

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

NOTICE OF ADOPTION OF EXISTING DOCKET NO. 070368-TP  
INTERCONNECTION AGREEMENT BETWEEN  
BELLSOUTH TELECOMMUNICATIONS, INC.  
D/B/A AT&T FLORIDA D/B/A AT&T SOUTHEAST  
AND SPRINT COMMUNICATIONS COMPANY  
LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS  
COMPANY L.P., SPRINT SPECTRUM L.P., BY  
NPCR, INC. D/B/A NEXTEL PARTNERS.

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COMPANY LIMITED PARTNERSHIP, SPRINT  
COMMUNICATIONS COMPANY L.P., SPRINT  
SPECTRUM L.P., BY NEXTEL SOUTH CORP.  
AND NEXTEL WEST CORP.

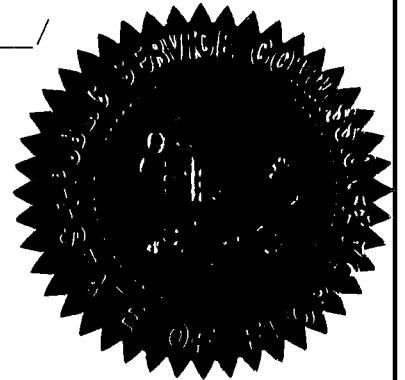
PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 5

BEFORE: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, June 3, 2008

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

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1 PARTICIPATING:

2 TRACY HATCH, ESQUIRE, and JOHN TYLER, ESQUIRE,  
3 representing AT&T Florida.

4 MARSHA E. RULE, ESQUIRE, and JOSEPH CHIARELLI,  
5 ESQUIRE, representing Nextel South Corp, Nextel West Corp., and  
6 Nextel.

7 LEE ENG TAN, ESQUIRE, SALLY SIMMONS, JEFF BATES,  
8 representing the Florida Public Service Commission staff.

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## P R O C E E D I N G S

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**CHAIRMAN CARTER:** Item 5.

Staff, you're recognized.

**MS. TAN:** Good morning, Commissioners. Lee Eng Tan on behalf of staff. Item Number 5 is a notice of adoption by several Nextel entities of an existing AT&T/Sprint interconnection agreement.

The first issue before this Commission is AT&T's request for oral argument. Staff recommends granting five minutes for each party. Should the Commission grant oral argument, representatives from Nextel and AT&T are available today for your convenience. Staff has summaries for each of the remaining issues should the Commission wish to hear them at the appropriate time.

Thank you.

**CHAIRMAN CARTER:** Thank you.

Commissioners, I think it would be helpful if we just allowed the parties to be heard. Is that okay with you? Let's do that. Let's give five minutes to each side. Let me kind of get my brains around here. The moving party on this is Nextel Partners, is that it, Sprint?

**MS. SIMMONS:** That's correct.

**CHAIRMAN CARTER:** Okay, then. I was just trying to -- then you'll be first. You're recognized.

**MS. RULE:** Thank you. Commissioners, I'm Marsha Rule

1 with the law firm Rutledge Ecenia and Purnell, and with me  
2 today is Mr. Joe Chiarelli, he's with the Nextel entities. We  
3 are here on behalf of Nextel, and Mr. Chiarelli will conduct  
4 oral argument.

5 **MR. CHIARELLI:** Thank you very much. I appreciate  
6 the opportunity to speak with you all here today.

7 Nextel entities support the staff recommendation that  
8 the Commission grant the motion for summary final order  
9 acknowledging Nextel's adoption of the existing Sprint/AT&T  
10 interconnection agreement and require the parties to execute  
11 adoption agreements.

12 Under federal law, incumbent LECs such as AT&T are  
13 required to make existing interconnection agreements available,  
14 quote, without unreasonable delay, end quote. Next Sunday,  
15 June 8th, marks the one year anniversary since Nextel's notices  
16 to adopt the Sprint interconnection agreement were filed with  
17 the Commission. Staff's recommendation clearly recognizes that  
18 as of the denial of AT&T's motion to dismiss in this case in  
19 October of last year, the only material issue of disputed fact  
20 that arguably remained that they had even raised at that point  
21 was simply whether or not Nextel has sought to adopt the Sprint  
22 agreement within a reasonable period of time. This AT&T  
23 fact-based objection was eliminated from this case when the  
24 Sprint interconnection agreement was amended in December of  
25 2007 to extend it three years from March of 2007, all of which

1 would then have preceded Nextel's adoption of request dates in  
2 June of 2007.

3           Quite frankly, if the Commission had chosen to do so  
4 it could have administratively approved Nextel's adoption  
5 request in December 2007 when the Sprint interconnection  
6 agreement was amended. In any event, staff is not alone in its  
7 view that Nextel's adoption of the Sprint interconnection  
8 agreement should be approved. Consistent with similar orders  
9 entered in Kentucky regarding virtually identical Nextel  
10 adoptions in December of 2007, as well as additional approval  
11 decisions rendered in the past 15 days in both Tennessee and  
12 Georgia, staff's recommendation is well grounded in the law and  
13 it sees AT&T's continuing opposition for exactly what it is,  
14 and that's an attempt to unreasonably delay Nextel's adoption  
15 by mere assertions that further AT&T objection may possibly  
16 exist but without providing any, quote, analysis or additional  
17 support whatsoever, end quote. And that's found at Page 15 of  
18 the staff recommendation.

19           Stated another way, AT&T has utterly failed to come  
20 forth with any evidence to rebut Nextel's showing that there is  
21 no genuine issue of material fact, and Nextel is now entitled  
22 as a matter of law under either Section 252(i) of the Act, or  
23 the merger commitments to approval of the adoption.

24           Unless the Commission has questions, I'll reserve the  
25 balance of my time for rebuttal.

1           **CHAIRMAN CARTER:** Thank you. We will get to that  
2 bridge when we cross it.

3           **MR. CHIARELLI:** Yes, sir.

4           **CHAIRMAN CARTER:** Okay. AT&T.

5           **MR. HATCH:** Thank you, Mr. Chairman. Tracy Hatch and  
6 John Tyler on behalf of AT&T Florida.

7                   Obviously we would take issue with the staff  
8 recommendation, and I guess that's why we are here. I would  
9 start with, rather than responding to the specifics of what Mr.  
10 Chiarelli has said, to point out to you that there is a very  
11 fundamental defect in the staff's rationale and analysis of  
12 this case and in the process upon which this case has been  
13 prosecuted from the very beginning. It's very clear, and I  
14 think everyone would agree, that under the Administrative  
15 Procedures Act every party is entitled to a clear point of  
16 entry and that point of entry is supposed to provide notice and  
17 opportunity for hearing, to put on argument, testimony,  
18 evidence, et cetera. I don't think anybody here disagrees that  
19 that process is out there.

20                   I guess, second, the Model Rules of Procedure  
21 basically are the mechanics by which this process is put in  
22 place. That in conjunction with the Commission's rules and  
23 procedure. The fundamental problem here is that we have never  
24 been given that clear notice and opportunity that applies with  
25 the APA. Now, they filed their opt-in notice in June of last

1 year. No problem. That kicks off a proceeding. I don't think  
2 there's anybody here that would argue that this proceeding  
3 doesn't create an issue that the decision affects our  
4 substantial interests, which is one of the magic words under  
5 the APA.

6 Now, having kicked off that proceeding, what process  
7 did the staff follow? Now, we followed the normal accustomed  
8 process for all cases that are prosecuted at the Commission,  
9 that being that they filed their opt-in letter, we  
10 fundamentally objected to it, we filed our motion to dismiss  
11 within the requisite 20 days under the APA and the model rules.  
12 That went on until a recommendation in an agenda in September,  
13 an order issued in mid-October denying the motion to dismiss.

14 Now, under the Commission's normal process for  
15 prosecuting cases, the next event would be you issue your  
16 procedural order setting forth the issues, the discovery  
17 deadlines, the testimony filing deadlines, and all the rest.  
18 None of that was ever done. We've never been given the  
19 opportunity for an Issue ID, we've never been given a  
20 procedural order, nothing in terms of a list of issues that  
21 defines the scope of discovery or anything else.

22 The next thing that happens is we get a motion for  
23 summary final order in late December. We responded to that as  
24 the next event in this thing, and raised the issues that we had  
25 remaining in the proceeding in response to the motion for

1 summary final order, and the staff's recommendation basically  
2 says whatever issues you had, you should have raised them  
3 earlier. The question is at what point is earlier.

4           According to the staff, we have an obligation to move  
5 quickly on opt-ins; so be it, I have no qualms with that. The  
6 problem is is that there is no order, there no is rule, there  
7 is no statutory process that designates when we are supposed to  
8 do anything outside the normal course that we have followed in  
9 this case.

10           Now, if the staff wants to move this along, or if the  
11 Commission wants to move this along in a more expedited fashion  
12 than its normal process, it's incumbent upon the Commission to  
13 establish a set of procedural rules different from the norm  
14 which they, I think, are free to do, but at the very least they  
15 are required to tell us what those rules are.

16           What you cannot do is say, oops, you guessed wrong,  
17 you should have done it earlier, without telling us when that  
18 earlier is. That has never been done, and that is the  
19 fundamental flaw in where we are in this process today. And so  
20 essentially what we have got is you have jumped past the  
21 procedural stuff looking to rule on the merits having never  
22 given us the procedural opportunities to actually define and  
23 put on our case up front, which is required under the APA.

24           **CHAIRMAN CARTER:** Thank you.

25           Commissioners, we had an opportunity to hear from the



1 parties, and staff's first recommendation was recommending oral  
2 argument, so we have done that. At this point in time, let's  
3 have staff to introduce the issues and then we can go through  
4 our questioning phase and go from there.

5 **MR. CHIARELLI:** Can we respond? Would this be the  
6 time to respond?

7 **CHAIRMAN CARTER:** Well, I think that we pretty much  
8 know the issues, and out of courtesy we were allowing you --

9 **MS. RULE:** Well, we did reserve some time for  
10 rebuttal, so if this is the appropriate time we would like to  
11 use it now. If you would prefer we wait, we will be happy to  
12 do that.

13 **CHAIRMAN CARTER:** No, you were given opening  
14 statements. We're not in closing arguments or anything like  
15 that. At the discretion of the Commission, we decided to allow  
16 you an opportunity for oral argument, or to present your oral  
17 argument and we listened to that.

18 **MS. RULE:** I'm sorry, I thought we were allowed five  
19 minutes. I don't want to press the issue, but Mr. Chiarelli  
20 reserved some time because he wanted to be able to rebut. And  
21 if it is the Commission's will, we would like to present it.  
22 Thank you.

23 **MR. CHIARELLI:** Part of the problem is this APA  
24 argument is the first time they've presented it other than  
25 informally. It is not in any of the pleadings.

1           **CHAIRMAN CARTER:** Was that it?

2           **MR. CHIARELLI:** That was not the response, but that  
3 was just another reason why we would like a rebuttal.

4           **CHAIRMAN CARTER:** You know I'm patient and the  
5 Commission is patient. Let's do this, let's give you two  
6 minutes. But, be advised as we proceed further, then the  
7 matter goes to the Commissioners. And, I mean, we offered this  
8 to you as a courtesy, so let's remember that in the future.

9           **MR. CHIARELLI:** Yes, sir, I appreciate that. With  
10 respect to the AP argument, AT&T ignores two critical legal  
11 points. Number one, their obligation to make the Sprint  
12 interconnection agreement available without reasonable delay is  
13 imposed by federal law pursuant to Rule 51-809(a), which  
14 implements the 252(i) provision of the Act.

15           Second, Florida's APA provides an express exception  
16 regarding its applicability to the Commission in this instance.  
17 Specifically, Section 120.80(13)(d) provides that with respect  
18 to the Florida Public Service Commission, notwithstanding the  
19 provisions of this chapter in implementing the Telecom Act of  
20 1996, the Public Service Commission is authorized to employ  
21 procedures consistent with that Act.

22           So, with all due respect, to the extent they want to  
23 rely upon the APA, they need to rely upon all of it, and the  
24 fact of the matter is it's within your discretion to use the  
25 procedure that was used in this case, and there was nothing at

1 all wrong with the procedure used in this case. The motion for  
2 summary final order is also provided for within the APA. Thank  
3 you.

4 **MR. HATCH:** May I respond, Mr. Chairman?

5 **CHAIRMAN CARTER:** You may respond.

6 **MR. HATCH:** I understand we are now in sort of a  
7 free-for-all, but --

8 **CHAIRMAN CARTER:** We are not in a free-for-all. I'm  
9 going to give you one minute, but we allowed you to make a  
10 statement only to assist the Commission. It's at our  
11 discretion, not to have a ping-pong match. So we will give you  
12 one minute, Mr. Hatch, and then we will move forward with our  
13 proceedings. And I would caution you, those of you that have  
14 been here before, that we do have an order at the Commission,  
15 and since you're visiting, I allowed you the courtesy, but  
16 let's kind of stay focused on our rules of procedure.

17 Mr. Hatch.

18 **MR. HATCH:** I will be really brief. With respect to  
19 the APA never having been raised, first, it is very difficult  
20 for me to raise an APA argument before I see a staff  
21 recommendation that says you have screwed up under the process  
22 and my question is what's the process. So there's no possible  
23 way I could have raised the APA argument up front.

24 Second, with respect to reasonable delay, that comes  
25 with the caveat under the federal rules that you have to comply

1 with all the conditions regarding the opt-in, and those issues  
2 we have set forth in our pleadings. With respect to the APA  
3 exemption, he is quite right there is an exemption in the APA  
4 with respect to adopting federal process. That process is  
5 undefined at the federal level, and if you are going to create  
6 a process in Florida, you have to tell me what that process is  
7 going to be, including the procedural steps, win, lose, or  
8 draw, upon which I can survive or fail. That has never been  
9 done.

10 **CHAIRMAN CARTER:** Thank you for your comments. They  
11 mirror what's in the staff recommendation.

12 Staff, you're recognized.

13 **MS. TAN:** Thank you. This is a notice of adoption  
14 under 252(i). AT&T is well aware of how the Commission handles  
15 a notice of adoption. It is handled without unreasonable delay  
16 by administrative memo. Jeff Bates handles all our notices of  
17 adoptions that come in, and would be more than happy to explain  
18 the process in which that works.

19 One of the things that we wanted to mention is that  
20 at this time AT&T has never been precluded from filing a  
21 response to the Nextel notice of adoption, and what we are  
22 looking at is what we have presented to us in our docket file.

23 **MR. BATES:** The process for handling notice of  
24 adoption is fairly similar and straightforward. It takes about  
25 20 minutes to take a look at the previous underlying agreement

1 to verify that the companies are authorized to conduct business  
2 in the state of Florida, either before the Commission or with  
3 the Division of Corporations to find out that the agreement,  
4 underlying agreement itself is still available for adoption.

5 All of those processes have been met here. If there  
6 is any exception, as Counselor Hatch has mentioned, staff would  
7 believe that the company would take its very first opportunity  
8 to raise that exception or to raise that argument, not simply  
9 say what if we do this, what if we do that. It's the  
10 company's -- it is incumbent upon them to bring that exception  
11 up at the very earliest opportunity. In this case, the company  
12 has not done that. They were never precluded from an  
13 opportunity to raise the exception, they just didn't do it.

14 **MS. SIMMONS:** Commissioners, Sally Simmons just with  
15 a brief addition to Mr. Bates' comment. The procedures are  
16 documented in the Administrative Procedures Manual. It's  
17 Section 2.07. I can't give you a specific site; however, that  
18 is the procedure we follow. And, the adoptions -- in the case  
19 of an adoption they are effective upon filing. That is the  
20 normal process. We do have a 90-day interval we go through,  
21 and there is an administrative memo done at the end of that  
22 period, but they are effective upon filing.

23 **CHAIRMAN CARTER:** Thank you.

24 Commissioners, we are now into our questioning phase.  
25 Feel free to ask questions of staff and the parties. With

1 that, Commissioner McMurrrian, you're recognized.

2           **COMMISSIONER McMURRIAN:** Thank you. And this is for  
3 the staff. I guess Mr. Hatch has raised some concerning  
4 issues, and actually we have talked about some of this earlier  
5 this week, but what is a party's point of entry? I mean, I  
6 know that when this case started that AT&T did file a motion to  
7 dismiss and we took that up. So they filed something sort of  
8 in response to this starting, but what would have happened if  
9 you would have gotten the notice of adoption and, let's say, by  
10 day two you had put out the memo. Would AT&T have a point of  
11 entry to raise their concerns under this APM process that we  
12 use?

13           **MS. TAN:** Yes. I mean, they may file something after  
14 a notice of adoption is filed, and then we would look at it,  
15 and upon that decide what would be the next step that we would  
16 take.

17           **COMMISSIONER McMURRIAN:** How many -- is there a  
18 certain period of time that you give when you get this notice  
19 of adoption filed before you file a -- well, this memo process  
20 under the APM, is there a certain period of time that you allow  
21 parties to -- other affected parties to say, wait a minute,  
22 this is going to concern us, or is it possible that it's just  
23 as soon as you get it you could file the memo? Because I think  
24 Ms. Simmons did say effective immediately.

25           **MR. BATES:** They are presumptively valid upon receipt

1 because they have been previously negotiated by the underlying  
2 parties. Staff believes and has always felt that holding a  
3 memo for 90 days, the same period of time as the negotiated  
4 agreement, allows ample opportunity for the parties to raise  
5 any issues. It does not preclude raising issues and it never  
6 would preclude raising issues.

7           **COMMISSIONER McMURRIAN:** So you're saying that you  
8 hold on -- before you file the memo approving the adoption, you  
9 hold onto it for 90 days, so that gives 90 days time for  
10 someone to raise some objection?

11           **MR. BATES:** I don't process a memo for 90 days. I  
12 will write a memo at the end of the 90-day period of time.  
13 It's a standard marker that we use for negotiated agreements,  
14 and it seemed to work properly for the adoption, as well. But  
15 it is not a waiting period, per se. We fully believe that the  
16 adoptions are available and effective upon receipt, effective  
17 upon the notice of adoption.

18           **CHAIRMAN CARTER:** Well, you brought up the  
19 presumptively valid, and I think some of the tariffs work that  
20 way, too. But I recall parties on the other side of the tariff  
21 raising issues before we -- you know, before it becomes  
22 effective and then perhaps a proceeding starts. So how do we  
23 assure parties that they have some way to say, wait a minute,  
24 this effects me, because I think that those APA concerns, we  
25 have to be concerned about those, quite honestly.

1           **MS. SIMMONS:** Well, as Mr. Bates mentioned, there is  
2 the 90-day period with the memo at the end of the period. I  
3 also don't believe -- I'll have to defer to GCL, but I don't  
4 believe there is anything to prevent a party that is adversely  
5 affected from filing something after the 90-day period, even  
6 some sort of reconsideration. I don't know exactly how it  
7 would be styled. I will defer to general counsel on that.

8           **MS. TAN:** One of the things that we would like to  
9 note is that they did file something, and they filed a motion  
10 to dismiss, and the Commission ruled on that and denied their  
11 motion to dismiss. So AT&T is aware of what's going on in this  
12 docket, and has actually, you know, actively participated in  
13 the docket.

14           **COMMISSIONER McMURRIAN:** And just in response, I  
15 agree with that, and I brought up the motion to dismiss to  
16 start with. But it also does seem like it is a little bit hard  
17 for a party to know at what point, and when I need to do what.  
18 That Mr. Hatch has raised this concern that there is no  
19 deadline for him raising issues, and so I don't think -- it  
20 doesn't seem like there is anything that they have violated. I  
21 know that you have said they should raise it earlier and we  
22 would always like for them to raise it earlier, but I'm not  
23 sure they have missed some deadline that we put out there.  
24 Because normally in cases, and this one it looks like it has  
25 been assigned a prehearing officer, and it looks like with a



1 lot of the things we have done, it sort of looks like it is on  
2 a track, almost for like a hearing track. And so it seems like  
3 there should be some point where they should be able to raise  
4 their response.

5 And I know you are saying they are not precluded from  
6 it, but there is also no timeline set that they haven't met  
7 yet. So I guess I'm somewhat confused about how they are  
8 supposed to know how to navigate this process.

9 **MS. SIMMONS:** I'll take a try at your question,  
10 Commissioner. Sally Simmons, again.

11 One thing I want to point out is this situation that  
12 is before us is unusual. We rarely have contested adoptions.  
13 And it's for that reason, perhaps, that the procedures are not  
14 as explicit as you might be expecting. This has not happened  
15 very often, so we're in a little bit of a gray area.

16 **COMMISSIONER McMURRIAN:** I guess, Chairman, I would  
17 turn to both parties and let them sort of jump in to some of  
18 the questions I've raised, because I guess I have concerns.  
19 And I also want to be clear about what it is that AT&T wants as  
20 resolution of these APA concerns. So if I could get those kind  
21 of things addressed. I guess, Mr. Hatch, do you want to go  
22 first?

23 **MR. HATCH:** Thank you.

24 I guess to go down the list really quickly, in terms  
25 of process, if the staff is relying for authority on the APM,

1 you're v got bigger problems, because that becomes an  
2 unpromulgated rule under the APA. The APM is strictly an  
3 internal procedures manual for operating internally. It does  
4 not create any rules of procedure that have been officially  
5 adopted as rules or embodied in any orders. That is my answer  
6 to the APM. So that's my answer to the APM, says that's my  
7 process that I should know about and was advised of.

8           Second, effective on notice basically is a concession  
9 that there is no point of entry. The fact that they hold it  
10 90 days but their view is that it is effective when they file a  
11 adoption only begs the question: Do I have a point of entry,  
12 where is it?

13           With respect to the motion to dismiss, if I had filed  
14 every issue I had in this case in my motion to dismiss, it  
15 would have been summarily dismissed and I would have been  
16 laughed out of the building, because one thing you cannot do in  
17 a motion to dismiss is to file all of your issues that are fact  
18 based. Those are inappropriate to be filed in a motion to  
19 dismiss. Those are simply issues of law to test the  
20 sufficiency of the pleadings up front. It doesn't resolve all  
21 of the issues in the case.

22           As with respect to an unusual situation, I  
23 wholeheartedly agree. This is a very unusual situation. The  
24 notion that we know how this practice has been done  
25 historically somehow conveying that we should have known what

1 the process is, yes, 99.9 percent of these things flow through  
2 administratively because they are noncontroversial. I mean, it  
3 begs the question should you provide some formal point of entry  
4 even in those that are noncontroversial. But setting that  
5 aside, the fact that they flow through on a noncontroversial  
6 basis doesn't help you answer the question what is the point of  
7 entry for somebody who decides they really do want to contest  
8 one of these things, which is what we have here. We think  
9 there are some fundamental flaws and problems in their adoption  
10 of this agreement, and those are yet to be resolved.

11 As to your last question, I think, Commissioner  
12 McMurrian, as to how we envision resolution of what we want out  
13 of this case, I think -- and, frankly, we are not in any great  
14 desire to delay this any further. We have been dragging this  
15 out -- involved in having this been drug out for over a year as  
16 it is. I think our desire would be to let us put our remaining  
17 issues on the table, file an expedited brief, probably, you  
18 know, 15 to 20 days, and we can do that on an expedited basis.  
19 I think those arguments are pretty well fleshed out, but we are  
20 entitled to the opportunity to make them and have them ruled  
21 on.

22 We would also like an opportunity for oral argument  
23 at the end of that process so that if there are any questions  
24 about what we have filed and why we have filed it, we can do  
25 that. But substantively we haven't gotten to the issues yet,

1 but we would like the opportunity to do that.

2 **MR. CHIARELLI:** Thank you.

3 What Mr. Hatch has just described is what we have  
4 already done in this case. There are two points of entry. One  
5 was the motion to dismiss. Now, he said he couldn't raise fact  
6 issues. Their third objection was exactly that, which you  
7 determined was a fact issue, and that was whether or not we had  
8 adopted on a reasonable basis of time. That was the single  
9 fact issue that was remaining.

10 The second point of entry was their response to our  
11 motion for summary final order, which is exactly what we are  
12 doing here today is pointing out there are no remaining fact  
13 issues. Had they responded to a motion for summary final order  
14 the way in which they are required to under the standards is we  
15 set forth what the undisputed facts are, which is exactly what  
16 we did, and the burden shifts to them to present some evidence  
17 that there is a remaining material fact.

18 If they had any evidence like they have attempted in  
19 other states by filing affidavits to raise the cost issue, then  
20 they should have filed it. They didn't do so. He has asked  
21 for an opportunity to file another set of expedited briefs.  
22 That's exactly what the purpose of the motion for summary  
23 judgment was, the opportunity to brief the issues and what's  
24 remaining. And if you have anything to present for a hearing,  
25 you present it by virtue of an affidavit or other evidence.

1           They said if, for example, AT&T of Florida's costs  
2 regarding the shared facility factor of bill and keep  
3 provisions increases as a result of Nextel adoption, the  
4 adoption violates the FCC rules. All of that was prefaced by  
5 an if. It wasn't prefaced by see our affidavit where we have  
6 some evidence to show that we have a valid issue of material  
7 fact to be resolved. That's the ultimate here. There are no  
8 remaining issues of fact. They have presented no evidence that  
9 shows that there is such an issue of fact. This case is ready  
10 for resolution. Thank you.

11           **CHAIRMAN CARTER:** If you don't mind, Commissioner,  
12 let me ask mine, and then I will come back to you. I was with  
13 you guys until the response to Commissioner McMurrian's  
14 questions. Things like we have never done it, it is the first  
15 time, first impression. If this is the first time we're doing  
16 something like this, then maybe we should have some kind of  
17 procedures that will give parties notice going forward. And,  
18 so I just got -- I was almost there, and then with this being a  
19 case of first impression, or something that we have not done  
20 before, there hasn't been a contested adoption before, and  
21 we're looking at -- I think if that's the case, and we are  
22 going to go down this road before, there probably does need to  
23 be some kind of road map giving notice to the parties as well  
24 as to the process that we are going to engage in.

25           I think in response to your question, Commissioner,

1 they were saying that this is the first time we have done this,  
2 a case of first impression, basically, and if that's the case,  
3 then I think what you're saying is that if that is the case,  
4 then why not. You have got a prehearing officer assigned, why  
5 not go through the process and see.

6 Did I misinterpret what you're saying? Because  
7 that's what I heard in response to some of your questions.

8 **COMMISSIONER McMURRIAN:** I was definitely sort of  
9 raising those as issues, because I think it is different. We  
10 have dealt with a lot of adoptions, but we haven't dealt with,  
11 I think, parties raising concerns about those adoptions like  
12 this. And I'm not sure what exactly the issues are in dispute,  
13 it may be that we have legal issues in dispute and not factual  
14 issues, because I haven't really heard -- even some of the  
15 things that were raised, I haven't heard AT&T go back through  
16 some of those things with respect to costs and all.

17 But it does sound like we have sort of a process and  
18 legal issues that are sort of outstanding, and I'm not sure  
19 what the point was for them to raise that, because in response  
20 to a motion for summary final order, it's supposed to be about  
21 whether there are disputed issues of fact. So if there are  
22 disputed issues of law, for instance, I don't know what we  
23 would do with those. So, anyway, that's me thinking out loud  
24 in response to your question. I'm not sure if that was on  
25 point or not.

1           **CHAIRMAN CARTER:** You're recognized to continue with  
2 your questioning. I just wanted to get that out while I was  
3 thinking about it. But you're recognized to continue your  
4 questions.

5           **COMMISSIONER McMURRIAN:** Well, I think I wanted to  
6 ask probably staff and Mr. Chiarelli, what if there are  
7 disputed issues of law? Because that is what it sounds like we  
8 have here to me.

9           **MR. CHIARELLI:** Sure. In fact, the standard for a  
10 motion for summary final order -- first of all, I want to point  
11 out that can be raised at any point in the procedure, and it is  
12 two-fold. We are entitled to relief if we can show as a matter  
13 of law, so that's where your issues of law get raised in which  
14 we have addressed those and pointed out that we are entitled to  
15 judgment as a matter of law.

16           And that's the two-pronged approach of a motion for  
17 summary final order. You have to show that we are entitled to  
18 it as a matter of law, and issues of law are issues for you to  
19 determine. So it is not that you have a hearing on issues of  
20 law. You only have a hearing if there is a needed one for  
21 issues of fact.

22           So we have laid out in our brief and staff has  
23 analyzed it and set forth in their recommendation why we are  
24 entitled to it as a matter of law. So you don't have a hearing  
25 for a matter of law, you have it for a issue of fact, and we

1 have demonstrated there is no issue of fact. I hope that  
2 answers your question.

3           **COMMISSIONER McMURRIAN:** And before I turn to staff,  
4 I guess I would ask we do sometimes have paper hearings on  
5 legal issues, so how does that play in? We may not have a  
6 hearing with no disputed issues of material fact, but we do  
7 have legal issues that are sometimes set up on some kind of  
8 briefing schedule. So --

9           **MR. COOKE:** Commissioners, this essentially is a  
10 hearing on legal issues. And the legal issue that I hear being  
11 raised is not really on the substance of the case and the facts  
12 as they come before us, it's a question of whether we are  
13 consistent with Florida APA procedurally. I haven't heard AT&T  
14 raise a substantive legal question on the underlying issue, but  
15 they have raised a very interesting and something that's  
16 causing us to think a lot in terms of whether our process for  
17 processing these adoptions is consistent with Florida APA law.

18           I'm reasonably comfortable, based on what I know at  
19 this point, that we are on reasonably solid ground based on  
20 120.80(13)(d), which says we can use procedures under the  
21 Telecommunications Act of 1996. And it's my understanding,  
22 although this is the first time I'm hearing this, so I haven't  
23 had a chance to check this directly, it's my understanding that  
24 we, the Commission, at some point in time authorized staff to  
25 act administratively on these procedures, and that is



1 essentially what we're doing.

2 I do think it is a very interesting argument, and I  
3 can't guarantee just hearing this for the first time that there  
4 might not be some issues here, but I'm reasonably comfortable  
5 with what the staff recommendation is.

6 Alternatively, if you want to be cautious, we could,  
7 as I think you are suggesting, Commissioner McMurrin, hold the  
8 hearing on this issue alone, on the administrative. And that  
9 would be essentially a legal argument before the Commission, or  
10 I suppose we could do it before a prehearing officer. But I  
11 think I would rather have it before the full Commission, if we  
12 do that.

13 **CHAIRMAN CARTER:** Commissioners, let's do this.

14 **MR. HATCH:** Mr. Chairman, may I make one observation?

15 **CHAIRMAN CARTER:** One second. One second. Hold the  
16 phone here.

17 Commissioners, let's do this. Let's, one, give the  
18 court reporter a break, and let's give ourselves about five  
19 minutes to get our thoughts together; so we're on recess.

20 (Recess.)

21 **CHAIRMAN CARTER:** We are back on the record. And  
22 thank you for the opportunity to take a break to give the court  
23 reporter a break, as well as get back into our questioning.

24 When we took a break, I think, Commissioner  
25 McMurrin, you had the phone, so to speak.

1           **COMMISSIONER McMURRIAN:** I guess with the confusion  
2 from before, maybe the easiest way is to ask Mr. Hatch, are  
3 there -- in your mind, are you trying to raise disputed issues  
4 of fact, of law? I know that you are raising the issue with  
5 the process of APA, but if you can just clarify that for me and  
6 what it is you are wanting to address in some other point of  
7 entry.

8           **MR. HATCH:** Setting the APA issue aside, assuming I  
9 had gotten all the process that was due, and we were here to  
10 argue what I wanted to argue, the answer to your question is  
11 it's a mixed question -- essentially our real remaining issue  
12 is a mixed question of law, policy, and fact. That issue is  
13 essentially whether Nextel is an appropriate entity to opt into  
14 the Sprint agreement.

15           There is a legal component of that obviously as to  
16 whether that complies with all the requirements under the  
17 federal law for an opt-in. There is a factual component to  
18 that dealing with what is Nextel? What does it do? What does  
19 it not do? What does it intend to do with this agreement,  
20 assuming it is able to operate under it?

21           And the big policy question is -- there, essentially,  
22 is a big policy question hanging out there as to the --  
23 ultimately a policy question as to the appropriateness of  
24 whether Nextel should be allowed to opt into this agreement and  
25 utilize particular portions of that agreement. I mean, our

1 allegation is that they are not a CLEC, they are not  
2 certificated as a CLEC in Florida. They are not entitled to  
3 opt into this agreement at all under any circumstances as a  
4 policy matter, once you establish all the other things.

5 **COMMISSIONER McMURRIAN:** And a follow up to that, Mr.  
6 Hatch. How would you propose -- because you have raised these  
7 issues about your point of entry, how would you propose that we  
8 can resolve that? I mean, would a paper hearing do that?

9 **MR. HATCH:** I think it would do that. I think what  
10 we would have to have is a set of stipulated facts as to what  
11 Nextel is or is not based on that specific set of facts, then  
12 we can argue based on those facts whether we think Nextel is an  
13 appropriate entity to opt into this agreement, both as a matter  
14 of law and as a matter of policy.

15 **COMMISSIONER McMURRIAN:** Mr. Chairman, I would be  
16 fine with Nextel responding to that, too.

17 **MR. CHIARELLI:** With respect to whether or not Nextel  
18 can adopt this agreement, that is a pure legal issue which has  
19 been addressed by other commissions, as well. It's a pure  
20 legal issue because the First Report and Order, the Second  
21 Report and Order, the FCC Rule 51.809(a), the second sentence  
22 expressly states that an ILEC cannot restrict an adoption based  
23 upon the service provided by a requesting carrier. A pure  
24 issue of law. All of these other things are just red herrings.

25 **COMMISSIONER McMURRIAN:** I guess to follow up on

1 that, whether it's an issue of law or a combined issue of law  
2 and policy and fact, do you think that that could be -- I think  
3 we have dealt with issues of purely law. Assume it is an issue  
4 of purely law, through some kind of paper hearing, do you --

5 **MR. CHIARELLI:** Yes, ma'am, I do. And I think we  
6 have already done it, a motion for summary final order, because  
7 we addressed those arguments in our brief. We have raised the  
8 similarly situated question; and as a matter of law, we are not  
9 precluded from adopting this agreement. That is one of the  
10 prongs that we had to flush out in a motion for summary final  
11 judgment that we're entitled to it as a matter of law.

12 **COMMISSIONER McMURRIAN:** And, Chairman, to the staff,  
13 I'm not sure whether it is a combined issue of all of those  
14 things. It does seem like there are some policy implications  
15 in there about whether it would be appropriate to allow that  
16 type of entity to adopt, but I know that that also combines a  
17 lot of legal issues, and Mr. Chiarelli raised the First Report  
18 and Order and some other things there.

19 But is there -- since it seems like we have some  
20 concern about the process as far as how to have a point of  
21 entry, and I don't think, at least in my opinion, it doesn't  
22 seem like there is a clear way of addressing how AT&T would  
23 raise those concerns. I realize we have had the motion to  
24 dismiss and we have got the motion for summary final order, but  
25 I'm not sure that either of those methods necessarily covers

1 the kinds of issues that perhaps they want us to address. And  
2 wouldn't it be a cleaner way to give them some sort of way to  
3 address that through briefs, and us make sure that we have  
4 afforded parties the proper due process there?

5 **MR. COOKE:** I think I agree with you, Commissioner,  
6 in this sense. I don't think we're precluded from having an  
7 additional hearing if we want to, number one. I think that if  
8 by doing that we get agreement with the parties that we're not  
9 going to be challenged on a procedural -- that our procedures  
10 aren't going to be challenged as being flawed, that would give  
11 us some protection of our final decision.

12 I do think that there has been a point of entry, it  
13 is just really unusual in this case given the way we follow the  
14 APA and the federal law here to pull this altogether, and what  
15 has happened. I guess what I'm saying, to be clear, we are not  
16 precluded in my mind from having an additional hearing if that  
17 is the Commission's will, but I would want to get reassurance  
18 that that takes care of the potential argument that our  
19 procedures are flawed and a challenge on that basis.

20 **MS. SIMMONS:** Chairman Carter, could I possibly  
21 interject something?

22 **CHAIRMAN CARTER:** Sure.

23 **MS. SIMMONS:** Thank you very much. Sally Simmons.  
24 I just wanted to follow up on Mr. Chiarelli's  
25 remarks. I want to say that I agree completely with what he

1 indicated. He mentioned an FCC Rule 51.809(a). He also  
2 mentioned a couple of FCC orders. I think it's very important  
3 for the Commissioners to be aware that the FCC has considered  
4 this -- I will use the terminology similarly situated argument.

5 Mr. Hatch is questioning whether Nextel can avail  
6 itself of this agreement. The FCC in their Order  
7 04-1464 mentioned as follows, and I'll quote, "We also reject  
8 the contention of at least one commenter that incumbent LECs  
9 should be permitted to restrict adoptions to, quote, similarly  
10 situated carriers. We conclude that Section 252(i) does not  
11 permit incumbent LECs to limit the availability of an agreement  
12 in its entirety, only to those requesting carriers serving a  
13 comparable class of subscribers or providing the same service  
14 as the original party to the agreement."

15 I just wanted to make sure you were aware of that,  
16 because I know we're talking about issues of law, and my  
17 concern is it would appear to me that the FCC has fairly  
18 definitively addressed that issue of whether or not Nextel is  
19 available to avail itself of this agreement.

20 **CHAIRMAN CARTER:** Commissioner, I'll come back to  
21 you.

22 Commissioner Edgar, you're recognized.

23 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

24 I do have a question, and it is going in kind of a  
25 different direction, or a different angle on this. But before

1 that just a brief comment. I think that for me, you know, a  
2 very interesting and intriguing APA issue has been raised.  
3 And, Mr. Chairman, I'm sure you remember, I loved APA Chapter  
4 120 issues since Professor Dore in law school years ago. So  
5 thank you for that, Mr. Hatch.

6 But kind of coming back at the issue, I note that in  
7 the agenda item staff has given us, of course, a recommendation  
8 which we have discussed, but then also laid out two other  
9 options if indeed that staff recommendation were to not be  
10 adopted. And, first of all, I appreciate that, because it's  
11 always helpful to me to see if not this, then what would be  
12 some of the other options, or what would then naturally follow.  
13 So I appreciate that being in the item.

14 But I guess I would like to pose to the parties and  
15 then also to staff, if the staff recommendation were not to be  
16 adopted, to the parties, what would be the status of the  
17 agreement, potential agreement, or business relationship? And  
18 if, just for discussion purposes, staff's recommendation were  
19 not to be adopted, could you speak to option one and option  
20 two. Mr. Hatch.

21 **MR. HATCH:** I apologize, I was conferring with  
22 counsel for the last part of your question.

23 If I understand it correctly, options one and two  
24 don't quite get to the full extent of what we're looking for  
25 here. I'm trying to figure out what option one was. One of

1 them limited it to the cost issue. Let me be clear to  
2 everybody. While the staff has focused on the cost issue and  
3 our potential waiver of the cost issue, at this point we have  
4 determined that we are not going to put on a cost case, but  
5 that isn't the only issue that we raised.

6 The other issue is the one that has generated the  
7 most discussion from us certainly, and that is whether Nextel  
8 is suitable for opting into the Sprint agreement. That's the  
9 question. That's the issue that we want resolved.

10 Now, Mr. Chiarelli has some wonderful arguments under  
11 the FCC's rules and orders supported by the staff, but I would  
12 caution you in those rules, and particularly in the order that  
13 Ms. Simmons read from, that order was issued in the context of  
14 a CLEC and an ILEC. Nextel is not even a CLEC. And so our  
15 argument in response to that would be those orders don't apply,  
16 and all of this only underscores the problem we have here.

17 These are all wonderful arguments. You're going to  
18 have to ultimately sort them out and figure out what the  
19 resolution is, but we are entitled to make the arguments. And,  
20 so what we would like is what I had referred to earlier is the  
21 opportunity -- and I think we could probably come to a quick  
22 list of stipulated facts with Nextel that at least support the  
23 factual basis for our arguments as to whether they are an  
24 inappropriate entity to opt into the Sprint agreement.

25 And from that, we would then file a brief, some brief



1 oral argument, five minutes, probably more, actually, is what  
2 we would request, but we could ask for that and you could give  
3 us what we want, or what you would choose to give us. From  
4 that, to answer Mr. Cooke's last question, he wants some  
5 assurances, we would treat that as a 120.57(2) opportunity,  
6 which is what I think Commissioner McMurrian was alluding to  
7 earlier saying, you know, if there are no disputed issues of  
8 fact, then we still do hearings. That's what 120.57(2) is  
9 designed to accomplish.

10 **COMMISSIONER EDGAR:** For Nextel, as well. Thank you.

11 **MR. CHIARELLI:** Yes, ma'am. Page 16 of the staff's  
12 recommendation states, "As a matter of law, Nextel is entitled  
13 to adoption of the Sprint ICA." We believe that's  
14 well-reasoned, based upon all the legal authority we have  
15 already provided. We have already gone through what has been  
16 discussed here, another round of briefing on that question. So  
17 it seems like we are just talking about further delay to get  
18 exactly back to where we are at right now.

19 **CHAIRMAN CARTER:** Commissioners, any further  
20 questions?

21 Commissioner Skop, you're recognized, sir.

22 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

23 I just have a few questions. I am trying to get a  
24 handle on why this seems to be so controversial. I kind of  
25 sense that the contested adoption may not really have anything

1 really at all to do with the exception arguments that may or  
2 may not be raised.

3 But, anyway, I guess on Page 7 of the staff  
4 recommendation, and this is a question to staff, right before  
5 the last paragraph it states that Nextel states that the delay  
6 is harmful to it as AT&T will likely argue that the 42-month  
7 clock is running. If we were to go into a hearing posture,  
8 would not tolling apply to that, or could staff speak to that  
9 concern?

10 **MS. SIMMONS:** Commissioner Skop, I do not believe  
11 tolling would apply. In this particular instance, the  
12 underlying agreement has been extended for three years and the  
13 three years are up March 19th of 2010.

14 **COMMISSIONER SKOP:** All right. And I guess on Page  
15 9, it lists the exception arguments, and I apologize for my  
16 hearing, because, again, sometimes it is hard to hear. But did  
17 I properly hear that AT&T was not going to raise the cost  
18 exception argument?

19 **MR. HATCH:** That's correct. At this point we are not  
20 going to maintain a cost argument, but that doesn't obviate the  
21 other issues that we have raised and want to pursue.

22 **COMMISSIONER SKOP:** And with respect to the other  
23 issues, would that be a technically feasible argument or solely  
24 limited to technically feasible argument?

25 **MR. HATCH:** It is not a technically feasible

1 argument. It has to do with Nextel's status. Our allegation  
2 is they are not a CLEC. They are not entitled to opt into a  
3 CLEC agreement by virtue of the fact of not even being a CLEC.

4           **COMMISSIONER SKOP:** Of course, I don't want to get  
5 into the merits of any future arguments, I'm just trying to  
6 make sure I heard properly. I guess the other question that I  
7 had, I guess, pertains to Page 15 of the staff recommendation,  
8 and it speaks specifically to Florida Rules of Civil Procedure  
9 Rule 1.40(h). I guess there has been, at least in my eyes,  
10 some interesting questions raised with respect to, you know,  
11 certainly a motion to dismiss was brought and, you know, that  
12 did not raise one of the exception arguments that was denied.

13           I guess I would like to hear from staff with respect  
14 to whether, you know, certain motions under 1.40(b), as staff  
15 recognizes, and I think Nextel also pointed out some motions  
16 could be brought prior to the responsive pleading, but then I  
17 guess my question, or the \$24,000 question here is certainly  
18 staff notes that AT&T was not prohibited from filing an answer  
19 subsequent to the Commission's denial of the motion to dismiss.

20           But, I guess procedurally, you know, what is the  
21 appropriate time for a responsive pleading if one was required?  
22 And so if staff could kind of flesh that out a little bit. I  
23 mean, I'm following the staff analysis, and it makes a lot of  
24 sense to me, because, you know, I think that on face it's  
25 pretty clear. However, I think some arguments were brought up

1 in terms of when a responsive pleading, if any, would be  
2 required, and I think I would like to hear a little bit more  
3 discussion on that.

4 **MS. TAN:** What staff is saying is that we believe  
5 there was ample opportunity for AT&T to file an answer at any  
6 time within this docket. They could have done it when they  
7 filed their motion to dismiss or when the Commission's order  
8 denying their motion to dismiss was issued, anytime at that  
9 point. We just believe that they had the opportunity and they  
10 continue to have the opportunity to raise those issues and we  
11 have just not seen them.

12 **COMMISSIONER SKOP:** So staff believes that their  
13 failure to raise the defenses that they would like to raise  
14 would be untimely?

15 **MR. COOKE:** May I jump in on this?

16 **COMMISSIONER SKOP:** Yes.

17 **MR. COOKE:** Here is the underlying issue, however.  
18 The issue is whether they are entitled to request a hearing  
19 before our decision becomes final. If we act upon this we are  
20 in the posture of -- if we act on staff's recommendation and  
21 adopt staff's recommendation, essentially you have disposed of  
22 this matter. It's a final issue. It's out of our hands at  
23 that point. And the issue that AT&T is raising is shouldn't  
24 they somewhere along the way have a right to a hearing even on  
25 factual issues. That doesn't mean they are going win. That

1 doesn't mean there are any factual issues. I suspect there  
2 aren't, but the question is do they have a right to have that  
3 opportunity, and that is the issue that has been raised.

4 I'm reasonably comfortable with where we are on this  
5 based on 120.80(13)(d), and on the work that has been done in  
6 the past by this Commission to adopt procedures. But it is an  
7 issue. So I'm uncomfortable saying that they have waived the  
8 right to raise the issue regarding procedural flaws under the  
9 APA by virtue of a rule of civil procedure as an affirmative  
10 defense.

11 **COMMISSIONER SKOP:** Okay. And just a follow-up to  
12 our General Counsel, Mr. Cooke. The issue with respect to the  
13 APA, I guess that was an emerging issue that was just kind of  
14 raised for the first time before us today. I really don't kind  
15 of see that in the staff recommendation, but it is just  
16 something that has developed before us as our discussion today  
17 has progressed. Is that correct?

18 **MR. COOKE:** That's correct.

19 **COMMISSIONER SKOP:** Because in my reading of the rec,  
20 again, that's a new one. I'm just trying to correlate that.

21 **MR. COOKE:** And if I may just elaborate. My response  
22 to Commissioner McMurrian was, you know, if this Commission  
23 wants to approve staff's recommendation, I'm not telling you  
24 you can't do that. I'm reasonably comfortable with the way we  
25 have crafted our argument based on the statutes as I understand

1 them.

2           If we want to play it safe and have an additional  
3 hearing that the parties will agree solves this procedural  
4 question and protects us from a challenge, then that is an  
5 additional -- I mean, it just preserves the integrity of the  
6 decision down the road. And I don't suspect that the hearing  
7 is going to be much different substantively than what has been  
8 happening today on these issues, but it is just an additional  
9 precaution that you may want to consider. And I think if you  
10 do, then some of these other options that are listed in the  
11 recommendation would allow us to do that.

12           **COMMISSIONER SKOP:** Thank you. And I agree. I think  
13 perhaps a more cautious approach may be best warranted. I am  
14 not exactly sure. I know I have heard paper hearings or full  
15 hearings. I don't exactly know what that approach would be,  
16 but I think a more cautious approach given the uncertainty that  
17 has been raised may be the more prudent course of action for  
18 the Commission.

19           **MR. COOKE:** And staff really does want to expedite  
20 this, and I'm hearing that AT&T is interested in doing that, as  
21 well. We don't want to see unreasonable delay on this issue.

22           **CHAIRMAN CARTER:** Thank you. And before I go back to  
23 Commissioner McMurrian, I think that Mr. Hatch said 15 days. I  
24 think that's fairly expeditious, unless I missed something.  
25 You did say that, right, Mr. Hatch?

1           **MR. HATCH:** I did. I actually said more than that,  
2 but that is one of the numbers I threw out there.

3           **CHAIRMAN CARTER:** Oh, really?

4           **MR. HATCH:** I said 15 to 20 to file briefs.

5           **CHAIRMAN CARTER:** Fifteen to 20. Okay. I latched  
6 onto 15.

7           Commissioner McMurrin, you're recognized.

8           **COMMISSIONER McMURRIAN:** I don't think I have any  
9 more questions. I think I just wanted to sort of clarify what  
10 my concern -- my underlying concern is I think that motions to  
11 dismiss and motions for summary final order have a tall  
12 standard to meet, and I think that's for a good reason, because  
13 I think we try to afford parties an ability to make their case,  
14 whether it's legal issues or factual issues, and sometimes even  
15 process issues, but the process issues go back to why we have  
16 all of these points of entry.

17           And I do realize that it's different than how we have  
18 done these before, because we don't usually have parties raise  
19 some kind of concerns, but I think we clearly have a  
20 substantially affected party raising some concerns about that.  
21 I'm not sure it's clear what the point of entry is. Perhaps  
22 they should have made some of these arguments sooner, but I'm  
23 not sure that they have messed up by not, really. I'm not sure  
24 it's clear to someone how they would go about doing that,  
25 because it is so unusual.

1           And so I just wanted to say that I think it is  
2 because it is such a final decision, and if we have a party  
3 raise a concern, whether it's strictly legal or whether it's a  
4 combination of legal and policy and fact, I would be more  
5 comfortable not ending it here and giving them some kind of  
6 very expedited way of making their arguments. I think that  
7 more cautious approach is better, and I'm sure that comes as no  
8 surprise since the arguments we have already had.

9           I will add that staff did point out the FCC order to  
10 me, and it looks like that's something we will definitely have  
11 to take a look at. But my concern is I hadn't heard until  
12 today what Mr. Hatch said about that that order was issued in  
13 the context of a CLEC/ILEC agreement and Nextel is not even a  
14 CLEC. It seems like those kind of things are things I need to  
15 know more about. So I feel uncomfortable saying summary final  
16 order, the case ends here today, when I've got sort of that  
17 outstanding outlying concern.

18           But that's not to say that at the end of some sort of  
19 paper hearing -- expedited I think is appropriate -- that it  
20 wouldn't be that Nextel still gets to adopt the agreement. And  
21 I don't want any unreasonable delay, either, and I think that  
22 we are bound to not have unreasonable delay. So, anyway, that  
23 is a speech. I'm sorry.

24           **CHAIRMAN CARTER:** Good speech.

25           **COMMISSIONER McMURRIAN:** I would say no to a summary



1 final order at this point and would like to provide some kind  
2 of expedited schedule, I think 15 days rather than 20. In  
3 fact, I don't know that they shouldn't be sitting down together  
4 today, or as soon as possible this week to decide what those  
5 issues would be in a hearing. I don't think that that is  
6 unreasonable to ask, either. But, anyway, that is my two  
7 cents. So I will be quiet now. Thank you.

8 **CHAIRMAN CARTER:** Is that a motion, Commissioner?

9 **COMMISSIONER McMURRIAN:** I can if --

10 **CHAIRMAN CARTER:** You're recognized for a motion.

11 **COMMISSIONER McMURRIAN:** Okay. I know we have other  
12 issues.

13 On Issue 2 I would move staff's recommendation,  
14 because that is to not hold the docket in abeyance pending the  
15 matter at the FCC.

16 **COMMISSIONER ARGENZIANO:** Second.

17 **CHAIRMAN CARTER:** It has been moved and properly  
18 seconded, Commissioners, on Issue 2.

19 Any questions? Hearing none, all those in favor let  
20 it be known by the sign of aye.

21 (Simultaneous aye.)

22 **CHAIRMAN CARTER:** All those opposed, like sign. Show  
23 it done.

24 Commissioner McMurrian, you're recognized.

25 **COMMISSIONER McMURRIAN:** On Issue 3, I would deny

1 staff's recommendation, and, instead, establish -- well,  
2 actually let me get some open help on this before I make this a  
3 motion, because I want to leave prehearing officer matters up  
4 to the prehearing officer. I do think we need to say in some  
5 way that we want to set this for a paper hearing, so that is  
6 120.57(2), but perhaps Mr. Cooke can help me get us on the  
7 right legal footing.

8 How should I word what I want to do?

9 **MR. COOKE:** I think you are doing it fine. I think  
10 you are saying that your motion would be that this -- well,  
11 first of all, you are not adopting staff's recommendation.

12 **COMMISSIONER McMURRIAN:** Right.

13 **MR. COOKE:** And you are, instead, instructing the  
14 parties to prepare for, as soon as possible, a 120.57(2)  
15 hearing on the issues that they identify within the next  
16 several days, and that this staff bring it back to this  
17 Commission as soon as possible.

18 **COMMISSIONER McMURRIAN:** So moved.

19 **COMMISSIONER ARGENZIANO:** Second.

20 **CHAIRMAN CARTER:** It has been moved and properly  
21 seconded.

22 Commissioners, any questions on the motion as  
23 presented? Any debate? Any debate? Any debate?

24 Hearing none, all those in favor let it be known by  
25 the sign of aye.

1 (Simultaneous aye.)

2 **CHAIRMAN CARTER:** All those opposed, like sign.

3 Show it done.

4 Thank you, and move expeditiously with all deliberate

5 speed. Commissioners, anything further?

6 Hearing none, Agenda is adjourned.

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STATE OF FLORIDA )

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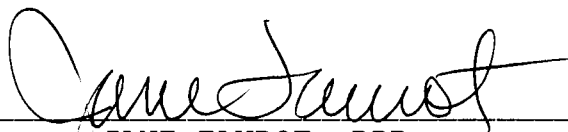
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 9th day of June, 2008.

  
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JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
(850) 413-6732