

Ruth Nettles

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Sent: Tuesday, November 13, 2007 9:47 AM
To: Filings@psc.state.fl.us
Cc: Tyler, John; Gurdian, Manuel; Tracy Hatch; Follensbee, Greg; Holland, Robyn P; Woods, Vickie
Subject: Florida Docket No. 070249-TP
Importance: High
Attachments: response.pdf

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- B. Docket No. 070249-TP: In the Matter of: 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 Florida, d/b/a AT&T Southeast.
- C. AT&T Southeast
 on behalf of John T. Tyler
- D. 20 pages total in PDF format
- E. Cole letter, Certificate of Service, and AT&T Florida's Response and Motion to Dismiss Amended Petition for Arbitration of Sprint Communications Company Limited Partnership and Sprint Spectrum Limited Partnership

<<response.pdf>>

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11/13/2007



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November 13, 2007

Ms. Ann Cole
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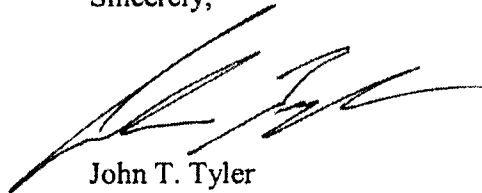
Re: Docket No. 070249-TP (Sprint Arbitration)

Dear Ms. Cole:

Enclosed is AT&T Florida's Response and Motion to Dismiss Amended Petition for Arbitration of Sprint Communications Company Limited Partnership and Sprint Spectrum Limited Partnership, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



John T. Tyler

cc: All Parties of Record
Gregory Follensbee
E. Earl Edenfield, Jr.
Lisa S. Foshee

CERTIFICATE OF SERVICE
Docket No. 070249-TP

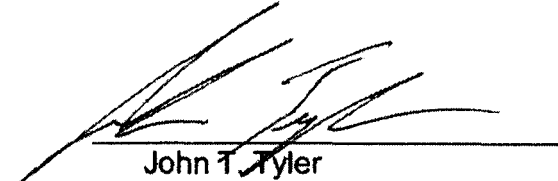
I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail
and First Class U. S. Mail this 13th day of November, 2007 to the following:

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John T. Tyler

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:)	
)	DOCKET NO. 070249-TP
Petition of Sprint Communications)	
Company L.P. and Sprint Spectrum L.P.,)	Filed: November 13, 2007
d/b/a Sprint PCS for Arbitration of Rates,)	
Terms, and Conditions of Interconnection)	
With BellSouth Telecommunications, Inc.,)	
d/b/a AT&T Florida, d/b/a AT&T Southeast)	

AT&T FLORIDA’S
RESPONSE AND MOTION TO DISMISS AMENDED PETITION
FOR ARBITRATION OF SPRINT COMMUNICATIONS COMPANY LIMITED
PARTNERSHIP AND SPRINT SPECTRUM LIMITED PARTNERSHIP

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”) respectfully submits the following Response and Motion To Dismiss the Amended Petition for Arbitration (“Amended Petition”) filed by Sprint Communications Company L.P. and Sprint Spectrum L.P., d/b/a Sprint PCS (collectively referred to as “Sprint”). AT&T Florida requests that this Commission dismiss Sprint’s Amended Petition because, as was the case with Sprint’s Initial Petition in this matter, Sprint continues to improperly seek to arbitrate the interpretation of a merger commitment, which lies within the exclusive jurisdiction of the Federal Communications Commission (“FCC”).

In its Initial Petition Sprint stated that the single issue in this arbitration is: “**May AT&T Southeast effectively deny Sprint’s request to extend its current Interconnection Agreement for three full years from March 20, 2007 pursuant to Interconnection Merger Commitment No. 4?**”¹ In its Amended Petition, Sprint states that the single issue in

¹ Petition at p. 8.

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this arbitration is: **“When should the agreed-upon three year extension of Sprint’s current Interconnection Agreement become effective?”**²

Despite Sprint’s attempt to obfuscate the matter, its amended issue for arbitration is nothing more than a restatement of the same issue presented in the first proceeding, and its Amended Petition is nothing more than a rehashing of the same argument that has already been analyzed and soundly rejected by this Commission in its Order in this Docket issued August 21, 2007 (“Order”). The three year extension that Sprint refers to in its Amended Petition is of course the same three year extension set forth in what Sprint refers to as “Merger Commitment No. 4” in its initial Petition.³ The Commission should not be confused by Sprint’s referral, in its Amended Petition, to “the agreed-upon three year extension.” That characterization amounts to nothing more than Sprint’s admission that, consistent with the merger order, AT&T Florida made a three-year extension available to Sprint. The issue that is improperly before the Commission remains Sprint’s erroneous interpretation of when the three-year extension begins.

The linchpin of Sprint’s case remains the same: interpretation of an FCC merger commitment, which interpretation this Commission (and others)⁴ already decided is best

² Amended Petition at p. 13.

³ See Initial Petition at p. 6; Amended Petition at p. 9.

⁴ The South Carolina and Louisiana commissions have deferred interpretation of the matter to the FCC. See *In re: Petition of Sprint Communications Company, LP and Sprint Spectrum LP d/b/a Sprint PCS for Arbitration of Rates, Term and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Louisiana d/b/a AT&T Southeast*, Dkt. No. U-30179 (June 21, 2007); *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, Incorporated d/b/a AT&T South Carolina d/b/a AT&T Southeast*, Dkt. No. 2007-215-C (May 30, 2007). Likewise, in a docket involving a dispute between AT&T and Nextel/Nextel Partners regarding a merger condition, the Mississippi Commission dismissed Nextel/Nextel Partners’ complaint for lack of jurisdiction. See *In the Matter of NPCR, Inc. (“Nextel Partners”) Petition for Adoption of the Existing Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P., Sprint Spectrum L.P.*, Dkt. No. 2007-UA-316 (June 28, 2007); and *In the Matter of Nextel South Corp. (“Nextel”) Petition for Adoption of the Existing Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P., Sprint Spectrum L.P.*, Dkt. No. 2007-UA-317 (June 28, 2007). The Kentucky commission is the only commission to assert

reserved to the FCC. In its Amended Petition, Sprint continues to rely upon its own self-serving interpretation of the FCC merger commitment as the basis of its position regarding when the three-year extension should begin. In response to Sprint's misplaced approach, the Commission found in its Order that Sprint was seeking "enforcement of an FCC order as Sprint interprets it."⁵ Furthermore, in dismissing Sprint's Petition the Commission stated that "Sprint's theory for treating the enforcement of the particular merger commitment as an arbitration of an open Section 251 issue is, at best, awkward."⁶ Nothing has changed, and by simply re-wording its single issue Sprint has not altered the fact that the entire case is based upon Sprint's self-serving interpretation of a merger commitment, which Sprint has awkwardly and inappropriately attempted to shoehorn into a Section 252 arbitration.

Simply put, but for the non-Section 251 Merger Commitment this issue would not be before the Commission in this Docket. As Sprint itself states: "**Sprint's Amended Petition arises out of the same conduct, transaction, or occurrence set forth in Sprint's original Petition.**"⁷ There is nothing new in the Amended Petition for the Commission to resolve, and Sprint's Amended Petition should be dismissed consistent with the Commission's initial Order.

MOTION TO DISMISS

I. The Issue Sprint Raised Is Not A Section 251 Arbitration Issue.

In accordance with the Act, an ILEC can only be required to arbitrate and negotiate issues related to Section 251 of the Act, and the Commission can only arbitrate non-251

jurisdiction over the matter. See *In the Matter of: 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, Case No. 2007-00180* (May 7, 2007).

⁵ Order at p. 4.

⁶ Id. at p. 5.

⁷ Amended Petition at p. 5.

issues to the extent they are required for implementation of the interconnection agreement.⁸ Importantly, Section 252 makes clear that the Arbitrators' role is to resolve the parties' open issues to "meet the requirements of Section 251... ." 47 U.S.C. § 251(c)(1) (emphasis added).

The sole issue that Sprint raises in this arbitration is clearly not an arbitrable issue pursuant to the Act. Furthermore, the issue that Sprint raises in its Petition was not discussed in the context of the parties' negotiations of a new interconnection agreement. Sprint's issue is as follows:

"ISSUE 1: When should the agreed-upon three year extension of Sprint's current Interconnection Agreement become effect?" Petition, p. 8.

That issue, regarding a merger commitment, is completely outside the scope of Section 251. Furthermore, Commission resolution of this merger commitment issue is not a requisite for implementation of the interconnection agreement. The merger commitment is not a *requirement* of Section 251. Sprint's attempt to frame the merger commitment as an arbitrable issue is an affront to the plain, clear, and unambiguous language contained in the Act. Given that Sprint has presented only this one non-arbitrable issue, Sprint's Amended Petition should be dismissed.

II. The FCC Has Sole Jurisdiction Over AT&T Florida's Merger Commitments.

On March 26, 2007, the Federal Communications Commission released a Memorandum Opinion and Order approving the merger of AT&T and BellSouth ("Merger Order"). The FCC has the sole authority to interpret, clarify or enforce any issue involving merger commitments set forth in its Merger Order. Furthermore, FCC resolution of all issues

⁸ *Coserve Limited Liab. Corp. v. Southwestern Bell Tel.*, 350 F.3d 482, 487 (5th Cir. 2003); *MCI Telecom., Corp. v. BellSouth Telecom., Inc.*, 298 F.3d 1269, 1274 (11th Cir. 2002).

relating to merger commitments ensures a uniform regulatory framework and avoids a conflicting and diverse interpretation of FCC requirements. Since the FCC has jurisdiction over these issues, any opinion offered by the Commission regarding whether the merger commitment at issue allows Sprint to extend the terms and conditions of its interconnection agreement in the manner Sprint has requested would be based on pure speculation as to the FCC's intent in adopting the commitments. Even if raised with the Commission in another context (that is, not in connection with an arbitration under Section 251 of the Act), adjudication of the issue with the Commission raises the potential for conflicting rulings by the FCC and this Commission.

Pursuant to the Federal Communications Act, the FCC is vested with the responsibility for evaluating and approving telecommunications mergers. 47 U.S.C. §§ 214(a), 310(d). The FCC undertakes an intense process whereby it reviews the parties' applications, takes public comment, and investigates whether the proposed transaction complies with federal law and FCC rules and is in the overall public interest. In approving a merger, the FCC "has the authority to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction Indeed, [its] public interest authority enables [it] to impose and enforce conditions based upon an extensive regulatory and enforcement experience" Merger Order, p. 14, ¶ 22; see also 47 U.S.C. § 303(r). Congress has clearly delegated to the FCC the authority to make and enforce regulatory determinations with regard to the telecommunications industry.

Furthermore, the United States Supreme Court has held that the interpretation of an agency order, when issued pursuant to the agency's established regulatory authority, falls within the agency's jurisdiction. *Serv. Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 177

(1959). As the author of the Merger Order and the agency charged with protecting the public interest in the telecommunication field, the FCC possesses jurisdiction over the merger commitments.

Moreover, the FCC explicitly reserved jurisdiction over the merger commitments contained in the Merger Order. The FCC specifically provided that “[f]or 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.” Merger Order (Appendix F), p. 147 (attached to AT&T Florida’s original Motion to Dismiss and Answer as “Exhibit A”) (emphasis added). Nowhere in Appendix F does the FCC provide that interpretation of merger commitment No. 4 is to occur outside the FCC. Thus, the FCC clearly intended to retain the authority to enforce and interpret the merger commitments established in the Merger Order.

Jurisdiction to interpret merger commitments rests exclusively with the FCC. The FCC alone is vested with jurisdiction to interpret and make determinations regarding compliance with those commitments. Therefore, because the sole issue raised by Sprint in this arbitration regards a merger commitment, the Commission should dismiss Sprint’s Amended Petition.

WHEREFORE, AT&T Florida respectfully requests that the Commission dismiss Sprint’s Amended Petition.

ANSWER

Pursuant to 47 U.S.C. § 252(b)(3), AT&T responds to the Amended Petition for Arbitration (“Amended Petition”) filed by Sprint Communications Company L.P. and Sprint Spectrum L.P., d/b/a Sprint PCS (“Sprint”) and states the following:

1. Sections 251 and 252 of the Telecommunications Act of 1996 (“1996 Act”) encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2)-(6).

2. As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.⁹ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.¹⁰ The petitioning party must submit along with its petition “all relevant documentation concerning: (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issues discussed and resolved by the parties.”¹¹ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after a commission receives the petition.¹² The 1996 Act limits a commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.¹³

⁹ 47 U.S.C. § 252(b)(2).

¹⁰ *See generally*, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

¹¹ 47 U.S.C. § 252(b)(2).

¹² 47 U.S.C. § 252(b)(3).

¹³ 47 U.S.C. § 252(b)(4).

3. Through the arbitration process, a commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once a commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to a commission for approval.¹⁴

4. AT&T Florida and Sprint previously entered into an interconnection agreement that has expired. Although AT&T Florida and Sprint negotiated in good faith as to the terms and conditions for a new interconnection agreement, the parties have been unable to reach a final agreement, and subsequently Sprint filed its Initial Petition, and subsequently its Amended Petition. AT&T Florida responds below to each of the separately numbered paragraphs of the Petition:

5. The allegations in Paragraph 1 of the Amended Petition require no response from AT&T Florida.

6. The allegations in Paragraph 2 of the Amended Petition require no response from AT&T Florida.

7. AT&T Florida admits the allegations in Paragraph 3 of the Amended Petition, and denies the remaining allegation.

8. AT&T Florida denies the allegations in Paragraph 4 of the Amended Petition.

¹⁴ 47 U.S.C. § 252(a).

9. AT&T Florida denies that the Commission has jurisdiction over the subject matter of the issue Sprint raised in its Amended Petition. AT&T Florida admits that Section 252(b)(1) of the Act created an arbitration process, and AT&T Florida affirmatively states that the provisions of the Act speak for themselves. AT&T Florida denies that Sprint's Amended Petition is filed in accordance with the Act. AT&T Florida affirmatively asserts that the obligations contained in sections 251 and 252 of the 1996 Act set forth the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. AT&T Florida affirmatively asserts that the issue Sprint raised in its Amended Petition is outside the scope of an arbitration proceeding.

10. The language contained in the Florida Statutes, referenced in Paragraph 6 of the Amended Petition, speaks for itself and requires no response from AT&T Florida.

11. Sections 251 and 252 of the 1996 Act, referenced in Paragraph 7, speak for themselves and require no response from AT&T Florida. AT&T Florida denies that the issue Sprint raised in its Amended Petition is properly before this Commission under Section 252(b).

12. The parties' interconnection agreement, referenced in Paragraph 8, speaks for itself and requires no response from AT&T Florida. AT&T Florida affirmatively asserts that the issue Sprint raised in its Amended Petition is based upon an FCC merger commitment that must be interpreted by the FCC prior to implementation in an interconnection agreement.

13. AT&T Florida admits the allegations contained in the first two sentences in Paragraph 9 of the Amended Petition. The Florida Rules of Civil Procedure, referenced in Paragraph 9, speak for themselves and require no response from AT&T Florida.

14. The interconnection agreement, referenced in Paragraph 10 of the Amended Petition, speaks for itself and requires no response from AT&T Florida. To the extent that any remaining allegations contained in Paragraph 10 require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

15. Paragraph 11 of the Amended Petition contains legal argument of the issue as framed by Sprint and requires no response from AT&T Florida. To the extent that any allegations contained in Paragraph 11 require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

16. AT&T Florida admits the allegations contained in Paragraph 12 of the Amended Petition.

17. AT&T Florida admits the allegations contained in Paragraph 13 of the Amended Petition.

18. The section of the interconnection agreement, referenced in Paragraph 14, speaks for itself and requires no response from AT&T Florida. AT&T Florida affirmatively asserts that, by its express terms, the interconnection agreement expired on December 31, 2004.

19. The sections of the interconnection agreement, referenced in Paragraph 15, speak for themselves and require no response from AT&T Florida. To the extent that any allegations contained in Paragraph 15 require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

20. The allegations contained in Paragraph 16 contain Sprint's characterizations and require no response from AT&T Florida. To the extent that any allegations contained in

Paragraph 16 require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

21. The allegations contained in the first two sentences in Paragraph 17 contain Sprint's characterizations and require no response from AT&T Florida. AT&T Florida admits the allegations contained in the last sentence in Paragraph 17.

22. AT&T Florida admits the allegations contained in Paragraph 18 of the Amended Petition.

23. AT&T Florida admits the allegations in Paragraph 19 of the Petition.

24. AT&T Florida admits that the AT&T/BellSouth merger resulted in conversations between the parties regarding the merger commitment. AT&T Florida affirmatively asserts that those discussions, regarding the merger commitment, were not a part of previous negotiations towards a new interconnection agreement, but were instead conversations held for the first time regarding extending the old interconnection agreement. AT&T Florida denies that it advised Sprint that "no decisions were being made in the new company without a committee." AT&T Florida denies that it indicated that the merger commitments applied to the parties' previous negotiations towards a new interconnection agreement. AT&T Florida admits that the parties extended the arbitration window for two weeks, and that a follow-up call was scheduled. AT&T affirmatively asserts that the purpose of the January 3, 2007 call, scheduled on December 21, 2006, was to conclude negotiation of a new interconnection agreement by verifying the agreement on issues AT&T Florida received from Sprint on December 14, 2006, and to finalize contract language for the new agreement. Sprint's characterization of issues contained in Paragraph 20 requires no response from AT&T Florida. To the extent any additional allegations contained in Paragraph 20

require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

25. AT&T Florida admits the allegation in Paragraph 21 of the Amended Petition.

26. AT&T Florida admits the allegations in Paragraph 22 of the Amended Petition.

27. AT&T Florida admits that the parties twice extended the 252 negotiation arbitration windows to provide additional time to continue negotiating interconnection issues. AT&T affirmatively asserts that the parties' negotiations for a new interconnection agreement were separate and distinct from the parties' discussions regarding extending the old interconnection agreement for three years pursuant to the Merger Commitment. Exhibit "A" to the Amended Petition, referenced in Paragraph 23, speaks for itself and requires no response from AT&T Florida.

28. AT&T Florida denies that the parties included extending the old interconnection agreement in their negotiations towards a new interconnection agreement. AT&T Florida admits that it made a three-year extension available to Sprint and that AT&T Florida's position is that the three-year extension of the parties' interconnection agreement should run from the express expiration date of the agreement; while Sprint asserted that the three-year extension should run from the month in which Sprint requested the three-year extension.

29. AT&T Florida denies that consideration of the effective date of the extended interconnection agreement was an aspect of the parties' negotiations regarding a new agreement. AT&T Florida affirmatively asserts that the parties had already agreed to an effective date for a new agreement prior to the issuance of the Merger Order, and that

discussions regarding extending the old agreement, as opposed to entering into a new agreement, were necessarily a separate and distinct issue. The letter attached as Exhibit "D" to Sprint's Amended Petition, referenced in Paragraph 25, speaks for itself and requires no response from AT&T Florida.

30. The allegation contained in Paragraph 26 of the Amended Petition requires no response from AT&T Florida. AT&T Florida affirmatively asserts that the single issue Sprint raised is not properly before this Commission.

31. AT&T Florida admits that Paragraph 27 of the Amended Petition contains Sprint's Position. AT&T Florida affirmatively asserts that Sprint's position is erroneous and its Amended Petition should be dismissed.

32. Sprint's understanding, as set forth in Paragraph 28, requires no response. To the extent that Sprint's characterization of its understanding requires any response from AT&T Florida, or is inconsistent with AT&T Florida's position, such characterization is denied. AT&T Florida admits the allegation contained in the last sentence in Paragraph 28 of the Amended Petition.

33. AT&T Florida denies that Sprint's petition presents a proper subject for arbitration by this Commission. Sections 251 and 252 of the Act and Florida Statute 364.16(3) speak for themselves and require no response from AT&T Florida. Sprint's characterizations, contained in Paragraph 29, require no response from AT&T Florida. To the extent that any further allegations contained in Paragraph 29 require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

34. The docket referenced in Paragraph 30 of the Amended Petition speak for themselves and require no response from AT&T Florida. To the extent that any allegations contained in Paragraph 30 require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

35. Paragraph 31 contains legal argument of issues as framed by Sprint, as opposed to factual allegations, and requires no response from AT&T Florida. To the extent that any allegations contained in Paragraph 31 of the Amended Petition require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

36. Paragraph 32 contains legal argument of issues as framed by Sprint, as opposed to factual allegations, and requires no response from AT&T Florida. To the extent that any allegations contained in Paragraph 32 of the Amended Petition require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

37. Paragraph 33 contains legal argument of issues as framed by Sprint, as opposed to factual allegations, and requires no response from AT&T Florida. To the extent that any allegations contained in Paragraph 33 of the Amended Petition require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

38. Paragraph 34 contains legal argument of issues as framed by Sprint, as opposed to factual allegations, and requires no response from AT&T Florida. To the extent that any allegations contained in Paragraph 34 of the Amended Petition require any response

from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

39. Paragraph 35 contains legal argument of issues as framed by Sprint, as opposed to factual allegations, and requires no response from AT&T Florida. To the extent that any allegations contained in Paragraph 35 of the Amended Petition require any response from AT&T Florida, or are inconsistent with AT&T Florida's position, such allegations are denied.

40. AT&T Florida denies each and every allegation in the Amended Petition not expressly admitted herein, and demands strict proof thereof. AT&T Florida denies that Sprint is entitled to the relief requested in the Conclusion And Prayer For Relief of the Amended Petition. AT&T affirmatively asserts that the Commission should dismiss the issue Sprint raised in its petition, and should adopt AT&T's position.

AFFIRMATIVE DEFENSES

41. To the extent Sprint seeks to: (i) arbitrate issues not identified in its Petition; and/or (ii) include and/or incorporate decisions rendered in other pending dockets into the interconnection agreement that is being arbitrated in this docket on issues that were not identified in its Petition; Sprint is barred from doing so pursuant to Section 252(b)(4)(A) of the Act and under the doctrine of laches, estoppel, and/or waiver.

AT&T FLORIDA'S POSITION ON UNRESOLVED ISSUES

Under Section 252 of the Act, a non-petitioning party to a negotiation may respond to the other party's petition and provide such additional information as it wishes within 25 days

after the Commission receives the petition.¹⁵ In accordance with Section 252, AT&T provides the Commission with the following response.

The parties had reached consensus on virtually every issue within the Agreement.¹⁶ However, when the agreement was all but consummated, Sprint filed its Petition and subsequent Amended Petition setting forth solely a non-arbitrable issue. Therefore, AT&T Florida is unaware of Sprint's position regarding AT&T Florida's issue set forth below, and thus AT&T Florida will only set forth AT&T Florida's position.

ISSUE 2 [Attachments 3A and 3B]: Should Attachments 3A and 3B (attached to AT&T Florida's original Motion to Dismiss and Answer collectively as "Exhibit C") be incorporated into the new interconnection agreement as "Attachment 3"?

Yes. The terms and conditions found within Attachments 3A and 3B should be incorporated into the new interconnection agreement as "Attachment 3." AT&T Florida and Sprint began negotiations for a new agreement in July of 2004. Those negotiations continued over a course of more than two years. Each party agreed to extend the arbitration window on several occasions as each believed the parties would achieve a negotiated agreement. In December of 2006 the parties did reach an agreement in principle and were working on finalizing the language to be placed in the new agreement. Subsequent to the merger of AT&T and BellSouth, Sprint withdrew its acceptance of the agreement and began pursuing an alternate path of extending its current agreement purportedly in accordance with the merger commitments. AT&T Florida requested to continue completion of pre-existing negotiations and finalize the agreement to the parties' mutual satisfaction, but Sprint has

¹⁵ 47 U.S.C. § 252(b)(3).

¹⁶ The Interconnection Agreement is attached to AT&T Florida's original Motion to Dismiss and Answer as "Exhibit B."

failed to make serious efforts to enter into a new agreement, and has instead continued its alternate path of attempting to improperly extend its current agreement.

AT&T Florida, therefore, submits with this Response what it believes to be the final agreement the parties had reached through negotiations for the General Terms & Conditions (“Negotiated GT&Cs”) and all attachments except Attachment 3 (“Negotiated Attachments”). AT&T Florida contends that when Sprint withdrew from significant negotiations with AT&T Florida, the only issues that were still under discussion and that were subject to agreement pending acceptable language proposals were several issues in Attachment 3. AT&T Florida, therefore, submits its generic Attachment 3A, for wireless interconnection services, and 3B for wireline interconnection services, and asks that the Commission adopt these two Attachments collectively as Attachment 3 along with the Negotiated GT&Cs and the Negotiated Attachments in order to finalize a new agreement.

While AT&T Florida recognizes that this is an unorthodox means of placing disputed issues before the Commission, AT&T Florida is forced to take this approach because of Sprint’s filing of the arbitration without finalizing a disputed issues list, especially given that the parties had reached an agreement in principal as to any remaining issues in Attachment 3 prior to Sprint’s abrupt abandonment of suitable negotiations.

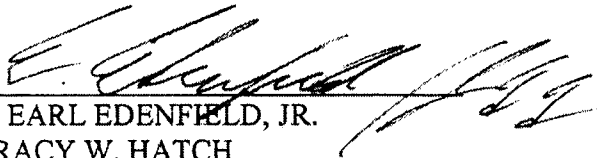
Sprint has filed its arbitration petition within the window described in Section 252(b)(1) of the Act, and has raised no issues other than a single issue that is wholly unrelated to the parties’ negotiations and that is not subject to arbitration under the Act. AT&T Florida, in its sole issue for arbitration, merely asks the Commission to adopt its generic Attachment 3 as proposed by AT&T Florida for inclusion in the negotiated interconnection agreement, and asserts that the attached interconnection agreement reflects

the agreement that the parties had reached with respect to the open negotiation issues for all issues except for matters in Attachment 3 as of December 2006. Accordingly, because of Sprint's refusal to finalize the Attachment 3 matters or to discuss those issues that it deems unresolved in Attachment 3 prior to filing its arbitration petition, this Commission should adopt AT&T Florida's generic Attachment 3 in order for the parties to complete a new agreement.

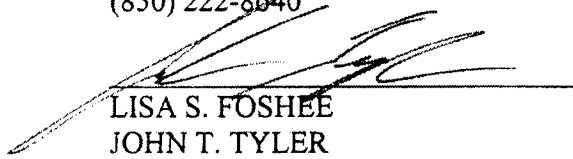
WHEREFORE, AT&T Florida respectfully requests that the Commission dismiss Sprint's Amended Petition and grant the relief requested by AT&T Florida.

Respectfully submitted, this 13th day of November, 2007.

AT&T Florida



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