

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of adoption of existing interconnection agreement 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 NPCR, Inc. d/b/a Nextel Partners.

DOCKET NO. 070368-TP

In re: Notice of adoption of existing interconnection agreement 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. and Nextel West Corp.

DOCKET NO. 070369-TP

ORDER NO. PSC-08-0484-PCO-TP

ISSUED: July 28, 2008

ORDER GRANTING MOTION TO STRIKE

I. Case Background

On June 8, 2007, NPCR, Inc. d/b/a Nextel Partners, Nextel South Corp. and Nextel West Corp. (collectively Nextel) filed its Notice of Adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., and Sprint Spectrum L.P. (collectively Sprint), pursuant to AT&T/BellSouth Merger Commitments and Section 252(i) of the Federal Telecommunications Act of 1996 (Act).

On June 23, 2008, these dockets were set for a Section 120.57(2), Florida Statutes (F.S.) proceeding by Order No. PSC-08-0415-FOF-TP, Order Setting Dockets for Section 120.57(2) F.S. Proceeding. Pursuant to Order No. PSC-08-0402-PCO-TP, issued June 17, 2008, Order Establishing Procedure (OEP), the parties were required to file Basic Position Statements on June 17, 2008 and Briefs on June 26, 2008. The parties filed Briefs on June 26, 2008 and June 27, 2008.<sup>1</sup> On June 30, 2008, Nextel timely filed a Motion to Strike Affidavit of P.L. (Scot) Ferguson on Behalf of AT&T Florida (Attachment A). On July 8, 2008, AT&T filed a Response in Opposition to Nextel's Motion to Strike Affidavit of P.L. (Scot) Ferguson.

<sup>1</sup> Order No. PSC-08-0456-PCO-TP, granting AT&T an Extension of Time to File Brief and Accepting Brief as Timely Filed.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

### Nextel's Motion to Strike

Nextel asserts that AT&T's Affidavit of P.L. (Scot) Ferguson is not authorized by the Order Setting Dockets for Section 120.57(2) F.S. Proceeding, and not in compliance with the OEP. Nextel also asserts that Mr. Ferguson's Affidavit is contrary to AT&T's previous representations to the Commission and denies Nextel its procedural due process.

Nextel cites to the parties' agreed-upon joint stipulations of fact and position statements and argues that by offering additional facts in this proceeding via Mr. Ferguson's Affidavit, AT&T violates the Order Setting Dockets for Section 120.57(2) F.S. Proceeding by setting forth additional factual assertions. Nextel further states the Affidavit's factual assertions and legal arguments should be ignored because Mr. Ferguson's Affidavit constitutes additional argument beyond the 30-page limit set forth in the Order Establishing Procedure.

### AT&T's Response in Opposition

AT&T states that Nextel fails to offer a legal basis for its Motion to Strike and that Nextel did not meet the standard under Rule 1.140(f), Florida Rules of Civil Procedure. AT&T further asserts that the information contained in Mr. Ferguson's Affidavit is entirely relevant and should be useful to the Commission in reaching resolution in the underlying dispute. AT&T argues that neither the OEP, nor the June 23, 2008, Order precludes the parties from filing attachments regarding the issues established and briefed by the parties. AT&T further argues that both Nextel and AT&T have attachments that exceed the established 30-page brief limit.

AT&T asserts that Nextel has not been denied due process. AT&T states that the parties had equal opportunity to address the issues and to include attachments. AT&T further states that it would not object to striking of Paragraph 40 of Mr. Ferguson's Affidavit.<sup>2</sup>

## II. Analysis

The parties agreed to joint stipulations of fact for the purposes of identifying issues for resolution in these proceedings. As defined by Black's Law Dictionary, an affidavit is "a declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public."

As the parties have already filed their joint stipulations of fact, it is not appropriate to introduce additional facts into the record. Upon review of Mr. Ferguson's Affidavit, it clearly contains additional unstipulated facts. Therefore, Mr. Ferguson's Affidavit is not an appropriate attachment to AT&T's Brief. Accordingly, the Affidavit of P.L. (Scot) Ferguson shall be stricken in its entirety.

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<sup>2</sup>Affidavit of P.L. (Scot) Ferguson, Paragraph 40 states "I respectfully request the opportunity to present the facts summarized in this affidavit to this Commission. These facts will demonstrate that the adoptions requested by Nextel should not be granted."

III. Decision


This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of this case.

Upon consideration of the above arguments, Nextel's Motion to Strike Affidavit of P.L. (Scot) Ferguson on Behalf of AT&T is granted.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that NPCR, Inc. d/b/a Nextel Partners, Nextel South Corp. and Nextel West Corp's Motion to Strike Affidavit of P.L. (Scot) Ferguson on Behalf of AT&T Florida is hereby granted.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 28th day of July, 2008.

  
LISA POLAK EDGAR  
Commissioner and Prehearing Officer

(SEAL)

TLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.