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Sent: Tuesday, August 28, 2007 4:38 PM
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Subject: Docket 070552-TP
Attachments: 2007-08-28, metropcs resp to motion to dismiss.pdf

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The Docket No. is 070552-TP - Petition and complaint for expedited proceeding or, alternatively, petition and complaint or petition for declaratory statement, by MetroPCS Florida, LLC, requiring BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast; TDS Telecom d/b/a TDS Telecom/Quincy Telephone; Windstream Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC, to submit agreements for transit services provided by AT&T Florida for approval.

This is being filed on behalf of MetroPCS Florida, LLC

Total Number of Pages is 17 (15 page document plus cover letter and certificate of service).

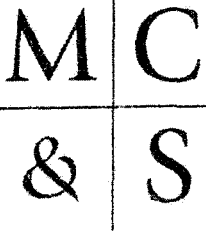
Response and Opposition of MetroPCS Florida, LLC to AT&T Florida's Motion to Dismiss and joinder by 3 Small LECs.

Thank you.

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August 28, 2007

BY ELECTRONIC FILING

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850


Re: Docket No. 070552-TP

Dear Ms. Cole:

Enclosed for filing on behalf of MetroPCS Florida, LLC ("MetroPCS") is an electronic version of Response And Opposition Of MetroPCS Florida, LLC to AT&T Florida's Motion to Dismiss in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb
Enclosure
cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition and complaint for expedited)
proceeding or, alternatively, petition and)
complaint or petition for declaratory statement,)
by MetroPCS Florida, LLC, requiring BellSouth)
Telecommunications, Inc. d/b/a AT&T Florida)
d/b/a AT&T Southeast; TDS Telecom d/b/a)
TDS Telecom/Quincy Telephone; Windstream)
Florida, Inc.; Northeast Florida Telephone)
Company d/b/a NEFCOM; GTC, Inc. d/b/a)
GT Com; Smart City Telecommunications, LLC)
d/b/a Smart City Telecom; ITS Telecommunications)
Systems, Inc.; and Frontier Communications of the)
South, LLC, to submit agreements for transit)
services provided by AT&T Florida for approval.)

Docket No. 070552-TP

Filed: August 28, 2007

**RESPONSE AND OPPOSITION OF
METROPCS FLORIDA, LLC
TO AT&T FLORIDA'S MOTION TO DISMISS**

METROPCS FLORIDA, LLC ("MetroPCS"), pursuant to Rule 28-106.204(1), Florida Administrative Code (F.A.C.), hereby responds in opposition to the Motion to Dismiss filed by BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast ("AT&T") on August 21, 2007, and the notice of adoption by Windstream Florida, Inc. ("Windstream"), Smart City Telecommunications, LLC d/b/a Smart City Telecom ("Smart City"), and ITS Telecommunications Systems, Inc. ("ITS") (together, Windstream, Smart City, and ITS shall be collectively referred to as the "Joint Small LECs") filed on August 23, 2007, and states:

I. Introduction

1. On August 1, 2007, MetroPCS filed its Petition and Complaint ("Petition") against AT&T and seven other incumbent local exchange telecommunications companies (collectively noted as the "Small LECs" in the Petition) seeking an order of this Commission to require AT&T and the Small LECs to file the transit agreements that the Commission had

ordered them to negotiate pursuant to the final order in Docket Nos. 050119 and 050125 (hereinafter, the "Transit Proceeding"; the final order was Order No. PSC-06-0776-FOF-TP, issued September 18, 2006 ("*Transit Order*"); the transit services agreements at issue shall be referred to as the "Transit Agreements").

2. On August 21, 2007, MetroPCS voluntarily dismissed without prejudice three of the Small LEC respondents on the basis of their representations that notwithstanding their prior statements to the Commission that they had negotiated transit agreements with AT&T, each did not in fact have a written transit agreement with AT&T.

3. Also on August 21, 2007, AT&T filed its Motion to Dismiss the MetroPCS Petition, alleging that the Transit Agreements between AT&T and the Small LECs are not required to be filed with this Commission. The Joint Small LECs filed their Joint Motion to Dismiss adopting AT&T's Motion to Dismiss on August 23, 2007. As further discussed below, the motions to dismiss fail to satisfy the grounds for a dismissal and they should, therefore, be denied.

4. AT&T correctly quotes from the Commission's order stating the well known standard for reviewing a motion to dismiss. In reviewing a motion to dismiss, the Commission must review not the facts, but whether the law is so clear that there is absolutely no legal basis for proceeding with the Petition. As this Commission has also noted, "When making this determination, only the petition can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner." Docket No. 000690-TP, Order No. PSC-00-2081-PCO-TP, at 3 (November 1, 2000). After considering AT&T's arguments, the Commission can only conclude that it has jurisdiction to consider and resolve the issues raised in

the Petition and that MetroPCS has standing to bring the Petition. Accordingly, the motions to dismiss should be denied.

II. MetroPCS' Motive for Filing its Petition Is Irrelevant

5. AT&T has questioned MetroPCS' motive for filing the Petition, but its assertions in this regard are erroneous and irrelevant to a motion to dismiss. AT&T asserts as follows:

MetroPCS's Petition is nothing more than a negotiation ploy. Specifically, AT&T Florida and MetroPCS have been negotiating a transit rate to include in the parties' interconnection agreement ("ICA"). In the context of such negotiations, MetroPCS has requested that AT&T Florida disclose the transit traffic rates AT&T Florida has agreed to with the Small LECs. AT&T Florida has refused to do so. As such, MetroPCS filed this Petition for the sole purpose of gaining some perceived negotiation leverage that may arise out of the disclosure of such rates.¹

6. As an initial matter, AT&T and MetroPCS are not "negotiating a transit rate to include in the parties' interconnection agreement." The interconnection agreement between MetroPCS and AT&T (the "MetroPCS Interconnection Agreement") provides that MetroPCS shall pay AT&T for transit service at the rate set forth in AT&T's transit tariff. As a result of the Commission's decision in the *Transit Order* requiring AT&T to cancel that tariff, the rate AT&T had negotiated was eliminated. AT&T does not like what it agreed to and the parties are attempting to resolve the resulting dispute.

7. Aside from the provisions of the MetroPCS Interconnection Agreement, AT&T is required to provide transit service upon nondiscriminatory terms and conditions, including rates. Whether MetroPCS' right to nondiscriminatory, just, and reasonable transit rates arises from Section 251(c) of the 1996 Federal Telecommunications Act, Sections 201 and 202 of the Communications Act, Florida Statutes Sections 364.16-364.162, or some combination of these,

¹ AT&T's Motion to Dismiss, at 1-2.

MetroPCS cannot determine whether the rates proposed by AT&T are nondiscriminatory, just, and reasonable without knowing what AT&T charges other carriers for transit service. The carriers which are relevant include the very carriers which were parties to the Transit Proceeding. Because AT&T refused to identify for MetroPCS the rates that AT&T charges the Small LECs for transit service, MetroPCS is unable to determine whether the rates that AT&T proposes that MetroPCS should pay are nondiscriminatory, just, and reasonable. MetroPCS accordingly filed its Petition to require AT&T to file its transit agreements with the Small LECs so that MetroPCS could determine the rates that AT&T charges the Small LECs for transit service.

III. There Is A Federal Law Basis for the Petition

8. AT&T's contention that the first count of MetroPCS' Petition fails to state a cause of action under federal law is wholly without foundation. As an initial matter, AT&T misunderstood the nature of the MetroPCS Petition. The Petition does not seek a finding that transit service needs to be provided at a particular price, or that the price charged the Small LECs is discriminatory. Rather, the Petition seeks a declaration that AT&T must only file the Transit Agreements.

9. AT&T contends that the Commission has twice refused to find that transit service is subject to Section 251(c)(2), citing the *Joint CLEC Arbitration Order*² and the *Transit Order*. The *Joint CLEC Arbitration Order* was a decision in an arbitration that should not be given precedential effect because interested persons, other than parties to the arbitration, were not permitted to intervene and express their positions. The Commission itself has not treated the *Joint CLEC Arbitration Order* as precedential. Although as noted in the *Transit Order*, AT&T

² *In re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.*, Docket No. 040130-TP, Order No. PSC-05-0975-FOF-TP, (October 11, 2005) ("*Joint CLEC Arbitration Order*").

relied extensively upon the *Joint CLEC Arbitration Order* in the Transit Proceeding, the Commission did not even mention it in its own analysis of the issue.

10. Moreover, as indicated by the very passage that AT&T quotes from the *Transit Order*, although the Commission has not found that transit service is required by Section 251(c)(2), it has not found the contrary, either. In the *Transit Order* the Commission found it unnecessary to reach or decide whether transit service is a Section 251(c) interconnection service:

This Commission need only acknowledge **in this proceeding** that §251(a) requires all telecommunications carriers to interconnect directly or indirectly, and that transit service has been expressly recognized by the FCC as a means to establish indirect interconnection.³

11. More importantly, the issue in both the *Joint CLEC Arbitration Order* and the *Transit Order* was whether AT&T should be required to price its transit service at TELRIC. In the *Joint CLEC Arbitration Order*, the Commission found that AT&T incurred costs associated with providing transit service that were not covered by AT&T's TELRIC rates and directed the parties to negotiate a rate element that would permit AT&T to recover those costs.⁴ In the *Transit Order* the Commission similarly found that transit rates should be subject to negotiation, in part because it was not persuaded that the FCC's proposal to fine Qwest for failing to file agreements concerning transit billing records constituted a ruling that transit service must be provided at a rate equal to the sum of the TELRIC rates for the switching and transport elements involved.

12. Unlike the previous arbitration and the Transit Proceeding, however, this case is not about whether AT&T must charge TELRIC rates for transit service, but whether it must file

³ *BellSouth Transit Order* at 44 (emphasis added).

⁴ *Joint CLEC Arbitration Order* at 52-53. MetroPCS notes that for reasons not discussed in the *Joint CLEC Arbitration Order*, most, if not all, of the costs at issue in that case, which were related to billing for transit traffic, should be borne by the terminating carriers who require information for billing purposes, not the originating carriers who may be billed for transit traffic.

agreements for transit service with the Commission. While the Commission concluded in the *Transit Order* that the FCC has not expressly required ILECs to provide transit service at TELRIC rates, the FCC has expressly found that agreements for transit service and transit billing records were required to be filed with state commissions and proposed to fine Qwest for failing to do so. Regardless of how AT&T may be permitted to price its transit service, the FCC has specifically ruled that transit-related agreements must be filed with state commissions under Section 252 and has imposed penalties for failing to do so.

13. Finally, even if the FCC had not already determined that transit service agreements must be filed under Section 252, that would not preclude this Commission from doing so under either federal or state law. In its *Qwest Declaratory Ruling*⁵ concerning the types of agreements that must be filed pursuant to Section 252, the FCC specifically ruled “that the state commissions should be responsible for applying, in the first instance, the statutory interpretation we set forth today to the terms and conditions of specific agreements,”⁶ finding this requirement “consistent with the structure of section 252, which vests in the states the authority to conduct fact-intensive determinations relating to interconnection agreements.”⁷

14. As the North Carolina Utilities Commission stated when ruling that Verizon was required by Section 251 of the Telecommunications Act to provide transit service to two ILECs:

If there were no obligation to provide transit service, the ubiquity of the telecommunications network would be impaired. . . .

The fact of the matter is that transit traffic is not a new thing. It has been around since “ancient” times in telecommunications terms. The reason that it has assumed new prominence since the enactment of TA96 is that there are now

⁵ *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, Memorandum Opinion and Order, 17 FCC Rcd. 19337 (released October 4, 2002) (“*Qwest Declaratory Ruling*”).

⁶ *Qwest Declaratory Ruling* at ¶ 7.

⁷ *Id.*

many more carriers involved – notably the new CMRS providers and the [Competing Local Providers] – and the amount of traffic has increased significantly. Few, if any, thought about complaining about transit traffic until recently. **It strains credulity to believe that Congress in TA96 intended, in effect, to impair this ancient practice and make it merely a matter of grace on the part of ILECs, when doing so would inevitably have a tendency to thwart the very purposes that TA96 was designed to allow and encourage.**

. . . . The fact is that the FCC, as is the case in many matters, has not definitively made its mind up on the matter. In the meantime, the telecommunications market and its regulation march on. **As much as we would wish for definitive guidance from the FCC, the states cannot always wait for that body to rule one way or another – or somewhere in between.**

. . . .
The real challenge facing the industry and the Commission is not whether there is a legal obligation for ILECs to provide a transit service. The Commission is convinced that there is. The Commission is confident that, should the FCC ever address the issue, it will find the same.⁸

15. In the *Qwest Declaratory Ruling*, the FCC identified in general terms the agreements that must be filed with state commissions pursuant to Section 252. When it did so, it required state commissions to make the actual decisions concerning whether specific agreements must be filed. Pursuant to that authority, the Minnesota Public Utilities Commission required Qwest to file for review 34 agreements that Qwest contended were not subject to the Section 252 filing requirement, including an agreement concerning transit service and two agreements concerning transit billing records. When Qwest filed the transit agreements, the Minnesota PUC determined that Qwest should have filed them under Section 252 and fined Qwest for its failure to do so. The FCC agreed and proposed an additional forfeiture.

⁸ Order Denying Petition, *In the Matter of Petition of Verizon South, Inc. for Declaratory Ruling that Verizon is Not Required to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Company to Adopt Alternative Transport Method*, NCUC Docket No. P-19, Sub 414 (September 22, 2003), at 6-7 (emphasis added).

16. This Commission cannot carry out its responsibility under the *Qwest Declaratory Ruling* without requiring AT&T and the Small LECs to file their Transit Agreements. "Until an agreement is filed, . . . the state commission would not be in a position to approve, reject, or determine whether a certain type of agreement does not require filing."⁹ If the Commission determines after reviewing the filed agreements that they do not contain provisions for interconnection services that must be filed under Section 252, then no harm will have been done by AT&T's failure to file the agreements without being ordered to do so. But if the Commission, after reviewing AT&T's agreements with the Small LECs, determines that, like Qwest's agreements for transit service and transit billing records, the agreements should have been filed for approval pursuant to Section 252, then the Commission should make AT&T file the agreements, they should be made public, and AT&T should be penalized for its failure to file them, just as the Minnesota PUC and the FCC penalized Qwest for its failure to file its transit agreements.

IV. In Addition to Federal Authority to Entertain MetroPCS' Petition, There is Also State Law Authority for the Petition and Standing by MetroPCS

17. As an initial matter, it must be said that AT&T completely fails to address the independent statutory basis under section 364.07(1), Florida Statutes, for this Commission to require the filing of any contracts between AT&T and any of the Small LECs. This statute provides:

Every telecommunications company shall file with the commission, as and when required by it, a copy of any contract, agreement, or arrangement in writing with any other telecommunications company, or with any other corporation, association, or person relating in any way to the construction, maintenance, or use of a telecommunications facility or service by,

⁹ *Qwest Declaratory Ruling* at ¶ 34.

or rates and charges over and upon, any such telecommunications facility.

Since this statute is one of the state law bases for the Petition, and AT&T has not denied the authority of the Commission under this statute to require the filing and approval of such transit agreements, the two motions to dismiss must be denied as there is ample state law authority for the Petition.

18. As for the other state law authority cited by MetroPCS in the Petition, Sections 120.565, 120.569, 120.57(1), 120.80(13)(d), 364.012, 364.07, 364.16, 364.161, 364.162, 364.27, and 364.285, Florida Statutes, AT&T has completely misread the various statutes – there is sufficient, satisfactory, and complete authority to require the filing and approval of the transit agreements

19. AT&T's state law argument relies upon its failure to consider all of the statutory aspects of Sections 364.16, 364.161, and 364.162, Florida Statutes. AT&T's claim is that Section 364.16(1) lacks a filing requirement, the Commission did not expressly order AT&T and the Small LECs to file their Transit Agreements, and that the filing requirements in 364.162(1) pertain only to CLECs. AT&T argues these positions by ignoring or misreading several of the key statutory sections MetroPCS relies upon.

20. There are two parts to the necessary analysis. First, the Commission must address what are the rights, duties, and responsibilities between the AT&T and the Small LECs with respect to the Transit Agreements. As MetroPCS set forth in its Petition, Section 364.16(1) sets forth the unambiguous authority of this Commission to require connections and to fix rates and charges whenever "any two or more local exchange telecommunications companies" have lines that "form a continuous line of communication." As AT&T reluctantly acknowledges, it was on the basis of this statute that the Commission, in the Transit Proceeding, ordered AT&T and the

Small LECs to negotiate the Transit Agreements. Thus, there is clear state law authority, and an explicit decision by the Commission to require the negotiation of an interconnection agreement that includes transit services.

21. So, given the fact that there is clear statutory authority to require AT&T and the Small LECs to negotiate transit services agreements, AT&T argues that the filing requirement of Section 364.162 pertains only to CLEC-ILEC agreements. However, AT&T ignores the fact that Section 364.16(3) requires AT&T and the Small LECs to follow the procedures set forth in Section 364.162, which among other things requires filing of any such agreements with the Commission.

22. AT&T's reliance on Section 364.012, "Consistency with federal law," is equally misplaced. AT&T would have the Commission believe that unless federal law requires something then there is no separate state law requirement, but Section 364.012 provides no such thing. Although Section 364.012(2) provides that nothing in Chapter 364 limits or modifies the duties of local exchange carriers or the Commission's authority under federal law, nothing in Section 364.012 expressly or by implication limits the provisions of Chapter 364 to what is required by federal law. Section 364.012(1) encourages the Commission "to participate in the proceedings of federal agencies in cases in which the state's consumers may be affected and to convey the commission's policy positions and information requirements in order to achieve greater efficiency in regulation," *i.e.*, to seek to have **Florida's** telecommunications policies reflected in **federal** requirements, **not** to **limit** state requirements to what is dictated by federal law. Section 364.012(1) urges the Commission to seek regulatory consistency by advocating federal recognition of Florida's policies, not by limiting the scope of Florida law to what is required by federal law.

23. Moreover, as has already been addressed in Section III above, there is federal authority requiring the filing of the Transit Agreements. However, even if there were not, a point MetroPCS does not concede, there is independent state authority for filing the AT&T-Small LEC Transit Agreements, as an express and inherent obligation under Sections 364.16-364.162 or under the more general statutory provisions of Section 364.07. This Commission in the Transit Proceeding relied upon state law in order to deny the transit tariff and to order the parties to negotiate a transit service agreement. While the Commission did not expressly order AT&T and the small LECs to file those Transit Agreements, these state law obligations for the public filing and approval of all types of interconnection agreements predate the 1996 Federal Telecommunications Act and serve important public policy purposes. Public filings convey valuable information to other carriers regarding services, network arrangements, prices, and other terms and conditions that help to establish standards or practices. Critically, like tariffs, filed agreements ensure that that rates, terms, and conditions are made available in a nondiscriminatory manner which helps to promote competition and competitive choices for consumers.

24. AT&T's dismissal, largely through a footnote, of the various cases cited by MetroPCS in Paragraph 63 of its Petition is again misplaced. As MetroPCS stated, these cases were cited as Commission precedents for the obligation under Florida law to file and obtain approval for all interconnection agreements, not for the proposition that transit services need to be provided at a certain rate.

25. With respect to AT&T's standing argument, not only has MetroPCS suffered injury in fact, but that injury is of a type or nature which the statutes upon which MetroPCS relies and this proceeding are designed to protect.

26. First, Section 364.161(1) is unlimited with respect to which types of services or facilities carriers may request unbundled network features, functions, and capabilities, and the prices to be set are to be nondiscriminatory, as is required to the procedure set forth in section 364.162. Likewise, Section 364.16(3) sets forth the basic obligations of all ILECs, including AT&T, to permit interconnection to any other carrier and to do so in a nondiscriminatory manner. Thus, the fact that MetroPCS may not be defined as a "telecommunications company" for purposes of certification and tariffing does not change the fact that MetroPCS is a telecommunications services provider entitled to nondiscriminatory treatment. Wireless carriers have been exempt from the statutory definition of a "telecommunications company" for over 20 years, but the CMRS exemption in Florida Statutes Section 364.02(14)(c), or the more recently enacted Section 364.011(4), Florida Statutes, has never been a bar to a wireless carrier's request for interconnection or establishment of nondiscriminatory rates. Indeed, long before the adoption of the Federal Telecommunications Act of 1996 and of the competition amendments to Chapter 364 written into law by the Florida Legislature in 1995, this Commission has entertained under state law wireless carrier requests for interconnection at nondiscriminatory rates. Order No. 20475 (Dec. 20, 1988; Docket No. 87065-TL); Order No. PSC-95-1247-FOF-TL (Oct. 11, 1995; Docket No. 940235-TL).

27. As MetroPCS noted in its Petition and AT&T acknowledged (despite its mischaracterization) in its Motion to Dismiss, MetroPCS has a present, real, and actual controversy with AT&T regarding the transit rate payable by MetroPCS to AT&T. Since the transit service MetroPCS is seeking from AT&T is *exactly the same* as the transit service provided to the Small LECs under the Transit Agreements, MetroPCS is entitled to have those Transit Agreements filed with this Commission and to have those services provided to

MetroPCS at rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Again, the obligation for nondiscriminatory, just, and reasonable rates, terms, and conditions has been the polestar of this Commission's jurisdiction for nearly 100 years. Even more directly, it is important to note that the interconnection statutes use the term "nondiscriminatory" instead of the phrase "not unfairly discriminatory." The nondiscrimination standard is a higher legal standard than not unfairly discriminatory – different rates for the same service may be justifiable and thus within the not unfairly discriminatory standard, whereas any rates for the same service that are different would violate the nondiscriminatory standard. The Commission's resolution of the question as to whether the Transit Agreements are to be filed will thus have a direct impact on the ability of MetroPCS to obtain nondiscriminatory rates from AT&T.

28. In terms of whether this is an appropriate proceeding, Sections 364.16, 364.161, and 364.162 establish processes and procedures that read together are designed to protect the rights of interconnecting carriers, and under the statutory provisions complaining carriers have the right to petition for relief. Section 364.16(3) specifically states that access and interconnection to the ILEC network at nondiscriminatory rates, terms, and conditions are to be "established by the procedures set forth in s. 364.162." Thus while Section 364.162, as AT&T argues, refers to CLEC and ILEC interconnection, AT&T would have the Commission ignore that Section 364.16(3) applies the process described in Section 364.162 to *other* interconnecting carriers. Whether or not there is an adoption right under state law, AT&T has an unambiguous obligation under state law to provide nondiscriminatory interconnection, and other carriers may petition to seek to enforce that obligation, in this case by requiring the filing of the Transit Agreements. These specific statutory directives give meaning to section 364.01, which grants the Commission jurisdiction to "[e]nsure that all providers of telecommunications services are

treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint” and in general to promote competition and competitive choices. AT&T’s refusal to identify the rates, terms, and conditions under which it has agreed to provide transit service to the Small LECs so that MetroPCS can determine whether AT&T is treating MetroPCS in a nondiscriminatory fashion is the type of injury contemplated by the statutory scheme in Chapter 364, and the MetroPCS Petition to enforce to the Commission’s earlier order to negotiate transit service agreements by filing such agreements is an appropriate vehicle to redress that injury.

29. Finally, AT&T is wrong with respect to MetroPCS’ alternative request for a declaratory statement, as AT&T is arguing the ultimate facts and not the law, which is inappropriate for a motion to dismiss. The declaratory statement that MetroPCS seeks is whether AT&T and the Small LECs are required to file the Transit Agreements that the Commission ordered them to negotiate. MetroPCS’ substantial interest lies in the fact that MetroPCS has requested access to the terms of the Transit Agreements in order to determine whether AT&T is seeking to discriminate against MetroPCS, and AT&T has refused saying it has no legal obligation to file the agreements or provide information concerning their rates to MetroPCS. Thus, to break the logjam, MetroPCS is seeking, in the alternative, a declaratory ruling from this Commission that the Transit Agreements must be filed.

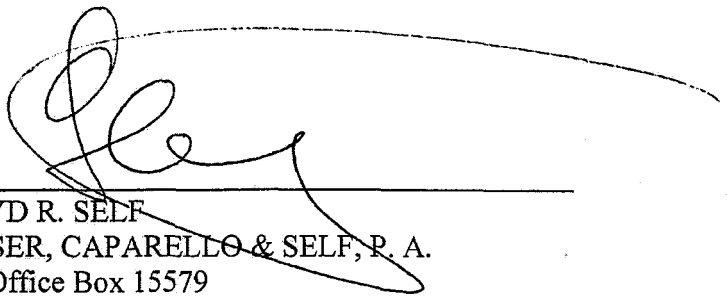
30. In Docket No. 060049-TL this Commission issued a declaratory statement requested by Broward County, Florida regarding an interpretation of certain rules, orders, and statutes and whether, and to what extent, they applied to Broward County. Order No. PSC-06-0306-DS-TL, at 7-8 (April 19, 2006). The situation here is similar – MetroPCS is seeking a legal determination from the Commission as to whether under federal or state law AT&T is

required to file the Transit Agreements so MetroPCS can determine whether AT&T's transit services rates are nondiscriminatory.

31. In the final analysis, this Commission has already ordered AT&T and the Small LECs to negotiate interconnection agreements for transit services pursuant to state law directives. The Commission presumably did not expressly order AT&T and the Small LECs to file such agreements because previously parties to interconnection agreements have filed them and obtained the Commission's approval, and the Commission reasonably assumed that AT&T and the Small LECs would do the same. Given the refusal of AT&T and the Small LECs to file such agreements, due process and nondiscriminatory principles requires that AT&T now be ordered to file such Transit Agreements.

WHEREFORE, since there is a sufficient and adequate basis in both federal and state law for this Commission to consider the issues raised in the MetroPCS Petition and Complaint, and since MetroPCS has standing to bring this action, the motions to dismiss of AT&T and the Joint Small LECs should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Electronic Mail (*) and/or U. S. Mail this 28th day of August, 2007 upon the following:

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