke to Jacksonville toll trunk group. BellSouth picks up the calls in Jacksonville and then routes them over the wireless carrier's Type2A interconnection trunks to the wireless carrier's switch.

Action Required by BellSouth:

BellSouth should rescind these VRCs as they are in violation of both Sprint and BellSouth tariffs. Alltel (ILEC) would need to establish trunks between Waldo/Brooker and Jacksonville. Sprint would then block these codes from coming across the EAS trunk group between Waldo/Brooker and Starke. BellSouth should calculate the lost revenues that Sprint is due for loss access revenue. Let me know if you need additional information??
Thanks
Jack

Starting on December 13, 1999, my new location:

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