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100019-TP

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The docket number and title of docket:

Docket No. 100019-TP
 In re: Enforcement of Interconnection Agreements between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Spectrum, L.P., WirelessCo., L.P. and SprintCom, Inc. (jointly d/b/a Sprint PCS) and Nextel South Corp.

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

Sprint Spectrum, L.P., WirelessCo., L.P. and SprintCom, Inc. (jointly d/b/a Sprint PCS) and Nextel South Corp. ("Sprint Nextel")

The total number of pages in the attached document: 29

A brief but complete description of each attached document:

Sprint Nextel's Answer, Affirmative Defenses and Counterclaim (pgs. 1-20)
 Exhibit 1 (pgs. 21-29)

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re:)
)
Enforcement of Interconnection Agreements) Docket No.: 100019-TP
between BellSouth Telecommunications, Inc. d/b/a)
AT&T Florida and Sprint Spectrum, L.P.,) Filed February 1, 2010
WirelessCo., L.P. and SprintCom, Inc. (jointly d/b/a)
Sprint PCS) and Nextel South Corp.)

**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM
OF SPRINT SPECTRUM L.P., AS AGENT AND GENERAL PARTNER
FOR WIRELESSCO, L.P., AND SPRINTCOM, INC. (JOINTLY D/B/A SPRINT PCS)
AND NEXTEL SOUTH CORP. TO THE COMPLAINT
OF BELL SOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T FLORIDA**

Sprint Spectrum L.P., as agent and General Partner of WirelessCo, L.P., and SprintCom, Inc., jointly d/b/a Sprint PCS ("Sprint") and Nextel South Corp. ("Nextel") (collectively "Sprint Nextel"), pursuant to Rule 28-106.203 of the Florida Administrative Code, file their Answer, Affirmative Defenses, and Counterclaims to the Complaint of BellSouth Telecommunications, Inc., d/b/a AT&T Florida ("AT&T").

INTRODUCTION

This dispute concerns AT&T's efforts to unilaterally change longstanding, previously agreed to and implemented surrogate methodologies used by the parties to classify and bill inter-Major Trading Area ("interMTA") traffic pursuant to the parties' respective interconnection agreements (individually referred to as the "Sprint ICA" and the "Nextel ICA", and collectively as the "ICAs").

Sprint and Nextel are wireless carriers licensed under federal law. The Federal Communications Commission ("FCC") has established rules regarding the application of reciprocal compensation charges to certain telecommunications traffic that is exchanged between

a wireless carrier and an incumbent local exchange carrier (“ILEC”) such as AT&T. The FCC’s reciprocal compensation rules apply to telecommunications traffic that originates and terminates in the *same* MTA based on the calling/called parties’ *locations* at the beginning of the call. This traffic is referred to as “intraMTA traffic” or “intraMTA calls”. Telecommunications traffic that originates and terminates in *different* MTAs based on the *locations* of the parties at the beginning of the call is referred to as “interMTA traffic” or “interMTA calls.” The FCC, however, has failed to implement any rules to address how, or even if, compensation should be paid for interMTA calls, which has resulted in wireless carriers and ILECs typically fashioning a negotiated methodology to address interMTA traffic based on business considerations, not regulations.

Regarding the classification and billing of interMTA traffic between the parties, the linchpin of AT&T’s Complaint is a provision of the parties’ ICAs that AT&T partially cites out of context. In particular, AT&T’s Complaint refers to the first sentence of the following provision from each ICA, and wholly fails to acknowledge the existence and controlling applicability of the second sentence in this matter:

Actual traffic measurement in each of the appropriate categories is the preferred method of classifying and billing traffic. *If, however, either party cannot measure traffic in each category, then* BellSouth and [Sprint Nextel] *shall agree on a surrogate method* of classifying and billing traffic, taking into consideration territory served (e.g. MTA boundaries, LATA boundaries and state boundaries) and traffic routing of [BellSouth and Sprint Nextel].¹ (Emphasis added.)

AT&T cannot accurately identify, classify and bill interMTA traffic based upon “[a]ctual traffic measurements.” This was the case at the time the ICAs were entered into, and continues to be the case today for three simple reasons. First, when an AT&T end-user originates a call to

¹ See and cf. AT&T Complaint ¶ 22 citing first sentence of Complaint Exhibit A Sprint ICA, Attachment 3, p. 32 § 673 [sic], Complaint Exhibit B, Nextel ICA, p. 12 § IV. C, and complete text of Exhibit A Sprint ICA, Attachment 3, p. 32, § 6.7.3, complete text of Exhibit B Nextel ICA, p. 11 / 12 of 30, § VI. C.

a mobile end-user (a land-to-mobile call) AT&T cannot “pre-identify” the actual terminating location of any called mobile end-user. In the case of a seven-digit dialed call, AT&T performs a Local Number Portability (“LNP”)-database dip and, based on the identified local routing number associated with the called mobile end-user number, routes the call over interconnection facilities to the mobile end-user’s provider. The mobile end-user’s provider, in turn, must locate and route the call for termination to the mobile end-user. To the extent such a call may be an interMTA call, pursuant to the ICA, AT&T would owe Sprint Nextel for termination of the call on the Sprint Nextel network.² Second, whether it is a land-to-mobile call, or a call originated by a mobile end-user to an AT&T end-user (i.e., a mobile-to-land call), the cell-site that serves the mobile end-user is not industry-standard information included in the call detail record data transmitted between the parties. Third, under the parties’ existing billing systems, neither party is capable of identifying, classifying and billing interMTA traffic on any type of real-time actual traffic measurement basis. Therefore, to the extent interMTA traffic is subject to compensation under the ICAs, each ICA requires that such traffic be classified and billed pursuant to an *agreed-to* surrogate method of classifying and billing such traffic.

Prior to 2007, AT&T classified and billed Sprint Nextel for interMTA traffic using the parties’ previously agreed to and implemented surrogate methods for classifying and billing interMTA traffic (“Agreed Billing Method”). Despite Sprint Nextel’s attempts to share

² See Complaint Exhibit A Sprint ICA, Attachment 3, p. 32 §§ 6.7.1 and 6.7.2 and Complanit Exhibit B, Nextel ICA, p. 12 § IV. A and B., which respectively provide, in pertinent part as to Non-Local interMTA traffic (emphais added):

[6.7.1 / IV. A] The delivery of Non-Local Traffic by a party to the other party ***shall be reciprocal and compensation will be mutual.*** For terminating its Non-Local Traffic on the other party’s network, ***each party will pay*** [] the access charges described in paragraph [6.7.2 / B.] hereunder

[6.7.2 / IV. B] For originating and terminating intrastate or interstate interMTA Non-Local Traffic, ***each party shall pay the other*** BellSouth’s intrastate or interstate, as appropriate, switched network access service rate elements on a per minute of use basis, which are set out in BellSouth’s Intrastate Access Services Tariff or BellSouth’s Interstate Access Services Tariff as those tariffs may be amended from time to time during the term of this Agreement.

information in an effort to reach a mutually acceptable change to the parties' Agreed Billing Method between 2005 and July, 2007, AT&T ignored Sprint Nextel's efforts. In July, 2007, based upon a new surrogate method unilaterally developed by AT&T to classify and bill terminating mobile-to-land interMTA traffic ("New AT&T Method") - and without any regard to any amounts AT&T would owe Sprint Nextel - AT&T not only back-billed Sprint Nextel but also commenced prospectively billing Sprint Nextel for mobile-to-land interMTA traffic charges that AT&T claims are due pursuant to the New AT&T Method.

The parties have never, as expressly required by the parties' ICAs, agreed upon the New AT&T Method for classifying and billing interMTA traffic. Further, neither ICA has been modified by a written amendment to allow AT&T to unilaterally impose a new surrogate billing methodology without Sprint Nextel's agreement.³ AT&T's unilateral actions are undeniably contrary to the terms of the ICAs, and therefore the Commission should deny AT&T's Complaint in its entirety.

ANSWER TO THE ALLEGATIONS OF THE COMPLAINT

Sprint Nextel further responds to the allegations of the Complaint as follows:

PARTIES

1. Sprint Nextel admits that AT&T has filed its Complaint with the Florida Public Service Commission ("Commission") and that the Commission's address is 2450 Shumard Oak Blvd., Tallahassee, Florida, but denies the remaining allegations contained in paragraph 1.

2. Based on information and belief, Sprint Nextel admits the allegations contained in paragraph 2.

³ The Sprint ICA, General Term and Conditions – Part A, p. 19, section "18. Modification of Agreement", subsection 18.1 expressly provides "[n]o modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective unless it is made in writing and duly signed by the Parties." Similarly, the Nextel ICA, p. 24, section "XXII. Amendment" expressly provides "[t]his Agreement may not be amended in any way except upon written consent of the parties."

3. Sprint Nextel admits that Sprint Spectrum, L.P. is a Delaware limited partnership, agent and General Partner for WirelessCo, L.P., which is also a Delaware limited partnership; that SprintCom, Inc. is a Kansas corporation; that Sprint Spectrum, L.P. as agent and General Partner for WirelessCo, L.P., and SprintCom, Inc., jointly d/b/a Sprint PCS, provide commercial radio service (“CMRS”) in Florida; but, denies the remaining allegations contained in paragraph 3.

4. Sprint Nextel admits the allegations contained in paragraph 4.

5. Sprint Nextel acknowledges AT&T’s designation of representatives contained in paragraph 5.

6. Sprint Nextel admits that Sprint Spectrum L.P., as agent and General Partner of WirelessCo, L.P., and SprintCom, Inc., jointly d/b/a Sprint PCS and Nextel South Corp. are appropriate Sprint Nextel entities to be named in this matter, but denies the remaining allegations contained in paragraph 6. The name and contact information for Sprint Nextel’s designated representatives in this matter are:

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JURISDICTION

7. Sprint Nextel admits the allegations contained in the first sentence of paragraph 7.

Regarding paragraph 7. a), Sprint Nextel admits that Sprint and AT&T entered into the Sprint ICA, which has an effective date of January 1, 2001; that such ICA was submitted and approved by the Commission as reflected in Docket No. 020826-TP and is still in force between Sprint and AT&T; that portions of such ICA are attached to the Complaint as Exhibit A; that, upon information and belief, the allegations in footnote 1 are accurate; but denies the remaining allegations contained in paragraph 7. a).

Regarding paragraph 7. b), Sprint Nextel admits that Nextel and AT&T entered into the Nextel ICA, which had an effective date of June 14, 2001; that such ICA was submitted and approved as reflected in Commission Docket No. 011393-TP; that a true and correct copy of such ICA is attached to the Complaint as Exhibit B; that such ICA remained in force until June 8, 2007, when Nextel adopted the Sprint ICA in its entirety as approved by the Commission as reflected in Docket No. 070369-TP; but, denies the remaining allegations contained in paragraph 7. b). Sprint Nextel further affirmatively states that the document AT&T attached as Exhibit C to the Complaint is not the final version of the Nextel agreement adopting the Sprint ICA as approved by the Commission and which was filed by AT&T with the Commission on or about February 26, 2009 in Docket No. 070369-TP. A true and correct copy of the Nextel agreement adopting the Sprint ICA, which was approved by the Commission and filed by AT&T on or

about February 26, 2009 as Document No. 01545-09 in Docket No. 070369-TP, is attached hereto as Exhibit 1.

8. Sprint Nextel admits that paragraph 8 quotes selected passages from the parties' ICAs; that the dispute alleged in the Complaint concerns the implementation of the Sprint ICA and the Nextel ICA; that the Commission has jurisdiction over this matter to the extent the dispute pertains to the accurate implementation of the parties' longstanding Agreed Billing Method. Sprint Nextel denies the remaining allegations of paragraph 8, and affirmatively states that the Commission does not have authority to impose either a retroactive or a prospective change to the parties' Agreed Billing Method that has not been mutually agreed to by the parties in writing as required by the ICA.

9. Sprint Nextel admits that the Commission has jurisdiction over this matter to the extent it pertains to the accurate implementation of the parties' longstanding Agreed Billing Method. Sprint Nextel denies the remaining allegations of paragraph 9, and affirmatively states that the Commission does not have authority to impose either a retroactive or a prospective change to the parties' Agreed Billing Method under the existing ICAs that has not been mutually agreed to by the parties in writing as required by the ICA.

FACTUAL ALLEGATIONS

10. Sprint Nextel admits that AT&T has filed the Complaint seeking certain relief, including the payment of monetary damages, but denies the remaining allegations of paragraph 10.

11. Sprint Nextel admits the FCC has established rules regarding the application of reciprocal compensation arrangements to certain telecommunications traffic that is exchanged between a wireless carrier and an ILEC such as AT&T. The FCC's reciprocal compensation

rules apply to telecommunications traffic that originates and terminates in the same MTA based on the calling/called parties' locations at the beginning of the call (*See* 51.701(b)(2)). Sprint Nextel denies the remaining allegations of paragraph 11, and affirmatively states that the FCC has failed to implement any rules to address how, or even if, compensation should be paid for interMTA calls.

12. Sprint Nextel admits that the Sprint ICA and Nextel ICA contain provisions regarding the compensation to be paid, if any, for intraMTA and interMTA traffic; that paragraphs 12. a) and b) quote incomplete portions of the ICAs' compensation provisions out of context; and that certain portions of the ICAs' compensation provisions utilize AT&T's access charge rate elements with respect to compensable interMTA traffic; but denies the remaining allegations contained in paragraphs 12, 12. a) and 12. b).

In further response to paragraph 12 and its subparts a) and b), Sprint Nextel incorporates by reference its response to paragraph 11. In light of the FCC's lack of rules regarding interMTA traffic, wireless carriers and ILECs typically fashion a negotiated methodology to address interMTA traffic based on business considerations, not regulations. Regarding the classification and billing of interMTA traffic between the parties, the Sprint ICA and the Nextel ICA each expressly state:

Actual traffic measurement in each of the appropriate categories is the preferred method of classifying and billing traffic. *If, however, either party cannot measure traffic in each category, then BellSouth and [Sprint Nextel] shall agree on a surrogate method* of classifying and billing traffic, taking into consideration territory served (e.g. MTA boundaries, LATA boundaries and state boundaries) and traffic routing of BellSouth and [Sprint Nextel].⁴ (Emphasis added.)

⁴ See AT& Complaint Exhibit A Sprint ICA, Attachment 3, p. 32, § 6.7.3, and Exhibit B Nextel ICA, p. 11 / 12 of 30, § VI. C.

AT&T cannot accurately identify, classify and bill interMTA traffic based upon “[a]ctual traffic measurements.” Therefore, to the extent interMTA traffic is subject to compensation under the ICAs, each ICA requires that such traffic be classified and billed pursuant to an *agreed-to* surrogate method of classifying and billing such traffic.

13. Sprint Nextel admits that since AT&T started billing interMTA traffic based upon the New AT&T Method (which is an AT&T unilaterally developed surrogate method to identify terminating mobile-to-land interMTA traffic), Sprint Nextel has disputed AT&T’s billed interMTA charges but further affirmatively states that, at the same time, Sprint Nextel has in good faith continued to pay a monthly amount to AT&T that Sprint Nextel believes approximates the interMTA charges that AT&T should have charged under the parties’ Agreed Billing Method for interMTA traffic. Sprint Nextel denies the remaining allegations contained in paragraph 13.

14. Sprint Nextel admits that the parties’ Agreed Billing Method is a surrogate method for classifying and billing interMTA traffic that includes application of an agreed-to interMTA factor which, in turn, is used to apportion the volume of billable traffic between interMTA and intraMTA traffic (or “local” traffic as referred to by AT&T), but denies the remaining allegations contained in paragraph 13. Sprint Nextel further states that, pursuant to the Sprint-AT&T Agreed Billing Method, the following steps are necessary for a terminating party to classify and bill for termination of the originating party’s interMTA traffic under the Sprint ICA:

- a) First, identify the total minutes of use (“MOUs”) of the originating party’s intraMTA traffic that is delivered over the interconnection facilities and terminated on the terminating party’s network in a given month (“intraMTA MOUs”);

- b) Second, multiply the intraMTA MOUs by the last agreed to interMTA factor of 1% to identify the billable interMTA MOUs (“interMTA MOUs”); and
- c) Third, bill 50% of the interMTA MOUs at AT&T’s terminating interstate access rate elements, and bill the remaining 50% of the interMTA MOUs at AT&T’s terminating intrastate access rate elements.

Sprint Nextel also further states that the Agreed Billing Method under the Nextel ICA is similar, but due to the use of separate interstate/intrastate interMTA factors, the process is as follows:

- a) First, identify the intraMTA MOUs;
- b) Second, multiply the intraMTA MOUs by the last agreed to interMTA interstate factor of 0.754% to identify the interMTA MOUs to be billed at interstate rates (“interstate interMTA MOUs”);
- c) Third, multiply the intraMTA MOUs by the last agreed to interMTA intrastate factor of 1.118% to identify the interMTA MOUs to be billed at intrastate rates (“intrastate interMTA MOUs”); and
- d) Fourth, bill the interstate interMTA MOUs at AT&T’s terminating interstate access rate elements, and bill the intrastate interMTA MOUs at AT&T’s terminating intrastate access rate elements.

15. Sprint Nextel denies the allegations contained in the first sentence of paragraph 15. Upon information and belief, Sprint Nextel affirmatively states that AT&T reached conclusions that AT&T purports are based upon AT&T’s analysis of the Jurisdictional Information Parameter (“JIP”) of the traffic delivered by Sprint Nextel to AT&T, but denies the remaining allegations contained in the second sentence of paragraph 15. As discussed in greater

detail below, Sprint Nextel denies that AT&T's use of JIP *standing alone*⁵ is an effective tool in determining whether traffic delivered over interconnection trunks is interMTA traffic. Sprint Nextel admits that the JIP is a data field and further affirmatively states such field may be populated by an originating carrier in the signaling information of a telecommunications call, but denies the remaining allegations contained in the third sentence of paragraph 15. Upon information and belief, Sprint Nextel states that AT&T used JIP data, standing alone, in reaching its conclusions regarding interMTA traffic delivered by Sprint Nextel to AT&T, but denies, as discussed in greater detail below, that AT&T's method of comparing stand-alone JIP data to a terminating phone number enables AT&T to accurately measure interMTA traffic. Sprint Nextel denies the remaining allegations contained in the fourth and the fifth sentences of paragraph 15.

16. Sprint Nextel denies the first sentence of paragraph 16. Sprint Nextel admits that the parties have engaged in discussions regarding regarding interMTA traffic, and affirmatively states that no agreement has been reached between the parties regarding a change to the parties' Agreed Billing Method for interMTA traffic, and denies the remaining allegations contained in the second sentence of paragraph 16.

17. Sprint Nextel admits that AT&T notified Sprint Nextel that AT&T would unilaterally adjust its billing of interMTA traffic on a prospective basis and that beginning in July, 2007, AT&T not only back-billed Sprint Nextel but also commenced prospectively billing Sprint Nextel for interMTA traffic charges that AT&T claims are due pursuant to the New AT&T Method of billing for interMTA traffic. Sprint Nextel denies the remaining allegations contained in paragraph 17.

⁵ With respect to AT&T's JIP analysis, "standing alone" means without AT&T performing further identification of the cell-site serving the mobile-end user at the beginning of a call.

18. Sprint Nextel admits that it has disputed the interMTA charges which AT&T has billed based upon the New AT&T Method for identifying interMTA traffic, and further affirmatively states that, at the same time, Sprint Nextel has in good faith continued to pay a monthly amount to AT&T that Sprint Nextel believes approximates the interMTA charges that AT&T should have charged under the parties' Agreed Billing Method for interMTA traffic. Sprint Nextel admits that AT&T is seeking to recover the amounts alleged in the second, third and fourth sentences of paragraph 18, and that the Commission does not have jurisdiction over any claimed interstate amounts due as conceded by AT&T in footnote 3, but denies the remaining allegations contained in paragraph 18, and affirmatively states that AT&T is not entitled to recover the alleged amounts due. Further, the Commission lacks jurisdiction to award the monetary damages sought by AT&T.

19. Sprint Nextel admits that it disputes the accuracy of AT&T's measurement of interMTA, and further affirmatively states that the New AT&T Method does not constitute the "actual traffic measurement" of interMTA traffic, but is simply a different surrogate methodology for classifying interMTA traffic, and that this different surrogate methodology has not been mutually agreed to by the parties. Sprint Nextel denies the remaining allegations of paragraph 19.

20. Sprint Nextel denies the allegations contained in the first sentence of paragraph 20 and affirmatively states that Sprint has attempted to produce traffic detail to AT&T, but AT&T has refused to cooperate in those efforts. Sprint Nextel denies the allegations contained in the second sentence of paragraph 20. Sprint Nextel further affirmatively states that not only has Sprint Nextel provided AT&T traffic study information for AT&T's consideration, but that AT&T has ignored such data and instead proceeded to unilaterally impose the New AT&T

Method to overbill interMTA traffic contrary to the Agreed Billing Method and without either the mutual agreement of the parties or a written amendment to the ICAs, both of which are required by the ICAs.

21. Sprint Nextel admits that the parties engaged in negotiations to revise the Agreed Method for classifying and billing interMTA traffic, but that AT&T disengaged from such discussions without the parties reaching any agreement to revise the Agreed Billing Method, and denies the remaining allegations contained in the first sentence of paragraph 21.

With respect to the second sentence of paragraph 21, Sprint Nextel admits that it has had discussions with AT&T about AT&T's attempts to bill Sprint Nextel based upon stand alone JIP data, and that Sprint Nextel engaged in discussions concerning interMTA traffic with AT&T both prior to and after April 20, 2009. Sprint Nextel has explained to AT&T why the JIP field data, standing alone, does not accurately identify the location of a wireless party to a call. Sprint Nextel also attempted to provide traffic study information that would accurately identify interMTA traffic, and attempted to engage AT&T to develop a mutually agreeable traffic study method to identify interMTA traffic. Despite these discussions and Sprint Nextel's insistence that the JIP data could not be used to identify interMTA traffic, AT&T unilaterally decided to ignore the parties' Agreed Billing Method and "adjust" the interMTA factor based upon AT&T's purported use of JIP data, in violation of the ICAs. Sprint Nextel denies the remaining allegations contained in the second sentence of paragraph 21 to the extent that they signify that AT&T had made a good faith effort to resolve this matter informally.

Sprint Nextel admits the allegation contained in the third sentence of paragraph 21 that AT&T sent a notice to invoke the dispute resolution provisions of the ICAs, but denies the remaining allegations contained in the third and the fourth sentences for the same reasons

discussed above in response to the second sentence of paragraph 21. Sprint Nextel further denies the remaining allegations contained in the third and fourth sentences of paragraph 21 to the extent that they signify that AT&T has made a good faith effort to resolve this matter informally. Sprint admits the fifth sentence of paragraph 21 to the extent that the term “impasse” means disagreement, but denies the remaining allegations of the fifth sentence to the extent that it attempts to characterize a good-faith effort by AT&T to resolve the dispute through negotiations.

22. Sprint Nextel admits that the Sprint ICA and Nextel ICA contain provisions regarding the compensation, if any, to be paid for different categories of traffic; that paragraph 22 quotes incomplete portions of the ICAs’ provisions out of context; and that certain portions of the ICA refer to the use of an “auditable factor”; but denies the remaining allegations contained in paragraph 22.

In further response to paragraph 22, Sprint Nextel incorporates by reference its response to paragraphs 11 and 12. Regarding the classification and billing of interMTA traffic between the parties, the Sprint ICA and the Nextel ICA each expressly state:

Actual traffic measurement in each of the appropriate categories is the preferred method of classifying and billing traffic. *If, however, either party cannot measure traffic in each category, then* BellSouth and [Sprint Nextel] *shall agree on a surrogate method* of classifying and billing traffic, taking into consideration territory served (e.g. MTA boundaries, LATA boundaries and state boundaries) and traffic routing of BellSouth and [Sprint Nextel].⁶ (Emphasis added.)

AT&T cannot accurately identify, classify and bill interMTA traffic based upon “[a]ctual traffic measurements.” Therefore, to the extent any interMTA traffic is subject to compensation under the ICAs, such traffic must be classified and billed pursuant to a mutually *agreed* to surrogate method of classifying and billing such traffic.

⁶See AT& Complaint Exhibit A Sprint ICA, Attachment 3, p. 32, § 6.7.3, and Exhibit B Nextel ICA, p. 11 / 12 of 30, § VI. C.

23. Sprint Nextel denies the allegations contained in paragraph 23. Sprint Nextel further affirmatively states that AT&T's allegations in paragraph 23 describe a "surrogate method of classifying and billing traffic" rather than any real-time ability to accurately perform "[a]ctual traffic measurement" of interMTA traffic.

24. Sprint Nextel denies the allegations contained in paragraph 24. Sprint Nextel further affirmatively states AT&T is in breach of the Sprint ICA and Nextel ICA by seeking to unilaterally impose a New AT&T Method for classifying interMTA traffic that has not been agreed to by the Parties.

25. Sprint Nextel denies each and every allegation of the Complaint to the extent not otherwise expressly identified and admitted herein.

AFFIRMATIVE DEFENSES

26. The Complaint fails to state a claim or a cause of action on which the Commission may grant relief. For example, and without limitation, AT&T seeks an award of damages, which is beyond the Commission's jurisdiction; and AT&T seeks modification of the parties' ICAs without Sprint Nextel's written consent, rather than interpretation or enforcement of existing agreed-to terms, which remedy is not provided by and in fact is contrary to the terms of the ICAs.

27. The Complaint is barred by AT&T's failure to meet the condition precedent of an agreement between the parties to change the existing Agreed Billing Method, rendering the Complaint an attempt to impose AT&T's unilateral desires through an otherwise unenforceable "agreement to agree" clause that is beyond the Commission's jurisdiction.

28. Despite AT&T's contention to the contrary, AT&T is not capable of actual measurement of interMTA Traffic using JIP data. As Sprint has repeatedly informed AT&T

representatives, use of the JIP field data standing alone does not accurately identify the location of the wireless party to a call or the jurisdiction of a call that occurs between the parties' end-users.

29. Despite AT&T's contention to the contrary, AT&T's analysis of interMTA traffic based upon the JIP field is flawed. Sprint has repeatedly informed AT&T and its representatives that any AT&T analysis based upon the JIP data field standing alone is flawed and leads to inaccurate conclusions.

30. AT&T has violated the Sprint ICA and the Nextel ICA by sending bills based upon a New AT&T Method that has not been agreed upon. The ICAs do not permit AT&T to unilaterally modify the parties' Agreed Billing Method for interMTA traffic. Rather, Sprint ICA § 6.7.3 and Nextel ICA § VI. C. require the parties' agreement as to any surrogate method for classifying and billing interMTA traffic; as set forth above, the parties have never agreed to change the existing Agreed Billing Method. Further, the ICA requirement that any surrogate method must be agreed to has not been amended to authorize AT&T's unilateral abandonment the parties' Agreed Billing Method for interMTA traffic and unilateral implementation of its own surrogate methodology, i.e., the New AT&T Method. Despite the parties' failure to agree upon either a new surrogate billing method, or an amendment to change the requirement of mutual agreement with respect to the use of any given surrogate methodology, AT&T unilaterally started billing Sprint based upon a new factor developed by AT&T using an inaccurate methodology that AT&T knows is objectionable to Sprint Nextel. AT&T's unilateral actions and refusal to cooperate with Sprint Nextel in good faith are inconsistent with and violate the ICA and bar AT&T from obtaining the relief it seeks or any relief in this proceeding.

31. Sprint Nextel has provided information concerning traffic studies to AT&T in an effort to cooperatively develop mutually acceptable modifications to the Agreed Billing Method by which the parties would prospectively bill interMTA traffic pursuant to the ICAs. AT&T has ignored such information from Sprint Nextel and has instead continued to send Sprint Nextel bills based upon AT&T's unilaterally imposed factors using the New AT&T Method for identifying interMTA traffic. AT&T's unilateral actions and refusal to cooperate with Sprint Nextel in good faith are inconsistent with and violate the ICA and bar AT&T from obtaining the relief it seeks or any relief in this proceeding.

32. The relief requested by AT&T is barred by the prohibition against retroactive ratemaking.

33. The Complaint is barred by waiver, laches, estoppel and unclean hands.

34. Sprint Nextel reserves the right to designate additional defenses as they become apparent throughout the course of discovery, investigation and otherwise.

COUNTERCLAIM

Sprint Nextel, for its counterclaim in this matter, states as follows:

35. Sprint Nextel incorporates by reference and re-alleges each of its statements and allegations beginning with the Introduction, through and including paragraph 31 of this pleading.

36. As previously discussed, pursuant to the Sprint ICA and the Nextel ICA, each party, as the terminating party, is entitled to bill the originating party for termination of the originating party's interMTA traffic on the terminating party's network.⁷ Throughout the term of the ICAs and continuing through and including the present time, Sprint Nextel has terminated AT&T interMTA traffic on the Sprint Nextel wireless networks. Accordingly, Sprint Nextel is

⁷ Complaint Exhibit A Sprint ICA, Attachment 3, p. 32 §§ 6.7.1 and 6.7.2 and Complianit Exhibit B, Nextel ICA, p. 12 § IV. A and B.

entitled to a declaration that, pursuant to the parties' ICAs, Sprint Nextel is entitled to bill and AT&T is obligated to pay Sprint Nextel for AT&T-originated interMTA traffic that terminates on Sprint Nextel's wireless networks ("AT&T interMTA traffic").

37. Pursuant to the Sprint ICA and the Nextel ICA, each party is entitled to bill and collect charges for previously unbilled charges provided the unbilled charges are not more than one (1) year old.⁸ Sprint Nextel has terminated AT&T interMTA traffic for which AT&T has incurred an obligation to pay Sprint Nextel during the past year but Sprint Nextel has not billed AT&T for such charges. Accordingly, Sprint Nextel is entitled to a further declaration that, pursuant to the parties' ICAs, Sprint Nextel is entitled to bill and collect charges from AT&T for previously unbilled AT&T interMTA traffic, provided such charges are billed within one (1) year from the time such charges were incurred.

PRAYER FOR RELIEF

WHEREFORE, Sprint Nextel prays for the following relief:

- A. That the Commission deny the relief prayed for by AT&T.
- B. That the Commission deny AT&T any relief in this proceeding
- C. That the Commission grant Sprint Nextel the relief sought in its Counterclaim,

and such other and further relief that the Commission deems to be just and appropriate.

⁸ See Complaint Exhibit A Sprint ICA, Attachment 7, p. 7, section "2. Wireless Billing and Compensation", subsection 2.2 which expressly provides "[a]ll charges under this agreement shall be billed within one year from the time the charge was incurred, previously unbilled charges more than one year old shall not be billed by either party"; and, Complaint Exhibit B Nextel ICA, p. 8-9, section "B. Billing", subsection 5 which provides, "[a]ll charges under this Agreement shall be billed within one (1) year from the time the charge was incurred; previously unbilled charges more than one year old shall not be billed by either Party."

Respectfully submitted this 1st day of February, 2010.

/s/ Marsha E. Rule

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*Attorneys for Sprint Spectrum L.P., WirelessCo,
L.P. and SprintCom, Inc., jointly d/b/a Sprint PCS
and Nextel South Corp.*

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 February 1, 2010 to the following parties:

Theresa Tan, Esq.
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
ltan@psc.state.fl.us

E. Earl Edenfield, Jr., Esq.
Tracy W. Hatch, Esq.
Manuel Gurdian, Esq.
c/o Greg Follensbee
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
ke2722@att.com
th9467@att.com
mg2708@att.com
greg.follensbee@att.com

/s/ Marsha E. Rule
Marsha E. Rule

EXHIBIT 1

DOCUMENT NUMBER-DATE

00727 FEB-19

FPSC-COMMISSION CLERK



Florida Regulatory Relations
150 S. Monroe St., Suite 400
Tallahassee, FL 32301

T: 850-577-5550
F: 850-577-5536
www.att.com

February 15, 2009

Mrs. Ann Cole
Director, Division of The Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Notice of the Adoption of existing interconnection agreement with modifications between BellSouth Telecommunications, Inc d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp.

Dear Mrs. Cole:

BellSouth Telecommunications, Inc d/b/a AT&T Florida d/b/a AT&T Southeast hereby provides notice to the Florida Public Service Commission of the adoption by Nextel South Corp. the Interconnection, Unbundling, Resale, and Collocation Agreement with modifications for the State of Florida entered into between BellSouth Telecommunications, Inc d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company, which was filed with this Commission in Docket No. 070369-TP.

Nextel South Corp is adopting the agreement and all amendments (if applicable), with modifications as provided by Section 252(i) of the Telecommunications Act of 1996.

Enclosed are the original and two (2) copies of the contract between BellSouth Telecommunications, Inc d/b/a AT&T Florida d/b/a AT&T Southeast and Nextel South Corp, for your records.

If you have any questions please do not hesitate to contact Robyn Yant at (850) 577-5551.

Very truly yours,


Jerry D. Hendrix
Regulatory Vice President



ata

WHOLESALE AGREEMENT

Customer Name: Nextel South Corp.

| | |
|--|---|
| Nextel South Adoption of Sprint in Florida | 2 |
| Nextel South Adoption Papers FL | 3 |
| Nextel South FL sig pg | 6 |
| Nextel South Adopt Sprint FL Exhibit 1 | 7 |

By and Between
BellSouth Telecommunications, Inc.
And
Nextel South Corp.

CCCS 2 of 7

DOCUMENT NUMBER-DATE
01545 FEB 26 8
FPSC-COMMISSION CLERK

By and Between

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

And

Nextel South 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"), a Georgia 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 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. (collectively "Sprint") 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 date of Order No. PSC-08-0584-FOF-TP, which includes the 3-year Extension Amendment jointly filed on December 4, 2007 by AT&T Florida and Sprint in Docket No. 070249-TP which was effective March 20, 2007. 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

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:

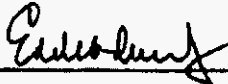
Sprint/Nextel
Legal/Telecom Management Privacy Group
6450 Sprint Parkway
Mailstop: KSOPHN0312-3A318
Overland Park, KS 66251
Phone 913-315-9762 (overnight mail only)


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 by AT&T
Operations, Inc., its authorized agent**

Nextel South Corporation

By: 

By: 

Name: Eddie A. Reed, Jr.

Name: Marichaya V. Bixley

Title: Director-Interconnection Agreements

Title: VP - Interconnection Solutions

Date: 2-4-09

Date: 1/29/09

EXHIBIT 1

2001 AT&T FLORIDA/SPRINT AGREEMENT

**This Interconnection Agreement is Currently On File With The Commission And Can Also
Be Found Via The Following Web Site Address:**

http://cor.bellsouth.com/clec/docs/all_states/800aa291.pdf