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Ruth Nettles

From: on behalf of Filings@psc.state.fl.us
To: Smith, Debbie N.
Subject: RE: Florida Docket Nos. 070368-TP and 070369-TP

From: Smith, Debbie N. [mailto:ds3504@att.com]
Sent: Wednesday, February 13, 2008 12:39 PM
To: Filings@psc.state.fl.us
Cc: Tyler, John; Gurdian, Manuel; Randa, Johna A; Woods, Vickie; Follensbee, Greg; Holland, Robyn P; Tracy Hatch
Subject: Florida Docket Nos. 070368-TP and 070369-TP
Importance: High

A. Debbie Smith
Legal Secretary for John T. Tyler
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c/o Gregory Follensbee
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B. Docket No. 070368-TP: 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. 070369-TP: Notice of the Adoption by Nextel South Corp. and Nextel West Corp (collectively "Nextel")

of the Existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001

C. AT&T Southeast
on behalf of John T. Tyler

D. 7 pages total in PDF format (includes Cole Letter, Certificate of Service, and attachment)

E. Cole Letter regarding Submission of Additional Supplemental Authority.

<<Cole-letter.pdf>>

Debbie N. Smith (sent on behalf of John T. Tyler)
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Office of Commission Clerk Official Filing

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Please note my new email address is debbie.n.smith@att.com

*****

at&t

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February 13, 2008

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

Re: Docket No. 070368-TP (Nextel Partners)
Docket No. 070369-TP (Nextel)
Submission of Additional Supplemental Authority

Dear Ms. Cole:

In its Supplemental Submission of February 7, 2008, AT&T Florida expressed its expectation that an expedited resolution by the Federal Communications Commission ("FCC") of the issues presented in AT&T's FCC Petition may render unnecessary any further proceedings in this docket. In that connection, AT&T Florida hereby submits as supplemental authority the attached Order that the FCC released on February 7, 2008, in *In Re Ameritech Operating Companies Tariff FCC No. 2 et al.*, Transmittal No. 1666. The FCC's Order states (at ¶ 8):

> Petitioners [including Sprint Nextel] remain free to file a complaint if they believe that AT&T has not complied with the commitments it made in the *AT&T/BellSouth Merger Order*. Indeed, the Commission stands ready to enforce such commitments should it receive complaints that AT&T is not complying with its commitments.

Accordingly, even if the Commission were to conclude – as AT&T Florida contends it should not – that it has authority to enforce the FCC Merger Commitment at issue here, the Commission should allow the FCC to decide the potentially dispositive questions AT&T has asked it to decide before conducting any further proceedings in this docket. If the FCC's determinations do not yield a complete resolution of the parties' disagreements concerning the Complainants' porting request, this Commission would then decide such questions of state law as may remain.

Sincerely,

John T. Tyler

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

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

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 13th day of February, 2008 to the following:

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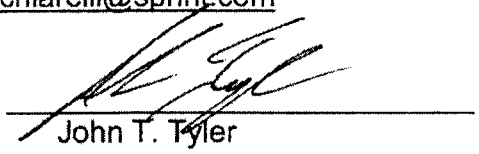

John T. Tyler

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Ameritech Operating Companies Tariff F.C.C. No. 2	)	Transmittal No. 1666
	)	
BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1	)	Transmittal No. 1121
	)	
Nevada Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 176
	)	
Pacific Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 385
	)	
Southern New England Telephone Company Tariff F.C.C. No. 39	)	Transmittal No. 965
	)	
Southwestern Bell Telephone Company Tariff F.C.C. No. 73	)	Transmittal No. 3251
	)	
	)	

ORDER

Adopted: February 7, 2008 **Released: February 7, 2008**

By the Commission:

I. INTRODUCTION

1. On January 24, 2008, AT&T Inc. (AT&T) filed the above-referenced tariff transmittals on behalf of its six operating subsidiaries: Ameritech Operating Companies; BellSouth Telecommunications, Inc., Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Company, and Southwestern Bell Telephone Company (Broadband Tariffs). In its tariff revisions, AT&T is proposing to withdraw certain broadband transmission services from its operating subsidiaries' access tariffs pursuant to the relief granted by the Commission in the *AT&T Enterprise Broadband Forbearance Order*.[1] Specifically, AT&T's proposed revisions seek to withdraw a number of broadband services from its tariff, including Frame Relay, ATM, Ethernet, Remote Network Access, SONET, Optical Network and Wave-Based services, with the exception of certain Frame Relay and ATM services operating below 200 Kbps in each direction.

2. We note that Time Warner Telecom Inc., COMPTEL, and Sprint Nextel Corporation (collectively the "Petitioners") filed petitions to reject or suspend and investigate previous tariff revisions

[1] *Petition of AT&T, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services and Petition of BellSouth Corporation for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007) (*AT&T Enterprise Broadband Forbearance Order*).

that AT&T had filed on January 7, 2008.[2] Those petitions claimed that AT&T may not withdraw any broadband tariffs until the expiration of the conditions established in the *AT&T/BellSouth Merger Order*.[3] Petitioners argued that the terms of a number of the merger commitments, such as special access merger commitments number 4 and 5 require that AT&T maintain tariffs.[4] Moreover, Petitioners argued that other commitments, such as merger commitment number 7, which requires mediation or accelerated docket treatment of disputes concerning tariffed services, would be rendered meaningless without publicly available tariffs.[5] On January 18, 2008, AT&T withdrew its tariff filing.

3. As previously noted, on January 24, 2008, AT&T filed revised tariff transmittals, which propose to withdraw many of the same broadband services from its operating subsidiaries' access tariffs, as it had in its earlier tariff transmittals.[6] In its January 24 filing, AT&T included new language expressly recognizing its obligation to comply with the commitments of the *AT&T/BellSouth Merger Order*. Section 2 in all of the above-referenced tariffs includes the following language:

> Pursuant to the detariffing authority granted by the Commission in Memorandum Opinion and Order, FCC 07-180 (released October 12, 2007), certain broadband services have been withdrawn from this tariff. When offering these services through non-tariffed arrangements, the Telephone Company will abide by all of the special access merger commitments set forth in Memorandum Opinion and Order, FCC 06-189 at Appendix F (released March 26, 2007), including but not limited to commitments that contain references to "tariffs," such as those addressing pricing, dispute resolution, and access service ratio terms. The detariffing of these services does not diminish or supersede any of those special access merger commitments.

4. On January 31, 2008, Petitioners filed petitions to reject or alternatively suspend and investigate the Broadband Tariffs.[7] Petitioners repeat their previous claims that, for example, AT&T may not withdraw any broadband tariffs until the expiration of the conditions established in the *AT&T/BellSouth Merger Order* and that other merger conditions would be rendered meaningless without publicly available tariffs.[8] In addition, Petitioners claim that detariffing these services will remove them from a customer's Managed Value Plan (MVP) and cause AT&T to violate its merger commitment not to raise rates.[9] The Petitioners also contend that customers who subscribe to an MVP can only meet their Minimum Annual Revenue Commitment (MARC) "based solely on services set forth in the tariff" or

[2] Petition of Time Warner Telecom Inc. and COMPTEL to Reject or, in the Alternative, Suspend and Investigate Tariff Filings, Transmittal Nos. 1664, 1119, 174, 383, 963, and 3249 (filed Jan. 11, 2008) (TWT/COMPTEL Petition); Petition of Sprint Nextel Corporation to Reject or Alternatively Suspend and Investigate, Transmittal Nos. 1664, 1119, 174, 383, 963, and 3249 (filed Jan. 14, 2008) (Sprint/Nextel Petition).

[3] *See* TWT/COMPTEL Petition at 2-4; Sprint/Nextel Petition at 3-6 (citing *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) (*AT&T/BellSouth Merger Order*); Order on Reconsideration, 22 FCC Rcd 6285 (2007)).

[4] *See, e.g.*, TWT/COMPTEL Petition at 2.

[5] *Id.* at 2-3.

[6] On February 5, 2008, AT&T filed a correction to its tariff transmittals reinstating tariff material that inadvertently was removed from its tariff filing of January 24, 2008. *See, e.g.*, Southwestern Bell Telephone Company, Transmittal No. 3252 (filed Feb. 5, 2008).

[7] Petition of Time Warner Telecom Inc. and COMPTEL to Reject or, in the Alternative, Suspend and Investigate Tariff Filings, Transmittal Nos. 1666, 1121, 176, 385, 965, and 3251 (filed Jan. 31, 2008) (TWT/COMPTEL Petition II); Petition of Sprint Nextel Corporation to Reject or Alternatively Suspend and Investigate, Transmittal Nos. 1666, 1121, 176, 385, 965, and 3251 (filed Jan. 31, 2008) (Sprint/Nextel Petition II).

[8] Sprint/Nextel Petition II at 3- 6; TWT/COMPTEL Petition II at 3-7.

[9] Sprint/Nextel Petition II at 6; TWT/COMPTEL Petition II at 8-9.

AT&T will be in violation of section 61.54(j) of the Commission's rules.[10] Finally, Sprint also argues that AT&T's detariffing of its Dedicated SONET Ring Service included the DS1 and DS3 port connections that were offered as part of that service, which exceeds the scope of forbearance granted in the *AT&T Enterprise Broadband Forbearance Order*.[11]

5. On February 6, 2008, AT&T filed an opposition to the TWT/COMPTEL and Sprint/Nextel petitions.[12] AT&T argues that "[d]etariffing is completely consistent with [the AT&T/BellSouth] special access merger commitments, all of which AT&T can and will fully implement."[13] In addition, AT&T makes clear that it "fully intends to enable existing MVP customers to continue receiving all of the credits on eligible MVP services to which they are entitled for the duration of their MVP terms, even when those services are detariffed pursuant to the [*AT&T Enterprise*] *Broadband Forbearance Order*."[14] Finally, AT&T responds that the DS1 and DS3 port connections "are not 'traditional TDM-based DS1 and DS3 services,'" but rather "are optical-electronic 'interfaces' on AT&T's SONET rings, to which a customer may connect a *separately purchased* service, such as a traditional TDM-based DS1 or DS3 service."[15]

II. DISCUSSION

6. Because AT&T has withdrawn its January 7, 2008, tariff transmittals, the petitions opposing AT&T's January 7 tariff revisions are moot and are therefore dismissed. The claims made by TWT/COMPTEL and Sprint/Nextel in their latest petitions opposing the Broadband Tariffs do not meet the standards for rejection or suspension of a tariff, as discussed below, and they are denied.[16]

7. The Commission may only reject a tariff filed by a carrier if the filing is "so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket."[17] Under this standard, we find that Petitioners have made no showing that the Broadband Tariffs are "patently a nullity as a matter of substantive law" or that they are otherwise unlawful on their face. To the contrary, these tariffs expressly provide that AT&T will comply fully with its obligations under the *AT&T/BellSouth Merger Order*.[18] In addition, under applicable Commission rules, tariffs filed by a price cap LEC pursuant to the requirements of section 61.42(d)(4)(ii) are considered *prima facie* lawful and will not be suspended by the Commission unless the petition requesting suspension shows each of the following: (1) that there is a high probability the tariff would be found unlawful after investigation; (2) that any unreasonable rate

[10] Sprint/Nextel Petition II at 6 (citing 47 C.F.R. § 61.54(j)); TWT/COMPTEL Petition II at 9 (same).

[11] Sprint/Nextel Petition II at 7-8.

[12] AT&T Inc.'s Motion to Strike Joint Petition of COMPTEL and Time Warner Telecom Inc. and AT&T Inc.'s Opposition to Petition of Sprint Nextel and Joint Petition of COMPTEL and Time Warner Telecom Inc., Transmittal Nos. 1666, 1121, 176, 385, 965, and 3251 (filed Feb. 6, 2008) (AT&T Motion and Opposition). AT&T's filing also included a motion to strike the TWT/COMPTEL petition alleging that it had not been properly served. *See id.* at 1-3.

[13] *Id.* at 3-8.

[14] *Id.* at 7. With respect to the alleged violation of section 61.54 of the Commission's rules, AT&T asserts that its actions are consistent with Commission precedent. *See id.* at 8 n.26.

[15] *Id.* at 9-10 (emphasis in original).

[16] Because we deny the TWT/COMPTEL Petition II, the AT&T motion to strike is moot and is dismissed.

[17] *Municipal Light Bds. v. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971); *cert denied*, 405 U.S. 989 (1972); *see also Capital Network Sys., Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994); *American Broadcasting Cos. V. FCC*, 663 F.2d 133, 138 (D.C. Cir. 1980).

[18] *See supra* para. 3.

would not be corrected in a subsequent filing; (3) that irreparable injury will result if the tariff filing is not suspended; and (4) that the suspension would not otherwise be contrary to the public interest.[19] Thus, if any one of these prongs is not met, the Commission will not suspend a proposed tariff. For example, there is no showing here of irreparable injury. In its filing, AT&T confirms that all of the services being withdrawn from the tariff will still be available on the same rates, terms and conditions, and that AT&T will continue to abide by all of the special access merger commitments set forth in Appendix F of the *AT&T/BellSouth Merger Order*.[20] Moreover, we find that AT&T's tariff revisions to its MVP discount plan do not alter any customer's ability to claim discounts under that plan as it existed prior to those revisions.[21] Thus, Petitioners have not show that irreparable injury will result if the tariff is not suspended.[22]

8. Moreover, Petitioners remain free to file a complaint if they believe that AT&T has not complied with the commitments it made in the *AT&T/BellSouth Merger Order*. Indeed, the Commission stands ready to enforce such commitments should it receive complaints that AT&T is not complying with its commitments.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), the January 11 and January 14, 2008, petitions of Time Warner Telecom, Inc., COMPTEL and Sprint/Nextel Corporation ARE DISMISSED AS MOOT.

10. IT IS FURTHER ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), the January 31, 2008, petitions of Time Warner Telecom, Inc., COMPTEL and Sprint/Nextel Corporation ARE DENIED.

11. IT IS FURTHER ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), the February 6, 2008, motion to strike of AT&T Inc. IS DISMISSED AS MOOT.

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[19] 47 C.F.R. § 1.773(a)(v).

[20] *See* Ameritech Operating Companies Tariff F.C.C. No. 2, section 2.1.13; BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1, section 2.1.14; Nevada Bell Telephone Company Tariff F.C.C. No. 1, section 2.1.14; Pacific Bell Telephone Company, Tariff F.C.C. No. 1, section 2.1.14; The Southern New England Telephone Company, Tariff F.C.C. No. 39; section 2.1.H; Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, section 2.1.10. *See also* AT&T Motion and Opposition at 4, 7-8.

[21] In fact, AT&T filed a correction to help make clear that the tariff revisions do not alter customers' rights to discounts under the MVP plan. *See supra* note 6. And AT&T affirms that existing MVP customers and the discounts that they receive will be unaffected for the duration of their MVP terms, even when those services are detariffed pursuant to the *AT&T Enterprise Broadband Forbearance Order*. *See supra* para. 5. For these reasons, we find that the Petitioners have not demonstrated irreparable harm with respect to their claims regarding whether the tariff revisions violate section 61.54 of the Commission's rules. We note that the MVP plan already relied on rate elements not included in the interstate tariff for purposes of the access ratio calculation. *See, e.g.*, Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, section 38.3. Thus, we find that the Petitioners likewise have not demonstrated that the Broadband Tariffs are "patently a nullity as a matter of substantive law" or that they are otherwise unlawful on their face.

[22] We likewise find that Sprint/Nextel has not demonstrated irreparable harm with regard to the detariffing of AT&T's Dedicated SONET Ring Service. Moreover, the DS1 and DS3 port connections appear simply to be a type of interface offered as part of the Dedicated SONET Ring Service, not DS1 and DS3 services in and of themselves, such that the detariffing of Dedicated SONET Ring Service would be consistent with the *AT&T Enterprise Broadband Forbearance Order*. *See* AT&T Motion and Opposition at 9-10.

12. IT IS FURTHER ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), this Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary