Sprint
Together with NEXTEL

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Douglas C. Nelson
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July 9, 2007

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

Re: **Docket No. 070368-TP** - - In the Matter of 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:

Enclosed is Nextel Partners' Response to AT&T Florida's Motion to Dismiss in the above-captioned docket.

Copies have been served to parties as indicated on the attached Certificate of Service.

Sincerely,

Douglas C. Nelson

Enclosure
cc: Service List

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been furnished by U.S. Mail and email to the following parties on this 9th day of July, 2007:

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Douglas C. Nelson

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In the Matter of 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<br>Filed: July 9, 2007 |

**NEXTEL PARTNERS' RESPONSE TO AT&T FLORIDA'S MOTION TO DISMISS**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") hereby files its Response to BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T") Motion to Dismiss filed June 28, 2007 ("Motion"). For the reasons set forth below, Nextel Partners respectfully requests that the Florida Public Service Commission ("Commission") deny AT&T's Motion, and acknowledge that effective June 8, 2007 Nextel Partners has adopted the existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum Limited Partnership"[1] dated January 1, 2001 ("Sprint ICA").

## I. INTRODUCTION

On December 29, 2006, AT&T, Inc. and BellSouth Corporation voluntarily proposed "Merger Commitments" that became "Conditions" of approval of the AT&T/BellSouth merger when the Federal Communications Commission ("FCC")

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

authorized the merger. The FCC ordered that as a Condition of its grant of authority to complete the merger, the merged entity and its ILEC affiliates (which include AT&T), are required to comply with their Merger Commitments.[2]

The interconnection-related Merger Commitment No. 1 granted Nextel Partners a right, unqualified as to time, to adopt "*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.*"[3] In addition to AT&T Merger Commitment No. 1, since the Sprint ICA is an interconnection agreement previously approved by this Commission, AT&T is also required by Section 252(i) of the Telecommunications Act of 1996 ("Act") to make the Sprint ICA available to Nextel Partners for adoption.[4]

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[2] *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control,* Memorandum Opinion and Order, Ordering Clause ¶ 227 at page 112, WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007) ("*AT&T/BellSouth*" or "*FCC Order*") ("IT IS FURTHER ORDERED that as a condition of this grant AT&T and BellSouth shall comply with the conditions set forth in Appendix F of this Order."). A copy of the Table of Contents and Appendix F to the *FCC Order* is attached as Nextel Partners Exhibit "A".

[3] *See FCC Order*, at page 149, Appendix F, Merger Commitment No. 1 under "Reducing Transaction Costs Associated with Interconnection Agreements" which 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).

[4] 47 USC § 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.

On June 8, 2007, Nextel Partners provided a Notice of Adoption to the Commission for the purpose of obtaining the Commission's acknowledgment of Nextel Partners' adoption of the existing Sprint ICA[5]. Nextel Partners' Notice of Adoption informed the Commission that:

1) Nextel Partners had exercised its rights, effective immediately, to adopt in its entirety the same Sprint ICA, as amended, that has been filed and approved in each of the 9 legacy-BellSouth states, including Florida[6];

2) Nextel Partners exercised such adoption rights pursuant to *both* the FCC approved Merger Commitment Nos. 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements" as ordered in the AT&T/BellSouth merger, *and* 47 U.S.C. § 252(i);[7]

3) 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-

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[5] *See* June 8, 2007 letter from Mr. Douglas C. Nelson, Sprint Nextel Attorney State Regulatory Affairs, to Ms. Ann Cole, Commission Clerk, Florida State Public Service Commission, Docket No. 070368-TP ("Notice of Adoption"). Nextel Partners acknowledges that a true and correct copy of its Notice of Adoption appears to be attached to AT&T's Motion as Exhibit A.

[6] *Id.* at page 1 and footnote 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."

[7] *Id.* at page 1 and footnote 4. *FCC Order*, at page 149, Appendix F, 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.

specific pricing and performance plans and technical feasibility" issues pursuant to Merger Commitment No. 1. Likewise, since the Sprint ICA is already Triennial Review Remand Order ("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;[8]

4) The Sprint ICA is effective and has not expired, although Sprint and AT&T have a dispute regarding the term of the agreement. Sprint believes the term of the agreement ends March 19, 2010 while AT&T has taken a position, among other things, that the term may not extend beyond December 31, 2007;[9]

5) Nextel Partners contacted AT&T regarding the exercise of Nextel Partners' adoption rights, but AT&T refuses to voluntarily acknowledge and honor Nextel Partners' adoption rights;[10] and,

6) The adopted Sprint ICA replaces in its entirety the existing interconnection agreement between Nextel Partners and AT&T.[11]

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[8] *Id.* at page 2.

[9] *Id.* at page 2; *see also In the Matter of Petition of Sprint Communications Company Limited Partnership and Sprint Spectrum Limited Partnership Limited Partnership d/b/a Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast,* Sprint *"Petition for Arbitration"* filed April 6, 2007 ("Sprint Petition"), AT&T *"Motion to Dismiss and Answer"*, filed May 1, 2007 ("AT&T Motion and Answer"), and Sprint *"Response to AT&T Florida's Motion to Dismiss and Answer"* filed May 15, 2007 ("Sprint Response"), Docket No. 070249-TP (FPSC) (generally referred to as "Sprint-AT&T Arbitration" or "Docket No. 070249-TP").

[10] *Id.*

[11] *Id.*

On June 28, 2007, AT&T filed its Motion in which AT&T contends that the Commission has no jurisdiction to interpret or enforce AT&T Merger Commitments;[12] that the Sprint ICA is "expired" and, therefore, Nextel Partners did not request adoption of the Sprint ICA in a timely fashion under the Act;[13] and, that Nextel Partners' Notice of Adoption is "premature" because Nextel Partners did not invoke a "dispute resolution" process within its existing interconnection agreement to address any dispute between the parties regarding Nextel Partners attempt to adopt the Sprint ICA.[14] In response to AT&T's Motion, it is Nextel Partners' position that:

1) This Commission has repeatedly exercised jurisdiction under the Act and state law to acknowledge a carrier's exercise of its adoption rights. The fact that such rights have been enhanced by the Merger Commitments does not divest the Commission of its authority to continue to oversee the exercise of such adoption rights. Instead, there is a long history of FCC and state commission precedent which clearly establishes that the FCC and the Commission continue to have *concurrent* jurisdiction under the Act and state law over any enhanced adoption rights granted by the AT&T interconnection-related Merger Commitments. This Commission has jurisdiction pursuant to both the

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[12] *See* Motion at pages 1 and 3-7.

[13] *Id.* at pages 1-2, and 7-10.

[14] *Id.* at pages 2 and 10-12. In making its "dispute resolution" argument, at Motion page 2 footnote 2, AT&T refers to: "a dispute resolution provision process by which the parties must abide in resolving disputes. *See Id.*, Article XIX. *A true and correct copy of the interconnection agreement can be found at http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf*" (emphasis added). To avoid any confusion in the record, it should be clarified that the foregoing link is not a link to any prior Nextel Partners/AT&T interconnection agreement - - it is the link to the very Sprint ICA to which Nextel Partners has exercised its adoption rights. *See supra* footnote 5.

Act and Florida law to acknowledge the Nextel Partners' exercise of its right to adopt the Sprint ICA.

2) AT&T's contention that Nextel Partners' adoption is untimely because the Sprint ICA is "expired" is based upon both factually[15] and legally erroneous premises. The Sprint ICA currently continues and is "deemed extended on a month-to-month basis"[16], and AT&T has admitted without qualification that it acknowledged to Sprint that the Sprint ICA can be extended 3-years pursuant to Merger Commitment No. 4.[17] Accordingly, not only does the Sprint ICA continue to be effective, there has yet to be a determination by this Commission regarding the commencement date of the Sprint ICA 3-year extension.

AT&T's "timeliness" argument is legally deficient in two respects. First, Merger Commitment No. 1 does not contain any "time" restriction upon when a requesting carrier may adopt another ICA. Second, on similar facts and case law cited by Alltel ILEC (i.e., the two *Global NAPS* cases cited by AT&T), this Commission denied Alltel's Motion to dismiss a CLEC's 252(i) request to adopt an agreement that was set to expire

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[15] AT&T's Motion at page 3 requests "that the Commission take judicial notice of the existing interconnection agreements between AT&T Florida and Nextel Partners and AT&T Florida and Sprint." For the purpose of this Response, Nextel Partners joins such request and further requests that the Commission also take judicial notice of the entire record in the Sprint-AT&T Arbitration, Docket No. 070249-TP.

[16] Sprint ICA, Section 2.1 at page 815.

[17] *FCC Order*, at page 150, Appendix F, Merger Commitment No. 4 states:

> The AT&T/BellSouth ILECs *shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period up to three years*, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's 'default' provisions."

(Emphasis added); *see also*. Sprint Petition ¶ 13 and unqualified admission of same at AT&T Motion and

within 72 days after the adoption date, but was likely to remain in effect beyond the stated termination date.[18]

3) AT&T's "dispute resolution process argument" is also legally deficient based upon this Commission's prior rejection of an AT&T argument that a carrier must "comply with the terms of its existing interconnection agreement concerning adoptions".[19] Thus, if Nextel Partners is not required to follow an "adoption process" contained in its prior agreement in order to adopt the Sprint ICA, there is no basis for requiring Nextel Partners to engage in a dispute resolution process when AT&T fails to voluntarily acknowledge its obligation to make the Sprint ICA available to Nextel Partners.[20]

For the reasons stated above and explained in greater detail below, Nextel Partners respectfully requests that the Commission deny AT&T's Motion and, administratively

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Answer ¶ 17, Docket No. 070249-TP.

[18] *See In Re: Petition by Volo Communication of Florida, Inc. d/b/a Volo Communications Group of Florida, Inc. for Adoption of Existing Interconnection Agreement Between ALLTEL Florida, Inc. and Level 3 Communications, LLC,* Order Denying Motion to Dismiss and Holding Proceedings in Abeyance, FPSC Docket No. 040343-TP, Order No. PSC-04-1109-PCO-TP (November 9, 2004) ("*Volo Notice of Adoption*").

[19] *See In Re: Notice of Adoption of Existing Interconnection, Unbundling, Resale, and Collocation Agreement Between BellSouth Telecommunications, Inc. and Network Telephone Corporation by Z-Tel Communications, Inc.,* Notice of Proposed Agency Action Order Acknowledging Adoption of Interconnection Agreement, FPSC Docket No. 040779-TP, Order No. PSC-05-0158-PAA-TP (February 9, 2005) ("*Z-Tel Notice of Adoption*").

[20] If, *for the sake of argument alone*, a dispute resolution process were considered applicable in this matter, AT&T fails to mention that: Nextel Partners initiated discussions with appropriate AT&T representatives regarding adoption of the Sprint ICA on January 3, 2007; AT&T confirmed on February 21, 2007 that it would not allow such adoption; Nextel Partners formally invoked its adoption rights under the Merger Commitments and 252(i) on May 18, 2007; and, by its May 30, 2007 response, AT&T again confirmed its refusal to recognize Nextel Partners' adoption rights. Clearly, any 30-day dispute resolution process commenced and expired long ago and, in light of AT&T's continuing stated positions, any further effort by Nextel Partners prior to filing its Notice of Adoption would have been a futile act, of which performance is not required under the law.

acknowledge that, effective June 8, 2007, Nextel Partners adopted the existing Sprint ICA.

## II. AT&T'S MOTION MUST BE DECIDED BASED UPON THE FACTS AS ALLEGED IN NEXTEL PARTNERS' NOTICE OF ADOPTION AND THE LIMITED UNDISPUTABLE FACTS OF WHICH THE COMMISSION CAN TAKE APPROPRIATE JUDICIAL NOTICE.

A Motion to dismiss must, as a matter of law, address the sufficiency of the facts alleged in the Petition to state a cause of action. For AT&T's Motion to be sustained AT&T must demonstrate that, accepting all allegations in the Notice of Adoption as facially correct, the Notice of Adoption fails to state a cause of action for which relief can be granted. When determining the sufficiency of the Petition, the Commission may not look beyond the four corners of the Petition, may not consider any affirmative defenses raised by AT&T, and may not consider any evidence likely to be produced by either side. And, all material allegations must be construed against AT&T in determining if Nextel Partners has stated the necessary allegations.[21]

Notwithstanding the foregoing, as previously indicated, Nextel Partners does not object to the Commission taking judicial notice as requested by AT&T provided, however, the Commission likewise takes judicial notice of the entire record in Docket No. 070249-TP. In so doing, in addition to the facts as stated in Nextel Partners' Notice of Adoption, Nextel Partners also relies upon the provisions of the Sprint ICA and the

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[21] *In Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law, by BellSouth Telecommunications, Inc.*, Order Denying Motion to Dismiss at page 5, FPSC Docket No. 041269-TP, Order No. PSC-05-0171-FOF-TP (February 15, 2005) ("*BellSouth Generic ICA Amendment Order*") (citing Matthews v. Matthews, 122 So. 2d 571 (2nd DCA 1960), Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).; In re Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc.,

undisputed admissions made by AT&T in Docket No. 070249-TP with respect to the Sprint ICA as identified herein.

The following are the essential operative facts that establish the existence of a matter within the jurisdiction of this Commission under Fla. Stat. § 364.01(4) (2006) and Section 252(i) of the Act:

- The Sprint ICA is active and effective by virtue of its express terms under which it continues "on a month-to-month basis"[22], and is "deemed extended on a month-to-month basis"[23];

- AT&T acknowledged to Sprint that a 3-year extension of the Sprint ICA is available, but there is a dispute between AT&T and Sprint regarding when the 3-year extension commences[24];

- Sprint has accepted a 3-year extension of the Sprint ICA and requested an amendment to implement its right to such 3-year extension[25];

- Sprint believes the term of the agreement ends March 19, 2010 while AT&T has taken a position, among other things, that the term may not extend beyond December 31, 2007;[26]

- The Commission has not yet made a determination in Docket No. 070249-TP as to when the 3-year extension of the Sprint ICA commences;

- Nextel Partners has exercised its rights, effective immediately, to adopt in its entirety the same Sprint ICA, as amended, that has been filed and approved in each of the 9 legacy-BellSouth states, including Florida[27];

- Nextel Partners exercised such adoption rights pursuant to *both* the FCC

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95 FPSC 5:339 (1995); Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

[22] Sprint ICA, Section 2.1 at page 815.

[23] *Id.*, Section 3.4 at page 816.

[24] Sprint Petition ¶ 13 and AT&T Motion to Dismiss and Answer ¶ 17, Docket No. 070249-TP.

[25] *Id.*, Sprint Petition ¶ 14 and AT&T Motion to Dismiss and Answer ¶ 18.

[26] *Notice of Adoption* at page 2.

[27] *Notice of Adoption* at page 1 and footnote 3.

approved Merger Commitment Nos. 1 and 2 *and* 47 U.S.C. § 252(i);[28]

- 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;[29]

- The adopted Sprint ICA replaces in its entirety the existing interconnection agreement between Nextel Partners and AT&T.[30]

## III. THE COMMISSION HAS AUTHORITY TO ACKNOWLEDGE NEXTEL PARTNERS' EXERCISE OF RIGHT TO ADOPT THE SPRINT ICA, AND SUCH AUTHORITY IS NOT ALTERED BY THE MERGER COMMITMENTS

Similar to its jurisdictional argument in Docket No. 070249-TP, AT&T asserts in this case as well that "the FCC alone possesses the jurisdiction to interpret and enforce the subject merger commitments"[31], and thereby suggests the Commission has no authority to acknowledge Nextel Partners' exercise of its right to adopt the Sprint ICA. Case law to the contrary, however, clearly establishes that this Commission has historically acknowledged carriers' exercise of their right to adopt existing interconnection agreements, and the *FCC Order* in the AT&T/BellSouth merger has not diminished the Commission's authority.

### A. THE COMMISSION HAS AUTHORITY TO ACKNOWLEDGE NEXTEL PARTNERS' EXERCISE OF ITS RIGHT TO ADOPT THE SPRINT ICA

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[28] *Id.* at page 1 and footnote 4.

[29] *Id.* at page 2.

[30] *Id.*

[31] *See* AT&T Motion at 6.

In making its jurisdictional argument, AT&T now cites two cases that were previously provided to the Commission by Sprint in Sprint's Response to AT&T's Motion to Dismiss the Sprint Petition in Docket No. 070249-TP, i.e., the *Sunrise Order* and *IDS* cases[32]. These two cases support Nextel Partners' position in this Docket for the same reasons they support Sprint's position in Docket No. 070249-TP: they stand for the proposition that the Commission can interpret and apply federal law in the course of exercising the authority that it is conferred under the Act and state law.

In the *Sunrise Order* Supra sought to have the Commission provide a remedy for AT&T's alleged violation of the Section 222 Confidentiality of Carrier Information provision of the Act. The Commission determined that, absent finding that AT&T's conduct was anticompetitive behavior prohibited under state law, Fla. Stat. § 364.01(4)(g), the Commission could not provide a remedy because it had not otherwise been conferred jurisdiction under the Act with respect to Section 222. Similarly, in *IDS*, the two out of five counts of IDS's informal complaint that were subject to dismissal were Count Three, which sought a finding that AT&T had violated a private settlement agreement, and Count Five, which alleged "anticompetitive behavior in violation of the Telecommunications Act of 1996."

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[32] *See* Sprint Response to AT&T's Motion to Dismiss filed May 15, 2007 in Docket No. 070249-TP at page 7, footnote 15: *In Re: Complaint against BellSouth Telecommunications, Inc. for Alleged Overbilling and Discontinuance of Service, and Petition for Emergency Order Restoring Service, by IDS Telecom LLC*, Order Granting BellSouth's Partial Motion to Dismiss at page 8, FPSC Docket No. 031125-TP, Order No. PSC-04-0423-FOF-TP (April 26, 2004) ("*IDS*") and page 8, footnote 16: *In Re: Complaint by Supra Telecommunications and Information Systems, Inc. against BellSouth, Inc. Regarding BellSouth's Alleged Use of Carrier-to-Carrier Information*, Final Order On BellSouth's Alleged Use of Carrier to Carrier Information at page 4, fn. 1, FPSC Docket No. 030349-TP, Order No. PSC-03-1392-FOF-TP (December 11, 2003) ("*Sunrise Order*"), and *cf.* AT&T Motion which cites the *Sunrise Order* as PSC-03-1892-FOF-TP [sic] at page 5 and *IDS* at page 6.

While the Merger Commitments provide requesting carriers with expanded adoption rights in addition to Section 252(i), the fact that the Commission's acknowledgement of Nextel Partners' exercise of any of its adoption rights may involve the Commission's interpretation and application of "federal law" provides no reason whatsoever to dismiss any aspect of the Notice of Adoption. Indeed, every time an ILEC interposes an objection to a carrier's exercise of any adoption right, the Commission is called upon to construe the Act, FCC orders and federal court decisions related to both the Act and said orders. While not binding on the FCC, it is too common for dispute that state commissions may interpret and apply federal law in the exercise of their jurisdiction under the Act.[33]

As recognized by this Commission in the *Sunrise Order*, the Act expressly provides a jurisdictional scheme of "cooperative federalism" under which Congress and the FCC have specifically designated areas in which they anticipate that state commissions have a role,[34] which undeniably includes matters relating to approval of interconnection agreements consistent the Act and orders of the FCC.

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[33] *See IDS* at page. 8 (Commission "find[s] BellSouth's argument is without merit to the extent that it argues that IDS's complaint fails to state a cause of action merely because the Complaint requires us to refer to a privately negotiated settlement agreement and federal law to settle the dispute … Thus, the fact that a count of this Complaint asks this Commission to interpret and apply federal law is not in and of itself reason to dismiss that portion of the complaint").

[34] *See Sunrise Order* at footnote 1; *In Re: Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth, Inc.*, Order, TRA Docket No. 01-00193, pp. 5-6 (June 28, 2002) ("To Implement the 1996 Act, Congress sought the assistance of state regulatory agencies. In what has been termed "cooperative federalism," Congress partially flooded the existing statutory landscape with specific preempting federal requirements, deliberately leaving numerous islands of State responsibility...No generalization can therefore be made about where, as between federal and State agencies, responsibility lies for decisions. The areas of responsibility are a patchwork and the dividing lines are sometimes murky. Certain provisions of the 1996 Act, such as those related to arbitrating and approving interconnection agreements mandate that State Commissions apply federal law within their existing State procedural structures."). *See also Verizon Corp. v. FCC*, 535 U.S. 467, 489, 122 S.Ct.

Contrary to the relief sought by the carriers in the *Sunrise Order* and *IDS* cases that the Commission had no power under the Act to grant, by its Notice of Adoption Nextel Partners has sought the exact same relief that this Commission has historically, repeatedly rendered to carriers that exercise their right to adopt another existing ILEC/Carrier interconnection agreement under either an FCC merger condition[35] or 252(i)[36], i.e., Commission acknowledgment that Nextel Partners' has in fact exercised its right to adopted the existing Sprint ICA.

### B. THE *FCC ORDER* DOES NOT RESTRICT, SUPERSEDE OR OTHERWISE ALTER THE COMMISSION'S AUTHORITY TO ACKNOWLEDGE NEXTEL PARTNERS' EXERCISE OF ITS RIGHT TO ADOPT THE SPRINT ICA

The fact that requesting carriers have been granted expanded adoption rights by virtue of the *FCC Order* does not *divest* the Commission of its existing authority to acknowledge a carrier adoption pursuant to Section 252(i) of the Act, or the alternative basis which the Commission has relied upon under state law, Fla. Stat. § 364.01(4), to

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1646, 1661 (2002) (With respect to Congress' passage of the Act, the Supreme Court noted that "[t]he approach was deliberate, through a hybrid jurisdictional scheme[.]"); and *Lucre, Inc. v. Michigan Bell Telephone Co.*, No. 06-1144, 2007 WL 1580101, p. 1 (6th Cir. May 31, 2007) ("The Act has been called one of the most ambitious regulatory programs operating under 'cooperative federalism,' and creates a regulatory framework that gives authority to state and federal entities in fostering competition in local telephone markets.")

[35] *In Re: Petition for Acknowledgment of Adoption of Existing Agreement Between Verizon Maryland Inc. f/k/a Bell Atlantic-Maryland, Inc. and Business Telecom, Inc., by Winstar Communications, L.L.C.*, Order Approving Petition for Acknowledgment of Adoption of an Agreement Under FCC Approved Merger Conditions and Granting Staff Authority To Administratively Acknowledge Adoption of Agreements Under FCC Approved Merger Conditions and Order Amending Administrative Procedures Manual, FPSC Docket No. 020353-TP, Order No. PSC-02-1174-FOF-TP (August 28, 2002) ("*Verizon Petition for Acknowledgement*").

[36] *See e.g. Z-Tel Notice of Adoption*; *Volo Petition for Adoption.*

acknowledge a carrier adoption pursuant to an FCC merger order.[37] The FCC has repeatedly and expressly recognized in its merger orders that adoption of merger conditions does not limit the authority of the states to impose or enforce requirements, which can even go beyond FCC-required conditions.[38] The FCC not only expects the states to be involved in the ongoing administration of interconnection-related merger conditions, but recognizes the states' concurrent jurisdiction to resolve interconnection-related disputes pursuant to § 252. For example,

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[37] *See Verizon Petition for Acknowledgement* (to acknowledge an FCC merger commitment adoption by Winstar in Florida of a Verizon interconnection agreement that had been approved by the Maryland Commission, the Commission stated that "we acknowledge this adopted agreement pursuant to *Section 364.01(4), Florida Statutes,* wherein the Legislature requires us to encourage and promote competition"). Winstar's FCC merger commitment adoption in *Verizon* is distinguishable from the FCC merger commitment adoption aspects of Nextel Partners' adoption based on the simple fact that Nextel Partners is adopting the Sprint ICA as previously approved by this Commission. The distinction that Nextel Partners draws between its adoption of the Sprint ICA pursuant to the Merger Commitment No. 1 and 252(i) is that Merger Commitment No. 1 imposes no time restriction upon Nextel Partners' exercise of its right to adopt the Sprint ICA.

[38] *See In the Matter of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control*, CC Docket No. 98-184, ¶ 254 (Adopted: June 16, 2000, Released: June 16, 2000) ("GTE/Bell Atlantic"); and *In the Applications of Ameritech Corp. and SBC Communications, Inc., For Consent to Transfer Control*, CC Docket No. 98-141, ¶ 358 (Adopted: October 6, 1999, Released: October 8, 1999) ("Ameritech/SBC").

in the *GTE/Bell Atlantic* merger the FCC provides:

> Although the merged firm will offer to amend interconnection agreements or make certain other offers to state commissions in order to implement several of the conditions, nothing in the conditions obligates carriers or state commissions to accept any of Bell Atlantic/GTE's offers. The conditions, therefore, do not alter any rights that a telecommunications carrier has under an existing negotiated or arbitrated interconnection agreement. **Moreover, the Applicants also agree that they will not resist the efforts of state commissions to administer the conditions by arguing that the relevant state commission lacks the necessary authority or jurisdiction.**[39]

Regarding implementation of the merged firm's interconnection-related "Most-Favored-Nation" and "Multi-State Interconnection and Resale Agreements" commitments, the FCC also made it clear that "[d]isputes regarding the availability of an interconnection arrangement ... shall be resolved pursuant to negotiation between the parties or by the relevant state commission under 47 U.S.C. § 252 to the extent applicable."[40]

Case law subsequent to the *GTE/Bell Atlantic* and *Ameritech/SBC* merger also finds that state commissions have continuing, concurrent jurisdiction to enforce interconnection-related merger conditions pursuant to Section 252. In *Core*

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[39] *GTE/Bell Atlantic* at ¶ 348 (emphasis added).

[40] *See also, Ameritech/SBC* at "Appendix C CONDITIONS," Section XII. Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements ¶¶ 42, 43, Section XII. Multi-State Interconnection and Resale Agreements ¶ 44, and XVIII. Alternative Dispute Resolution through Mediation ¶ 54 ("Participation in the ADR mediation process established by this Section is voluntary for both telecommunications carriers and state commissions. The process is not intended and shall not be used as a substitute for resolving disputes regarding the negotiation of interconnection agreements under Sections 251 and 252 of the Communications Act, or for resolving any disputes under Sections 332 of the Communications Act. The ADR mediation process shall be utilized to resolve local interconnection agreement disputes between SBC/Ameritech and unaffiliated telecommunications carriers at the unaffiliated carrier's request").

*Communications*,[41] CLECs filed a complaint action against SBC at the FCC over alleged violations of *Ameritech/SBC* merger conditions. SBC asserted that the FCC lacked jurisdiction to hear the complaint under Sections 206 and 208 of the Act on a theory that the state's authority under Section 251 and 252 overrode the FCC's Section 206 and 208 enforcement jurisdiction. The FCC determined that it *also* had 206 and 208 enforcement authority (as opposed to finding that only the FCC had enforcement authority) and, in her concurring opinion, then Commissioner Abernathy stated:

> This Order holds that the Commission has concurrent jurisdiction with the state commissions to adjudicate interconnection disputes. I agree that the plain language of the Act compels this conclusion. But I also believe that there are significant limitations on the circumstances in which complainants will actually be able to state a claim under section 208 for violations of section 251(c) and the Commission's implementing rules.
>
> ... as the Order acknowledges, the section 252 process of commercial negotiation and arbitration provides the primary means of resolving disputes about what should be included in an interconnection agreement – its change of law provisions, for example – likely would foreclose any remedy under section 208.[42]

Similarly, in *Ameritech ADS*, in the context of granting "Alternative Telecommunications Utility" certification to a post-merger *Ameritech/SBC* affiliate, Commissioner Joe Mettner found it necessary to issue a concurring opinion to the Wisconsin Public Service Commission's ("WPSC") decision in order to address

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[41] *In the Matter of Core Communications, Inc. and Z-Tel Communications, Inc. v. SBC Communications, et al.*, Memorandum Opinion and Order, 18 FCC Rcd 7568, 2003 FCC Lexis 2031 (2003) ("*Core Communications*") *vacated and remanded on other grounds,* 407 F.3d 1223 (U.S.App.D.C. 2005) (vacated for further proceedings in which Commission may develop and apply its interpretation of the conditions under which CLECs may waive specified merger rights).

[42] *Core Communications* at 17.

statements made by a dissenting Commissioner in light of the FCC's *Ameritech/SBC* merger order:

> It is important that the public not be left with inaccurate statements concerning the extent, if any, to which FCC action in merger cases alters, modifies or preempts the federal statutory scheme of shared responsibility between the state commissions and the FCC over matters relating to opening local exchange markets to competition and the monitoring of the terms and conditions of interconnection agreements entered into by the ILEC's with competitors.
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> * * *
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> It is fundamental to the scheme of shared regulation found in the Telecommunications Reform Act of 1996 that state commissions and the FCC preserve their respective spheres of authority to ensure that the general obligations of ILEC's to provide nondiscriminatory interconnection features to requesting entities, and that the states retain a particularly important role in the review and approval of interconnection agreements. 47 U.S.C. §§ 251(c) and (d), 252(e).
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> * * *
>
> The Merger Order simply doesn't stand as any valid extra-jurisdictional reconfiguration of state v. federal authority in these matters, as the FCC has been careful to indicate in its own Merger Order.
>
> ... it may well be true, as the dissent has noted, that the FCC in some sense has "final enforcement authority" over issues concerning SBC/Ameritech's OSS, to the extent that the FCC may preempt any state commission failing to fulfill its responsibilities under 47 U.S.C. 252 in reviewing interconnection agreements. It is not true, however, that the Merger Order does anything (as indeed it may not) to alter the primary authority of state commissions in review of interconnection agreements, and the terms and conditions of same.[43]

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[43] *Petition of Ameritech Advanced Data Services of Wisconsin, Inc. for Authorization to Resell Frame Relay Switched Multimegabit Data, and Asynchronous Transfer Mode Services on an Intrastate Bases and to Operate as an Alternative Telecommunications Utility in Wisconsin; Investigation into the Digital Services and Facilities of Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin),* Final Decision and Certificate, 2000 Wisc. PUC Lexis 36 (Jan. 2000) *("Ameritech ADS").*

Based on the foregoing, it is apparent that not only do the states continue to retain 251-252 authority over disputes regarding interconnection-related merger conditions in an FCC order, but also that the FCC itself has expressed a belief that even its complaint enforcement authority may be considered secondary to the states with respect to such disputes.

### C. THE *FCC ORDER* EXPRESSLY RECOGNIZES THE STATES' CONCURRENT AUTHORITY OVER AT&T'S INTERCONNECTION-RELATED MERGER COMMITMENTS

Appendix F to the *FCC Order* contains the Merger Commitments that the FCC adopted in conjunction with its approval of the AT&T/BellSouth merger. AT&T asserts that "the FCC explicitly reserved jurisdiction over the merger commitments" by virtue of the following language in the *Order*: "[f]or the avoidance of doubt, unless otherwise stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC."[44] AT&T then goes on to assert that "[n]owhere in Appendix F does the FCC provide that interpretation of merger commitment No. 4 is to occur outside the FCC."[45] This is simply not an accurate statement with respect to Appendix F.

The FCC clearly recognized in Appendix F that it has no authority to alter the states' *concurrent* statutory jurisdiction under the Act over interconnection matters addressed in the Merger Commitments. The paragraph immediately preceding the

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[44] Motion at 6.

[45] Motion at 7.

language relied upon by AT&T states:

> *It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.*[46]

It should be noted that the above language was not part of the proposed Merger Commitments as filed by AT&T with the FCC via Mr. Robert Quinn's December 28, 2006 letter. Rather, it was *specifically added by the FCC.* This language serves the obvious purpose of recognizing, similar to what the FCC has done in prior merger orders as already discussed herein, that the Act is designed with dual authority for both the states and the FCC. The *FCC Order* reflects absolutely no attempt by the FCC, nor could it legitimately do so, to alter the states' primary responsibility for initial review and acknowledgement of the agreement to be in effect between two parties. As recognized in the Act and articulated by the Wisconsin PSC in *Ameritech ADS*, the FCC's role in this regard is secondary, unless the state fails to take action or, as stated by the FCC itself in *Core Communications,* a carrier elects to pursue a direct enforcement action with the FCC pursuant to Section 206 and 208.

Considering the former SBC's post-merger action in the *Core Communications* case (*i.e.*, contending the FCC lacked enforcement jurisdiction over a merger condition complaint), the language relied on by AT&T merely serves to make it clear that the FCC's enforcement authority remains an *available* avenue, as opposed to the *exclusive*

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[46] *FCC Order* at 147, APPENDIX F (emphasis added).

avenue, to address any AT&T interconnection-related Merger Commitment violations. Appendix F does not contain, nor could it, any provision that even attempts to divest the states of their jurisdiction over interconnection-related merger commitment matters and vest *exclusive* jurisdiction over such matters in the FCC.

Indeed, when the FCC's Wireline Competition Bureau was faced with an issue similar to the one raised by AT&T's Motion, it relied upon its authority pursuant to § 252(e)(5) to act in the stead of a state commission in arbitrating interconnection agreements, and not upon its authority as a Bureau of the FCC, in resolving the issue. In the *GTE/Bell Atlantic* merger order, the merged firm was required to "offer telecommunications carriers, subject to the appropriate state commission's approval, an option of resolving interconnection agreement disputes through an alternative dispute resolution mediation process that may be state-supervised."[47] Subsequently, the Wireline Competition Bureau arbitrated the terms of interconnection agreements between Verizon and the former WorldCom, Inc. and former AT&T Corp. after the Virginia Corporation Commission declined to do so.[48]

In the *WorldCom Virginia Arbitration,* Verizon and WorldCom disagreed concerning the dispute resolution provision to be included in their arbitrated interconnection agreement. WorldCom contended that a sentence proposed by Verizon

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[47] *GTE/Bell Atlantic* at ¶ 317.

[48] *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration,* DA-02-1731, CC Docket No. 00-218 *et al.,* (Adopted July 17, 2002; Released July 17, 2002) ("*WorldCom Virginia Arbitration*").

should be deleted in order to make clear that the alternative dispute resolution procedure required by the *GTE/Bell Atlantic* merger condition remained available to WorldCom, while Verizon contended that the Bureau, acting as a Section 252(b) arbitrator, lacked the authority to require the inclusion of an arbitration provision in the interconnection agreement. The Bureau disagreed, ruling that "[t]he Act gives us broad authority, ***standing in the shoes of a state commission,*** to resolve issues raised in this proceeding."[49] Indeed, the Bureau found that failing to give effect to the merger condition when arbitrating an interconnection agreement "would essentially modify that Commission order, which we cannot do … ."[50] The Commission has no more authority to modify the AT&T/BellSouth adoption Merger Commitments than the Wireline Competition Bureau had to modify the *GTE/Bell Atlantic* merger order. Like the Wireline Competition Bureau when it was arbitrating an interconnection agreement under § 252 on behalf of a state commission, this Commission must interpret and apply the Merger Commitments consistent with the *FCC Order* in acknowledging Nextel Partners' exercise of its right to adopt the Sprint ICA.

And finally, it is obvious from the express language of the *FCC Order* that the FCC understood the state commissions would be involved in reviewing adoptions under Merger Commitment No. 1. The last requirement of Merger Commitment No. 1 is that the adoption be "consistent with the laws and regulatory requirements of, the state for which the request is made." This Commission is, unquestionably, the forum with

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[49] *WorldCom Virginia Arbitration* at ¶ 703.

[50] *Id.* at ¶ 702.

authority to review the Nextel Partners Notice of Adoption to ensure its consistency with the laws and regulatory requirements of Florida.

## IV. AT&T'S ARGUMENT THAT NEXTEL PARTNERS' ADOPTION OF THE SPRINT ICA IS UNTIMELY IGNORES BOTH THE FACTS AND COMMISSION PRECEDENT TO THE CONTRARY

AT&T contends the Sprint ICA is "expired"[51] and, therefore, Nextel Partners' did not timely adopt the Sprint ICA within the "reasonable period of time" that AT&T was required to make the Sprint ICA available for adoption pursuant to 47 C.F.R. § 51.809(c).[52] AT&T's position on these points is factually and legally inadequate to support dismissal.

Factually, AT&T premises its conclusion that the Sprint ICA is "expired" upon its request that the Commission take judicial notice of the Sprint ICA, and its sole assertion that "the ICA was entered into on January 1, 2001, and was amended twice to extend the term to December 31, 2004."[53] AT&T, however, fails to recognize either a) the express provisions of the Sprint ICA that establish it currently continues and is "deemed ***extended*** on a month-to-month basis"[54], or b) AT&T admits without qualification that it acknowledged to Sprint that the Sprint ICA can be extended 3-years

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[51] Motion at pages 1, 7 and 9

[52] Motion at page 7. 47 C.F.R. § 51.809(c) states: "Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under Section 252(h) of the Act."

[53] Motion at page 9 footnote 11.

[54] Sprint ICA, Section 2.1 at page 815 (emphasis added).

pursuant to Merger Commitment No. 4. Based on the foregoing additional undisputable facts, contrary to AT&T's assertion, the Sprint ICA not only continues to be effective, but there is a good faith argument that by Sprint's exercise of its right to a 3-year extension of the Sprint ICA, the Sprint ICA is not scheduled to expire until March 19, 2010.

From a legal perspective, AT&T cannot overcome two hurdles. First, Merger Commitment No. 1 does not contain any language to impose any time limitation as to when Nextel Partners was required to exercise its right to adopt the Sprint ICA pursuant to Merger Commitment No. 1. Thus, the "reasonable period of time" limitation that AT&T contends exists as to a non-merger 252(i) adoption by virtue of 47 C.F.R. § 51.809(c) is simply inapplicable to an adoption under Merger Commitment No. 1.

As to Nextel Partners' additional reliance upon 252(i), AT&T cites to two *Global NAPs* cases under which the respective state commissions held that given the limited amount of time remaining in the interconnection agreements (10 and 7 months, respectively), allowing the requesting CLEC to opt-in would be unreasonable.[55] Alltel previously cited these exact same two *Global NAPs* in requesting the Commission to dismiss Volo's Notice of Adoption of an agreement that was set to expire within 72 days after the adoption date, but was likely to remain in effect beyond the stated termination date.[56] Volo argued that the *Global NAPs'* adoptions were distinguishable from Volo's adoption in that Volo sought to adopt an interconnection in its entirety, whereas the

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[55] Motion at page 8 – 9 citing *In Re: Global NAPS South, Inc.,* 15 FCC R'cd 23318 (August 5, 1999) and *In Re: Notice of Global NAPS South, Inc.,* Case No. 8731 (Md. PSC July 15, 1999) (collectively "*Global NAPs* cases").

carriers in *Global NAPs* sought to change the terms of the agreements being adopted. The Commission recognized that there is "no definitive standard set forth by the FCC as to what constitutes a reasonable time", and that Alltel's Motion to Dismiss failed because, on its face, Volo's Notice of Adoption stated a cause of action on which relief could be granted.[57]

As in *Volo*, Nextel Partners' Notice of Adoption states a cause of action on its face and AT&T has failed to establish as a matter of fact or law that Nextel Partner's Notice of Adoption is untimely.

## V. NEXTEL PARTNERS WAS NOT REQUIRED TO INVOKE THE DISPUTE RESOLUTION PROVISIONS OF ITS PRIOR AGREEMENT BEFORE EXERCISING ITS RIGHT TO ADOPT THE SPRINT ICA

Without citation to a single legal authority, AT&T contends that because the Nextel Partners agreement had a provision regarding the adoption of agreements, and Nextel Partners disagreed with AT&T regarding Nextel Partners' adoption of the Sprint ICA, "Nextel Partners was contractually bound to follow the dispute resolution process contained in the parties' agreement".[58] This is not a new AT&T argument. In attempting to avoid a unilateral adoption by Z-Tel of an AT&T/Network Telephone Corporation ("Network") interconnection agreement, AT&T likewise claimed that "Z-Tel did not comply with the terms of its existing interconnection agreement concerning adoptions" and argued that Z-Tel's adoption of the Network agreement should be

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[56] *See Volo Notice of Adoption,* Docket No. 040343-TP, Order No. PSC-04-1109-PCO-TP.

[57] *Id.*

[58] Motion at page12

rejected.[59] The Commission found that "Z-Tel's adoption [was] well within its statutory right under § 252(i) to opt-in to such an agreement in its entirety", that "[b]y the very fact of the Network agreement being active and effective, Z-Tel [was] within its rights to adopt", and accepted Z-Tel's Notice of Adoption.[60]

Nextel Partners was clearly not required to follow an "adoption process" contained in its prior agreement in order to adopt the Sprint ICA. It logically follows, then, that there is no basis for requiring Nextel Partners to engage in a dispute resolution process based upon AT&T's failure to voluntarily honor and acknowledge its obligation to make the Sprint ICA available to Nextel Partners.

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[59] *Z-Tel Notice of Adoption,* Docket No. 040779-TP, Order No. PSC-05-0158-PAA-TP.

[60] *Id.*

## CONCLUSION

For all of the reasons stated above, AT&T has failed to demonstrate that it is entitled to dismissal as matter of fact or law. Accordingly, Nextel Partners respectfully requests that the Commission deny AT&T's Motion in its entirety and, administratively acknowledge that, effective June 8, 2007, Nextel Partners adopted the existing Sprint ICA.

Respectfully submitted this 9th day of July, 2007.

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not received such flexibility, and to provide a 15% discount on Reciprocal Non-Price Cap Services; and (ii) file tariff revisions that would implement such changes within 90 days of the Merger Closing Date (a "Non-Reciprocating Carrier"), the AT&T/BellSouth ILECs shall be deemed by the FCC to have substantial cause to make any necessary revisions to the tariffs under which they provide the services subject to this commitment to such Non-Reciprocating Carrier, including any affiliates, to prevent or offset any change in the effective rate charged such entities for such services. The AT&T/BellSouth ILECs will file all tariff revisions necessary to effectuate this commitment, including any provisions addressing Non-Reciprocating Carriers and their affiliates, within 90 days from the Merger Closing Date.

7. AT&T/BellSouth will not oppose any request by a purchaser of interstate special access services for mediation by Commission staff of disputes relating to AT&T/BellSouth's compliance with the rates, terms, and conditions set forth in its interstate special access tariffs and pricing flexibility contracts or to the lawfulness of the rates, terms, and conditions in such tariffs and contracts, nor shall AT&T/BellSouth oppose any request that such disputes be accepted by the Commission onto the Accelerated Docket.

8. The AT&T/BellSouth ILECs will not include in any pricing flexibility contract or tariff filed with the Commission after the Merger Closing Date access service ratio terms which limit the extent to which customers may obtain transmission services as UNEs, rather than special access services.

9. Within 60 days after the Merger Closing Date, the AT&T/BellSouth ILECs will file one or more interstate tariffs that make available to customers of DS1, DS3, and Ethernet service reasonable volume and term discounts without minimum annual revenue commitments (MARCs) or growth discounts. To the extent an AT&T/BellSouth ILEC files an interstate tariff for DS1, DS3, or Ethernet services with a varying MARC, it will at the same time file an interstate tariff for such services with a fixed MARC. For purposes of these commitments, a MARC is a requirement that the customer maintain a minimum specified level of spending for specified services per year.

10. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC, AT&T/BellSouth will offer an alternative proposal that gives the customer the option of obtaining a volume and/or term discount(s) without a MARC. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC that varies over the life of the contract, AT&T/BellSouth will offer an alternative proposal that includes a fixed MARC.

11. Within 14 days of the Merger Closing Date, the AT&T/BellSouth ILECs will give notice to customers of AT&T/BellSouth with interstate pricing flexibility contracts that provide for a MARC that varies over the life of the contract that, within 45 days of such notice, customers may elect to freeze, for the remaining term of such pricing flexibility contract, the MARC in effect as of the Merger Closing Date, provided that the customer also freezes, for the remaining term of such pricing flexibility contract, the contract discount rate (or specified rate if the contract sets forth specific rates rather than discounts off of referenced tariffed rates) in effect as of the Merger Closing Date.

**Transit Service**

The AT&T and BellSouth ILECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth ILECs provide in the AT&T/BellSouth in-region territory.[11]

**ADSL Service[12]**

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the "Implementation Date" in that state. For purposes of this commitment, the "Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth's in-region territory in that state.[13] Within twenty days after meeting the Implementation Date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.

2. AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within AT&T's in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).

3. Within twelve months of the Merger Closing Date, AT&T/BellSouth will make available in its in-region territory an ADSL service capable of speeds up to 768 Kbps to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service ("Stand Alone 768 Kbps service"). AT&T/BellSouth will continue to offer the 768 Kbps service in a state for thirty months after the "Stand Alone 768 Kbps Implementation Date" for that state. For purposes of this commitment, the "Stand Alone 768 Kbps Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer the Stand Alone 768 Kbps service to eighty percent of the ADSL-capable premises in AT&T/BellSouth's in-region territory in that state. The Stand Alone 768 Kbps service will be offered at a rate of not more than $19.95 per month (exclusive of regulatory fees and taxes). AT&T/BellSouth may make available such services at other speeds at prices that are competitive with the broadband market taken as a whole.

**ADSL Transmission Service**

AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the combined

[11] Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier.

[12] The commitments set forth under the heading "ADSL Service" are, by their terms, available to retail customers only. Wholesale commitments are addressed separately under the heading "ADSL Transmission Service."

[13] After meeting the implementation date in each state, AT&T/BellSouth will continue deployment so that it can offer the service to all ADSL-capable premises in its in-region territory within twelve months of the Merger Closing Date.

AT&T/BellSouth territory that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date.[14] Such wholesale offering will be at a price not greater than the retail price in a state for ADSL service that is separately purchased by customers who also subscribe to AT&T/BellSouth local telephone service.

**Net Neutrality**

1. Effective on the Merger Closing Date, and continuing for 30 months thereafter, AT&T/BellSouth will conduct business in a manner that comports with the principles set forth in the Commission's Policy Statement, issued September 23, 2005 (FCC 05-151).

2. AT&T/BellSouth also commits that it will maintain a neutral network and neutral routing in its wireline broadband Internet access service.[15] This commitment shall be satisfied by AT&T/BellSouth's agreement not to provide or to sell to Internet content, application, or service providers, including those affiliated with AT&T/BellSouth, any service that privileges, degrades or prioritizes any packet transmitted over AT&T/BellSouth's wireline broadband Internet access service based on its source, ownership or destination.

This commitment shall apply to AT&T/BellSouth's wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, defined as the point of interconnection that is logically, temporally or physically closest to the customer's premise where public or private Internet backbone networks freely exchange Internet packets.

This commitment does not apply to AT&T/BellSouth's enterprise managed IP services, defined as services available only to enterprise customers[16] that are separate services from, and can be purchased without, AT&T/BellSouth's wireline broadband Internet access service, including, but not limited to, virtual private network (VPN) services provided to enterprise customers. This commitment also does not apply to AT&T/BellSouth's Internet Protocol television (IPTV) service. These exclusions shall not result in the privileging, degradation, or prioritization of packets transmitted or received by AT&T/BellSouth's non-enterprise customers' wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, as defined above.

[14] An ADSL transmission service shall be considered "functionally the same" as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date if the ADSL transmission service relies on ATM transport from the DSLAM (or equivalent device) to the interface with the Internet service provider, and provides a maximum asymmetrical downstream speed of 1.5Mbps or 3.0Mbps, or a maximum symmetrical upstream/downstream speed of 384Kbps or 416Kbps, where each respective speed is available (the "Broadband ADSL Transmission Service"). Nothing in this commitment shall require AT&T/BellSouth to serve any geographic areas it currently does not serve with Broadband ADSL Transmission Service or to provide Internet service providers with broadband Internet access transmission technology that was not offered by AT&T to such providers in its in-region territory as of the Merger Closing Date.

[15] For purposes of this commitment, AT&T/BellSouth's wireline broadband Internet access service and its Wi-Max fixed wireless broadband Internet access service are, collectively, AT&T/BellSouth's "wireline broadband Internet access service."

[16] "Enterprise customers" refers to that class of customer identified as enterprise customers on AT&T's website (http://www.att.com) as of December 28, 2006.

This commitment shall sunset on the earlier of (1) two years from the Merger Closing Date, or (2) the effective date of any legislation enacted by Congress subsequent to the Merger Closing Date that substantially addresses "network neutrality" obligations of broadband Internet access providers, including, but not limited to, any legislation that substantially addresses the privileging, degradation, or prioritization of broadband Internet access traffic.

**Internet Backbone**

1. For a period of three years after the Merger Closing Date, AT&T/BellSouth will maintain at least as many discrete settlement-free peering arrangements for Internet backbone services with domestic operating entities within the United States as they did on the Merger Closing Date, provided that the number of settlement-free peering arrangements that AT&T/BellSouth is required to maintain hereunder shall be adjusted downward to account for any mergers, acquisitions, or bankruptcies by existing peering entities or the voluntary election by a peering entity to discontinue its peering arrangement. If on the Merger Closing Date, AT&T and BellSouth both maintain a settlement free peering arrangement for Internet backbone services with the same entity (or an affiliate thereof), the separate arrangements shall count as one settlement-free peering arrangement for purposes of determining the number of discrete peering entities with whom AT&T/BellSouth must peer pursuant to this commitment. AT&T/BellSouth may waive terms of its published peering policy to the extent necessary to maintain the number of peering arrangements required by this commitment. Notwithstanding the above, if within three years after the Merger Closing Date, one of the ten largest entities with which AT&T/BellSouth engages in settlement free peering for Internet backbone services (as measured by traffic volume delivered to AT&T/BellSouth's backbone network facilities by such entity) terminates its peering arrangement with AT&T/BellSouth for any reason (including bankruptcy, acquisition, or merger), AT&T/BellSouth will replace that peering arrangement with another settlement free peering arrangement and shall not adjust its total number of settlement free peers downward as a result.

2. Within thirty days after the Merger Closing Date, and continuing for three years thereafter, AT&T/BellSouth will post its peering policy on a publicly accessible website. During this three-year period, AT&T/BellSouth will post any revisions to its peering policy on a timely basis as they occur.

**Forbearance**

1. AT&T/BellSouth will not seek or give effect to a ruling, including through a forbearance petition under section 10 of the Communications Act (the "Act") 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

2. AT&T/BellSouth will not seek or give effect to any future grant of forbearance that diminishes or supersedes the merged entity's obligations or responsibilities under these merger commitments during the period in which those obligations are in effect.

**Wireless**

1. AT&T/BellSouth shall assign and/or transfer to an unaffiliated third party all of the 2.5 GHz spectrum (broadband radio service (BRS)/educational broadband service (EBS)) currently licensed to or leased by BellSouth within one year of the Merger Closing Date.

2. By July 21, 2010, AT&T/BellSouth agrees to: (1) offer service in the 2.3 GHz band to 25% of the population in the service area of AT&T/BellSouth's wireless communications services (WCS) licenses,

for mobile or fixed point-to-multi-point services, or (2) construct at least five permanent links per one million people in the service area of AT&T/BellSouth's WCS licenses, for fixed point-to-point services. In the event AT&T/BellSouth fails to meet either of these service requirements, AT&T/BellSouth will forfeit the unconstructed portion of the individual WCS licenses for which it did not meet either of these service requirements as of July 21, 2010; provided, however, that in the event the Commission extends the July 21, 2010, buildout date for 2.3GHz service for the WCS industry at large ("Extended Date"), the July 21, 2010 buildout date specified herein shall be modified to conform to the Extended Date. The wireless commitments set forth above do not apply to any 2.3 GHz wireless spectrum held by AT&T/BellSouth in the state of Alaska.

**Divestiture of Facilities**

Within twelve months of the Merger Closing Date, AT&T/BellSouth will sell to an unaffiliated third party(ies) an indefeasible right of use ("IRU") to fiber strands within the existing "Lateral Connections," as that term is defined in the *SBC/AT&T Consent Decree*,[17] to the buildings listed in Attachment B to this Appendix F ("BellSouth Divestiture Assets"). These divestitures will be effected in a manner consistent with the divestiture framework agreed to in the *SBC/AT&T Consent Decree*, provided that such divestitures will be subject to approval by the FCC, rather than the Department of Justice.

**Tunney Act**

AT&T is a party to a Consent Decree entered into following the merger of SBC and AT&T (the "Consent Decree"). The Consent Decree documents the terms under which AT&T agreed to divest special access facilities serving 383 buildings within the former SBC in-region ILEC territory (the "SBC Divestiture Assets"). In its Order approving the AT&T/SBC merger, the Commission also required the divestiture of these same facilities on the terms and conditions contained in the Consent Decree. The Consent Decree is currently under review pursuant to the Tunney Act in the U.S. District Court for the District of Columbia (the "Court") in U.S. v. SBC Communications, Inc. and AT&T Corp., Civil Action No. 1:05CV02102 (EGS) (D.D.C.), where the Court is reviewing the adequacy of the remedy contained in the Consent Decree to address the competitive concerns described in the Complaint filed by the Department of Justice (DOJ).

If it is found in a final, non-appealable order, that the remedy in the Consent Decree is not adequate to address the concerns raised in the Complaint and AT&T and the DOJ agree to a modification of the Consent Decree (the "Modified Consent Decree"), then AT&T agrees that (1) AT&T/BellSouth will conform its divestiture of the BellSouth Divestiture Assets to the terms of the Modified Consent Decree; and (2) AT&T/BellSouth will negotiate in good faith with the Commission to determine whether the conditions imposed on AT&T/BellSouth in the Commission order approving the merger of AT&T and BellSouth satisfies, with respect to the BellSouth territory, the concerns addressed in the Modified Consent Decree.

**Certification**

AT&T/BellSouth shall annually file a declaration by an officer of the corporation attesting that AT&T/BellSouth has substantially complied with the terms of these commitments in all material

[17] *See United States v. SBC Communications, Inc.*, Civil Action No. 1:05CV02102, Final Judgment (D.D.C. filed Oct. 27, 2005).

respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, and the second, third, and fourth declarations shall be filed one, two, and three years thereafter, respectively.

**Conditions**
**ATTACHMENT A**

**Service Quality Measurement Plan**
**For Interstate Special Access**

**Contents**

**Section 1: Ordering**

**FOCT: Firm Order Confirmation (FOC) Timeliness**

**Definition**
Firm Order Confirmation (FOC) Timeliness measures the percentage of FOCs returned within the Company-specified standard interval.

**Exclusions**
- Service requests identified as "Projects" or "ICBs"
- Service requests cancelled by the originator
- Weekends and designated holidays of the service center
- Unsolicited FOCs
- Administrative or test service requests
- Service requests that indicate that no confirmation/response should be sent
- Other exclusions as defined by each RBOC to reflect system and operational differences

**Business Rules**
Counts are based on the first instance of a FOC being sent in response to an ASR. Activity starting on a weekend or holiday will reflect a start date of the next business day. Activity ending on a weekend or holiday will be calculated with an end date of the last previous business day. Requests received after the company's stated cutoff time will be counted as a "zero" day interval if the FOC is sent by close of business on the next business day. The standard interval will be that which is specified in the company-specific ordering guide.

**Calculation**
**Firm Order Confirmation (FOC) Interval** = (a - b)
- a = Date and time FOC is returned
- b = Date and time valid access service request is received

**Percent within Standard Interval** = (c / d) X 100
- c = Number of service requests confirmed within the designated interval
- d = Total number of service requests confirmed in the reporting period

**Report Structure**
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

**Geographic Scope**
- State

**SQM Disaggregation (Percent FOCs returned within Standard Interval)**
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

**Section 2: Provisioning**

**PIAM: Percent Installation Appointments Met**

**Definition**
Percent Installation Appointments Met measures the percentage of installations completed on or before the confirmed due date.

**Exclusions**
- Orders issued and subsequently cancelled
- Orders associated with internal or administrative (including test) activities
- Disconnect Orders
- Other exclusions as defined by each RBOC to reflect system and operational differences

**Business Rules**
This measurement is calculated by dividing the number of service orders completed during the reporting period, on or before the confirmed due date, by the total number of orders completed during the same reporting period. Installation appointments missed because of customer caused reasons shall be counted as met and included in both the numerator and denominator. Where there are multiple missed appointment codes, each RBOC will determine whether an order is considered missed.

**Calculation**
**Percent Installation Appointments Met** = (a / b) X 100
- a = Number of orders completed on or before the RBOC confirmed due date during the reporting period
- b = Total number of orders where completion has been confirmed during the reporting period

**Report Structure**
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

**Geographic Scope**
- State

**SQM Disaggregation**
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

**NITR: New Installation Trouble Report Rate**

**Definition**
New Installation Trouble Report Rate measures the percentage of circuits or orders where a trouble was found in RBOC facilities or equipment within thirty days of order completion.

**Exclusions**
- Trouble tickets issued and subsequently cancelled
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- RBOC troubles associated with administrative service
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions defined by each RBOC to reflect system and operational differences
- Subsequent trouble reports

**Business Rules**
Only the first customer direct trouble report received within thirty calendar days of a completed service order is counted in this measure. Only customer direct trouble reports that required the RBOC to repair a portion of the RBOC network will be counted in this measure. The RBOC completion date is when the RBOC completes installation of the circuit or order.

**Calculation**
**Trouble Report Rate within 30 Calendar Days of Installation** = (a / b) X 100
- a = Count of circuits/orders with trouble reports within 30 calendar days of installation
- b = Total number of circuits/orders installed in the reporting period

**Report Structure**
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

**Geographic Scope**
- State

**SQM Disaggregation**
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

**Section 3: Maintenance & Repair**

**CTRR: Failure Rate/Trouble Report Rate**

**Definition**
The percentage of initial and repeated circuit-specific trouble reports completed per 100 in-service circuits for the reporting period.

**Exclusions**
- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports/circuits associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

**Business Rules**
Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this report. The trouble report rate is computed by dividing the number of completed trouble reports handled during the reporting period by the total number of in-service circuits for the same period.

**Calculation**
**Percent Trouble Report Rate** = (a / b) X 100
- a = Number of completed circuit-specific trouble reports received during the reporting period
- b = Total number of in-service circuits during the reporting period

**Report Structure**
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

**Geographic Scope**
- State

**SQM Disaggregation**
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

**MAD: Average Repair Interval/Mean Time to Restore**

**Definition**
The Average Repair Interval/Mean Time to Restore is the average time between the receipt of a customer trouble report and the time the service is restored. The average outage duration is only calculated for completed circuit-specific trouble reports.

**Exclusions**
- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

**Business Rules**
Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this measure. The average outage duration is calculated for each restored circuit with a trouble report. The start time begins with the receipt of the trouble report and ends when the service is restored. This is reported in a manner such that customer hold time or delay maintenance time resulting from verifiable situations of no access to the end user premise, other CLEC/IXC or RBOC retail customer caused delays, such as holding the ticket open for monitoring, is deducted from the total resolution interval ("stop clock" basis).

**Calculation**
**Repair Interval** = (a – b)
- a = Date and time trouble report was restored
- b = Date and time trouble report was received

**Average Repair Interval** = (c / d)
- c = Total of all repair intervals (in hours/days) for the reporting period
- d = Total number of trouble reports closed during the reporting period

**Report Structure**
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

**Geographic Scope**
- State

**SQM Disaggregation**
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

## GLOSSARY

| | |
|---|---|
| **Access Service Request (ASR)** | A request to the RBOC to order new access service, or request a change to existing service, which provides access to the local exchange company's network under terms specified in the local exchange company's special or switched access tariffs. |
| **RBOC 272 Affiliates Aggregate** | RBOC Affiliate(s) authorized to provide long distance service as a result of the Section 271 approval process. |
| **RBOC Affiliates Aggregate** | RBOC Telecommunications and all RBOC Affiliates (including the 272 Affiliate). Post sunset, comparable line of business (e.g., 272 line of business) will be included in this category. |
| **Business Days** | Monday thru Friday (8AM to 5PM) excluding holidays |
| **CPE** | Customer Provided or Premises Equipment |
| **Customer Not Ready (CNR)** | A verifiable situation beyond the normal control of the RBOC that prevents the RBOC from completing an order, including the following: CLEC or IXC is not ready to receive service; end user is not ready to receive service; connecting company or CPE supplier is not ready. |
| **Firm Order Confirmation (FOC)** | The notice returned from the RBOC, in response to an Access Service Request from a CLEC, IXC or affiliate, that confirms receipt of the request and creation of a service order with an assigned due date. |
| **Unsolicited FOC** | An Unsolicited FOC is a supplemental FOC issued by the RBOC to change the due date or for other reasons, e.g., request for a second copy from the CLEC/IXC, although no change to the ASR was requested by the CLEC or IXC. |
| **Project or ICB** | Service requests that exceed the line size and/or level of complexity that would allow the use of standard ordering and provisioning interval and processes. Service requests requiring special handling. |
| **Repeat Trouble** | Trouble that reoccurs on the same telephone number/circuit ID within 30 calendar days |
| **Service Orders** | Refers to all orders for new or additional lines/circuits. For change order types, additional lines/circuits consist of all C order types with "I" and "T" action coded line/circuit USOCs that represent new or additional lines/circuits, including conversions for RBOC to Carrier and Carrier to Carrier. |

**Conditions**
**ATTACHMENT B**

**Building List**

| Metro Area | CLLI | Address | City | State | Zip Code |
|---|---|---|---|---|---|
| Atlanta | ALPRGAVP | 5965 CABOT PKWY | ALPHARETTA | GA | 30005 |
| Atlanta | ATLNGABI | 2751 BUFORD HWY NE | ATLANTA | GA | 30324 |
| Atlanta | CHMBGAJG | 2013 FLIGHTWAY DR | CHAMBLEE | GA | 30341 |
| Atlanta | NRCRGAER | 6675 JONES MILL CT | NORCROSS | GA | 30092 |
| Atlanta | NRCRGAIJ | 4725 PEACHTREE CORNERS CIR | NORCROSS | GA | 30092 |
| Atlanta | NRCRGANX | 3795 DATA DR NW | NORCROSS | GA | 30092 |
| Atlanta | NRCRGARC | 335 RESEARCH CT | NORCROSS | GA | 30092 |
| Birmingham | BRHMALKU | 101 LEAF LAKE PKWY | BIRMINGHAM | AL | 35211 |
| Charlotte | CHRMNCXI | 2605 WATER RIDGE PKWY | CHARLOTTE | NC | 28217 |
| Chattanooga | CHTGTNAC | 537 MARKET ST | CHATTANOOGA | TN | 37402 |
| Jacksonville | JCVNFLHK | 10201 CENTURION PKWY N | JACKSONVILLE | FL | 32256 |
| Knoxville | KNVLTNHB | 8057 RAY MEARS BLVD | KNOXVILLE | TN | 37919 |
| Knoxville | KNVNTN82 | 2160 LAKESIDE CENTER WAY | KNOXVILLE | TN | 37922 |
| Miami | BCRTFLAU | 851 NW BROKEN SOUND PKWY | BOCA RATON | FL | 33487 |
| Miami | BCRTFLCM | 501 E CAMINO REAL | BOCA RATON | FL | 33432 |
| Miami | DLBHFLDU | 360 N CONGRESS AVE | DELRAY BEACH | FL | 33445 |
| Miami | JPTRFLAC | 100 MARQUETTE DR | JUPITER | FL | 33458 |
| Miami | JPTRFLBC | 1001 N USHWY 1 | JUPITER | FL | 33477 |
| Miami | PLNBFLAZ | 1601 SW 80TH TER | PLANTATION | FL | 33324 |
| Miami | PLNBFLCQ | 1800 NW 69TH AVE | PLANTATION | FL | 33313 |
| Miami | SUNRFLCF | 720 INTERNATIONAL PKWY | SUNRISE | FL | 33325 |
| Nashville | BRWDTNEV | 210 WESTWOOD PL | BRENTWOOD | TN | 37027 |
| Nashville | NSVLTNIH | 1215 21ST AVE S | NASHVILLE | TN | 37212 |
| Nashville | NSVLTNWL | 28 OPRYLAND DR | NASHVILLE | TN | 37204 |
| Nashville | NSVNTNFO | 252 OPRY MILLS DR | NASHVILLE | TN | 37214 |
| Nashville | NSVPTNIJ | 332 OPRY MILLS DR | NASHVILLE | TN | 37214 |
| Nashville | NSVPTN98 | 427 OPRY MILLS DR | NASHVILLE | TN | 37214 |
| Nashville | NSVPTNJX | 540 OPRY MILLS DR | NASHVILLE | TN | 37214 |
| Miami | LDHLFLAC | 4300 N UNIVERSITY DR | LAUDERHILL | FL | 33351 |
| Miami | SUNRFLBD | 440 SAWGRASS CORP. PARKWAY | SUNRISE | FL | 33325 |
| Orlando | ORLFFLYL | 8350 PARKLINE BLVD | ORLANDO | FL | 32809 |