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: September 30, 2008

NEXTEL'S RESPONSE IN OPPOSITION
TO AT&T FLORIDA'S MOTION FOR RECONSIDERATION

NPCR, Inc., d/b/a Nextel Partners, and Nextel South Corp. (collectively, "Nextel"), pursuant to Rules 25-22.060 and 28-106.204, Florida Administrative Code, hereby file this Response in Opposition to BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T") Motion For Reconsideration. In support, Nextel states as follows:

Standard of Review

1. Motions for reconsideration are not properly used to reargue a party's position:

> The purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or

> failed to consider when it rendered its order in the first instance. It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order.

Diamond Cab Co. of Miami v. King, 146 So.2d 889, 891 (Fla. 1962). A motion for reconsideration may only properly identify a point of fact or law which the Commission overlooked or failed to consider in rendering its order. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). S*ee also State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817, 818 (Fla. 1st DCA 1958) (emphasis added):

> The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision. Judges are human and subject to the frailties of humans. *It follows that there will be occasions when a fact, a controlling decision or a principle of law even though discussed in the brief or pointed out in oral argument will be inadvertently overlooked in rendering the judgment of the court*. There may also be occasions when a pertinent decision of the Supreme Court or of another District Court of Appeal may be rendered after the preparation of briefs, and even after oral argument, and not considered by the court. It is to meet these situations that the rules provide for petitions for rehearing as an orderly means of directing the court's attention to its inadvertence.

Further, reconsideration is not appropriate when the movant "only seeks a second hearing on the same contentions" and where, as here, alleged errors "were major issues which were fully argued before the Commission …." *Sentinel Star Express Company v. Florida Public Service Commission*, 322 So.2d 503, 505 (Fla. 1975). Finally, it is clearly inappropriate to reargue a position with new arguments and citing new authorities. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959).

Background

2. On June 8, 2007, Nextel filed its Notice of Adoption, that "effective immediately Nextel has adopted in its entirety the 'Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P.[1] dated January 1, 2001' ('Sprint ICA') as amended." AT&T responded on June 28, 2007 by filing a Motion to Dismiss Nextel's notice. As to Nextel's adoption of the Sprint ICA based upon 47 U.S.C. Section 252(i), AT&T argued that a) Nextel's adoption was untimely based on the factually inaccurate assertion that the Sprint ICA had "expired" (despite the fact that, pursuant to its express terms, the ICA was expressly extended on a month-to-month basis and never terminated by either party) and b) Nextel had not followed the dispute resolution process found in the pre-existing Nextel-AT&T interconnection agreements. The Commission denied AT&T's Motion in Order No. PSC-07-0831-FOF-TP on October 16, 2007, expressly finding that whether the Sprint ICA was "expired" was a material issue of fact; that Nextel was not required to invoke the dispute resolution provisions of its former ICA, such that Nextel was "well within its statutory right to opt-in to the Sprint Agreement in its entirety;" and that "Nextel's Notice, on its face, states a cause of action upon which relief could be granted".

3. On December 4, 2007, the single then-remaining issue raised by AT&T, i.e., whether the Sprint ICA was "expired," was rendered moot by Sprint and AT&T's Joint Motion in Docket No. 070249-TP to extend the Sprint ICA three years from the

[1] Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., and Sprint Spectrum L.P. are collectively referred to herein as "Sprint".

date of Sprint's March 20, 2007 request for such extension. The Commission granted the Joint Motion on January 29, 2008 in Order No. PSC-08-0066-FOF-TP.

4. In light of the lack of any further pending objections by AT&T, Nextel filed its Motion for Summary Final Order on December 26, 2007. On January 22, 2008, AT&T responded by filing its Response in Opposition which proceeded to raise its new, yet legally deficient, "similarly situated" objections to Nextel's adoption. Thereafter, AT&T made three supplemental submissions in support of its Response on February 7, 2008, February 13, 2008 and March 28, 2008. Nextel sought and was granted leave to reply to AT&T's Response and supplemental submissions, and filed such Reply on February 18, 2008. Nextel made one supplemental submission in support of its Reply on February 20, 2008. Although the Commission denied Nextel's Motion for Summary Final Order in Order No. PSC-08-0415-FOF-TP, issued on June 23, 2008, it set the proceeding for a "paper hearing" under Section 120.57(2), Florida Statutes regarding specific legal issues. The last issue to be determined was "what should be the effective date of Nextel's adoption of the Sprint ICA?" Thereafter, AT&T and Nextel filed briefs on June 26, 2008.[2]

5. As to the effective date issue, AT&T's June 26, 2008 Brief:

   a. argued "the effective date of the adoption should be thirty (30) calendar days after the final party executes the adoption document and, as further explained below, in no event should the adoption become effective prior to the effective date of a final Commission order granting such adoption" (AT&T Brief p. 26);

[2] The Brief of AT&T Florida filed June 26, 2008 is referred to herein as "AT&T Brief" or "Brief".

b. re-asserted AT&T's inaccurate factual allegation that the Sprint ICA "expired" prior to the June 7, 2007 date advocated by Nextel, citing the same *Global NAPs* cases it relied upon in support of the same argument in its previously-rejected Motion to Dismiss; (*Id.* page 26-27);

c. argued that a "retroactive" effective date is contrary to basic rules of contract formation necessary to approve *an interconnection agreement pursuant to Section 252(e)* – a matter not at issue herein – and would constitute retroactive rate-making (*Id.*, page 28-29, emphasis added); and,

d. essentially contended that adoptions under Section 252(i) are on par with creation of new interconnection agreements and thereby subject to the 252(e) approval process (*Id.*, page 29-30).

6. On September 4, 2008, the Commission voted to approve a Staff Recommendation to uphold Nextel's adoption of the Sprint ICA. On September 9, 2008, AT&T filed its Expedited Motion to Stay Effectiveness of Commission Vote. The Commission issued its Order No. PSC-08-0584-FOF-TP approving the adoption on September 10, 2008. Holding "that AT&T did not have a valid objection to the Adoption" the Commission recognized that the effective date of Nextel's adoption was June 8, 2007. On September 17, 2008, AT&T withdrew its Expedited Motion for Stay and filed its Motion for Reconsideration ("AT&T Motion").

7. AT&T's Motion is directed solely at that portion of the Commission's decision recognizing June 8, 2007 as the effective date of Nextel's adoption of the Sprint ICA and is nothing more than a re-argument of AT&T's position to the effect that "in no event should the adoption become effective prior to the effective date of a final

Commission order granting such adoption". It is, however, premised upon the worn out and inaccurate factual contention – which has been specifically rejected by the Commission – that the Sprint ICA was "expired" as of the date of Nextel's June 8, 2007 Notice of Adoption, peppered with a few new citations to inapplicable cases and statutes. As explained herein, AT&T's Motion is not well taken, and should be dismissed.

Response to Motion for Reconsideration

8. AT&T now argues that the Commission should reconsider and change its decision that the effective date of Nextel's adoption of the Sprint ICA is June 8, 2007, because the Commission presumably overlooked purportedly "well-established procedure in cases involving contested adoptions under 252(i)" and "precedents"[3] when making this determination. AT&T is incorrect, and its Motion should be denied. The issue of the proper effective date for Nextel's adoption was first raised over a year ago by Nextel's Notice of Adoption, which clearly asserted that it was effective immediately, and the Commission has been well informed as to each party's position and arguments in support thereof. AT&T has wholly failed to identify any controlling point of fact or law that the Commission overlooked or failed to consider. Instead, AT&T's Motion consists of nothing more than a improper (and longer)[4] re-briefing of its response to Issue No. 3, which was specifically addressed by the parties' Briefs dated June 26, 2008:

> 3. ...[W]hat should be the date of Nextel's adoption of the Sprint ICA?

[3] *See* AT&T Motion, ¶¶9, 21.

[4] AT&T's June 17, 2008 Brief devoted less than 5 pages of argument to Issue 3, while its Motion for Reconsideration contained 11 pages on the same subject – none of which demonstrates that the Commission overlooked a single issue of controlling fact or law.

> AT&T Position: …[T]he effective date of Nextel's adoption of the Sprint ICA should be thirty (30) calendar days after the final party executes the adoption agreement.

9. AT&T's Motion should be dismissed because it improperly (a) rehashes – often verbatim – its previously-raised arguments that the adoption should not or could not be effective as of June 8, 2007 and (b) raises several new arguments against the Commission's decision. The Commission has already considered and rejected AT&T's previously-raised arguments[5] and its newly-raised arguments are not only improper, but incorrect.

10. AT&T mistakenly relies on this Commission's decision in Order No. PSC-98-0251-FOF-TP[6] as authority for its argument that contested adoptions are effective only after the parties have executed and filed adoption agreements. In that case, several months after the Commission approved and the parties entered into an *arbitrated* interconnection agreement between Sprint Communications Company, Limited Partnership d/b/a Sprint and GTE Florida Incorporated, Sprint – while still bound to the arbitrated agreement – sought approval to *adopt* an interconnection agreement between

[5] Specifically, despite AT&T's acknowledgement that the "reasonable period of time" argument was raised in its Motion to Dismiss and denied by the Commission, and that the Sprint ICA was in fact extended for three years from the date of Sprint's March 20, 2007 request (*see* Motion at ¶¶ 2-3), AT&T nevertheless continues to insist that "the Sprint ICA was expired, and therefore not available for adoption, on June 8, 2007 when Nextel gave notice that it wished to adopt the Agreement" (Motion at ¶ 4). AT&T's assertion is directly contrary to the Commission's findings in Order No. PSC-07-0831-FOF-TP that whether the Sprint ICA was "expired" was a material issue of fact, that Nextel was "well within its statutory right to opt-in to the Sprint Agreement in its entirety", and that "Nextel's Notice, on its face, states a cause of action upon which relief could be granted". Such assertion is also contrary to the Commission's determination in its September 10, 2008 Order at page 11 that, by the filing the Sprint/AT&T Joint Motion to amend the Sprint ICA the parties stated "the interconnection agreement was in operation and enforceable by both parties." And finally, such assertion is remains contrary to the undeniable express terms of the Sprint ICA; i.e., that while the *fixed* term of the Sprint ICA may have expired, prior to the 3-year extension the Sprint ICA was always in effect, operational and continuing on a month-to-month basis by its express terms - and such terms precluded AT&T's termination of the Sprint ICA while the Sprint /AT&T arbitration was pending.

[6] Docket No. 971159-TP, *In re: Petition for approval of election of interconnection agreement with GTE Florida Incorporated pursuant to section 242(i) of the Telecommunications Act of 1966, by Sprint Communications Company Limited Partnership d/b/a Sprint*, February 6, 1998.

GTE and AT&T Communications of the Southern States and thereby terminate its arbitrated agreement. That case differs substantially from the instant case, and the Commission's order did not purport to establish a precedent or procedure of general applicability for adoption agreements. Importantly, unlike Nextel, Sprint did not file a Notice of Adoption stating that its adoption was "effective immediately", but instead petitioned the Commission for approval to adopt the GTE-AT&T ICA. Further, neither Sprint nor GTE raised or argued the issue of when the adoption should become effective; in fact, Sprint's petition stated that it sought the Commission's "*approval*" and stated its "*request* that Sprint be *permitted* to adopt this contract…."[7] Accordingly, the Commission's decision to grant Sprint's petition did not establish a precedent for the effective date of contested adoptions as AT&T suggests, but was done in response to the procedure elected by the petitioner, and merely reflected the Commission's normal procedure of granting or denying a petition at the end of the proceeding.

11. AT&T's reliance on Order No. PSC-01-0824-FOF-TP[8] is similarly misplaced. That case involved the arbitration of a new interconnection agreement between a CLEC and BellSouth. At the time of the arbitration CLECs were permitted by the FCC's "pick and choose" rules to amend their existing interconnection agreements by substituting or adding selected terms and conditions from unrelated third-party

[7] Sprint Communications Company Limited Partnership d/b/a Sprint Petition for approval of election of interconnection agreement with GTE Florida Incorporated pursuant to Section 252 (i) of the Telecommunications Act of 1996 at pg. 8, (emphasis added), filed as Document No. 08861-97 on September 3, 1997 in Docket No. 971159-TP, *In re: Petition for approval of election of interconnection agreement with GTE Florida Incorporated pursuant to Section 252(i) of the Telecommunications Act of 1996, by Sprint Communications Company Limited Partnership d/b/a Sprint.*

[8] Docket No. 000649-TP, *In re: Petition by MCImetro AccessTransmission Services LLC and MCI WorldCom Communications, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996,* March 30, 2001.

interconnection agreements. The CLEC and BellSouth disagreed on contract language to establish a process to amend the arbitrated agreement in the future if the CLEC were to "pick and choose" a new term from a third-party agreement to be incorporated into the parties' previously-arbitrated agreement. The Commission determined in Order No. PSC-01-0824-FOF-TP that a future resulting "combination of these 'pick and choose' terms and conditions with the other [existing] terms and conditions" created a "new negotiated agreement. . . in accordance with Section 252(a)" which must be submitted for Commission approval pursuant to 47 U.S.C. §252(e)(4). Accordingly, like all negotiated agreements, a newly created hybrid "pick and choose"-enhanced agreement would become effective upon the Commission's approval or failure to act.[9] The FCC's current "all or nothing" rules do not permit this practice; CLECs must adopt the entirety of an existing interconnection agreement, as Nextel has done herein, and may not amend such agreement with terms and conditions found in other interconnection agreements. The Commission's decision regarding the creation of a new hybrid "pick and choose" negotiated agreement has no applicability to agreements adopted in their entirety under the FCC's current "all or nothing" rules.

12. As shown above, both Order PSC-98-0251-FOF-TP and Order No. PSC-01-0824-FOF-TP were based on fact-specific situations not at all similar to that presented herein, and neither order established or exemplifies a "policy" or precedent regarding the effective date of agreements adopted in their entirety pursuant to 47 U.S.C. § 252(i). Accordingly, the Commission must reject AT&T's newly-hatched theory that the Commission somehow departed from any "policy" when it determined that, in the

[9] Order No. PSC-01-0824-FOF-TP, pg. 156.

absence of any valid objection, Nextel's adoption was effective as of the date it filed its Notice. The cases cited in support of AT&T's argument[10] are wholly inapplicable; the Commission neither changed a non-rule policy nor departed from existing practice and thus had no obligation to justify its decision as proposed by AT&T.[11]

13. Among other improper new arguments in support of its previously-argued position on Issue 3, AT&T contends that the Commission's decision "would be at odds" with the Sixth Circuit Court of Appeals decision in *BellSouthTelecomm., Inc. v. Southeast Telephone, Inc.*, 462 F.2d 650 (6th Cir. 2006) (cited at Motion ¶ 22). Once more, AT&T is incorrect, and its argument misrepresents the facts and decision in the case.

14. In that case, relying upon the FCC's then-current "pick and choose" rule, the CLEC asked the Public Service Commission of Kentucky to approve an amendment by which the CLEC adopted and incorporated a new dispute resolution provision from a third-party's ICA with BellSouth into the CLEC's existing agreement, and to "make[e] the amendment to the interconnection agreement *effective as of the date of the Order*."[12] BellSouth filed a formal objection to the CLEC's request. Thereafter, the Kentucky PSC granted the CLEC's "pick and choose" request to amend its interconnection agreement, despite the fact that the FCC had in the meantime adopted the "all or nothing rule" and repealed the "pick and choose" rule. Notwithstanding this intervening change in FCC

[10] *Courts v. Agency for Health Care Admin.*, 965 So.2d 154 (Fla. 1st DCA 2007); *Velez v. City of Coral Gables*, 819 So.2d 895 (Fla. 3d DCA 2002); *Southern States Utils. v. Florida PSC*, 714 So.2d 1046 (Fla. 1st DCA 1998).

[11] In fact, the opposite of AT&T's argument is true: failure to declare the instant adoption effective when filed would constitute a departure from the Commission's present policy regarding the effective date of adopted agreements and would require sufficient justification.

[12] *Id.* 660, emphasis in original.

regulation, the Kentucky PSC reasoned that it should review the request under the FCC regulation that existed at the time the CLEC filed its request.

15. The Sixth Circuit Court reversed a lower court decision that upheld the Kentucky order, finding that "[t]he FCC intended for the new [all or nothing] rule to go into effect immediately,"[13] the Kentucky Commission had no authority to apply the "pick and choose" rule after it was repealed, and application of the new rule did not have an "impermissibly retroactive" effect because the CLEC had no "vested right" to adoption under prior law. Thus, the CLEC's attempt to adopt less than an entire agreement gave rise to a valid objection by BellSouth under the newly applicable "all or nothing rule". Importantly, the Sixth Circuit made no attempt to address the Kentucky Commission's authority to set an effective date for adoption of an interconnection agreement either in the absence of a change of law or the absence of a valid objection. Thus, even if Sixth Circuit decisions were binding on the Commission – which they are not – the decision would establish no precedent applicable to the instant case.

16. Nor is the Sixth Circuit decision at all persuasive regarding the issue at hand. AT&T argues, incorrectly, that the decision stands for the proposition that an adoption cannot become final and effective until approved by the Commission. This is simply not the case; as AT&T is well aware, adoptions routinely go into effect without the Commission's approval or acknowledgement, effective on the date they were filed. As Staff explained at the June 3, 2008 oral argument, when the Commission receives a notice of adoption, Staff confirms that the adopted agreement is still available for adoption. If so, the adoption is considered presumptively valid and effective upon receipt

[13] *Id.*, 654.

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.[14] The Commission's approval of each adoption is not required because it has already approved the underlying agreement. This process exemplifies the Commission's stated practice of considering such adoptions "presumptively valid and effective upon receipt of the notice."[15] AT&T failed to raise a single sustainable objection during this proceeding that rebutted the presumed validity of Nextel's notice of adoption of the Sprint ICA, and the Commission therefore was justified in determining that the adoption should be effective upon filing – just as it would have been in the absence of AT&T's groundless challenge.

17. The Commission must reject AT&T's absurd argument that the Commission's presumption of validity somehow nullifies an ILEC's right to raise objections to an adoption under federal law. To the contrary, what the Commission's legitimate existing practice nullifies is the prejudice that would otherwise result if an ILEC were allowed to serially assert unsustainable objections with impunity, directly contrary to the anti-discriminatory and competitive objectives of the Telecommunications Act. As demonstrated in this docket, ILECs have ample opportunity to object during the ninety days the docket remains open; the Commission's process most certainly did not divest AT&T of its opportunity to raise even its serial, unsustainable objections to Nextel's adoption in a vain attempt to rebut its presumed validity.

[14] June 3, 2008 Commission Agenda Conference Transcript at p. 12 line 23 – p. 13 line 13; p. 14 line 1 – p. 15 line 17.

[15] Order No. PSC-08-0584-FOF-TP, pg. 11.

18. The Commission must reject AT&T's other newfound theory – that §364.162(1), Florida Statutes prohibits the Commission from determining that Nextel's adoptions should be effective as of the date they were originally filed. First, by its clear terms, the statute pertains only to negotiated and arbitrated interconnection agreements, and simply has no application to adoptions of existing agreements.[16] Further, AT&T's argument fails to appreciate an essential difference between adopting an existing interconnection agreement and negotiating or arbitrating a new one: the rates, terms and conditions of an adopted agreement have already been "filed" and approved by the Commission – that is one of the central reasons that the adoption process should proceed in an expedited fashion. As noted in Nextel's Notice of Adoption, the Sprint ICA it sought to adopt was initially filed with the Commission in 2001, well before its effective date as to Nextel. AT&T's argument elevates form over substance by attributing unwarranted significance to the *pro forma* adoption agreement itself. While a convenient method of tracking adoptions and demonstrating that the ILEC has no objection to adoption, federal law does not require an ILEC's affirmative agreement to an adoption under 252(i). *See* FCC First Report and Order, ¶1321:

> We further conclude that a carrier seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial Section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis. ... We conclude

[16] AT&T's selective omission of words from the quotation on page 9 of its Motion renders the result misleading. First, AT&T is actually quoting its own position in that docket: "BellSouth disagrees and cites to Section 364.162, Florida Statutes, as explicit state law authority to address such disputes [over enforcement of a previously-approved interconnection agreement]." More importantly, however, there is simply no significance the fact that the Commission acknowledged the existence of §364.162 when determining that it had the authority to resolve complaints arising out of negotiated or arbitrated agreements. *See* Order No. PSC-02-0484-FOF-TP issued on April 8, 2002, in Docket No. 001097-TP, *In re: Request for arbitration concerning complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc. for resolution of billing disputes.*

> that the *nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation* ***and approval process*** *pursuant to section 252* before being able to utilize the terms of a previously approved agreement. *Since agreements shall necessarily be filed with the states pursuant to 252(h), we leave to state commissions in the first instance the details of the procedures for making agreements available to requesting carriers on an expedited basis*. (emphasis added).

Negotiated and arbitrated interconnections require state commission approval and filing under §252(e) and §252(h), respectively. Adoptions of existing interconnection agreements under §252(i) clearly do not. The Commission's process is consistent with the Telecommunications Act and therefore authorized by §120.80(13) Florida Statutes.

19. The Commission has already considered and rejected AT&T's remaining arguments. The decision does not constitute retroactive ratemaking; §364.14, Florida Statutes, cited as the basis for the Florida Supreme Court's decision in *City of Miami v. Florida Public Service Commission*, 208 So.2d 249, 259 (Fla. 1968) is not applicable to wireless carriers, CLECs or price-regulated ILECs, including AT&T;[17] and the Commission's recognition that Nextel properly exercised its statutory right under federal law to adopt an existing ICA (and its concomitant recognition that AT&T failed to demonstrate a valid objection to such adoption) simply does not raise the issue of retroactivity found in *Southern Bell Telephone v. Florida Public Service Commission*, 453 So.2d 780 (Fla. 1984), where the Commission adjudicated a dispute regarding a

[17] *See* §§364.051(1)(c) and 364.337(2), Florida Statutes. Once more, AT&T's quotation is less than straightforward; in *City of Miami* the Florida Supreme Court actually stated "*An examination of pertinent statutes* leads us to conclude that the Commission would have no authority to make retroactive ratemaking orders", noting that §364.14 required the Commission to "determine the just and reasonable rates, charges, tolls, or rentals to be *thereafter* observed and in force and fix the same by order." (emphasis added). The case simply does not support the proposition urged by AT&T.

methodology for dividing toll revenues and applied its newly-announced policy retroactively to amend a long-standing agreement.

20. Further, this is the *third time* the Commission has considered AT&T's argument that Nextel did not adopt the Sprint ICA within a reasonable period of time, and that the agreement had expired. AT&T first raised these issues well over a year ago, and since that time has copied and pasted the exact same arguments from its Motion to Dismiss[18] to its Brief, [19] and again from its Brief to its Motion for Reconsideration – each time without even attempting to explain how the Commission could possibly have authorized the "amendment" of the Sprint ICA by its January 29, 2008 Order if in fact that ICA had expired and was no longer effective and operational. As noted above, reconsideration is not appropriate where AT&T "only seeks a second hearing on the same contentions" (or in the instant case, a third hearing) and where, as here, the alleged errors "were major issues which were fully argued before the Commission…" *Sentinel Star Express Company* at 505. As the Commission recognized in Order No. PSC-08-0584-FOF-TP, AT&T acknowledged in Docket No. 070249-TP that the underlying Sprint ICA was effective as of March 20, 2007, and therefore the agreement was in effect when Nextel adopted it three months later. The Commission should reject the discriminatory notion that the Sprint ICA, although effective and operational as to Sprint and AT&T, nevertheless could not be adopted by Nextel.

21. AT&T's arguments, if accepted, would give ILECs the unilateral and cost-free power to delay implementation of each and every attempted adoption by simply

[18] AT&T Motion to Dismiss, June 28, 2007, pgs. 7-9.

[19] AT&T Brief, June 27, 2008, pgs. 26-27.

raising and repeating unsustainable objections, as AT&T did here. AT&T's position that the adoption should not be effective until September 11, 2008, is not only discriminatory and inconsistent with federal law as well as this Commission's practices, but would limit Nextel, despite its timely adoption, to the remaining 18 month term of the underlying agreement. AT&T's backup position – that the adoption should be effective January 29, 2008 – similarly would limit Nextel to a term slightly more than two years. An ILEC could easily "run out the clock" on adoption of an existing interconnection agreement; by the time the Commission is able to consider the most recent of AT&T's unfounded serial objections to Nextel's adoptions, this docket will have been open for 17 months – nearly half the duration of most interconnection agreements. The Commission's Order, on the other hand, protects the rights of both CLECs and ILECs: ILECs may have their objections heard by the Commission but where, as here, such objections do not prove to be valid, CLECs will not be unduly penalized and the ILECs are merely be held to their statutory obligations directed at preventing discrimination among and between the ILEC and competing carriers.

22. AT&T has not attempted to demonstrate that the Commission overlooked or failed to consider any point of controlling law or fact when it made its decision. Instead, AT&T simply argues – at great length, and with improper new arguments – that the Commission's decision was wrong. The fact that AT&T disagrees with the Commission's Order is insufficient justification for its Motion, and it should be denied.

WHEREFORE, Nextel Partners requests the Commission to deny AT&T's Motion for Reconsideration.

Respectfully submitted this 30th day of September, 2008.

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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 30, 2008 to the following parties:

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