BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of the Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing "Interconnection Agreement by and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001	)	Docket No. 070368-TP
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	)	Docket No. 070369-TP Filed: June 26, 2008

NEXTEL'S BRIEF IN SUPPORT OF
NEXTEL'S ADOPTION OF THE SPRINT ICA

Pursuant to Order No. PSC-08-0402-PCO-TP, Order Establishing Procedure, issued in the above dockets on June 17, 2008, NPCR, Inc., d/b/a Nextel Partners, Nextel South Corp. and Nextel West Corp. (collectively referred to herein as "Nextel"), hereby file this further Brief in Support of Nextel's June 8, 2007 Notices of Adoption[1] of the interconnection agreement between BellSouth Telecommunications, Inc.[2] and Sprint[3] (the

[1] Document No. 04648-07, filed in Docket No. 070368-TP and Document No. 04649-07, filed in Docket No. 070369-TP on June 8, 2007 ("Notices of Adoption" or "Notices"). Docket Nos. 070368-TP and 070369-TP are collectively referred to herein as the "Nextel Dockets". Pursuant to the parties' Stipulations of Fact (Corrected), ¶16, filed on June 17, 2008 (hereinafter "Corrected Stipulations"), Nextel's Notices are incorporated into the record of this proceeding by reference, such that Nextel need not re-file such Notices.

[2] BellSouth Telecommunications, Inc. now does business in Florida as "AT&T Florida" and is referred to herein as "BellSouth" or "AT&T".

[3] Sprint Communications Company Limited Partnership and Sprint Communications Company L.P. are collectively referred to as "Sprint CLEC", Sprint Spectrum L.P. and SprintCom Inc. are collectively referred to as "Sprint PCS", and the respective Sprint CLEC and Sprint PCS entities are collectively referred to as "Sprint". *See* Corrected Stipulations, ¶¶ 1 and 14 ("When the terms and conditions apply to both Sprint CLEC and Sprint PCS, the collective term 'Sprint' shall be used herein").

"Sprint ICA") pursuant to Section 252(i) of the Act[4] and AT&T's Merger Commitments.[5]

I. BACKGROUND[6]

Nextel's Notices of Adoption were filed with the Commission on June 8, 2007. Nextel's Notices asserted that, pursuant to AT&T's Merger Commitment Nos. 1 and 2 and 47 U.S.C. § 252(i), Nextel adopted in its entirety, effective immediately, the Sprint ICA, as amended, which had been filed and approved in each of the 9-legacy BellSouth states, including Florida. A copy of the Sprint ICA is posted on AT&T's website where it is viewable by the public at: http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf [7]

Nextel's Notices also asserted that the Sprint ICA was current and effective, but acknowledged that Sprint and AT&T had a dispute regarding the term of the agreement, specifically referring to the then-pending Sprint-AT&T arbitration in Commission Docket No. 070249-TP (the "Sprint-AT&T Arbitration Docket"). On December 4, 2007 Sprint and AT&T filed a Joint Motion in the Sprint-AT&T Arbitration Docket to approve an amendment that extended the term of the Sprint ICA for a period of three years from the date of Sprint's March 20, 2007 request for such extension. On January 29, 2008, in Order No. PSC-08-0066-FOF-TP, the Commission approved the amendment which thereby extended the Sprint ICA for 3 years from the date of Sprint's March 20, 2007

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[4] The Communications Act of 1934, as amended, 47 U.S.C. *et. seq*. (the "Act").

[5] *See In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, Ordering Clause ¶ 227 at page 112, WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007) ("*FCC Order*") ("IT IS FURTHER ORDERED that as a condition of this grant AT&T and BellSouth shall comply with the conditions set forth in Appendix F of this Order."). A copy of the *FCC Order* APPENDIX F setting forth the Merger Commitments that became conditions of AT&T/BellSouth's merger is attached to AT&T's Motion to Dismiss as Exhibit C (filed June 28, 2007).

[6] A more detailed summary of this matter is set forth in Nextel's Motion for Summary Final Order (filed in these dockets on December 26, 2007) ("Nextel Motion") and Nextel's Reply to AT&T Florida's Response and Supplement Submissions in Opposition to Nextel's Motion for Summary Final Order (filed February 18, 2008) ("Nextel Reply").

[7] Corrected Stipulations, ¶ 15.

request for such extension.

Nextel and Sprint PCS are, respectively, wireless-only carriers licensed by the Federal Communications Commission ("FCC"), and are not certificated to provide wireline CLEC services in Florida.[8] AT&T has now conceded that it is *not* objecting to Nextel's adoption of the Sprint ICA based on any recognized FCC exception as provided in FCC Rule 47 CFR §§ 51.809(b)(1) or (b)(2).[9] Nevertheless, AT&T now suggests that the Florida Public Service Commission ("Commission") can, "as a policy matter", deny Nextel's adoption of the Sprint ICA by virtue of the fact Nextel is not a CLEC.[10] AT&T's incredible proposal requires the Commission to affirmatively ignore firmly established federal law and policy, fact and precedent, including:

- The unambiguous FCC Orders and Rules that prohibit AT&T from discriminating against Nextel by objecting to Nextel's use of the Sprint ICA based on the fact that Nextel is a wireless-only carrier;

- The express terms of the Sprint ICA that a) recognize the ability of a wireless-only carrier to operate under it, and b) do not impose any "balance of-traffic" requirements on either the use of the bill-and-keep or the equal-cost sharing of wireless interconnection facility provisions;

- The plain language of AT&T's Merger Commitments; and,

- The legacy-BellSouth state-commission decisions that appropriately and unambiguously rejected AT&T's effort to escape its obligations under both

[8] Corrected Stipulations, ¶¶ 3 through 5.

[9] Nextel Dockets, June 3, 2008 Commission Agenda Conference Transcript at p. 34 line 16 – p. 35 line 3 ("COMMINSSIONER SKOP: [D]id I properly hear that AT&T is not going to raise the cost exception argument? MR. HATCH: That's correct. At this point we are not going to maintain a cost argument, but that doesn't obviate the other issues that we have raised and want to pursue. COMMISSIONER SKOP: And with respect to the other issues, would that be a technically feasible argument or solely limited to technically feasible argument? MR. HATCH: It is not a technically feasible argument. It has to do with Nextel's status. Our allegation is they are not a CLEC. They are not entitled to opt into a CLEC agreement by virtue of the fact of not even being a CLEC"). Per Corrected Stipulations, ¶ 16, the record of this proceeding incorporates by reference all notices, pleadings and intermediate motions filed in this docket, and the official transcript(s) of all proceedings held in these dockets, including agenda conferences, without need for either party to re-file the same.

[10] *Id.*, at p. 27 line 1 – 4 (MR. HATCH: "[T]hey are not a CLEC, they are not certificated as a CLEC in Florida. They are not entitled to opt into this agreement at all under any circumstances as a policy matter").

Section 252(i) of the Act and AT&T's Merger Commitments based on the exact same federal law applied to the same controlling facts that are present in these Nextel Dockets.

As explained herein, Nextel is entitled as a matter of law to adopt the Sprint ICA under both 47 U.S.C. § 252(i) of the Act and AT&T's Merger Commitments Nos. 1 and 2. The Commission is authorized under both federal law and Sections 364.01(4) and 364.02(13), Florida Statutes, to not only resolve any dispute regarding Nextel's Notice of Adoption of the Sprint ICA, but also to recognize the effectiveness of those Notices as of the date they were filed with the Commission over a year ago, June 8, 2007.

III. DISCUSSION OF THE ISSUES

Issue 1. Can Nextel as a wireless entity avail itself of 47 U.S.C. Section 252(i) to adopt the Sprint ICA?

Nextel Position: Yes. "[A]ny requesting telecommunications carrier" can avail itself of 252(i), regardless of the technology it uses to provide service. Per federal law, the only exceptions upon which this Commission may allow AT&T to avoid Nextel's adoption of the Sprint ICA are expressly provided by 47 C.F.R. § 51.809(b)(1) or (b)(2).

AT&T Position: Nextel is not an appropriate entity to avail itself of the opt-in provisions of Section 252(i). Nextel is not seeking to adopt the Sprint interconnection agreement "upon the same terms and conditions" as required by the FCC's rulings. In addition, Nextel's proposed adoption of the Sprint ICA is an inappropriate attempt to evade its current wireless intercarrier compensation mechanism by seeking a CLEC provision from the Sprint ICA that provides for bill-and-keep. Bill and keep has never been offered or required for standalone wireless carriers. Moreover, Nextel is inappropriately attempting to take advantage of a CLEC provision from the ICA that provides for the equal sharing of facilities.

Sprint PCS, a wireless-only carrier, is a party to the Sprint ICA.[11] Like Sprint PCS, Nextel is a wireless-only carrier that is not certificated to provide CLEC-wireline services in Florida.[12] Nevertheless, AT&T is asking the Commission to deny Nextel's adoption of the Sprint ICA (and thereby use the same bill-and-keep or equal facility cost

[11] *See* Corrected Stipulations, ¶¶ 1, 3.
[12] *See* Corrected Stipulations, ¶¶ 3 through 5.

sharing provisions that Sprint PCS uses) because Nextel does not itself provide wireline service, and has not brought an independent CLEC-wireline carrier with it to the "adoption table".[13] Regardless of how AT&T window-dresses the argument in its Brief, AT&T's argument boils down to the assertion that Nextel cannot adopt the Sprint ICA because Nextel is not "similarly situated" to AT&T as are the original Sprint parties.[14] However, the plain language of Section 252(i), the FCC's orders and Rule 47 CFR § 51.809 implementing Section 252(i), applicable case law, and the express terms of the Sprint ICA itself all support Nextel's adoption of the Sprint ICA under Section 252(i) and the rejection of AT&T's attempt to now impose after-the-fact implied non-cost-based "poison pill" restrictions upon Nextel's adoption of the Sprint ICA.

As long as Nextel is willing to *accept as written* all of the terms and conditions of the Sprint ICA as required by the FCC's "all-or-nothing rule",[15] the parties are in the exact same position in Florida as they have been in the states of Kentucky, Georgia and Tennessee, where Nextel's adoptions of the Sprint ICA has already been approved.

1. Section 252(i), the FCC Orders, Rule 51.809 and applicable case law authorize Nextel's adoption of the Sprint ICA.

47 U.S.C. § 252(i) provides:

> A local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

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[13] Although they did not consider it necessary or required by law, for the express stated purpose of avoiding any potential delay regarding the exercise of Nextel's right to adopt the Sprint ICA, Nextel and Sprint CLEC affirmatively advised AT&T that Sprint CLEC stood "ready, willing and able to also execute the Sprint ICA as adopted by Nextel in order to expeditiously implement Nextel's adoption". *See* Mark G. Felton letter to AT&T dated May 18, 2007 attached to AT&T's Motion to Dismiss as Exhibit B.

[14] For the reasons set forth throughout this Brief, this is a legally deficient argument. It is, however, also factually wrong. Nextel, Sprint PCS and Sprint CLEC are three separate subsidiaries under the same holding company, thereby sharing the same brother-sister affiliate relationships. *See* Corrected Stipulations, ¶¶ 6 through 13.

[15] 47 CFR § 51.809(a).

The FCC recognizes that Section 252(i) is "a primary tool of the 1996 Act for preventing discrimination under section 251[,]"[16] and that "the primary purpose of section 252(i) [is] preventing discrimination [.]"[17] The FCC clearly and unequivocally found in paragraph 1317 of the *Local Competition Order*, that the *only grounds* upon which an ILEC can prevent a requesting carrier from timely adopting an existing ILEC agreement under Section 252(i) are if the carrier's request increases the ILEC's cost or is not technically feasible:

> 1317. We find that section 252(i) permits differential treatment based on the LEC's cost of serving a carrier. We further observe that section 252(d)(1) requires that unbundled rates be cost-based, and sections 251(c)(2) and (c)(3) require incumbent LECs to provide only technically-feasible forms of interconnection and access to unbundled elements, while section 252(i) mandates the availability of publicly-filed agreements be limited to carriers willing to accept the same terms and conditions as the carrier who negotiated the original agreement with the incumbent LEC. We conclude that ***these provisions, read together, require that publicly-filed agreements be made available only to carriers who cause the incumbent LEC to incur no greater costs than the carrier who originally negotiated the agreement, so as to result in an interconnection agreement that is both cost-based and technically feasible. However, as discussed in Section VII regarding discrimination, where an incumbent LEC proposes to treat one carrier differently than another, the incumbent LEC must prove to the state commission that that differential treatment is justified based on the cost to the LEC of providing that element to the carrier***. [Emphasis added].

The FCC's paragraph 1317 cross-reference to the Section VII discrimination discussion within the *Local Competition Order* is particularly pertinent in this case, where AT&T is attempting to assert an improper "price basis" objection. "[P]rice differences, such as volume and term discounts, when based upon legitimate variations in costs are

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[16] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd, 15499 at ¶ 1296 (1996) ("*Local Competition Order*" or "*First Report and Order"*).
[17] *Id.* at ¶ 1315.

permissible under the 1996 Act, if justified."[18] However, "price differences based not on cost differences but on ***such considerations as competitive relationships***, ***the technology used by the requesting carrier***, ***the nature of the service the requesting carrier provides***, ***or other factors not reflecting costs*** would be discriminatory and ***not permissible*** under the new [discrimination] standard [within the 1996 Act amendments]."[19]

Further, in paragraph 1318 of the *Local Competition Order*, the FCC also expressly prohibited *an interpretation* of 252(i) that would limit an adoption based upon the "type of service" provided by the requesting carrier:

> 1318. We conclude, however, that section 252(i) ***does not*** permit LECs to limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement. In our view, the class of customers, or the type of service provided by a carrier, ***does not*** necessarily bear a direct relationship with the costs incurred by the LEC to interconnect with that carrier or on whether interconnection is technically feasible. ***Accordingly, we conclude that an interpretation of section 252(i) that attempts to limit availability by class of customer served or type of service provided would be at odds with the language and structure of the statute, which contains no such limitation***. [Emphasis added].

Based on the foregoing, the two, and only two, exceptions the FCC recognized in the *Local Competition Order* that AT&T can raise to defeat a carrier's timely request to adopt an existing AT&T interconnection agreement pursuant to 252(i) – *i.e.*, greater costs or technical feasibility – are codified in FCC Rule 47 CFR § 51.809(b).[20] Importantly,

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[18] *Id.* at ¶ 860.
[19] *Id.* at ¶ 861 (emphasis added).
[20] 47 CFR 51.809(b) states "[t]he obligations of paragraph [51.809](a) of this section shall not apply where the incumbent LEC proves to the state commission that:

> (1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or
> (2) The provision of a particular agreement to the requesting carrier is not technically feasible."

AT&T has conceded it is *not* relying upon either of the *only* two FCC-recognized exceptions as the basis for its latest objection to Nextel's adoption of the Sprint ICA. Further, the FCC's unambiguous and plainly stated prohibition in paragraph 1318 of the *Local Competition Order* against interpreting 252(i) in a manner that would limit Nextel's 252(i) adoption of the Sprint ICA based on any consideration of the type of service Nextel provides is expressly codified in the second sentence of Section 51.809(a). Section 51.809(a), in its entirety, states:

> (a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. ***An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement***. [Emphasis added].

The "any agreement in its entirety" clause that is now contained in Section 51.809(a) came into existence as the result of the FCC's *Second Report and Order*.[21] In July of 2004, the FCC revisited its interpretation of 252(i) to reconsider and eliminate what was originally known as its "pick-and-choose" rule,[22] replacing it with the "all-or-nothing" rule which is reflected in the current version of Rule 51.809(a) above. The FCC's adoption of the "all-or-nothing" rule did not change the fact that the only two express, limited narrow exceptions that an ILEC could prospectively rely upon to preclude a timely adoption under 51.809(b) continued to be increased costs or technical

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[21] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No.01-338, Second Report and Order, 19 FCC Rcd, 13494 (2004) ("*Second Report and Order"*).

[22] Under the pick-and-choose rule, a requesting carriers could select discrete but related terms that the carrier desired from one (or more) of an incumbent LEC's existing filed interconnection agreement(s) and create a new cut and paste agreement, rather than take an entire interconnection agreement intact.

feasibility; and further, the express prohibition against limiting an adoption based upon the type of service provided by a requesting carrier remained in the second sentence of 51.809(a).[23]

Citing to PAETEC comments filed in the *Second Report and Order*, the FCC clearly recognized that carriers not only can, but in fact do, adopt an entire (i.e., intact) existing agreement pursuant to Section 252(i) ***without any intent of using the entire agreement***.[24] The referenced PAETEC Comments state:

> For those carriers who are willing to adopt an existing agreement whole, or accept the model terms that the ILEC proposes, the process of negotiating an interconnection agreement has become virtually a ministerial process that can be conducted with an exchange of emails over a period of a few days or weeks. Consequently, carriers that are anxious to enter a market are typically satisfied with a model agreement or an adoption. Moreover, since the duty of performance in a typical interconnection agreement falls almost exclusively on the ILEC, it is the rare competitor that is concerned about its overall obligations under the agreement. ***It is not uncommon to see a carrier adopt a 600 page agreement with the intention of using only a few provisions***. Alternative negotiated terms based on a pick-and-choose right are the exception rather than the rule.[25]

Obviously, as long as Nextel is willing to *adopt* the Sprint ICA in its entirety, i.e., intact without modification, it is free to use less than all of it. And, as further explained in Subsection 2 below, the Sprint ICA expressly identifies which Attachments are currently *available* for use by a wireless carrier and what steps a wireless carrier must take if it wants to use the additional Attachments that, as a practical matter, are currently of no typical concern to a wireless carrier.

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[23] *Second Report and Order* at n. 103 ("Under the all-or-nothing rule we adopt here, we retain the other limitations and conditions of the existing pick-and-choose rule").
[24] *Id.* at ¶ 18 and n. 64. ("The current record … demonstrates that in practice competitive LECs frequently adopt agreements in their entirety", citing "PAETEC Comments at 2").
[25] *Comments of PAETEC Communications, Inc.*, at p. 2, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No.01-338 (October 16, 2003).

The FCC also reaffirmed in the *Second Report and Order* the need for state commissions to detect and prevent the occurrence of discrimination not only when an interconnection agreement is initially approved under Section 252(e), but also in the context of a Section 252(i) adoption. In particular, absent the applicability of a 51.809(b) exception, an ILEC must make an agreement available in its entirety at the election of the requesting carrier, and the ILEC cannot include specific provisions in an agreement as a means to prevent subsequent requesting carriers from adopting that agreement:

> To the extent that carriers attempt to engage in discrimination, such as including ***poison pills*** in agreements, we expect state commissions, in the first instance, will detect such discriminatory practices in the review and approval process under section 252(e)(1). Discrimination provisions include, but are not limited to, such things as inserting an onerous provision into an agreement ***when the provision has no reasonable relationship to the requesting carrier's operation***. ***We would also deem an incumbent LEC's conduct to be discriminatory if it denied a requesting carrier's request to adopt an agreement to which it is entitled under section 252(i) and our all-or-nothing rule***.[26] [Emphasis added].
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> "Poison pills" are onerous provisions that could be included in an interconnection agreement, which would not negatively affect the original requesting carrier, but would discourage other carriers from subsequently adopting the agreement.[27]
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> We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent

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[26] *Second Report and Order* at ¶ 29.

[27] *Id.* at n. 17 (citing *Local Competition Order* at ¶ 1312) ("We also find that practical concerns support our interpretation. As observed by AT&T and others, failure to make provisions available on an unbundled basis could encourage an incumbent LEC to insert into its agreement onerous terms for a service or element that the original carrier ***does not need***, in order to discourage subsequent carriers from making a request under that agreement.") (Emphasis added).

> LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.[28]

AT&T's pre-merger parent, BellSouth Corporation, specifically contended before the FCC in the *Second Report and Order* proceeding that ILECs should be permitted to restrict 252(i) adoptions to "similarly situated" carriers.[29] To support that position, BellSouth used an example of an interconnection agreement with bill-and-keep compensation terms *that it argued should only be available to similarly-situated carriers*. BellSouth informed the FCC that it sought to "construct contract language specific to this situation, [but] there is still risk that CLECs who are not similarly situated will argue they should be allowed to adopt the language[.]"[30] The example cited an un-named CLEC with a very specific business plan, customer base and bill and keep provisions that BellSouth contended in "other circumstances … would be extremely costly to BellSouth."[31] Notwithstanding such assertions, based upon the prohibition codified in 51.809(a), the FCC expressly held:

> 30. We also reject the contention of at least one commentator that incumbent LECS should be permitted to restrict adoptions to "similarly situated" carriers. We conclude that section 252(i) does not permit incumbent LECs to limit the availability of an agreement in its entirety only to those requesting carriers serving a comparable class of subscribers or providing the same service as the original party to the agreement. Subject to the limitations in our rules, the ***requesting carrier may choose*** to initiate negotiations or to adopt an agreement in its entirety ***that the requesting carrier deems appropriate for its business needs*.** Because the all-or-nothing rule should be more easily administered and enforced than the current rule, we do not believe that further clarifications are warranted at this time.[32]

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[28] *Id.*at ¶ 19.
[29] *Id* at ¶ 30 and n. 101.
[30] *Id.* at BellSouth Affidavit of Jerry D. Hendrix at ¶ 6 (May 11, 2004) (attached to Nextel's Motion For Summary Final Order as Exhibit F).
[31] *Id*.
[32] *Second Report and Order* at ¶ 30. (Emphasis added)

At the June 3, 2008 oral argument held in these dockets - in expressing its strong support for Nextel's adoption of the Sprint ICA - Staff quoted the first two sentences of the above passage from the FCC's *Second Report and Order* to affirmatively advise the Commission that the FCC has "fairly definitively" addressed the issue now raised by AT&T, *i.e.*, whether or not Nextel can avail itself of the Sprint ICA.[33] AT&T, however, responded with the erroneous assertion that the "[O]rder that Ms. Simmons read from, that [O]rder was issued in the context of a CLEC and an ILEC". AT&T then stated "Nextel is not even a CLEC" and, that AT&T's argument is that "those [O]rders don't apply."[34]

AT&T's assertion that the FCC's *Second Report and Order* "was issued in the context of a CLEC and an ILEC" or that it does not apply to wireless carriers is simply incorrect. First, the passage quoted by Staff expressly refers to "requesting carriers" and a "requesting carrier", not "requesting CLECs" or a "requesting CLEC".[35] Second, the FCC's *First Report And Order*[36] and *Second Report and Order* were certainly ***not*** "issued" in the limited "context of a CLEC and an ILEC", much less any limited context of only a "CLEC/ILEC agreement". Both of these FCC Orders were issued as the result of a FCC Notice of Proposed Rulemaking ("NPRM") to establish, and consider revisions to, the FCC's Rules governing implementation of Sections 251 and 252 between ILECs and other telecommunications carriers. *Both proceedings were open to and participated*

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[33] Nextel Dockets, June 3, 2008 Commission Agenda Conference Transcript at p. 29 line 23 - p. 30 line 19.
[34] *Id.* at p. 32 line 15.
[35] Pursuant to 47 U.S.C. §158(10), the term "carrier" includes wireless providers: " 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy . . . ."
[36] The *Local Competition Order* is also referred to as the *First Report and Order*, as it was by Nextel's counsel at Oral Argument (June 3, 2008 Commission Agenda Conference Transcript at p. 27 line 20).

in by wireline and wireless carriers alike – including Nextel via filed comments in each NPRM proceeding.[37] Based on the FCC's unequivocal rejection of BellSouth's argument that it should be permitted to restrict adoptions to "similarly situated" carriers, AT&T's attempt to deny Nextel's adoption of the Sprint ICA must fail.

In this case, AT&T is essentially contending that it granted preferential bill-and-keep and equal-cost sharing interconnection facility treatment to Sprint PCS, and only did so because AT&T thought that it included "additional but unavailable" CLEC terms in the Sprint ICA that it could cite as a means to prevent another wireless carrier from adopting the Sprint ICA. A similar "additional but unavailable terms" argument with a slight twist was raised in Texas by SBC, another AT&T predecessor, in a vain attempt to avoid filing all of the terms of an agreement it entered into with Sage Telecom.[38]

In *Sage,* SBC and Sage Telecom entered into a "Local Wholesale Complete Agreement" ("LWC") that included both products and services subject to the requirements of the Act and certain products and services that were not governed by either §§ 251 or 252. Following the parties' press release and filing of only that portion of the LWC that SBC and Sage considered to be specifically required under § 251 of the Act, other carriers filed a petition requiring the filing of the entire LWC. The Texas Commission found the LWC was an integrated agreement, resulting in the entire agreement being an interconnection agreement subject to filing and thereby being made available for adoption pursuant to 252(i). On appeal, SBC argued that "requiring it to

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[37] *See Local Competition Order* at "Appendix A List of Commenters in CC Docket No. 96-98" which identifies various commenting wireless carriers, including "Nextel Communications, Inc. (Nextel)" at A-4; *Second Report and Order* at Appendix A List of Commenters "Replies in Pick-and-Choose Proceeding, CC Docket No. 01-338" which identifies various commenting wireless carriers including "Nextel Communications, Inc. at p. 37.

[38] *Sage Telecom, L.P. v. Public Utility Commission of Texas,* 2004 U.S. Dist. LEXIS 28357 (W.D. Tex.) (*"Sage"*), a copy of which is attached as Exhibit A to the Nextel Reply filed February 18, 2008.

make the terms of the entire LWC agreement with Sage available to all CLECs is problematic because there are certain terms contained in it, which for practical reasons, it could not possibly make available to all CLECs." In rejecting this argument, the federal district court stated:

> [SBC's] argument proves too much. The obligation to make all the terms and conditions of an interconnection agreement to any requesting CLEC follows plainly from § 252(i) and the FCC's all-or-nothing rule interpreting it. The statute imposes the obligation for the very reason that its goal is to discourage ILECs from offering more favorable terms only to certain preferred CLECs. SBC's and Sage's appeal to the need to encourage creative deal-making in the telecommunications industry simply does not show why specialized treatment for a particular CLEC such as Sage is either necessary or appropriate in light of the Act's policy favoring nondiscrimination.[39]

Clearly, Nextel is entitled to decide whether the Sprint ICA contains terms that Nextel deems appropriate for its business needs, as opposed to AT&T deciding to whom it may elect to provide an existing agreement. Further, AT&T's admission that it entered into an agreement that AT&T now contends provides Sprint PCS treatment that AT&T would not ordinarily have agreed to, mandates against, not in favor of AT&T's position.

2. The express terms of the Sprint ICA do not even include the "poison pill" limitations upon which AT&T seeks to have the Commission deny Nextel's adoption of the Sprint ICA.

The Sprint ICA is divided into the following sections:

- General Terms and Conditions – Part A
- Attachment 1 Resale
- Attachment 2 Network Elements and Other Services
- Attachment 3 Network Interconnection
- Attachment 4 Physical Collocation
- Attachment 5 Access to Numbers and Number Portability
- Attachment 6 Ordering and Provisioning
- Attachment 7 Billing and Billing Accuracy Certification

[39] *Sage* at page 6.

- Attachment 8 License for Rights of Way (ROW), Conduits, And Pole Attachments
- Attachment 9 Performance Measurements
- Attachment 10 Agreement Implementation Template (Residence) and (Business)
- Attachment 11 BellSouth Disaster Recovery Plan

By the express terms of the Sprint ICA, all Attachments are available to both the Sprint PCS wireless entity and the Sprint CLEC wireline entity. Contrary to AT&T's position statement assertions, the bill-and-keep provision ***is not*** a "CLEC[-specific] provision", and the equal sharing of facility costs specifically ***is*** a "***Wireless Network Interconnection***" provision. Further, pursuant to the General Term and Condition ("GTC") § 35 Application of Attachments, the Sprint PCS wireless entity initially elected the Attachments that it wanted to use and retained the express right to elect to use any remaining Attachments at a later date. Specifically, GTC § 35 states:

> Application of Attachments
>
> This Agreement was negotiated between BellSouth, Sprint CLEC and Sprint PCS for the purpose of creating a single interconnection arrangement between BellSouth and Sprint. At the date of signing this Agreement, Sprint PCS has elected not to opt into the terms and conditions of the following Attachments: 1 Resale, 5 Access to Numbers, 6 Ordering and Provisioning, 9 Performance Measurements and 11 Disaster Recovery. Should Sprint PCS desire to operate under the terms and conditions of those Attachments, prior to the expiration of the term of this Agreement, Sprint PCS and BellSouth shall negotiate an amendment to this Agreement.[40]

Clearly, within the four corners of the Sprint ICA, the contract allows the Sprint PCS wireless carrier to affirmatively de-select those provisions that Sprint PCS apparently had no need or desire to use on a going-forward basis. Obviously, if the original parties to an interconnection agreement expressly agree in one provision that

[40] A copy of the Sprint ICA GTC § 35 is attached hereto as **Exhibit A.**

certain provisions are not necessary at the outset but may be re-visited in the future, under the "all-or-nothing" rule Nextel can certainly adopt the exact same agreement and likewise use Section 35 to conduct its business under the same provisions that are used by the Sprint PCS wireless entity. For AT&T to expressly contract with Sprint to permit Sprint PCS to use only that part of the Sprint ICA that Sprint PCS apparently believed it has a need to use, yet attempt to preclude Nextel's adoption of the exact same contract to permit Nextel to use the exact same provisions as used by Sprint PCS, is *per se* discrimination.

Regarding the remaining provisions of the Sprint ICA that are unquestionably subject to Sprint PCS's use – including the UNE Attachment 2 – *all* of those provisions have obviously already been written in a way that restricts a wireless carrier from *improperly* using such terms and conditions that, as a matter of law, may only be appropriate for use by a wireline CLEC. For example, there is the express *TRRO* UNE restriction in amended Attachment 2 – *an Attachment that Sprint PCS did elect to use* - that states "Sprint shall not obtain a Network Element for the exclusive provision of mobile wireless services or interexchange services". [41]

AT&T has not cited to a single provision in the Sprint ICA that mandates the continuing presence of both a wireless and a wireline party, because no such provision exists. The Sprint ICA does, however, expressly recognize that a Sprint entity can opt-out of the Sprint ICA into a different AT&T agreement[42] and, Attachment 3 Network Interconnection § 6.1 specifically contemplates and would permit the Sprint PCS wireless

[41] A copy of the Sprint ICA Attachment 2 (as amended), Section 1.5 is attached hereto as **Exhibit B.**
[42] Pursuant to the 9th Amendment GTC § 17, entitled "Adoption of Agreements[,]" the Sprint ICA provides that "BellSouth shall make agreements available to Sprint in accordance with 47 USC § 252(i) and 47 C.F.R. 51.809."

entity to independently operate under the Sprint ICA on a stand-alone basis:

> Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Traffic is the result of negotiation and compromise between Bell South, Sprint CLEC and Sprint PCS. The Parties' agreement to establish a bill and keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic. Specifically, Sprint PCS provided BellSouth a substantial cost study supporting its costs. As such the bill and keep arrangement is contingent upon the agreement by all three Parties to adhere to bill and keep. ***Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between BellSouth and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by BellSouth.*** [Emphasis added].

Under the plain and ordinary terms of Section 6.1, the scenario under which one Sprint entity departure triggers a termination or renegotiation only occurs if the departing Sprint entity "opts into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act *which calls for reciprocal compensation*" (emphasis added). Therefore, if one of the Sprint entities opts out of the Sprint ICA, the entire agreement, including the bill and keep provisions, clearly remains effective and unchanged as to the remaining Sprint entity, unless the foregoing triggering event occurs. Thus, contrary to AT&T's claims, the triggering event for "termination or renegotiation" of the bill-and-keep arrangement (as opposed to the entire agreement), is not the departure of either Sprint CLEC or Sprint PCS; rather, it is the departing entity's opting into another ICA that *requires the payment of reciprocal compensation by AT&T to that Sprint entity*. The Sprint ICA clearly does not require both Sprint entities to remain as parties for it to remain effective and unchanged as to Sprint PCS as a stand-alone wireless carrier. Further, to the extent that AT&T had even *attempted* to include such a non-cost based restriction within the Sprint ICA, such a requirement would constitute an unenforceable,

discriminatory "poison pill" provision contrary to federal law.

AT&T has failed to cite to a single provision in the Sprint ICA that requires the original Sprint parties, *either individually or collectively*, to maintain any particular "balance of traffic" with AT&T, or to satisfy any minimum service purchase or revenue requirements. As demonstrated by the existing terms of the Sprint ICA, AT&T agreed to the use of bill-and-keep without including either a "balance of traffic" definition or any provision to institute billing at any point in time triggered by any given traffic exchange ratio or volume of exchanged traffic. In other words, there is nothing in the Sprint ICA that is even akin to a permissible cost-based "volume and term" restriction provision with respect to the exchange of traffic.

Regarding the general use of bill-and-keep, bill-and-keep means an arrangement "in which neither of two interconnecting networks charges the other network for terminating traffic that originated on the other network. Instead, each network recovers from its own end users the cost of both originating traffic delivered to the other network and terminating traffic received from the other network."[43] The FCC has repeatedly recognized that a bill-and-keep arrangement is an alternative mechanism to the traditional "calling party's network pays" reciprocal compensation arrangements.[44] In the context of bill-and-keep reached through voluntary negotiations, the parties make their own determination as to the economic efficiency of the arrangement.[45] Considering there

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[43] *Local Competition Order*, at ¶ 1096.

[44] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, at ¶ 9 (2001) ("An alternative to such CPNP arrangements, however, is a 'bill and keep' arrangement."); *see also In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge Caps*, CC Dockets No. 96-262, 94-1, Order, 17 FCC Rcd 10868 at ¶ 44 (Describing bill and keep systems as an alternative to traditional intercarrier compensation mechanisms).

[45] *See Local Competition Order* at ¶ 1118.

simply is no "balance-of-traffic" restriction upon the use of bill-and-keep in the Sprint ICA, no basis exists for AT&T to preclude Nextel from likewise adopting and using the Sprint ICA bill-and-keep provisions without a "balance-of-traffic" requirement. Thus, there are no intercarrier compensation policy implications of Nextel's adoption of the Sprint ICA – AT&T is simply looking for any way it can to get the Commission to release it from its adoption obligations without establishing a legitimate cost-based exception under 47 CFR § 51.809(b) to avoid Nextel's adoption of the Sprint ICA.

Finally, AT&T's position statement that "Nextel is inappropriately attempting to take advantage of a CLEC provision from the ICA that provides for the equal sharing of facilities" is, once again, contrary to the express terms of the Sprint ICA. The provision for equal sharing of interconnection facilities that is applicable to Nextel ***is an express "wireless" provision*** specifically found in the Sprint ICA at Attachment 3, Section 2.3 ***Wireless Network Interconnection***, subsection 2.3.2 at p. 6 – 7: "The cost of the interconnection facilities between BellSouth and *Sprint PCS* switches within BellSouth's service area shall be shared on an equal basis." (Emphasis added).[46]

In summary, under the plain language of Section 252(i), and the federal authorities relied upon by Nextel, Nextel is a requesting carrier that can avail itself of Section 252(i) to adopt the Sprint ICA in its entirety, regardless of either Nextel's status as a wireless-only carrier or whether Nextel may ultimately use, or be in a position to use, all of the provisions of the Sprint ICA.[47] The Commission must reject AT&T's

[46] Copies of Sprint ICA Attachment 3, Section 2.3, Wireless Network Interconnection pp. 6-7 are attached hereto as **Exhibit C.**

[47] *See* TRA Docket Nos. 07-00161 and 07-00162 May 19, 2008 TRA Authority Conference Transcript Decision approving Nextel's Adoption of the Sprint ICA in Tennessee, at p. 5 - 6 (a carrier does not have to avail or have the legal right to utilize the entire agreement; and, the Sprint ICA allows both use of selected portions and stand-alone use by a wireless carrier); Kentucky PSC Case No. 2007-00255, Order (filed

contentions to the contrary.

Issue 2. A. Does the Commission have jurisdiction over AT&T's FCC Merger Commitments?

Nextel Position: Yes. By FCC Order, the Merger Commitments do not "restrict, supercede, or otherwise alter" this Commission's jurisdiction, or "limit state authority to adopt…policies that are not inconsistent with these Commitments." This Commission has already recognized its authority under Fla. Stat. § 364.01(4) to acknowledge a Merger Commitment adoption.

AT&T Position: The Commission does not have the jurisdiction under state law to interpret or enforce the AT&T/BellSouth merger conditions.

The Commission has the authority to construe the Act, FCC orders and federal court decisions related to ILEC interconnection obligations and agreements, and routinely does so every time it arbitrates an interconnection agreement or resolves an interconnection-related dispute. As Nextel explained in its Response to AT&T's Motion to Dismiss, the fact that requesting carriers have been granted expanded adoption rights by the Merger Order does not divest this Commission of its existing authority to acknowledge a carrier adoption pursuant to § 252(i) of the Act or § 364.01(4), Florida Statutes.

In its Motion to Dismiss, AT&T cited Commission Order No. PSC-03-1892-FOF-TP ("*Sunrise Order*") and the 1959 United States Supreme Court case *Serv. Storage & Transfer Co. v. Virginia,* 359 U.S. 171, 177 (1959) in support of its position the Commission lacks jurisdiction to approve Nextel's adoption of the Sprint ICA pursuant to

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February 18, 2008 in the Nextel adoption approval cases) ("KY PSC Order"); and Georgia PSC Docket Nos. 25430 and 25431, Order Granting Adoption of Interconnection Agreements (filed May 29, 2008 in the Nextel adoption approval cases) ("Georgia PSC Order"). Pertinent pages of the TRA's April 21 and May 19 Transcript Decisions are attached as **Exhibit D**, and copies of the KY PSC Order and Georgia PSC Order are respectively attached as **Exhibits E** and **F**.

AT&T's Merger Commitments.[48] Nextel pointed out that the *Sunrise Order* arises from cases previously cited by *Sprint* in opposing AT&T's jurisdiction claim in the Sprint-AT&T Arbitration, and that such cases likewise support Nextel's position that the Commission has jurisdiction to interpret and enforce AT&T's Merger Commitments.[49] In fact, the *Sunrise Order* stands for the proposition that the Commission can interpret and apply federal law in the course of exercising the authority that it is conferred under both the Act and state law.

Serv. Storage similarly fails to support AT&T's position. *Serv. Storage* involves a trucking company's appeal of a state imposed fine for failing to obtain a state certificate for intrastate hauling operations. The trucking company contended its operations were encompassed within the authority of its *federal interstate commerce certificate* issued by the Interstate Commerce Commission. The Supreme Court noted that "[i]t appears clear that interpretations of federal certificates of this character should be made in the first instance by the authority issuing the certificate and upon whom the Congress has placed the responsibility of action."[50]

Serv. Storage is clearly distinguishable; unlike the Telecommunications Act of 1996 which confers dual jurisdiction and the responsibility to act upon both a federal agency and state commission over the same subject matter, i.e., interconnection-specific matters, the Motor Carrier Act creates no such federal/state dual jurisdiction over the very same subject matter.[51]

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[48] AT&T Motion to Dismiss, pp. 5-6.
[49] Nextel Response to AT&T Motion to Dismiss, pgs. 1-13.
[50] *Serv. Storage* at 177.
[51] In response to questioning by the North Carolina Utilities Commission of AT&T's reliance upon *Serv. Storage* at oral argument held in a Sprint-AT&T arbitration, AT&T conceded that this case contains no language to support the contention that an "agency and only that agency" can interpret an Order issued by

Section 364.01, Florida Statute, confers jurisdiction upon this Commission to exercise its power over telecommunications carriers such as AT&T by the exercise of its exclusive jurisdiction to not only encourage and promote competition (which encompasses the approval of a merger-condition adoption)[52], but to expressly ensure that all providers of telecommunications services are treated fairly by preventing anticompetitive behavior.[53] Further, in defining what "Service" means with respect to telecommunications carriers, Florida law expressly states "'Service' is to be construed in its broadest and most inclusive sense [and] the commission may arbitrate, ***enforce , or approve interconnection agreements***, and resolve disputes ***as provided by*** U.S.C. §§ 251 and 252, or ***any other applicable federal law*** or regulation."[54] Thus, any time a requesting carrier seeks to interconnect with AT&T through the use of an existing interconnection agreement as the means to govern the parties' interconnection relationship under any federal law, the Commission has the authority and is called upon to construe the Act, FCC orders and federal court decisions related to that interconnection agreement request.

Appendix F to the *FCC Order* contains the Merger Commitments upon which the FCC conditioned its approval of the AT&T/BellSouth merger. AT&T asserts that "the

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that agency. Transcript of Testimony in the hearing and oral argument held July 31, 2007 and filed August 31, 2007 in North Carolina Utilities Commission Docket No. P-294, Sub 31, p. 135, line 2 – p. 136, line 10, attached hereto as **Exhibit G**.

[52] *See* Commission Order No. PSC-02-1174-FOF-TP, Order Approving Petition for Acknowledgement of Adoption of an Agreement Under FCC Approved Merger Conditions and Granting Staff Authority to Administratively Acknowledge Adoption of Agreements Under FCC Approved Merger Conditions and Order Amending Administrative Procedures Manual, (August 28, 2002) ("we acknowledge this adopted agreement pursuant to *Section 364.01(4), Florida Statutes*, wherein the Legislature requires us to encourage and promote competition" and, "we direct our staff to administratively acknowledge all future agreements submitted to the Commission which have been adopted under merger conditions approved by the FCC"). The appropriateness of Commission approval under Merger Commitment No. 1 is even stronger in Nextel's case based on the simple fact that the Sprint ICA is an agreement previously approved by this Commission.

[53] *See* § 364.01(4)(g).

[54] Section 364.02(13) (emphasis added).

FCC explicitly reserved jurisdiction over the merger commitments" by virtue of the following language in the *FCC Order*: "[f]or the avoidance of doubt, unless otherwise stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC."[55] AT&T then asserts that "[n]owhere in the Merger Order does the FCC provide that interpretation of merger commitments is to occur outside the FCC."[56] This is simply not an accurate statement with respect to Appendix F. The paragraph immediately preceding the language relied upon by AT&T states:

> It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.[57]

The above language was not part of the proposed Merger Commitments as filed by AT&T with the FCC, but was specifically added by the FCC. This language serves the obvious purpose of recognizing, as FCC had done in prior merger orders, that the Act is designed with dual authority for both the states and the FCC. The *FCC Order* reflects absolutely no attempt by the FCC to alter the states' primary responsibility for initial review and acknowledgement of the agreements that will govern the interconnection relationship between a requesting carrier and AT&T.

Finally, it is obvious from the express language of the *FCC Order* that the FCC understood the state Commissions would be involved in reviewing adoptions under Merger Commitment No. 1. The last requirement of Merger Commitment No. 1 is that

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[55] Motion to Dismiss and Answer at 6.
[56] *Id*.
[57] *FCC Order* at 147, APPENDIX F.

the adoption be "consistent with the laws and regulatory requirements of, the state for which the request is made." This Commission is, unquestionably, the forum with authority to review Nextel's Petition for approval in order to ensure an adoption of the Sprint ICA is consistent with the laws and regulatory requirements of Florida.

As have the Kentucky Public Service Commission ("Kentucky PSC"), the Georgia Public Service Commission ("Georgia PSC") and the Tennessee Regulatory Authority ("TRA"), who have all denied AT&T's Motion to Dismiss for lack of jurisdiction in similar cases involving Nextel's efforts to adopt the Sprint ICA as previously approved by those Commissions in their respective states[58], this Commission likewise must conclude it has jurisdiction to consider Nextel's adoption of the Sprint ICA as contemplated by AT&T's Merger Commitments.

Issue 2. B. If so, do the Merger Commitments allow Nextel to adopt the Sprint ICA?

Nextel Position: Yes. Independent of Section 252(i), the Merger Commitments allow Nextel to adopt "any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T BellSouth 22-state ILEC operating territory" subject to state-specific pricing and performance plans and technical feasibility.

AT&T Position: If the Commission has jurisdiction to interpret and enforce the merger commitments, the merger commitments do not allow Nextel to adopt the Sprint ICA.

AT&T's interconnection-related Merger Commitments Nos. 1 and 2 respectively state:

> The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans

[58] *See* Kentucky PSC Order, at pp. 10-11; Georgia PSC Order, at pp. 6 and 9; and, TRA April 21, 2008 Transcript Decision at p. 58.

> and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.
>
> The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.[59]

To date, AT&T has contended that Merger Commitment No. 1 "applies ***only*** when a carrier wants to take an interconnection agreement from one state and operate under that agreement in a different state".[60] AT&T's stated rationale for its interpretation is that adoption of any agreement pursuant to Merger Commitment No. 1 is "subject to state-specific pricing and performance plans and technical feasibility" and must be "consistent with the laws and regulatory requirements of the state for which the request is made."[61] The mere fact that an adoption remains subject to state-specific requirements does not in any way preclude adoption of a given agreement in the same state in which it was originally adopted or created. To reject a Merger Commitment adoption on such a basis would create and impose a non-existent limitation on a requesting carrier's clearly unrestricted Merger Commitment right to adopt "any" agreement that AT&T had entered into in "any" of its 22 states.

The express purpose of the interconnection-related Merger Commitments was to encourage competition by reducing interconnection costs between a requesting carrier

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[59] *FCC BellSouth Merger Order*, at page 149, Appendix F.
[60] AT&T Response in Opposition to Motion for Summary Final Order at page 4 (emphasis added).
[61] *Id.*

such as Nextel and the new 22-state mega-billion dollar, post-merger AT&T[62], and alleviate concerns regarding a new "consolidated entity – one owning nearly all of the telephone network in roughly half the country – *using its market power to reverse the inroads that new entrants have made and, in fact, to squeeze them out of the market altogether.*"[63] It was this well-documented concern that led to the FCC requiring the interconnection-related Merger Commitments:

> To mitigate this concern, the merged entity has agreed … ***to ensure that the process of reaching such agreements is streamlined***. These are important steps for fostering residential telephone competition and ensuring that this merger does not in any way retard such competition.[64]

With the foregoing purpose firmly in mind, distilling and applying the essential operative terms of Merger Commitment No. 1 to this case would result in the following:

> AT&T … shall make available to [Nextel] any entire effective interconnection agreement [i.e., the Sprint ICA] … subject to [pricing and feasibility limitations that do not apply in this case], and provided, further, that … AT&T … shall not be obligated to provide … any interconnection arrangement … given … [again, feasibility and consistent with the law of the state of adoption limitations that do not apply in this case].

Applying the plain and ordinary meaning of the words used to establish the applicable Merger Commitments, it is incontestable that:

- Nextel is within the group of "any requesting telecommunications carrier";
- Nextel has requested the Sprint ICA;

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[62]*See* FCC Order at page 169, "Concurring Statement of Commissioner Michael J. Copps": "… we Commissioners were initially asked to approve the merger the very next day ***without a single condition*** to safeguard consumers, businesses, or the freedom of the Internet. This is all the more astonishing when you consider that this $80-some odd billion dollar acquisition would result in a new company with an estimated $100 billion dollars in annual revenue, employing over 300,000 people, owning 100% of Cingular (the nation's largest wireless carrier), covering 22 states, providing service to over 11 million DSL customers, controlling the only choice most companies have for business access services, serving over 67 million access lines, and controlling nearly 23% of this country's broadband facilities."
[63]*Id.* at page 172 (emphasis added).
[64]*Id.* (emphasis added).

- The Sprint ICA is within the group of "any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory", having been entered into by Sprint and AT&T in all 9 legacy BellSouth states;

- The Sprint ICA already has state-specific pricing and performance plans incorporated into it with respect to each state covered by the agreement;

- There is no issue of technical feasibility; and,

- The Sprint ICA has already been amended to reflect changes of law, i.e. the *TRRO* requirements.

Nextel meets all the requirements set forth in the Merger Commitments and is entitled to adopt the Sprint ICA on that basis alone, whereas AT&T's argument would require the Commission to either re-write, or simply ignore, the plain and ordinary meaning of the words used by the FCC to impose a non-existent porting requirement. Although the Kentucky PSC ultimately relied upon only Section 252(i) to approve Nextel's adoption of the Sprint ICA in Kentucky,[65] both the Georgia PSC[66] and the TRA[67] found that the plain language of Merger Commitment No. 1 did not restrict an adoption under Merger Commitment No. 1 to only the porting of out-of-state agreements.

Issue 3. If the answer to Issue 1 or Issue 2B is "yes," what should be the effective date of Nextel's adoption of the Sprint ICA?

Nextel Position: The effective date should be June 8, 2007, the date of Nextel's Notice of Adoption. Any other date is inconsistent with sound public policy and the Merger Commitments, resulting in prejudice to Nextel and rewarding AT&T for any delay that

[65] Kentucky PSC Order at 10-11, "[a]lthough Nextel can adopt the Sprint ICA pursuant to the merger commitments, as discussed below, Nextel can adopt the Sprint ICA pursuant to 47 U.S.C. Section 252(i), independently of the merger commitments, and, therefore, any objections pertaining to adoption under the merger commitments is moot."

[66] Georgia PSC Order at p. 7, "[t]he fact that the adoption may apply to the porting of agreements does not mean that it is restricted to the porting of agreements. Nextel's adoption complies with the Merger Condition."

[67] TRA April 21, 2008 Transcript Decision at p. 59, "Upon review of the plain language of Merger Commitment No. 1, I do not agree with AT&T that the commitment only applies to out-of-state agreements."

has occurred, regardless of the reason for delay.

AT&T Position: If the answer to Issue 1 or Issue 2B is "yes", then the effective date of Nextel's adoption of the Sprint ICA should be thirty (30) calendar days after the final party executes the adoption document.

The FCC stated in the *Local Competition Order* that "a carrier seeking interconnection, network elements or services … *shall be permitted to obtain its statutory rights on an expedited basis"* and "*the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated"* if requesting carriers must undergo a lengthy process before being able to utilize the terms of a previously approved agreement.[68] Further, the FCC left it "to state commissions in the first instance" to determine the procedures for making agreements available to requesting carriers on an expedited basis.[69]

At the June 3, 2008 oral argument, Staff explained the adoption process in Florida. When a notice of adoption is received, it takes Staff about 20 minutes to confirm that the adopted agreement is still available for adoption. If the underlying agreement is still available for adoption, the adoption is considered presumptively valid and effective upon receipt of the adoption notice. An administrative memo is prepared, but held for ninety days simply to provide ample opportunity for interested parties to raise exceptions, if any.[70]

AT&T engaged in a litigation strategy of serial objections that began with its June 28, 2007 Motion to Dismiss and continued with its latest "policy" objection that is contrary on its face to the overwhelming federal law. By its Issue 3 position statement, AT&T unabashedly seeks yet *further delay*, proposing an effective date "thirty (30)

[68] *Local Competition Order* at ¶ 1321 (emphasis added).
[69] Id.
[70] Nextel Dockets, June 3, 2008 Commission Agenda Conference Transcript at p. 12 line 23 – p. 13 line 13; p. 14 line 1 – p. 15 line 17.

calendar days after the final party executes the adoption document". Under a best-case scenario, assuming a mid-July oral argument followed by an adoption agreement executed by the last party in the third week of July, AT&T's proposed further 30-day delay results in the adoption being considered "effective" near the end of August. An effective date of more than 14 months after Nextel filed Notices of Adoption that are considered presumptively effective upon filing is absurd, and certainly does not constitute "expedited" treatment expected under federal law.

Recognizing Nextel's adoption as of the presumptive effective date of June 8, 2007 is consistent with: 1) federal law that calls for expedited treatment as the means to further the Act's policies of nondiscrimination and pro-competition; 2) *Nextel's due process rights* by Commission following its existing procedure with respect to adoption notices and the simple fact that AT&T has failed to prove any exception to the presumed effectiveness of Nextel's adoption; 3) the Commission's implementation of other AT&T's Merger Commitments in Florida – specifically, extension of the Sprint ICA as of the date of Sprint's request for the extension; 4) the concept of "true-up"; and, 5) the concept that AT&T should not benefit from delay in honoring either its statutory or Merger Commitment-related adoption obligations. Conversely, AT&T's effective date proposal makes a mockery of each and every one of the foregoing considerations without advancing a single nondiscrimination or pro-competition policy of the Act.

IV. CONCLUSION

Nextel is entitled to adopt the Sprint ICA as a matter of law. Therefore, for the reasons stated herein, Nextel respectfully requests that the Commission continue to exercise its jurisdiction over these matters, and acknowledge Nextel's adoptions,

effective June 8, 2007.

Respectfully submitted this 26th day of June, 2008.

/s/ Marsha E. Rule
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Attorneys for Nextel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail on June 26, 2008 to the following parties:

Lee Eng Tan, Esq.
Adam Teitzman, Esq.
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

E. Edenfield, Jr.
Tracy W. Hatch
Manuel Gurdian
c/o Greg Follensbee
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

/s/ Marsha E. Rule
Marsha E. Rule

Exhibit A

By and Between

BellSouth Telecommunications, Inc.

And

Sprint Communications Company Limited Partnership
Sprint Communications Company L.P.
Sprint Spectrum L.P.

33.3.16 procedures for coordination of local PIC changes and processing;

33.3.17 physical and network security concerns; and

33.3.18 such other matters specifically referenced in this Agreement that are to be agreed upon by the Implementation Team and/or contained in the Implementation Plan.

33.4 The Implementation Plan may be modified from time to time as deemed appropriate by both parties.

34. Filing of Agreement

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. BellSouth and Sprint shall use their best efforts to obtain approval of this Agreement by any regulatory body having jurisdiction over this Agreement and to make any required tariff modifications in their respective tariffs, if any. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith make such revisions as may reasonably be required to achieve approval. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, Sprint shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by Sprint.

For electronic filling purposes in the State of Louisiana, the CLEC Louisiana Certification Number is required and must be provided by Sprint prior to filing of the Agreement. The CLEC Louisiana Certification Number for Sprint CLEC is TSP 00078.

35. Application of Attachments

This Agreement was negotiated between BellSouth, Sprint CLEC and Sprint PCS for the purpose of creating a single interconnection arrangement between BellSouth and Sprint. At the date of the signing of this Agreement, Sprint PCS has elected not to opt into the terms and conditions of the following Attachments: 1 Resale, 5 Access to Numbers, 6 Ordering and Provisioning, 9 Performance Measurements, and 11 Disaster Recovery. Should Sprint PCS desire to operate under the terms and conditions of those Attachments, prior to the expirations of the term of this Agreement, Sprint PCS and BellSouth shall negotiate an amendment to this Agreement.

36. Entire Agreement

This Agreement and its Attachments, incorporated herein by reference, sets forth the entire Agreement and supersedes prior agreements between the Parties relating

Exhibit B

ACCESS TO NETWORK ELEMENTS AND OTHER SERVICES

1 Introduction

1.1 This Attachment is subject to the General Terms and Conditions of this Agreement and sets forth rates, terms and conditions for unbundled network elements (Network Elements) and combinations of Network Elements (Combinations) that BellSouth offers to Sprint for Sprint's provision of Telecommunications Services. BellSouth shall offer Sprint access to Network Elements and Combinations in accordance with its obligations under Section 251(c)(3) of the Act and the orders, rules and regulations promulgated thereunder by the FCC(47 C.F.R. Part 51) and the Commission as interpreted by a court of competent jurisdiction. Additionally, this Attachment sets forth the rates, terms and conditions for other facilities and services BellSouth makes available to Sprint (Other Services). Additionally, the provision of a particular Network Element or Other Service may require Sprint to purchase other Network Elements or services. In the event of a conflict between this Attachment and any other section or provision of this Agreement, the provisions of this Attachment shall control.

1.2 The rates for each Network Element, Combinations and Other Services are set forth in Exhibits A and B. Where a Commission has adopted rates for network elements or services provided pursuant to this Attachment as of the Effective Date of the Amendment, it is the intent of the Parties that the rate exhibits incorporated into this Agreement will be those Commission adopted rates. If no rate is identified in this Agreement, the rate will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties upon request by either Party. If Sprint purchases service(s) from a tariff, all terms and conditions and rates as set forth in such tariff shall apply. A one-month minimum billing period shall apply to all Network Elements, Combinations and Other Services.

1.3 Sprint may purchase and use Network Elements and Other Services from BellSouth in accordance with 47 C.F.R § 51.309.

1.4 The Parties shall comply with the requirements as set forth in the technical references within this Attachment 2.

1.5 Sprint shall not obtain a Network Element for the exclusive provision of mobile wireless services or interexchange services.

1.6 Conversion of Wholesale Services to Network Elements or Network Elements to Wholesale Services. Upon request, BellSouth shall convert a wholesale service, or group of wholesale services, to the equivalent Network Element or Combination that is available to Sprint pursuant to Section 251 of the Act and under this Agreement or convert a Network Element or Combination that is available to Sprint pursuant to Section 251 of the Act and under this Agreement to an

Exhibit C

2.2.1 Using one or more of the NIM's herein, the Parties will agree to a physical interconnection architecture plan for a specific geographic area. Sprint CLEC and BellSouth agree to interconnect their networks through existing and/or new interconnection facilities between Sprint CLEC's switch(es) and BellSouth End Office(s) and/or Tandem switch(es). The physical architecture plan will, at a minimum, include the location of Sprint's switch(es) and BellSouth's End Office switch(es) and/or Tandem switch(es) to be interconnected and the facilities that will connect the two networks. At the time of implementation in a given local exchange area the plan will be documented.

2.3 Wireless Network Interconnection

2.3.1 There are three appropriate methods of interconnecting facilities: (1) interconnection via purchase of facilities from either party by the other party; (2) physical collocation; and (3) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. For FCC licensed CMRS providers only, Type 1, Type 2A and Type 2B interconnection arrangements described in BellSouth's General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended, may be purchased pursuant to this Agreement provided, however, that such interconnection arrangements shall be provided at the rates, terms and conditions set forth in this Agreement. Rates and charges for both virtual and physical collocation may be provided in a separate collocation agreement. Rates for virtual collocation will be based on BellSouth's Interstate Access Services Tariff, FCC #1, Section 20 and/or BellSouth's Intrastate Access Services Tariff, Section E20. Rates for physical collocation will be negotiated on an individual case basis.

2.3.2 BellSouth and Sprint PCS will accept and provide any of the preceding methods of interconnection. Reciprocal connectivity shall be established to at least one BellSouth access tandem within every LATA Sprint PCS desires to serve, or Sprint PCS may elect to interconnect directly at an end office for interconnection to end users served by that end office. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to Bellcore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point after Sprint PCS implements SS7 capability within its own network. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. BellSouth and Sprint PCS facilities' shall provide the necessary on-hook, off-hook answer and disconnect supervision and shall hand off calling party number ID when technically feasible. In the event a party interconnects via the purchase of facilities and/or services from the other party, the appropriate intrastate tariff, as amended from time to time will apply. The cost of the

interconnection facilities between BellSouth and Sprint PCS switches within BellSouth's service area shall be shared on an equal basis. Upon mutual agreement by the parties to implement one-way trunking on a state-wide basis, each Party will be responsible for the cost of the one-way interconnection facilities associated with its originating traffic.

2.3.3 BellSouth and Sprint PCS will establish trunk groups from the interconnecting facilities of subsection 2.3.1 of this section such that each party provides a reciprocal of each trunk group established by the other party. Notwithstanding the foregoing, each party may construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency. BellSouth's treatment of Sprint PCS as to said charges shall be consistent with BellSouth treatment of other local exchange carriers for the same charges. Unless otherwise agreed, BellSouth will provide or bear the cost of all trunk groups for the delivery of Local Traffic from BellSouth to Sprint PCS's Mobile Telephone Switching Offices within BellSouth's service territory, and Sprint PCS will provide or bear the cost of all trunk groups for the delivery of traffic from Sprint PCS to each BellSouth access tandem and end office at which BellSouth and Sprint PCS interconnect.

2.3.4 BellSouth and Sprint PCS will use an auditable Wireless Percent Local Usage (PLU) factor as a method for determining whether wireless traffic is Local or Non-Local. The Wireless PLU factor will be used for wireless traffic delivered by either party for termination on the other party's network.

2.3.5 When BellSouth and Sprint PCS provide an access service connection between an Interexchange Carrier ("IXC") and each other, each party will provide its own access services to the IXC. If access charges are billed, each party will bill its own access service rates to the IXC.

2.3.6 The ordering and provision of all services purchased from BellSouth by Sprint PCS shall be as set forth in the BellSouth Telecommunications Wireless Customer Guide as that guide is amended by BellSouth from time to time during the term of this Agreement.

2.4 Physical Collocation Interconnection

2.4.1 When Sprint provides its own facilities or uses the facilities of a 3rd party to a BellSouth tandem or end office and wishes to place its own transport terminating equipment at that location, Sprint may interconnect using the provisions of physical collocation as set forth in Attachment 4 of this Agreement.

2.5 Virtual Collocation Interconnection

Exhibit D

BEFORE THE TENNESSEE REGULATORY AUTHORITY

EXCERPT OF TRANSCRIPT OF AUTHORITY CONFERENCE

Monday, April 21,2008

APPEARANCES:

TRA Docket Manager:	Ms. Sharla Dillon
For Sprint Nextel Corp:	Mr. Melvin Malone Mr. Joseph Chiarelli
For AT&T:	Mr. Guy Hicks Mr. John Tyler

Reported By:
Jennifer B. Carollo, RPR, CCR

DIRECTOR KYLE: Yeah. That would be great. Take notes; that's what I was going to --

CHAIRMAN ROBERSON: Okay.

DIRECTOR KYLE: All right.

CHAIRMAN ROBERSON: Let's see now.

DIRECTOR KYLE: I'm ready.

CHAIRMAN ROBERSON: I'll get copies of my motion. Here we go.

Consistent with the Authority decision in Docket 06-00132, I find that the Authority has jurisdiction over the merger commitments concurrent with the FCC. In addition, consistent with previous rulings in this docket, I find that the Authority has jurisdiction pursuant to Section 252(i).

Further I find that Nextel has met the burden in making a showing that there are no remaining genuine issues of material fact. AT&T has failed to meet the burden to establish the falsity of the undisputed relevant facts set out by Nextel. Although AT&T attempted to cure this deficiency at least in regard to Section 252(i) by it's late-filed affidavit, the granting of the motion to strike has resulted in AT&T's failing to provide factual evidence that it would incur greater costs in providing the Sprint interconnection agreement to Nextel than it does

in providing the agreement to the original parties.

Upon review of the plain language of Merger Commitment No. 1, I do not agree with AT&T that the commitment only applies to out-of-state agreements.

I further find that because the Sprint interconnection agreement has been amended to reflect changes of law, Merger Commitment 2 is not of particular relevance and has no bearing on this matter.

To me the bright line test is the Merger Commitment 1. However, I am not prepared to find that Nextel is entitled for summary judgment as a matter of law under either Section 252(i) or Merger Commitment 1. I am still unclear about how to interpret the language in Rule 51-809 and in Merger Commitment No. 1 regarding adoption of the entire effective agreement quote as it relates to the party of this agreement.

I would like for the parties to do some additional briefing and precise briefings on this issue. And to address or distinguish the agreements in docket -- TRA Docket 04-00311. That is the Alltel agreement that I mentioned earlier.

So, therefore, I would move to defer consideration of the motion for summary judgment until the May 19 Authority Conference and direct the hearing

Hargett, Kyle, and Roberson.

Docket No. 07-00161, Sprint Nextel Corporation; petition regarding notice of election of interconnection agreement by Nextel South Corp.; consider motion for summary judgment.

CHAIRMAN ROBERSON: I have a motion unless any of my panel want to put forward one.

DIRECTOR KYLE: No.

CHAIRMAN ROBERSON: The hearing officer's schedule for briefing of the additional issues did not provide for oral arguments but states that the parties should be available for questions, if any, from the panel.

So do my fellow directors have any questions for the parties before we deliberate?

DIRECTOR KYLE: No.

DIRECTOR HARGETT: None.

CHAIRMAN ROBERSON: I have a motion then. After review of the briefs and the record, I find that to adopt an entire agreement, a carrier does not have to avail nor have the legal right to utilize the entire agreement so long as the services and products purchased by the adopting party use the same rates, terms, and conditions as those contained in the adopted agreement. The prohibition in Rule 51-809

against limiting adoptions based on class of customer and type of service clearly indicates to me that a carrier does not have to be technically capable of using all the provisions in an agreement to adopt the entire agreement.

Further, I find that the express terms of the Sprint interconnection agreement allows both the use of selected portions and stand-alone use by a wireless carrier. Therefore, I have concluded that Nextel is entitled to summary judgment as a matter of law.

Now, based upon these findings as well as the findings of the panel made at the April 21st Authority conference, I move to grant Nextel's motion for summary judgment and approve Nextel's adoption of the Sprint interconnection agreement effective today. I would further move to direct the counsel for Nextel to submit a draft order to our general counsel as soon as possible, and I so move.

DIRECTOR KYLE: Yes. I second and vote yes.

DIRECTOR HARGETT: I'm going to vote yes as well, Director -- Chairman Roberson. If I could offer a couple more things. I didn't hear you mention this. I want to just for the record say a couple of

things.

I determined there were no general issues of material fact in dispute. I do, however, have some lingering concerns that my agreement with the decision we made last time was based on a record that was not as fully developed as I would have liked.

And also I did not hear you mention the Alltel interconnection agreement. Did you mention that in your motion?

CHAIRMAN ROBERSON: No, I didn't.

DIRECTOR HARGETT: In reviewing AT&T's current practices for the Alltel interconnection agreement, Docket 04-00311, I was also unable from the record to distinguish any differences with that instant docket and the docket relative to the issues presented before us. I vote yes.

CHAIRMAN ROBERSON: Okay. The vote is 3-0. Next matter.

MS. DILLON: Next we have Docket No. 07-00251, Atmos Energy Corporation; petition of Atmos Energy Corporation for a waiver to permit the limited use of polyethylene piping; hear and consider petition.

CHAIRMAN ROBERSON: The instant petition was filed on November the 13th, 2007 and

Exhibit E

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION BY NEXTEL WEST CORP. 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.	)))))))	CASE NO. 2007-00255

O R D E R

On December 21, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky")[1] filed a motion to reconsider the Commission's final Order entered on December 18, 2007. As grounds for its motion, AT&T Kentucky states that because the Commission's Order "not only denied the Motion to Dismiss filed by AT&T Kentucky. . .but also granted the adoption by Nextel West Corp. ["Nextel"][2] of the interconnection agreement. . .,"[3] the Order is procedurally flawed. AT&T Kentucky asserts that "[r]esolution of AT&T Kentucky's Motion to Dismiss was a threshold matter in this Docket, and did not address the underlying substantive issues."[4] AT&T argues

[1] AT&T Kentucky is an incumbent local exchange carrier ("ILEC") and provides local exchange service in large portions of Kentucky.

[2] Nextel is a commercial mobile radio service ("CMRS") and is licensed to provide wireless service in Kentucky

[3] AT&T Kentucky's Motion for Reconsideration at 1.

[4] Id.

that should the Commission not dismiss the case for lack of jurisdiction, "proper resolution requires a hearing on the merits and AT&T [sic] should not be precluded from bringing its case-in-chief to the Commission for final resolution."[5] On January 10, 2008, the Commission issued an Order stating that AT&T Kentucky's motion for reconsideration is granted for the purpose of allowing the Commission additional time in which to address the parties' arguments. As discussed below, the Commission finds that AT&T Kentucky's motion for reconsideration and its motion for a procedural schedule should be denied.

PROCEDURAL BACKGROUND

On June 21, 2007, Nextel filed with the Commission a notice of adoption of the interconnection agreement ("Sprint ICA") between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P. ("Sprint"). In the notice of adoption, Nextel asserted that it was exercising its right pursuant to Merger Commitments 1 and 2 of the Federal Communications Commission's ("FCC") merger proceeding[6] between AT&T and BellSouth as well as under 47 U.S.C. § 251(i). At the time Nextel filed its notice with the Commission, Sprint and AT&T Kentucky were in the middle of a dispute

[5] Id. at 2.

[6] In the Matter of AT&T Inc. and BellSouth Corporation Application to Transfer of Control, FCC WC Docket No. 06-74, Appendix F, Order dated March 26, 2007 ("Merger").

regarding the effective date of the Sprint ICA and the effect of the merger commitments on the effective date.[7]

On July 3, 2007, AT&T Kentucky filed with the Commission an objection to the notice of adoption of the interconnection agreement and moved the Commission to dismiss the complaint. As grounds for its motion to dismiss, AT&T Kentucky argued that: (1) the Commission did not have the authority to interpret and enforce the AT&T merger commitments; (2) Nextel was attempting to adopt an expired agreement and, therefore, did not satisfy the timing requirements of 47 C.F.R. § 59.801; and (3) the notice of adoption was premature because Nextel had failed to abide by the dispute resolutions provisions of its then existing interconnection agreement with AT&T Kentucky.

On September 18, 2007, while this case was still pending, the Commission entered an Order in Case No. 2007-00180. The primary issues in Case No. 2007-00180 were whether or not the Commission had the authority to interpret and apply merger commitments from the FCC's merger proceeding to disputes involving interconnection agreements in Kentucky and, if so, what was the effective date of the Sprint ICA. AT&T Kentucky argued that the Commission lacked the jurisdiction to enforce merger commitments (just as it does in the case at bar). The Commission found that it had the authority to resolve post-merger or merger-related disputes and then found that the Sprint ICA had an effective date of December 29, 2006.

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[7] Case No. 2007-00180, Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast (Ky. PSC Sep. 18, 2007).

On December 18, 2007, the Commission issued an Order in the case at bar. In the Order, the Commission, citing its rationale in Case No. 2007-00180, found that "[f]or reasons set forth in the Commission's September 18, 2007 Order in Case No. 2007-00180, the Commission finds that AT&T's motion must be denied."[8] The Commission found that, because of its decision in Case No 2007-00180, the Sprint ICA extended to December 29, 2009 and a reasonable time remained for Nextel to adopt the agreement. The Commission granted Nextel's request to adopt the Sprint ICA, denied AT&T Kentucky's motion to dismiss, and ordered the parties, within 20 days of the date of the Order, to submit their executed adoption of the Sprint ICA.

On December 21, 2007, AT&T Kentucky filed its motion for reconsideration. Nextel filed its response to AT&T Kentucky's motion for reconsideration on January 3, 2008. On January 10, 2008, the Commission entered an Order granting AT&T Kentucky's motion for reconsideration "for the purpose of allowing the Commission additional time in which to address the parties' arguments."[9] On January 24, 2008, AT&T Kentucky submitted a filing titled "AT&T Kentucky's Brief in Support of Request for Procedural Schedule and Hearing." This filing contains arguments virtually identical to those AT&T Kentucky raised in its motion for reconsideration except that, for the first time, AT&T Kentucky raised the argument that the adoption might result in higher costs in its provision of the agreement.

AT&T Kentucky, in both of its motions, argues that Nextel's attempted adoption does not comply with the merger commitments and, accordingly, the adoption should be

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[8] December 18, 2007 Order at 2 (footnote omitted).

[9] January 10, 2008 Order at 2.

denied. AT&T Kentucky asserts that Merger Commitment 1 applies only "when a carrier wants to take an interconnection agreement from one state and operate under that agreement in a different state. . . ."[10] AT&T Kentucky argues that because Nextel is not seeking to adopt an interconnection agreement from a state outside of Kentucky, such an adoption was not contemplated under the merger commitment and, therefore, the Commission should deny the adoption request. AT&T Kentucky, additionally, argues that Merger Commitment 2 merely requires AT&T Kentucky, under certain conditions, not to refuse an adoption request on the ground that the interconnection agreement had not been amended to reflect changes of law. AT&T Kentucky asserts that because its objection to Nextel's adoption is not based on any change of law issues, Merger Commitment 2 is not applicable to this dispute. Therefore, AT&T Kentucky argues, because neither of the merger commitments relied upon by Nextel for adoption of the Sprint ICA is applicable, the Commission should reconsider the adoption and deny it.

Nextel first argues that its adoption of the Sprint ICA is consistent with the merger commitments. Nextel argues that it was properly "porting" the Sprint ICA from other states when it invoked Merger Commitment 1 as one of the grounds for its adoption of the Sprint ICA. Nextel asserts that, plainly put, Merger Commitment 1 gives a requesting telecommunications carrier, such as Nextel, the right to adopt any interconnection agreement in AT&T Kentucky's 22-state service area.

Nextel asserts that Merger Commitments 1 and 2 apply because: (1) Nextel is a "requesting telecommunications carrier"; (2) Nextel has requested the Sprint ICA; (3) the Sprint ICA is an interconnection agreement entered into in "any state in the

[10] Id. at 4.

AT&T/BellSouth ILEC operating territory," and Sprint and AT&T Kentucky have entered into the same agreement in BellSouth's 9 "legacy" states; (4) the Sprint ICA already has state-specific pricing and performance plans incorporated into it; (5) there are no issues of technical feasibility; and (6) the Sprint ICA has already been amended to reflect changes in law. Nextel argues that it could just as easily have adopted a similar agreement from North Carolina and "ported" it over as it could have adopted the Sprint ICA in Kentucky.

AT&T Kentucky also argues that the adoption does not comply with 47 U.S.C. § 252(i). In support of this argument, AT&T Kentucky asserts that the Sprint ICA addresses a "unique mix of wireline and wireless items, and Nextel is a solely wireless carrier"[11] and that allowing Nextel to adopt the Sprint ICA would be contrary to FCC rulings and be "internally inconsistent."[12]

AT&T Kentucky first argues that Nextel, because it is only a wireless carrier, could not avail itself of the network elements provided within the Sprint ICA because when AT&T Kentucky negotiated the Sprint ICA, it was with both Sprint's wireless and local exchange entities. AT&T Kentucky asserts that because of this "unique" mix, the Sprint ICA "reflects the outcome of negotiated gives and takes that would not have been made if the agreement addressed only wireline service or wireless service."[13] AT&T Kentucky asserts that the terms and agreements of the Sprint ICA clearly apply only to an entity that provides both wireless and wireline service. AT&T Kentucky also asserts

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[11] Id. at 5.

[12] Id.

[13] Id. at 7.

that it rarely enters into an interconnection agreement addressing both wireline and wireless services.

AT&T Kentucky asserts that to allow Nextel to adopt the Sprint ICA would "disrupt the dynamics of the terms and conditions negotiated between AT&T Kentucky and the parties to the Sprint interconnection agreement and, in this case, AT&T Kentucky would lose the benefits of the bargain negotiated with those parties."[14] AT&T Kentucky, as an example, points to Attachment 3, Section 6.1.1 of the Sprint ICA, providing for "bill and keep" arrangements. AT&T Kentucky states that it never would enter a bill-and-keep arrangement "with a strictly wireless carrier such as Nextel."[15]

AT&T Kentucky also argues that granting the adoption would violate FCC rules. AT&T Kentucky lists one instance where it alleges the adoption would erroneously allow Nextel to avail itself of unbundled network elements ("UNEs"), something prohibited by the FCC to wireless carriers. AT&T Kentucky then states that this is "but one example of why granting the adoption would violate the FCC rules."[16] AT&T Kentucky asserts that there are various terms and conditions in the Sprint ICA that cannot be applied to Nextel, but it "will refrain from discussing each at length within this pleading."[17]

AT&T Kentucky argues that the agreement cannot be revised to address these issues because the FCC has prohibited the "pick and choose" adoptions of provisions of

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[14] Id. at 7-8.

[15] Id.

[16] Id. at 9.

[17] Id.

an agreement and requires a carrier to adopt "all or nothing" of the agreement.[18] AT&T Kentucky argues that allowing Nextel to adopt the Sprint ICA after revising the agreement to clarify what is applicable to Nextel would be contrary to the FCC's ruling.

In its Brief in Support of Request for Procedural Schedule and Hearing, AT&T Kentucky advances the arguments discussed above and advances one new argument. AT&T Kentucky now argues that if certain of its costs increase as a result of Nextel's adoption, the adoption would violate the FCC's rules.[19] AT&T Kentucky further asserts that the applicable regulation, 47 C.F.R. § 51.809(b), requires AT&T Kentucky to have "an opportunity to 'prove'"[20] that the adoption would result in higher costs to it and, therefore, the Commission should schedule a hearing to do just that.

Nextel claims that AT&T Kentucky's attempt to prevent the adoption of the Sprint ICA is a discriminatory practice that was expressly rejected by the FCC. Nextel argues that AT&T Kentucky cannot "avoid making an ICA available for adoption under the 'all-or-nothing' rule based on the inclusion of what the ILEC considers additional negotiated terms that cannot be 'used' by a subsequent adopting carrier."[21] Nextel argues that both 47 U.S.C. § 251(i) and 47 C.F.R. § 51.809 prohibit AT&T Kentucky from refusing to make available interconnection agreements that are in effect. Nextel argues that

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[18] See Second Report and Order, In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 19 F.C.C.R. 13494 at Section 1 (July 13, 2004) ("Second Report and Order").

[19] AT&T Kentucky's Brief in Support of Request for Procedural Schedule and Hearing at 8-9.

[20] Id. at 9.

[21] Nextel's Response to AT&T Kentucky's Motion for Reconsideration at 11.

47 C.F.R. § 51.809 specifically prohibits an ILEC from limiting the availability of the agreement "only to those requesting carriers serving a comparable class of subscribers or providing the same service. . . ."[22]

Nextel also asserts that adoption of the Sprint ICA is not barred by either 47 C.F.R. § 51.809(b)(1) or (2) because AT&T Kentucky did not initially argue that the costs of providing the services in the Sprint ICA to Nextel are higher than the cost of providing the same services to Sprint and still does not argue that the interconnection is technically infeasible.

Nextel argues that the FCC, in adopting the "all-or-nothing" rule, was attempting to protect carriers such as Nextel. Moreover, Nextel argues that the "all-or-nothing" rule specifically prohibits AT&T Kentucky's refusal to allow the agreement to be adopted. Additionally, under the "all-or-nothing" rule, it is Nextel, not AT&T Kentucky, that gets to decide what portions of the Sprint ICA are applicable.

Nextel notes that the Sprint ICA allows either Sprint entity to opt out of the agreement, while the other entity can still operate under the Sprint ICA. Nextel also notes that, referencing AT&T Kentucky's concern that Nextel could obtain UNEs under the Sprint ICA, the Sprint ICA specifically provides that Sprint "shall not obtain a Network Element for the exclusive provision of mobile wireless services. . . ."[23]

Nextel also argues that the Commission should strike AT&T Kentucky's brief in support of its hearing request because no procedure allows for the filing of such a document. Nextel argues that the brief is merely a rehash of AT&T Kentucky's previous

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[22] Id. at 12, quoting 47 C.F.R. § 51.809.

[23] Id. at 19, quoting 9th Amendment, Attachment 2, Section 1.5 of the Sprint ICA.

arguments and the only purpose for the filing is to interject "confusion and delay"[24] into this proceeding. Nextel also objects to AT&T Kentucky's filing of Additional Supplemental Authority, claiming that it is merely devised to create further delay.

DISCUSSION

The adoption of an existing interconnection agreement, under most circumstances, is a straightforward and quick proceeding. At the time Nextel filed its notice of adoption of the Sprint ICA, the status and effective date of the Sprint ICA were not known, and that impeded the typically automatic adoption of an interconnection. However, as discussed below and in the Commission's December 18, 2007 Order, upon resolution of the status of the Sprint ICA, any existing obstacles to its adoption were removed.

JURISDICTION OVER MERGER COMMITMENTS

The Commission found in its December 18, 2007 Order that by the reasoning in its previous decision in Case No. 2007-00180, the Commission had jurisdiction to interpret and apply merger commitments and adjudicate disputes arising out of the commitments. We find the reasoning in Case No. 2007-00180 still persuasive and incorporate by reference our reasoning in that case regarding our jurisdiction over disputes arising from the merger and merger commitments. Although Nextel can adopt the Sprint ICA pursuant to the merger commitments, as discussed below, Nextel can adopt the Sprint ICA pursuant to 47 U.S.C. § 252(i), independently of the merger commitments, and, therefore, any objections pertaining to adoption under the merger

[24] Nextel's Response and Motion to Strike AT&T Kentucky's Brief in Support of Request for Procedural Schedule and Hearing at 1.

commitments is moot. Moreover, because, as discussed below, we find that Nextel may adopt the agreement pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, and need not invoke the merger commitments, we find no reason to suspend this proceeding pending resolution of AT&T Kentucky's recent petition to the FCC requesting clarification regarding the merger commitments.[25]

THE SPRINT ICA IS ADOPTABLE UNDER 47 U.S.C. § 252(i) AND 47 C.F.R. § 51.809.

The Commission, as noted in its December 18, 2007 Order, had found in Case No. 2007-00180 that the Sprint ICA was extended by 3 years from December 29, 2006. When Nextel originally filed its petition for adoption on June 21, 2007, it relied, in part, on its rights "pursuant to the Federal Communications Commission approved Merger Commitments Nos. 1 and 2. . .and 47 U.S.C. § 252(i)."[26] At the time of the filing of the notice of adoption, however, the status of the Sprint ICA was unclear, as the Commission had not ruled on that matter in Case No. 2007-00180. The Commission has since resolved these issues, and the Sprint ICA is effective and adoptable under 47 U.S.C. § 252(i).

[25] AT&T ILECs' Petition for Declaratory Ruling That Sprint Nextel Corporation, Its Affiliates, and Other Requesting Carriers May Not Impose a Bill-and-Keep Arrangement of a Facility Pricing Arrangement Under the Commitments Approved By the Commission in Approving the AT&T-BellSouth Merger. WC Docket No. _____. (Filed February 5, 2008.) Similarly, we find AT&T Kentucky's February 13, 2008 letter to the Commission's Executive Director to be equally unpersuasive. In the letter, AT&T Kentucky urges the Commission to hold this proceeding in abeyance pending the outcome of its petition to the FCC. As discussed herein, 47 U.S.C. § 251(i) provides an independent basis for the adoption of the Agreement, and the FCC's ruling will not affect our decision.

[26] Nextel's Notice of Adoption of Interconnection Agreement at 1.

47 U.S.C. § 252(i) and 47 C.F.R. § 51.809 govern a telecommunications carrier's adoption of an existing interconnection agreement between an ILEC and a non-ILEC.

47 U.S.C. § 252(i) provides:

> A local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

47 C.F.R. § 51.809 provides that:

> (a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e. local, access, or interexchange) as the original party to the agreement.
>
> (b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:
>
> > 1) the costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or
> >
> > 2) the provision of a particular agreement to the requesting carrier is not technically feasible.
>
> (c) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.

The method for adopting an existing interconnection agreement is simple and expedient. 47 C.F.R. § 51.809 contains the only prohibitions by which an ILEC could refuse adoption of an interconnection agreement. Here, AT&T Kentucky did not allege (until its brief in support of request for a procedural schedule) that providing the Sprint ICA to Nextel would cost it more than offering the same ICA to Sprint, nor did AT&T Kentucky allege that providing the Sprint ICA to Nextel is technically infeasible. AT&T Kentucky argues that providing the Sprint ICA to Nextel results in AT&T Kentucky not being able to negotiate possible higher prices for services than it charges to Sprint Wireless. However, this argument is a far cry from alleging that providing the Sprint ICA to Nextel would cost it more than providing it to Sprint Wireless. In fact, AT&T Kentucky's argument is antithetical to the very purpose of 47 U.S.C. § 252(i), which is to allow telecommunications providers to enter into interconnection agreements on the same footing as each other. The FCC, in promulgating the "all-or-nothing" rule, clearly recognized that it would prohibit this type of discrimination:

> We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain benefit of the incumbent LEC's discriminatory bargain. Because the agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.[27]

[27] Second Report and Order at ¶ 19.

By allowing this sort of adoption, the FCC and the 1996 Telecommunications Act ensure that an ILEC, such as AT&T Kentucky, cannot play favorites in a market and determine which businesses succeed and which fail by offering more advantageous terms to one party and lesser terms to another. If AT&T Kentucky can prevent Nextel, or any requesting carrier, from adopting the Sprint ICA or any other interconnection agreement by simply asserting that some of the provisions of the interconnection agreement cannot apply to the requesting carrier, then the very purpose of the all-or-nothing rule is thwarted. Most requesting carriers' business plans or structures differ from one another, and, therefore, it would be difficult to comprehend a situation in which any requesting carrier could adopt an interconnection agreement and have all the provisions apply to it. If AT&T Kentucky's argument is to be believed, then it would result in changing almost every adoption proceeding into an arbitration.

Because the Sprint ICA is effective, Nextel's rights under 47 U.S.C. § 251(i) and 47 C.F.R § 51.809 are sufficient, by themselves, to allow it to adopt the Sprint ICA. If Nextel had not filed its notice of adoption on June 21, 2007, and were to file it today, it would only have to invoke its rights under 47 U.S.C. § 252(i) to adopt the agreement and need not rely on any merger commitments.

AT&T Kentucky states that it has been denied its opportunity to present its substantive case, but does not give a very detailed discussion of what evidence it would present at hearing, nor how the evidence would prove to the Commission that the Sprint ICA would not have to be made available to Nextel for adoption. However, as discussed above, it can only refuse to make available an interconnection agreement if it can convince the Commission that one of two situations exists. Prior to its January 24,

2008 filing, AT&T Kentucky did not allege that it intended to attempt to prove that either of those two situations exist and, therefore, no evidence it presented, or even offered to present prior to January 24, 2008, could have lead the Commission to deny the adoption.

47 C.F.R. § 51.809(a) requires that an incumbent LEC shall make available "without unreasonable delay" any agreement to a requesting carrier. Although no law is directly on point regarding what constitutes an "unreasonable delay" in this context, we find that raising an objection pursuant to 47 C.F.R. § 51.809 to a petition for adoption of an interconnection agreement over 7 months after the petition was filed is unreasonable delay. AT&T Kentucky raised numerous objections to the petition for adoption in both its original objection to the petition, filed on July 3, 2007, and in its petition for reconsideration filed on December 24, 2007. As discussed above, however, an ILEC can only deny adoption of an interconnection agreement if an ILEC can prove one of two situations exists. AT&T Kentucky, until the eleventh hour, did not even raise the specter of any such objections, objecting only on grounds not contemplated in 47 C.F.R. § 51.809(b).

47 C.F.R. § 51.809(b)(1) does provide that an ILEC can refuse the adoption of an interconnection agreement if it can prove to the state commission that the cost of providing the interconnection to the requesting carrier exceeds that of providing it to the original negotiating carrier. This right of refusal cannot be limitless; otherwise, an ILEC could seek to get out from under any interconnection agreement at any time a cost allegedly rises, even after the agreement has been adopted. Here, AT&T Kentucky not only files an untimely request arguing about potential raised costs, but its supposition

that entering into the interconnection agreement would produce higher costs is merely hypothetical. AT&T Kentucky has raised no colorable argument or proof for the existence of different costs.

To the Commission's knowledge, since the enactment of the 1996 Telecommunications Act, no ILEC has objected to the adoption in Kentucky of an interconnection agreement based on the exception found in 47 C.F.R. § 51.809(b)(1). Therefore, AT&T Kentucky's objection is a matter of first impression to the Commission and is a matter of uncharted procedural territory. However, we find that the objection is raised untimely, and moreover, even if it were timely raised, it is not specific enough to establish a colorable claim, much less warrant a hearing. If the Commission were to grant AT&T Kentucky's request for a hearing,[28] at the minimum this proceeding would drag out for another 3 months, which would result in an application for an adoption of an interconnection agreement taking over 10 months to resolve. This would be an unreasonable result. In the future, AT&T Kentucky, or any carrier raising an objection under 47 C.F.R. § 51.809(b) or (c) should raise such objections ex ante, upon the filing of the notice of adoption, and not 7 months after the initial filing. Conceivably, if this is not done, a carrier could continue to raise objections at any time during an adoption

[28] Requests for a hearing made pursuant to 807 KAR 5:001, Section 4(1)(b) are not granted automatically. 807 KAR 5:001, Section 4(1) provides that "[e]xcept as otherwise determined in specific cases," the Commission shall grant a hearing upon application for a hearing or in the event that a defendant has not satisfied a complaint. AT&T Kentucky's request for a hearing is one of the "specific cases" in which the Commission has determined that a hearing should not be held.

proceeding, delaying the adoption until the adoption could be denied pursuant to 47 C.F.R. § 51.809(c).[29]

CONCLUSION

The adoption of an interconnection agreement pursuant to 47 U.S.C. § 252(i) generally is a straightforward procedure and should occur without much delay unless adoption of the agreement falls under the exceptions in 47 C.F.R. § 51.809. These exceptions must be raised as early as practicably possible in a contested proceeding. The practical effect of AT&T Kentucky's untimely and incomplete objections is to attempt to turn a simple adoption proceeding into an arbitration proceeding, possibly exceeding over a year in length, a result that could have been avoided had AT&T Kentucky raised its objections when the petition was filed. Such a result is not only unfair, but it is also prohibited, as it is provided for in neither law nor regulation. Had AT&T Kentucky raised its objections under 47 C.F.R. § 51.809 when the petition was filed, the Commission could have addressed all objections to the petition at the same time and this proceeding would already be complete.

IT IS THEREFORE ORDERED that:

1. AT&T Kentucky's Motion for Reconsideration is denied.

2. AT&T Kentucky's Request for Procedural Schedule and Hearing is denied.

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[29] We do not agree with Nextel's assertion in its response to AT&T Kentucky's supplemental submission that AT&T Kentucky's petition with the FCC is made in bad faith or to cause intentional delay in resolution of this proceeding. However, such a filing is a clear example of how an ILEC could continually raise objections to an adoption, stringing the proceeding out for months, if not years. Any objections must be raised ex ante, not post hoc.

3. Within 20 days of the date of this Order, Nextel and AT&T Kentucky shall submit their executed adoption of the Sprint ICA.

4. This is a final and appealable Order.

Done at Frankfort, Kentucky, this 18th day of February, 2008.

By the Commission

ATTEST:

Executive Director

Exhibit F

Georgia Public Service Commission

COMMISSIONERS:

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In Re: Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement between Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T Georgia, d/b/a AT&T Southeast

In Re: Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement between Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T Georgia, d/b/a AT&T Southeast

ORDER GRANTING ADOPTION OF INTERCONNECTION AGREEMENTS

This matter comes before the Georgia Public Service Commission ("Commission") upon the Petitions of NPCR, Inc. d/b/a Nextel Partners and Nextel South Corp. (collectively referred to herein as "Nextel") to adopt the interconnection agreement between Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS (jointly, "Sprint") and BellSouth Telecommunications, Inc. d/b/a AT&T Georgia, d/b/a AT&T Southeast ("AT&T") (the agreement shall be referred to herein as the "Sprint ICA" or Sprint agreement").

I. Background

A. Nextel Petitions

On June 21, 2007, NPCR, Inc. d/b/a Nextel Partners filed its Petition for Approval of Adoption of the Interconnection Agreement between Sprint and AT&T. On the same date, Nextel South Corp. filed an identical petition. (Both Petitions for Approval of Adoption of the Interconnection Agreement between Sprint and AT&T shall be referred to jointly as the "Petitions").

In the Petitions, Nextel requests that the Georgia Public Service Commission ("Commission") approve its adoption of the agreement between Sprint and AT&T and require AT&T to execute the adoption agreement attached to the Petitions. (Petitions, p. 2). Nextel relies in part upon the following commitments made by AT&T, Inc. and BellSouth Corp. to the Federal Communications Commission ("FCC") in the merger of the two companies:

> Merger Commitment No. 1:
>
> The AT&T/ BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/ BellSouth ILEC entered into in any state in the AT&T/ BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/ BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

FCC Order at 147, appendix F

> Merger Commitment No. 2:
>
> The AT&T/ BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

Id. at 149, appendix F

Nextel also points out that Section 252(i) of the Telecommunications Act of 1996 provides:

> A local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunication carrier upon the same terms and conditions as those provided in the agreement.

Finally, Nextel states that, in its arbitration with Sprint, AT&T admitted:

> Soon after the FCC approved Merger Commitments were publicly announced on December 29, 2006, the Parties [Sprint and AT&T] considered the impact of the Merger Commitments upon their pending Interconnection Agreement negotiations. AT&T Georgia acknowledged that, pursuant to Interconnection Merger Commitment No. 4, Sprint can extend its current Interconnection Agreement for three years. The Parties disagree, however, regarding the commencement date for such three-year extension.

B. AT&T Motion to Dismiss and, in the Alternative, Answer

On July 16, 2007, AT&T filed a Motion to Dismiss and, in the Alternative, Answer in both dockets ("Motion to Dismiss"). On July 17, 2007, AT&T filed exhibits to its Motions to Dismiss that were inadvertently omitted from the July 16 filing. AT&T argues that the Petitions should be dismissed because the Commission does not have the authority to interpret the merger conditions. AT&T asserts that the FCC stated in its order that, "[for] the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter." *FCC Order at 147, appendix F.* AT&T further argues that Nextel did not file the Petitions within "a reasonable period of time" after the original contract is approved as required by 47 C.F.R. §51.809(c). Essentially, AT&T asserts that the agreement is expired and is therefore not available for adoption, despite the fact that AT&T and Sprint are currently operating under the agreement on a month to month basis.

C. Nextel Response to Motions to Dismiss

Nextel filed its Responses to both Motions on August 7, 2007. In response to AT&T's suggestion that the adoption request was filed after the expiration date of the agreement, Nextel claimed that whether AT&T is correct that the Sprint agreement can only be extended to three years from the original expiration date, or, as Sprint argued, that the agreement should be extended from the date of the FCC's merger order, the earliest possible expiration date of the Sprint Agreement would be December 31, 2007. Nextel points out that the Commission established a "bright line" test in Docket No. 18808 when it determined that an agreement with six months or more remaining in its term was suitable for adoption. Nextel filed its Petitions on June 21, 2007, which is slightly more than six months from the December 31, 2007 expiration date that Nextel alleges is the earliest possible expiration date.

D. Commission's September 12, 2007 Order on Petitions

In its September 12, 2007 Order on Petitions, the Commission adopted Staff's recommendation to hold the Petitions filed by NPCR, Inc. d/b/a Nextel Partners and Nextel South Corp. in abeyance until the Commission resolved the issues in the arbitration between AT&T and Sprint. The Commission adopted the Staff's recommendation that stated as follows:

> It is undisputed that AT&T and Sprint are operating under an agreement on a month to month basis. Nextel asks the Commission to approve its adoption of the agreement because there were six months remaining in the agreement as of the time of its request. However, while it is true that the agreement may be extended for three years from the expiration date of the agreement, the agreement has not yet been amended to extend the agreement. Thus, Nextel's application of the Commission's "bright line" test fails because the agreement has at most one month remaining at any

given time in its term until it is amended by the parties. If, at the resolution of the Sprint/ AT&T arbitration, the Commission determines that the parties should extend the contract to December 31, 2007 or beyond, the Commission can approve Nextel's request, once the Sprint contract has been amended.

(Order on Petitions, p. 3). At the August 30, 2007, Telecommunications Committee, AT&T stated that it was fully supportive of Staff's approach to an abeyance in these dockets

E. Commission Order Granting Joint Motion in Docket No. 25064

On January 8, 2008, in Docket No. 25064, the Commission issued its Order Granting Joint Motion, in which it approved the amendment to the interconnection agreement between AT&T and Sprint. The Joint Motion, submitted by AT&T and Sprint, stated that the amendment provides the relief requested by Sprint in its Petition, i.e., to extend the term of the Parties' existing Interconnection Agreement for a period of three (3) years from the date of Sprint's March 20, 2007 request for such extension. Given that the Commission had been holding the Nextel Petitions in abeyance until resolution of the dispute between AT&T and Sprint, Staff had placed Nextel's Petitions on the Telecommunications Committee for consideration by the Commission.

F. AT&T's Expedited Motion to Modify Telecommunications Committee Schedule and, in the Alternative, for Procedural Schedule

On January 8, 2008, in response to the Nextel Petitions being placed on the Telecommunications Committee Agenda, AT&T filed an Expedited Motion to Modify Telecommunications Committee Schedule and, in the Alternative, for Procedural Schedule ("Expedited Motion"). In its Expedited Motion, AT&T raised three arguments.

First, AT&T argued that Nextel's adoption does not comply with the merger commitments because the first merger condition only applies when a carrier is porting an agreement from one state to another. Prior to the merger condition, carriers did not have the right to port an agreement from one state to another. AT&T stated that the merger condition does not apply to Nextel's request because Nextel is not seeking to port an agreement, but instead, it is attempting to use the merger commitment to adopt the AT&T/Sprint agreement.

Second, AT&T argued that Nextel's adoption does not comply with Section 252(i). AT&T stated that the Sprint ICA addresses a unique mix of wireline and wireless items and Nextel is solely a wireless provider. Nextel cannot avail itself of all of the interconnection services and network elements provided within the Sprint agreement. The terms and conditions of the Sprint interconnection apply only when the non-ILEC parties to the agreement are providing both wireline and wireless services. Nextel does not provide both services in Georgia. Allowing Nextel to adopt the Sprint interconnection agreement would disrupt the dynamics of the terms and conditions negotiated between AT&T Georgia and the parties to the Sprint interconnection agreement, and AT&T would lose the benefits of the bargain negotiated with

availability of an interconnection agreement to carriers that serve a comparable class of subscribers or provide the same service. See 47 C.F.R. § 51.809.

Finally, Nextel contends that AT&T's arguments erroneously construe the Sprint interconnection agreement to require that presence of both a wireline and wireless entity. Nextel argues that the agreement stays in full force and effect, even if one of the Sprint entities were no longer a party.

H. AT&T's Submission of Supplemental Authority

On February 8, 2008, AT&T informed the Commission that it petitioned the FCC for a determination on the issues presented in these dockets. On February 13, 2008, AT&T requested that the Commission refrain from ruling on the merits of these dockets until after the FCC issues an order in response to its petition.

I. Order Denying Motion to Dismiss and Procedural and Scheduling Order

On March 4, 2008, the Commission issued an Order Denying Motion to Dismiss and Procedural and Scheduling Order. First, the Commission addressed the two grounds raised in AT&T's Motion to Dismiss. The Commission adopted Staff's recommendation that it has the authority to rule on Nextel's petitions. The FCC made clear that state commissions did not lose any jurisdiction as a result of the Merger Order. State commissions have previously ruled upon requests to adopt the terms and conditions of another carrier's interconnection agreement. The Merger Conditions enhanced adoption rights, but the FCC did not demonstrate any intent to curtail state commission jurisdiction on this issue. To the contrary, the FCC expressly preserved state commission jurisdiction.

The Merger Order states that:

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

FCC BellSouth Merger Order at 147, APPENDIX F. The Commission rejected AT&T's argument that the Commission lacked the authority to rule upon Nextel's petitions.

As discussed above, the second ground raised by AT&T in its Motion to Dismiss was that Nextel did not file the Petitions within "a reasonable period of time" after the original contract is approved as required by 47 C.F.R. §51.809(c). Based on Staff's recommendation, the Commission rejected this argument as well. In Docket No. 18808, the Commission established a "bright line" test that an agreement with six months or more remaining in its term was suitable for adoption. Since the original pleadings were filed in this case, AT&T and Sprint extended their agreement for three years. There can no longer be any contention that the agreement is expired. The agreement is not scheduled to expire for a period of time well in excess of the six

months established as the standard by the Commission. Nextel has adopted the agreement within a reasonable time.

The Commission then addressed the arguments raised for the first time in AT&T's Expedited Motion. First, the Commission found that the Nextel adoption complied with the Merger Conditions. Merger Condition 1 states:

> The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

The Commission found that Nextel is a "requesting telecommunications carrier." Nextel has requested the entire Sprint ICA. The Sprint ICA is an effective agreement entered into in AT&T's 22-state ILEC operating territory. The Sprint ICA has state-specific pricing and performance plans incorporated into it for each state covered by the agreement. There is no issue of technical feasibility. The Sprint ICA has been amended to reflect changes in law. The fact that the adoption may apply to the porting of agreements does not mean that it is restricted to the porting of agreements. Nextel's adoption complies with the Merger Condition.

In response to the remaining arguments raised in AT&T's Expedited Motion, the Commission determined that an ILEC cannot refuse a requesting carrier's adoption of an interconnection agreement based on the type of service the requesting provider offers; however, an ILEC can refuse the adoption if it can demonstrate that the costs of providing the agreement to the requesting carrier are greater than the costs to provide the agreement to the telecommunications carrier that originally negotiated the agreement. 47 C.F.R. 51.809(b). In accordance with this determination, the Commission scheduled an evidentiary hearing to determine whether the costs to AT&T of providing the interconnection agreement to Nextel are greater than the costs to AT&T of providing the agreement to Sprint. The Commission found that examination of this issue would require a determination as to what constitutes greater costs to the provider as contemplated by 47 C.F.R. § 51.807(b). The Commission scheduled a hearing for March 19, 2008.

Finally, the Commission denied AT&T's request that the Commission hold this matter in abeyance until the FCC rules on AT&T's petition regarding the issues involved in these dockets. There is no date by which the FCC must rule on AT&T's petition. It is not fair to Nextel to hold its petitions in abeyance indefinitely.

J. AT&T's Withdrawal of Request for a Hearing

On March 14, 2008, after the pre-filing of testimony, AT&T withdrew its request for a hearing in these dockets. In its request AT&T requested that the Commission reconsider its March 4, 2008 Order Denying Motion to Dismiss and Procedural and Scheduling Order, or clarify its decisions regarding AT&T's arguments set forth in its January 8, 2008 Expedited Motion. AT&T stated that it read the Commission's March 4, 2008 Order as "omitting a decision on all of the arguments raised" in its Expedited Motion.

In response to AT&T's withdrawal of its request, the Commission cancelled the hearings scheduled to commence on March 19, 2008.

II. Discussion

Staff recommended that the Commission grant Nextel's adoption of the Sprint interconnection agreements. The Commission finds Staff's recommendation to be reasonable and lawful. The Commission adopts the Staff's recommendation for the reasons set forth herein.

First, in initially placing the matter in abeyance, Staff recommended that "If, at the resolution of the Sprint/ AT&T arbitration, the Commission determines that the parties should extend the contract to December 31, 2007 or beyond, the Commission can approve Nextel's request, once the Sprint contract has been amended." (Order on Petitions, p. 2). At the August 30, 2008, Telecommunications Committee, AT&T stated that it fully supported Staff's approach to an abeyance in these dockets and characterized the approach as well-reasoned. Given that Staff's approach included approval of the adoptions should the Sprint contract be amended, AT&T's full support of that approach indicated that AT&T would not object to the adoption under such circumstances. The Commission adopted Staff's recommendation, and the Sprint interconnection agreement has subsequently been amended to provide for a termination date in March, 2010. In sum, under the terms of the Staff's recommendation that was endorsed by AT&T and adopted by the Commission, the Nextel adoptions should be approved.

Second, AT&T has not shown that the Commission's denial of its Motion to Dismiss warrants reconsideration. In its Motion to Dismiss, AT&T argued that state commissions did not have the authority to enforce conditions of the Merger, and that Nextel did not file the Petitions within "a reasonable period of time" after the original contract is approved as required by 47 C.F.R. §51.809(c). Neither of these arguments constitutes grounds for dismissal. As discussed in Section I.I. above, the Merger Order expressly preserved state commission jurisdiction.

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

FCC BellSouth Merger Order at 147, APPENDIX F. The Merger Order did not strip state commissions of their authority to rule upon requests to adopt the terms and conditions of another carrier's interconnection agreement.

AT&T's argument that Nextel's adoption of the Sprint ICA was not timely must be rejected in light of the amendment to the Sprint ICA and the Commission's bright line test for the adoption of agreements set forth in Docket No. 18808. Nextel's adoption satisfies the bright line test because there are more than six months remaining in the interconnection agreement that Nextel seeks to adopt.

Third, the objections raised in AT&T's Expedited Motion were not raised in AT&T's earlier pleadings in these dockets. ILECs are obligated to make agreements available in their entirety to requesting carriers without delay. 47 C.F.R. § 51.809(b). By excluding these objections from its earlier pleading, AT&T has delayed resolution of these dockets. The

arguments raised by AT&T in its Expedited Motion could have been raised in its Motion to Dismiss. Instead, AT&T did not present its additional reasons for opposing Nextel's adoption until months after its Motion to Dismiss was filed. The arguments raised in AT&T's Expedited Motion have been considered, but the delay caused by staggering the presentation of the arguments in opposition to the adoption of the Sprint agreements is contrary to the applicable FCC rule.

Fourth, the Commission correctly determined that the Nextel adoption complied with the Merger Conditions. As discussed above, there is nothing about the Nextel adoption that is in any way inconsistent with the plain language of the Merger Condition. There is no basis for AT&T's construction of the Commission's March 4, 2008 Order that the Commission did not address this issue. The Order explains why the Nextel adoption complies with Merger Condition 1. The Order includes the following discussion:

> Nextel is a "requesting telecommunications carrier." Nextel has requested the entire Sprint ICA. The Sprint ICA is an effective agreement entered into in AT&T's 22-state ILEC operating territory. The Sprint ICA has state-specific pricing and performance plans incorporated into it for each state covered by the agreement. There is no issue of technical feasibility. The Sprint ICA has been amended to reflect changes in law. The fact that the adoption may apply to the porting of agreements does not mean that it is restricted to the porting of agreements. Nextel's adoption complies with the Merger commitment.
>
> The Commission finds Staff's recommendation reasonable. For the reasons identified by the Staff and set forth above, the Commission concludes that Nextel's proposed adoption complies with the merger condition.

(Order Denying Motion to Dismiss and Procedural and Scheduling Order, p. 5).

Fifth, the fact that Nextel offers wireless service exclusively is not a sufficient basis upon which to refuse a request for adoption. The FCC has stated the following:

> We conclude, however, that section 252(i) does not permit LECs to limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement. In our view, the class of customers, or the type of service provided by a carrier, does not necessarily bear a direct relationship with the costs incurred by the LEC to interconnect with that carrier or on whether interconnection is technically feasible. Accordingly, we conclude that an interpretation of section 252(i) that attempts to limit availability by class of customer served or type of service provided would be at odds with the language and structure of the statute, which contains no such limitation.

Local Competition Order[2], ¶ 1318. Refusal of the Nextel adoption on the grounds that it provides exclusively wireless service, while the Sprint ICA involves a mixture of wireline and wireless, would violate the terms of the Local Competition Order because it would be limiting the availability of the ICA on the grounds that Nextel did not provide the same service. Moreover, AT&T's argument that adoption would suggest that Nextel could obtain UNEs is inconsistent with the terms of the Sprint ICA. The agreement prohibits the purchase of UNEs for the exclusive provision of wireless services. (Sprint ICA, Exhibit 1, Attachment 2, p. 3, § 1.5). Adoption of the agreement would not suggest that Nextel could obtain UNEs.

Sixth, 47 C.F.R. § 51.809(b) identifies the exceptions to the ILEC's obligation to permit adoption of an agreement. 47 C.F.R. § 51.809(a) provides for the obligation of incumbent local exchange carriers to make interconnection agreements available in their entirety to requesting carriers. 47 C.F.R. § 51.809(b) states:

> (b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:
>
> (1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or
>
> (2) The provision of a particular agreement to the requesting carrier is not technically feasible.

In its Order Denying Motion to Dismiss and Procedural and Scheduling Order, the Commission scheduled evidentiary hearings for the purpose of determining whether the costs to AT&T of providing the interconnection agreement to Nextel are greater than the costs to AT&T of providing the agreement to Sprint. The Commission stated that it would be necessary to determine what constitutes greater costs to the provider as contemplated by FCC Rule 51.807(b). AT&T subsequently withdrew its request for an evidentiary hearing. In response, the Commission cancelled the hearing. There has been no showing that the costs of providing the agreement to Nextel are greater than the costs of providing the agreement to Sprint.

Seventh, the Commission decision not to hold this matter in abeyance until after the FCC rules on AT&T's Petition is sound. There is no assurance that the FCC will rule upon the petition in a reasonable time. The Commission reasonably determined that it would not be fair to Nextel to hold the Petitions in abeyance for an indefinite period of time.

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[2] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd, 15499, 16139 at ¶ 1315 (1996) ("Local Competition Order").

For all of the above reasons, the Commission adopts the Staff's recommendation to approve the Nextel's adoption of the Sprint agreements.

* * * * *

WHEREFORE IT IS ORDERED, that the Commission hereby grants Nextel's adoption of the Sprint interconnection agreements.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 20th day of May, 2008.

Reece McAlister
Executive Secretary

5-28-08
Date

Chuck Eaton
Chairman

5/28/08
Date

Exhibit G

PLACE: Dobbs Building, Raleigh, North Carolina

DATE: Tuesday, July 31, 2007

DOCKET NO.: P-294, Sub 31

TIME IN SESSION: 9:30 a.m. - 12:23 p.m.

BEFORE: Commissioner William T. Culpepper, III, Presiding
Commissioner Sam J. Ervin, IV
Commissioner Lorinzo L. Joyner

IN THE MATTER OF

Sprint Communications Company, L.P. Petition of Sprint Communications for Arbitration with BellSouth Telecommunications, d/b/a AT&T North Carolina, d/b/a AT&T Southeast.

A P P E A R A N C E S:

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whatever the merger conditions were.

Two questions: First, are you interpreting this sentence to be an assertion of exclusive jurisdiction by the FCC so that the predicate for your argument that the FCC has exclusive authority over this dispute comes from this language? And if you are making that assertion, what about this language is an assertion of exclusive FCC jurisdiction?

MR. TYLER: Well, Commissioner, it's not simply the language that appears in Appendix F. It's also case law we have submitted to you in briefing that we will include as well.

COMMISSIONER ERVIN: Maybe I missed it when I read through it, but I didn't see any citation from AT&T that indicated that the FCC had sole authority to enforce merger conditions. Maybe I missed something. And if you cite it for me again, so I can go look at it.

MR. TYLER: I think one of the citations, Commissioner, is a Supreme Court case from 1959.

COMMISSIONER ERVIN: I did see that one. And that one, at least as I read it, didn't say that -- you did the parenthetical. I didn't go read the case, but that is the Service Storage Company vs. Virginia?

MR. TYLER: That's correct, sir.

COMMISSIONER ERVIN: It says it held that the interpretation of an agency's Order pursuant to the agency's established regulatory party falls within the agency's jurisdiction, which as least as I read that language means that if you issue an Order, you've got the authority to interpret it. However, is there a specific language from that case that says that agency and only that agency can interpret that language?

MR. TYLER: No, Commissioner, you won't find a statement that says that.

COMMISSIONER ERVIN: Okay. I think your argument in effect, "they", they the FCC are then the only entity who has the authority to interpret this merger condition. That's your argument. And I'm trying to understand where that argument comes from. I didn't think it came from that case. So I was first going to go to the language that I directed your attention to from Attachment F to ask you if you interpreted that language to be a statement exclusive to FCC jurisdiction?

MR. TYLER: That, Commissioner, is part of it. But I believe we have to look at the totality of the argument that AT&T is crafting. I don't believe that --

COMMISSIONER ERVIN: Maybe I'm going at it wrong. I'm trying to break it down in piece parts to see

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of the Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing "Interconnection Agreement by and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001	)	Docket No. 070368-TP
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	)	Docket No. 070369-TP Filed: June 26, 2008

NEXTEL'S REQUEST FOR ORAL ARGUMENT

NPCR, Inc., d/b/a Nextel Partners, and Nextel South Corp. (collectively, "Nextel") pursuant to Rule 25-22.0022, Florida Administrative Code, and §120.57(2), Florida Statutes, hereby requests the Commission to grant oral argument on Nextel's Legal Brief, filed this day in the above-styled dockets in compliance with Order No. PSC-08-0415-FOF-TP and Order No. PSC-08-0402-PCO-TP. In support of its request, Nextel respectfully states as follows:

1. On June 3, 2008, the Commission denied Nextel's Motion for Summary Final Order and set this matter for a proceeding under §120.57(2), Florida Statutes, with issues to be identified and briefed by the parties. See Order No. PSC-08-0415-FOF-TP.

Thereafter, the Prehearing Officer directed the parties to file legal briefs on June 26, 2008. See Order No. PSC-08-0402-PCO-TP.

2. Contemporaneously with this Motion, Nextel has filed its legal brief addressing the following stipulated issues:

> 1. Can Nextel as a wireless entity avail itself of 47 U.S.C. Section 252(i) to adopt the Sprint ICA?
>
> 2. A. Does the Commission have jurisdiction over AT&T's FCC Merger Commitments?
>
> B. If so, do the Merger Commitments allow Nextel to adopt the Sprint ICA?
>
> 3. If the answer to Issue 1 or Issue 2B is "yes," what should be the effective date of Nextel's adoption of the Sprint ICA?

3. Oral argument will aid the Commission in understanding and evaluating the legal bases for Nextel's adoption of the Sprint – AT&T interconnection agreement, and in particular, why the arguments raised by AT&T against such adoption are fallacious. Specifically, oral argument will aid the Commission's understanding and evaluation of AT&T's attempt to avoid the application of applicable law which clearly authorizes Nextel's right to adopt the Sprint ICA.

4. Oral argument is particularly important in this case because the procedural schedule provides no opportunity for a reply brief and thus no other opportunity for Nextel to respond to arguments made in AT&T's legal brief. Further, oral argument is a more efficient way of providing such response than a reply brief, given the volume of material already filed in this case. Finally, oral presentations to the presiding authority are specifically contemplated by §120.57(2), Florida Statutes.

5. Nextel requests that each side (Nextel and AT&T) be granted ten (10) minutes for oral argument.

WHEREFORE, Nextel respectfully requests that the Commission grant this Request for Oral Argument.

Respectfully submitted this 26th day of June, 2008.

/s/ Marsha E. Rule
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail on June 26, 2008 to the following parties:

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