

Dorothy Menasco

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Sent: Thursday, September 11, 2008 4:45 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; Lee Eng Tan; greg.follensbee@att.com; Tracy Hatch; jt9523@att.com; Douglas.C.Nelson@sprint.com; Joe.M.Chiarelli@sprint.com; Bill.Atkinson@sprint.com; Marsha Rule; Roxanne Levingston
Subject: Dockets 070368 and 070369
Attachments: Nextel Resp in Opp to Motion for Stay 09 11 2008.pdf

The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:

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The docket number and title of docket:

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

Docket No. 070369-TP
 Notice of the Adoption by Nextel South Corp. and Nextel West Corp. (collectively "Nextel") Of the Existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001

The name of the parties on whose behalf the document is filed:

NPCR, Inc. d/b/a Nextel Partners and Nextel South Corp. and Nextel West Corp. (collectively "Nextel")

The total number of pages in the attached document: 14

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DOCUMENT NO. DATE
 08470-08 9/11/08
 FPSC - COMMISSION CLERK

9/11/2008

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of the Adoption by NPCR, Inc. d/b/a)	
Nextel Partners of the Existing "Interconnection)	Docket No. 070368-TP
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)	
)	
)	
Notice of the Adoption by Nextel South Corp.)	
and Nextel West Corp. (collectively "Nextel"))	Docket No. 070369-TP
Of the Existing "Interconnection Agreement)	
By and Between BellSouth)	Filed: September 11, 2008
Telecommunications, Inc. and Sprint)	
Communications Company Limited Partnership,)	
Sprint Communications Company L.P.,)	
Sprint Spectrum L.P." dated January 1, 2001)	
)	

NEXTEL'S RESPONSE IN OPPOSITION TO AT&T'S EXPEDITED MOTION TO STAY EFFECTIVENESS OF COMMISSION VOTE

NPCR, Inc., d/b/a Nextel Partners, and Nextel South Corp. (collectively, "Nextel") pursuant to Rules 28-106.204, 25-22.0022 and , Florida Administrative Code, hereby files this Response in Opposition to AT&T's Expedited Motion to Stay Effectiveness of Commission Vote. In support, Nextel respectfully states:

1. On September 4, 2008, this Commission determined that Nextel was entitled under federal law to adopt the Sprint-AT&T interconnection agreement, and that the parties should file a signed adoption of such agreement "no later than 7 days following the Commission's vote." ¹

¹ Staff Recommendation, Issue 4, pg. 27.

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08470-08 9/11/08
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2. Following the Commission's vote, and in compliance with the Commission's decision, on September 8, 2008, Nextel tendered to AT&T proposed Florida adoption agreements. On September 9, 2008, AT&T filed its Expedited Motion to stay its obligation to execute an adoption agreement.

3. Thereafter, on September 11, 2008, AT&T and Nextel reached agreement on the form and content of adoption documents, and the adoption documents have now been executed by both AT&T and Nextel. A copy of the executed adoption documents is attached hereto as Exhibit A. However, AT&T has advised Nextel that it does not intend to withdraw its Expedited Motion and Nextel therefore files this Response in Opposition.

4. Without citation to any authority, AT&T asserted in its Motion that its due process rights would somehow be violated in the absence of a stay. AT&T is simply incorrect, and its Motion is yet another transparent attempt to unreasonably delay Nextel's adoption and implementation of the Sprint interconnection agreement.

5. AT&T seeks a stay "until such time as a Final Order is issued, AT&T's statutory right to reconsideration has expired, or a timely-filed Motion for Reconsideration has been resolved."² AT&T is not entitled to a stay pending any of these events. Its Motion should be denied and the parties should be required to comply with the Commission's Order.

6. First, the Commission's rules do not provide for a stay pending issuance of a final order, and in any event, AT&T's request for such a stay was rendered moot by the Commission's issuance of Order No. PSC-08-0584-FOF-TP on September 10, 2008 and AT&T's subsequent execution of the adoptions.

² AT&T Motion, ¶22.

7. Next, although AT&T argues that it requires a stay in order to “exercise its affirmative statutory right to seek reconsideration....”, AT&T has cited no statute that grants the alleged right, and Nextel is unaware of such statute. In fact, AT&T has not even asserted that it will actually file a motion for reconsideration. Instead, its Motion states that AT&T “cannot seek reconsideration” until the Commission issues a written order; states that it requires such stay in connection with “any reconsideration that AT&T *might* desire to seek”; and asks the Commission to stay its Order “until such time as . . . AT&T’s statutory right to reconsideration has expired *or* a timely-filed Motion for Reconsideration has been filed”³ but fails to assure the Commission that any motion for reconsideration will be forthcoming – or indeed, that there is any legitimate basis for such a motion. At best, AT&T’s Motion must be understood to indicate that AT&T might seek reconsideration and therefore seeks a stay just in case it decides to do so.

8. Additionally, although the Commission has occasionally stayed its orders pending reconsideration, AT&T has failed to demonstrate any need for a stay. AT&T argues that in the absence of a stay, it “would be forced to execute and file with the Commission the adoption documents prior to ever having been allowed to exercise its affirmative statutory right to seek reconsideration....” Not only has AT&T failed to identify any due process right that could possibly be affected in the absence of a stay, but AT&T has failed to identify how, if at all, it would be harmed or disadvantaged if no stay is granted. There is simply no reason why AT&T cannot file a motion for reconsideration or pursue whatever post-decision remedies it desires without a stay.⁴

³ AT&T Motion, ¶¶ 6, 8, 11 (emphasis added).

⁴ As Staff recognized in its May 21, 2008 Recommendation in these dockets, the Commission could certainly have required AT&T to execute adoption documents subject to a later hearing on the cost issue

9. In reviewing AT&T's Motion, the Commission should consider that AT&T has already unreasonably delayed Nextel's adoption for over a year, and has already had multiple opportunities to present its serial arguments to the Commission. AT&T should not be permitted to further delay these proceedings, and its Motion should be denied.

WHEREFORE, Nextel respectfully requests that the Commission deny AT&T's Expedited Motion to Stay Effectiveness of Commission Vote.

Respectfully submitted this 11th day of September, 2008.

/s/ Marsha E. Rule

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Joseph M. Chiarelli
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6450 Sprint Parkway
Mailstop: KSOPHN0214-2A671
Overland Park, KS 66251
(913) 315-9223
Fax: (913) 523-9623

AT&T had raised at that time, which adoption could be rescinded if necessary. Staff Recommendation, May 21, 2008, pg. 16.

joe.m.chiarelli@sprint.com

Attorneys for Nextel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email and U.S. mail on September 11, 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. d/b/a
AT&T Florida d/b/a
AT&T Southeast**

And

NPCR, Inc. d/b/a Nextel Partners

AGREEMENT

This Agreement, which shall be considered effective in the State of Florida as of June 8, 2007 ("Effective Date"), and is entered into by and between NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), a Delaware corporation and BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, Nextel Partners has requested that AT&T Florida make available the interconnection agreement in its entirety between AT&T Florida and Sprint Communications Company Limited Partnership, Sprint Communications Company, L.P. and Sprint Spectrum L.P. dated January 1, 2001 for the State of Florida ("2001 AT&T Florida/Sprint Agreement").

WHEREAS, pursuant to the Florida Public Service Commission's Staff Recommendation adopted by the Commission at the September 4, 2008 Agenda Conference in Docket No. 070368-TP, for purposes of this Agreement, Nextel Partners has adopted the 2001 AT&T Florida/Sprint Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, Nextel Partners and AT&T hereby agree as follows:

1. As of the Effective Date of this Agreement, Nextel Partners adopts in its entirety the 2001 AT&T Florida/Sprint Agreement and any and all amendments to said agreement executed and approved by the Florida Public Service Commission as of the Effective Date of this Agreement. The 2001 AT&T Florida/Sprint Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference. The adoption of this agreement with amendment(s) consists of the following:

ITEM	NO. PAGES
Adoption Papers	4
Exhibit 1 – 2001 AT&T Florida/Sprint Agreement including Amendments	1176
TOTAL	1180

2. In the event that Nextel Partners consists of two (2) or more separate entities as set forth in the preamble to this Agreement, all such entities shall be jointly and severally liable for the obligations of Nextel Partners under this Agreement.

3. The term of this Agreement shall be from the Effective Date as set forth above and shall expire as set forth in Section 2.1, Part A of the General Terms and Conditions of the 2001 AT&T Florida/Sprint Agreement.

4. Notice to the parties as may be required under the terms of the 2001 AT&T Florida/Sprint Agreement shall be provided as follows to:

AT&T Florida

Contract Management
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four AT&T Plaza
Dallas, TX 75202-5398
Facsimile: 214-464-2006

NPCR, Inc. d/b/a Nextel Partners

Sprint/Nextel
Manager, ICA Solutions
6330 Sprint Parkway
Mailstop: KSOPHA0310-3B268
Overland Park, KS 66251
Phone 913-762-4847 (overnight mail only)

Manager, ICA Solutions
P.O. Box 7954
Shawnee Mission, KS 66207-0954

With a copy to:

Sprint/Nextel
Legal/Telecom Management Privacy Group
6450 Sprint Parkway
Mailstop: KSOPHN0312-3A318
Overland Park, KS 66251
Phone 913-315-9762 (overnight mail only)

Legal/Telecom Management Privacy Group
P.O. Box 7966
Overland Park, KS 66207-0966

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications,
Inc. d/b/a AT&T Florida**

By: Kathy Wilson-Chu

Name: Kathy Wilson-Chu

Title: Director

Date: Sept. 11, 2008

NPCR, Inc. d/b/a Nextel Partners

By: Craig T. Cowden

Name: Craig T. Cowden

Title: V. P. Cable Ops.

Date: September 11, 2008

By and Between

**BellSouth Telecommunications, Inc. d/b/a
AT&T Florida d/b/a
AT&T Southeast**

And

Nextel South Corp. and Nextel West Corp.

AGREEMENT

This Agreement, which shall be considered effective in the State of Florida as of June 8, 2007 ("Effective Date"), and is entered into by and between Nextel South Corporation ("Nextel South"), a Georgia Corporation, and Nextel West Corp. ("Nextel West"), a Delaware corporation, (Nextel South and Nextel West are collectively referred to herein as "Nextel") and BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, Nextel has requested that AT&T Florida make available the interconnection agreement in its entirety between AT&T Florida and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P. and Sprint Spectrum L.P. dated January 1, 2001 for the State of Florida ("2001 AT&T Florida/Sprint Agreement").

WHEREAS, pursuant to the Florida Public Service Commission's Staff Recommendation adopted by the Commission at the September 4, 2008 Agenda Conference in Docket No. 070369-TP, for purposes of this Agreement, Nextel has adopted the 2001 AT&T Florida/Sprint Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, Nextel and AT&T Florida hereby agree as follows:

1. As of the Effective Date of this Agreement, Nextel adopts in its entirety the 2001 AT&T Florida/Sprint Agreement and any and all amendments to said agreement executed and approved by the Florida Public Service Commission as of the Effective Date of this Agreement. The 2001 AT&T Florida/Sprint Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference. The adoption of this agreement with amendment(s) consists of the following:

ITEM	NO. PAGES
Adoption Papers	4
Exhibit 1 - 2001 AT&T Florida/Sprint Agreement including Amendments	1176
TOTAL	1180

2. In the event that Nextel consists of two (2) or more separate entities as set forth in the preamble to this Agreement, all such entities shall be jointly and severally liable for the obligations of Nextel under this Agreement.

3. The term of this Agreement shall be from the Effective Date as set forth above and shall expire as set forth in Section 2.1, Part A of the General Terms and Conditions of the 2001 AT&T Florida/Sprint Agreement.

4. Notice to the parties as may be required under the terms of the 2001 AT&T Florida/Sprint Agreement shall be provided as follows to:

AT&T Florida

Contract Management
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four AT&T Plaza
Dallas, TX 75202-5398
Facsimile: 214-464-2006

**Nextel South Corporation
Nextel West Corporation**

Sprint/Nextel
Manager, ICA Solutions
6330 Sprint Parkway
Mailstop: KSOPHA0310-3B268
Overland Park, KS 66251
Phone 913-762-4847 (overnight mail only)

Manager, ICA Solutions
P.O. Box 7954
Shawnee Mission, KS 66207-0954

With a copy to:

Sprint/Nextel
Legal/Telecom Management Privacy Group
6450 Sprint Parkway
Mailstop: KSOPHN0312-3A318
Overland Park, KS 66251
Phone 913-315-9762 (overnight mail only)

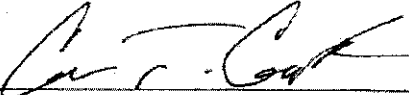
Legal/Telecom Management Privacy Group
P.O. Box 7966
Overland Park, KS 66207-0966

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

**BellSouth Telecommunications,
Inc. d/b/a AT&T Florida**

**Nextel South Corporation
Nextel West Corporation.**

By: Kathy Wilson-Chu

By: 

Name: Kathy Wilson-Chu

Name: Craig T. Gordon

Title: Director

Title: V.P. Cable Ops.

Date: Sept. 11, 2008

Date: September 11, 2008

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