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: December 26, 2007

MOTION FOR SUMMARY FINAL ORDER

NPCR, Inc., d/b/a Nextel Partners, Nextel South Corp. and Nextel West Corp. (collectively referred to herein as "Nextel"), pursuant to Rule 28-106.204(4), Florida Administrative Code, hereby respectfully moves the Florida Public Service Commission ("Commission") for a Summary Final Order that acknowledges Nextel's adoptions of the existing interconnection agreement between BellSouth Telecommunications, Inc., d/b/a AT&T Florida ("AT&T") and Sprint[1] (the "Sprint ICA"), and requires AT&T to execute the Adoption Agreements attached hereto as Exhibit A.

In support of this Motion, and as further discussed in detail below, Nextel states that there is no genuine issue as to any material fact regarding Nextel's adoption of the

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

Sprint ICA, and Nextel is entitled to adopt the Sprint ICA under both AT&T's Merger Commitments and 47 U.S.C. § 252(i) as a matter of law.

Contemporaneously herewith Nextel also files it Motion To Quash and for Protective Order with respect to AT&T Florida's Notice of Rule 1.310(b)(6) Deposition. As set forth therein, AT&T's request on its face is totally unwarranted and can only be interpreted as a blatant attempt to unreasonably delay the adoption process. There is neither precedent nor justification for such an undertaking.

I. CASE BACKGROUND

On June 8, 2007, Nextel filed Notices of Adoption of the Sprint ICA. In its Notices, Nextel stated that pursuant to Merger Commitment Nos. 1 and 2 as set forth in the Federal Communications Commission's ("FCC") approval of the AT&T Inc. and BellSouth Corporation Application for Transfer of Control and 47 U.S.C. § 252(i), Nextel has adopted in its entirety, effective immediately, the Sprint ICA as amended which has been filed and approved in each of the legacy BellSouth states, including Florida. Nextel asserted that the Sprint ICA is current and effective, but acknowledged that Sprint and AT&T had a dispute regarding the term of the agreement, specifically referring to the pending Sprint – AT&T arbitration Docket 070249-TP. Nextel further asserted that it had contacted AT&T regarding Nextel's adoption of the Sprint ICA, but AT&T refuses to voluntarily acknowledge and honor Nextel's adoption rights.[2]

[2] *See* June 8, 2007 letters from Douglas C. Nelson, Sprint Attorney, State Regulatory Affairs, to Ms. Ann Cole, Commission Clerk, Florida Public Service Commission (collectively, "Notices of Adoption") respectively filed in Docket Nos. 070368-TP and 070369-TP (collectively, "the Nextel Dockets"). True and correct copies of Nextel's Notices of Adoption are attached as Exhibit A to AT&T's respective Motion to Dismiss filed June 28, 2007 in the Nextel Dockets (collectively, "Motion to Dismiss").

On June 28, 2007, AT&T filed its Motion to Dismiss Nextel's Notices of Adoption, asserting three arguments: 1) the Commission does not have authority to interpret and enforce the AT&T merger conditions; 2) Nextel is attempting to adopt an expired agreement, therefore the adoptions do not meet the legal timing requirement under the Telecommunications Act of 1996 ("the Act"); and 3) Nextel's Notices are premature because Nextel failed to abide by contractual dispute resolution provisions found in its existing interconnection agreement with AT&T.[3]

On July 9, 2007, Nextel filed its Response to AT&T's Motion to Dismiss, contending: 1) AT&T's Motion to Dismiss must be decided based on the facts as alleged in Nextel's Notices of Adoption; 2) well-established precedent demonstrates this Commission's authority to acknowledge Nextel's exercise of its rights to adopt the Sprint ICA; 3) Nextel's Notices of Adoption are timely, particularly in light of the fact that Sprint's exercise of its own rights to a 3-year extension of the Sprint ICA would result in the ICA not being scheduled to expire until March 19, 2010; and 4) under existing Commission precedent, Nextel was not required to invoke the parties' existing dispute resolution provisions before exercising any right to adopt the Sprint ICA.[4]

On October 16, 2007 the Commission denied AT&T's Motion to Dismiss.[5] The Commission rejected AT&T's first argument (that the Commission lacked jurisdiction), by finding that Nextel's Notices of Adoption stated a cause of action upon which relief

[3] *See* AT&T Motion to Dismiss.

[4] *See* Nextel respective Response to AT&T Florida's Motion to Dismiss filed in the Nextel Dockets (collectively, "Nextel Response").

[5] Order Denying Motion to Dismiss, Nextel Dockets, Order No. PSC-07-0831-FOF-TP ("Order").

may be granted.[6] Based on existing Commission precedent, the Commission rejected AT&T's third argument (that Nextel was required to follow its existing dispute resolution provisions), affirmatively stating in no uncertain terms:

> … consistent with our findings in the Z-Tel Order we find that Section 252(i) obligates incumbents, such as AT&T, to enable Nextel and other CLECs to operate upon the same terms and conditions as those provided in a valid existing interconnection agreement. We do not find that Nextel is obligated to invoke the parties' existing dispute resolution provisions. ***Nextel's adoption is well within its statutory right to opt-in to the Sprint Agreement in its entirety.***[7]

Regarding AT&T's final argument (that Nextel was attempting to adopt an expired ICA and, therefore, had not acted within a reasonable time), the Commission concluded that AT&T's "argument as to what constitutes a reasonable period of time under 47 C.F.R. 809(b) … may involve legal and policy arguments that could implicate a dispute of material fact." More specifically, the Commission found that "whether the Sprint ICA Nextel seeks to adopt has expired is a disputed material fact. … Consequently, whether the Sprint ICA has expired may require further fact finding and policy analysis." The Commission went on to clearly recognize the relationship between the ultimate resolution of the Sprint arbitration case, which involved the issue of whether the Sprint ICA would indeed be extended 3 years, and the Nextel Dockets.[8]

Since entry of the Commission's October 16th Order, the only legitimate fact issue raised by AT&T and recognized in the Commission's Order has been resolved. On December 4, 2007 Sprint and AT&T filed a Joint Motion in the Sprint arbitration case to

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[6] Order at p. 6.

[7] *Id.*

[8] *Id.* at footnote 8: "Because Nextel seeks to adopt the existing Sprint ICA, the procedure and ultimate resolution of this docket may rely heavily on the outcome of the Sprint – AT&T Arbitration in Docket No. 070249-TP."

approve an amendment to the Sprint ICA that "provides the relief requested by Sprint in its amended Petition, i.e., to extend the term of the Parties' existing Interconnection Agreement for a period of three years from the date of Sprint's March 20, 2007 request for such extension."[9] The Joint Motion further states that "[u]pon Commission approval of the three-year term extension Amendment, the issues in the above-styled arbitration proceeding will be resolved."[10]

Notwithstanding a Kentucky Public Service Commission-ordered 3-year extension[11] to the Sprint ICA, an agreed to 3-year extension of the Sprint ICA in every other legacy BellSouth state[12] that will resolve all of the various Sprint-AT&T arbitration proceedings, and Kentucky Public Service Commission-ordered adoptions of the Sprint ICA by Nextel[13], AT&T continues to oppose Nextel's adoptions by asserting arguments and attempting discovery that have no legal basis under either the Merger Commitments or § 252(i) of the Act. Just recently AT&T served a Notice of Deposition in these Nextel Dockets that is clearly on its face a blatant attempt at unreasonable delay of the adoption

[9] *See* Joint Motion to Approve Amendment at ¶ 2, filed December 4, 2007, Docket No. 070249-TP ("Joint Motion").

[10] *Id.* at ¶ 3.

[11] *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,* Order, Case No. 2007-00180 (September 18, 2007), a copy of which is attached as Exhibit C.

[12] Outside of Kentucky, Sprint and AT&T have also filed the necessary Sprint ICA Amendment documentation with the appropriate state Commissions to extend the Sprint ICA 3 years in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

[13] *In the Matter of: Adoption by Nextel West Corp. 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.*, Order, Case No. 2007-00255 (December 18, 2007), and *In the Matter of: 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.*, Order, Case No. 2007-00256 (December 18, 2007), copies of which are attached as Exhibit D.

process and intended to advance irrelevant[14] arguments not previously raised in this proceeding. Such a practice, if condoned, in essence voids the benefits of the 252(i) process as well as the benefits of the Merger Commitments. If the Commission were to adopt such a precedent AT&T would have the ability to delay indefinitely any 252(i) request by simply continuing the discovery process *ad infinitum*.

As an example, since the Commission's October 16th Order in the Nextel Dockets, AT&T has filed testimony in the South Carolina Nextel proceedings[15] that Nextel is not "similarly situated" to the Sprint entities and, therefore, cannot adopt the Sprint ICA. AT&T essentially contends in South Carolina, that since Nextel is only providing wireless service and has not also brought a wireline carrier with it to the table, it cannot adopt an ICA that contains provisions which enable both wireless and wireline carriers to provide service.[16] Aside from any blatant factual inaccuracies in AT&T's contention in light of the obvious affiliate relationship between Nextel and the Sprint entities, ***the underlying legal premise of AT&T's argument - that a requesting carrier must be "similarly situated" as the original party to an ICA with respect to either the***

[14] Contemporaneous with the filing of Nextel's Motion for Summary Final Order Nextel is filing a Motion to Quash Notice of Deposition and For Protective Order to preclude AT&T from taking a deposition that is clearly beyond the scope of permissible discovery. As more fully set forth in Nextel's Motions, AT&T's deposition notice does not seek any information that is reasonably calculated to lead the to discovery of any admissible information as to any remaining issue in the Nextel Dockets. Quite simply, resolution of the extension of the Sprint ICA resolved the only potentially legitimate disputed fact issue in these dockets, i.e., whether or not there was sufficient time remaining to the life of the Sprint ICA to result in Nextel's adoption rights being exercised within a reasonable time.

[15] *See e.g.* AT&T South Carolina's Direct Testimony of P.L. (Scot) Ferguson Before the Public Service Commission of South Carolina filed in Nextel Adoption Dockets Nos. 2007-255-C & 2007-256-C (October 30, 2007) at page 10, lines 1-3, "… the Sprint agreement addresses a unique mix of wireline and wireless items. Nextel, however, provides only wireless services and, in fact, is not even certificated to provide wireline services in South Carolina", *and cf.* 47 C.F.R. 51.809(a0 which expressly states "[a]n incumbent LEC *may not limit the availability of any agreement* only to those requesting carriers serving a comparable class of subscribers *or providing the same service* " (emphasis added).

[16] AT&T P.L. (Scot) Ferguson, *supra* note 15.

class of customers the requesting serves or the services it provides - has been directly raised by AT&T's predecessor BellSouth before the FCC, expressly rejected by the FCC, and is contrary to the express terms of 47 C.F.R. § 51.809(a). AT&T's continuing tactics serve no legitimate purpose, and are in direct contravention of not only its Merger Commitments to permit adoption of any negotiated or arbitrated agreement by any carrier but also its § 51.809(a) obligation that it "shall make available without unreasonable delay" any agreement in its entirety to any carrier.

For the reasons stated above and explained in greater detail below, there simply are no legitimate genuine issues of material fact that remain to be resolved in the Nextel dockets. Accordingly, the Commission should issue a Summary Final Order that acknowledges Nextel's adoption of the Sprint ICA under both AT&T's Merger Commitments and 47 U.S.C. § 252(i) as a matter of law and requires AT&T to execute the Adoption Agreements attached hereto as Exhibit A.

II. STANDARD FOR SUMMARY FINAL ORDER

Pursuant to Rule 28-106.204(4), Florida Administrative Code, any party may move for summary final order whenever there is no genuine issue as to any material fact. The purpose of a summary final order is to avoid the expense and delay of a formal administrative hearing when no dispute exists concerning the material facts. The record is reviewed in the most favorable light against whom the summary order is to be entered. When the movant presents a showing that no material fact on any issue is disputed, the burden shifts to his opponent to demonstrate the falsity of the showing.[17] The standard is

[17] *In Re: Request for Arbitration concerning complaint of ITCDeltaCom Communications, Inc. against BellSouth Telecommunications, Inc. for breach of interconnection terms, and request for immediate relief,* Order Granting Motion For Final Summary Order, FPSC Docket No. 991946-TP, Order No. PSC-00-1540-FOF-TP (August 24, 2000).

not the absence of all factual disputes, but "an absence of disputed material facts under the substantive law applicable to the action. To decide this question the applicable substantive law must be determined and then compared with the facts in the record."[18]

A. UNDISPUTED MATERIAL FACTS

A motion for summary final order may be, but is not required to be, accompanied by supporting affidavits.[19] The Commission can take judicial notice of the records of the courts in this state or any court of record of the United States or any state, territory, or jurisdiction of the United States; facts that are not subject to dispute because they are generally known within its territorial jurisdiction; and facts that are not in dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.[20] Nextel requests that the Commission take judicial notice of its existing records in the Nextel Dockets and the Sprint – AT&T arbitration Docket, as well as the cited facts herein whose accuracy cannot reasonably be questioned.

Nextel submits that the following are the relevant, undisputed material facts necessary for the Commission's resolution of Nextel's requests to adopt the Sprint ICA pursuant to AT&T's Merger Commitments and § 252(i):

1. On December 29, 2006, AT&T, Inc. and BellSouth Corporation voluntarily proposed "Merger Commitments" that became "Conditions" of approval of the AT&T/BellSouth merger when the FCC authorized the merger. The FCC ordered that as a Condition of its grant of authority to complete the merger, the merged entity and its

[18] *Id.*

[19] Rule 28-106.204(4), Florida Administrative Code.

[20] *See* Sections 90.202(6), (11) and (12), and 120.569(2)(i), Florida Statutes (2007).

ILEC affiliates (which include AT&T Florida), are required to comply with their Merger Commitments.[21]

2. AT&T interconnection-related Merger Commitment No. 1 imposed upon AT&T an obligation to "make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made."[22]

3. The Sprint ICA is an interconnection agreement previously approved by this Commission, therefore, AT&T is also required by Section 252(i) of the Telecommunications Act of 1996 ("Act") to make the Sprint ICA available to Nextel Partners for adoption.[23]

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[21] *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control,* Memorandum Opinion and Order, Ordering Clause ¶ 227 at page 112, WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007) ("*FCC BellSouth Merger Order*") ("IT IS FURTHER ORDERED that as a condition of this grant AT&T and BellSouth shall comply with the conditions set forth in Appendix F of this Order."). A copy of the Table of Contents and Appendix F to the *FCC BellSouth Merger Order* is attached to AT&T's Motion to Dismiss as Exhibit "C."

[22] *See FCC BellSouth Merger Order*, at page 149, Appendix F, Merger Commitment No. 1 under "Reducing Transaction Costs Associated with Interconnection Agreements".

[23] 47 USC § 252(i) provides:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

4. On May 18, 2007 Mark G. Felton, of Sprint Nextel, sent a letter to AT&T on behalf of Nextel as a requesting carrier for the stated purpose of exercising Nextel's right to adopt the Sprint ICA pursuant to AT&T's Merger Commitments and Section 252(i).[24]

5. Mr. Felton's May 18, 2007 letter specifically advised AT&T that "[a]lthough neither Nextel nor Sprint CLEC consider it either necessary or required by law, to avoid any potential delay regarding the exercise of Nextel's right to adopt the Sprint ICA, Sprint CLEC stands ready, willing and able to also execute the Sprint ICA as adopted by Nextel in order to expeditiously implement Nextel's adoption."

6. On May 30, 2007, Eddie A. Reed, Jr., of AT&T, responded to Mr. Felton's May 18, 2007 letter, and a copy of Mr. Reed's letter is attached hereto as Exhibit B. The only basis asserted by Mr. Reed for AT&T's refusal to grant Nextel's requests to adopt the Sprint ICA was a claimed lack of understanding regarding the applicability of the Merger Commitments to Nextel's requests; and an assertion that the Sprint ICA was not available for adoption because it was expired and in arbitration, therefore, was not adopted within a reasonable period of time under § 51.809(c).

7. On June 21, 2007, Nextel filed with the Commission its Notices of Adoption of the Sprint ICA.[25]

8. On July 16, 2007, AT&T filed its Motions to Dismiss, in which the only objections AT&T raised to Nextel's Notices of Adoption were that: a) the Commission did not have jurisdiction over Nextel's adoption requests under the Merger

[24] A copy of Mark Felton's May 18, 2007 letter and enclosures are attached to AT&T's Motions to Dismiss as Exhibit B.

[25] *See* June 8, 2007 letters from Douglas C. Nelson, Sprint Attorney, State Regulatory Affairs, *supra* note 2.

Commitments; b) that the Sprint ICA was "expired" and, therefore, Nextel did not request adoption of the Sprint ICA in a timely fashion under the Act; and c), that Nextel was required to follow the dispute resolution provisions of its existing ICA.[26]

9. On October 16, 2007 the Commission denied AT&T's Motion to Dismiss. The only AT&T objection that survived the Commission's denial of AT&T's Motion was a disputed material fact as to "whether the Sprint ICA Nextel seeks to adopt has expired".[27] The Commission clearly recognized, however, the relationship between the ultimate resolution of the Sprint arbitration case, which involved the issue of whether the Sprint ICA would indeed be extended 3 years, and the Nextel Dockets.[28]

10. Pursuant to Rule 28-106.203 Florida Administrative Code, an "Answer" is not required (i.e., a party "may" file an answer). However, if a party is going to file a response, pursuant to Florida Rule of Civil Procedure 1.140(b), every defense in law or fact to a claim for relief "shall be asserted in the responsive pleading". Further, pursuant to Rule 1.140(a)(2), to the extent any further response may be appropriate after a party's initial motion has been denied, such response "shall be served within 10 days after notice of the court's action".

11. Rule 1.140(h), Florida Rules of Civil Procedure, provides that a party waives any affirmative defense not plead in its answer or responsive motion such as the Motion to Dismiss filed by ATT. Subsequent to the Commissions October 16, 2007 Order, AT&T has never filed any Answer or any other response to raise any further

[26] AT&T Motions to Dismiss.

[27] Order at p. 6.

[28] *Id.* at footnote 8: "Because Nextel seeks to adopt the existing Sprint ICA, the procedure and ultimate resolution of this docket may rely heavily on the outcome of the Sprint – AT&T Arbitration in Docket No. 070249-TP."

objections to Nextel's Notices of Adoptions other than the three objections raised in AT&T's Motion to Dismiss.

12. On December 4, 2007 Sprint and AT&T filed a Joint Motion in the Sprint arbitration case to approve an amendment to the Sprint ICA that "provides the relief requested by Sprint in its amended Petition, i.e., to extend the term of the Parties' existing Interconnection Agreement for a period of three years from the date of Sprint's March 20, 2007 request for such extension."[29] The Joint Motion further states that "[u]pon Commission approval of the three-year term extension Amendment, the issues in the above-styled arbitration proceeding will be resolved."[30]

13. The Sprint – AT&T Amendment to the Sprint ICA has been executed by both parties and expressly states that it "shall be filed with and is subject to approval by the Commission and shall be effective upon the date of the last signature of both Parties." The date of the last signature of both parties was AT&T's signature on December 4, 2007.[31]

B. NEXTEL IS ENTITLED TO ADOPT THE SPRINT ICA AS A MATTER OF LAW PURSUANT TO AT&T'S MERGER COMMITMENTS AND 47 U.S.C. § 252(i)

1) ADOPTION OF THE SPRINT ICA PURSUANT TO AT&T's MERGER COMMITMENTS

AT&T's interconnection-related Merger Commitments Nos. 1 and 2 respectively state:

[29] *See* Joint Motion at ¶ 2.

[30] *Id.* at ¶ 3.

[31] *Id.*, Joint Motion attached Amendment ¶ 4, and signatures on Amendment page 3.

> The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.
>
> The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.[32]

All of the interconnection-related Merger Commitments were intended to encourage competition by reducing interconnection costs between a requesting carrier such as Nextel *and the new 22-state mega-billion dollar, post-merger AT&T*.[33] Indeed, there was acknowledged FCC concern regarding a merger that created a "consolidated entity – one owning nearly all of the telephone network in roughly half the country – *using its market power to reverse the inroads that new entrants have made and, in fact, to squeeze them out of the market altogether:*"[34]

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[32] *FCC BellSouth Merger Order*, at page 149, Appendix F.

[33] *See* FCC Order at page 169, "Concurring Statement of Commissioner Michael J. Copps":

> "… we Commissioners were initially asked to approve the merger the very next day ***without a single condition*** to safeguard consumers, businesses, or the freedom of the Internet. This is all the more astonishing when you consider that this $80-some odd billion dollar acquisition would result in a new company with an estimated $100 billion dollars in annual revenue, employing over 300,000 people, owning 100% of Cingular (the nation's largest wireless carrier), covering 22 states, providing service to over 11 million DSL customers, controlling the only choice most companies have for business access services, serving over 67 million access lines, and controlling nearly 23% of this country's broadband facilities."

[34] *Id.* at page 172, emphasis added.

> To mitigate this concern, the merged entity has agreed to allow the portability of interconnection agreements ***and to ensure that the process of reaching such agreements is streamlined***. These are important steps for fostering residential telephone competition and ensuring that this merger does not in any way retard such competition.[35]

Cognizant of the intent behind the interconnection-related Merger Commitments, and applying the plain and ordinary meaning of the words used to establish such Commitments, it cannot be disputed that:

- Nextel is within the group of "any requesting telecommunications carrier";
- Nextel has requested the Sprint ICA;
- The Sprint ICA is within the group of "any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory", having been entered into by Sprint and AT&T in all 9 legacy BellSouth states;
- The Sprint ICA already has state-specific pricing and performance plans incorporated into it by the state;
- There is no issue of technical feasibility; and,
- The Sprint ICA has already been amended to reflect changes of law, i.e. the TRRO requirements.

Any AT&T argument that attempts to avoid Nextel's adoption of the Sprint ICA pursuant to the above Merger Commitments will require the Commission to re-write or simply ignore the plain and ordinary meaning of the words used by the FCC. There simply is no legal basis for AT&T to continue to thwart its commitment to a "streamlined" process by which "any" carrier, including Nextel, can adopt "any" agreement.

[35] *Id.*, emphasis added.

2) ADOPTION OF THE SPRINT ICA PURSUANT TO § 252(i)

47 U.S.C. § 252(i) provides:

> A local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The FCC's current version of Rule § 51.809, which implements § 252(i) and is entitled "Availability of agreements to other telecommunications carriers under section 252(i) of the Act", further states:

> (a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.
>
> (b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:
>
> (1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or
>
> (2) The provision of a particular agreement to the requesting carrier is not technically feasible.
>
> (c) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.

While Commissioner Copps' comments indicate the intended purpose of the interconnection Merger Commitments was to streamline the process of reaching

agreements with the newly created behemoth ILEC, the primary purpose of the section 252(i) adoption process has been to ensure an ILEC does not discriminate in favor of any particular carriers[36]. Nextel clearly satisfies the adoption requirements set forth in the current rule, and clearly does not fall into either of the two exceptions. Section 252(i) only permits "differential treatment" if a) the LEC's costs of serving a requesting carrier are higher than the cost to serve the carrier that originally negotiated the agreement; or b) serving a requesting carrier is not technically feasible. As noted previously, the issue with respect as to whether the request was made within a reasonable time is no longer relevant. AT&T apparently seeks discovery to address one of the two issues remaining. Nevertheless, unless it can be demonstrated that such action is undertaken by AT&T for all 252(i) proceedings, subjecting Nextel to such action is clearly discriminatory treatment of Nextel.

AT&T is engaged in a blatant attempt at discriminatory treatment. Specifically, AT&T recently served Nextel with a Notice of Rule 1.310(b)(6) Deposition of one or more Nextel representatives regarding a laundry list of subjects that all involve *internal information of Nextel.* For example, AT&T specifically asks as part of its Deposition Notice:

d. The complete suite of services offered by Nextel South Corp. and Nextel West Corp.

e. The complete suite of services offered by Sprint Spectrum L.P. d/b/a Sprint PCS.

f. The manner in which the above-referenced services are provisioned.

[36] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd, 15499, 16139 at ¶ 1315 (1996) ("Local Competition Order").

A copy of AT&T's Notice is attached as Exhibit E.

Where a LEC proposes to treat one carrier differently than another, the incumbent LEC must prove to the state Commission that that differential treatment is justified, which AT&T has not done and cannot do. The FCC has held that the fact a carrier serves a different class of customers, or provides a different type of service does not bear a direct relationship with the costs incurred by the LEC to interconnect with that carrier or on whether interconnection is technically feasible.[37] The FCC also concluded that a carrier seeking to adopt an exiting ICA under 252(i) "shall be permitted to obtain its statutory rights on an expedited basis."[38]

Despite having two of its originally stated three objections to Nextel's Notices of Adoption denied by this Commission, the third one being mooted by the agreed to 3-year extension of the Sprint ICA, and having failed to raise increased costs or technical feasibility as a defense, AT&T apparently intends to persist as long as possible to avoid its 252(i) obligation to permit Nextel's adoption of the Sprint ICA "on an expedited basis". AT&T's intent to go fishing into the subject matters of: Nextel's internal corporate structure; its corporate relationship to other Sprint Nextel entities; the service offerings of Nextel and each Sprint Nextel entity; provisioning practices; traffic patterns; OCN codes; utilized circuits; what Nextel seeks to order under the Sprint ICA; what Sprint already orders under the Sprint ICA; and what Sprint Nextel entities are certificated by the Commission – all point to one thing and one thing only: AT&T is

[37] *Id.* at ¶ 1318.

[38] *Id.* at ¶ 1321.

attempting to employ a process of delay unique to Nextel to unlawfully discriminate against Nextel in the adoption of the Sprint ICA.

In July of 2004 the FCC revisited its interpretation of 252(i) to reconsider and eliminate what was originally known as its "pick-and-choose" rule which permitted requesting carriers to select only the related terms that they desired from an incumbent LEC's existing filed interconnection agreements, rather than an entire interconnection agreement. The FCC eliminated the pick-and-choose rule and replaced with the "all-or-nothing" rule, which is reflected in the current version of Rule 51.809 above. The FCC concluded that the original purpose of 252(i), protecting requesting carriers from discrimination, continued to be served by the all-or nothing rule:

> We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). *Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers.* If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.[39]

The FCC has already effectively rejected AT&T's current tactic of delving unnecessarily into Nextel's structure, relationships, services, etc. in order to delay or deny ICA adoptions. As set forth in the FCC's Second Report and Order, AT&T's pre-merger parent BellSouth Corporation specifically contended that incumbent LECs should be

[39] *In the Matter of: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, 19 FCC Rcd, 13494 at ¶ 19 (2004) ("Second Report and Order"), emphasis added.

permitted to restrict 252(i) adoptions to "similarly situated" carriers.[40] In light of the bill and keep aspects of the Sprint ICA, one BellSouth-disclosed scenario is of particular interest: BellSouth asserted in support of its position that it sought to "construct contract language specific to this situation, [but] *there is still risk that CLECs who are not similarly situated will argue they should be allowed to adopt the language*". The situation involved a CLEC with a very specific business plan, customer base and bill and keep provisions that BellSouth contended in "other circumstances … would be extremely costly to BellSouth."[41] Notwithstanding such assertions, the FCC held:

> We also reject the contention of at least one commentator that incumbent LECS should be permitted to restrict adoptions to "similarly situated" carriers. We conclude that section 252(i) does not permit incumbent LECs to limit the availability of an agreement in its entirety only to those requesting carriers serving a comparable class of subscribers or providing the same service as the original party to the agreement. Subject to the limitations in our rules, the requesting carrier may choose to initiate negotiations or to adopt an agreement in its entirety *that the requesting carrier deems appropriate for its business needs*. Because the all-or-nothing rule should be more easily administered and enforced than the current rule, we do not believe that further clarifications are warranted at this time.[42]

In addition to providing a LEC the means to discriminate between carriers, a LEC's efforts to delve unnecessarily into protracted discovery and delay only serve to encourage protracted litigation through unnecessary and unwarranted discovery. The result is to undermine the Legislature's mandate that the Commission encourage and promote competition and deprives Florida's consuming public of enhanced choices and

[40] *Id.*, at ¶ 30 and footnote 101.

[41] *Id.*, BellSouth Affidavit of Jerry D. Hendrix at ¶ 6, a copy of which is attached hereto as Exhibit F.

[42] *Id.*, at ¶ 30.

pricing in their telecommunications services. To the extent AT&T may attempt to re-package its arguments, review of its actions demonstrates that it has never expressed any concern whatsoever with any "cost" or "technical feasibility" issue. AT&T's May 30, 2007 letter, as well as the only AT&T Motion to Dismiss argument that survived dismissal, each consisted of nothing more than objections to the timeliness of Nextel's adoption requests.

The amendment to extend the Sprint ICA 3 years is pending for administrative approval in Docket No. 070249-TP, which eliminates the only issue of material fact that remained after the Commission's denial of AT&T's Motion to Dismiss in that docket. Accordingly, Nextel and AT&T are in the same position that they were in the Kentucky Nextel adoption proceeding after the Kentucky Commission ordered a 3-year extension of the Sprint ICA. BellSouth initially filed the same substantive objections in a Motion to Dismiss Nextel's efforts to adopt the Sprint ICA in Kentucky and, upon extension of the Sprint ICA for 3 years in Kentucky, the Kentucky Public Service Commission recently found that "there is a reasonable time left to this agreement, making its adoption lawful.[43] There is no basis for a different result in Florida.

CONCLUSION

For all of the reasons stated above, there is no genuine issue as to any material fact regarding Nextel's adoptions of the Sprint ICA, and Nextel is entitled to adopt the Sprint ICA under both AT&T's Merger Commitments and 47 U.S.C. § 252(i) as a matter of law.

[43] Exhibit D, Kentucky Public Service Commission Orders, Nextel Case Nos. 2007-00255 and 2007-00256 (December 18, 2007) at p. 3.

WHEREFORE, Nextel respectfully requests that the Commission:

a) Issue a Summary Final Order that acknowledges Nextel's adoptions of the Sprint ICA and requires AT&T to execute the Adoption Agreements attached hereto as Exhibit A;

b) Retain jurisdiction of this matter and the parties hereto as necessary to enforce the adopted Nextel-AT&T Interconnection Agreement; and

c) Grant such other and further relief as the Commission deems just and proper.

Respectfully submitted this 26th day of December, 2007.

/s/ Marsha E. Rule

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Attorneys for Nextel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished by U.S. Mail and email to the following parties on this 26th day of December, 2007:

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Victor McKay, Esq.
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
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E. Edenfield, Jr.
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850-577-5555

/s/ Marsha E. Rule
Marsha E. Rule

Exhibit A

By and Between

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

And

NPCR, Inc. d/b/a Nextel Partners

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., d/b/a AT&T Florida d/b/a AT&T Southeast ("AT&T"), a Georgia Corporation, having offices at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns, and NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") a Delaware Corporation and shall be deemed effective in the state of Florida as of _____ ("the Effective Date").

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

WHEREAS, pursuant to section 252(i) of the Act, AT&T is required to make available any interconnection agreement filed and approved pursuant to 47 U.S.C. § 252; and

WHEREAS, pursuant to Merger Commitment Nos. 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements" as required by the Federal Communications Commission in its AT&T, Inc. – BellSouth Corporation Order, i.e., *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control,* Memorandum Opinion and Order, Ordering Clause ¶ 227 at page 112 and Appendix F at page 149, WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007), AT&T is also required to make available any entire effective interconnection agreement that an AT&T/BellSouth ILEC has entered in any state in the AT&T/BellSouth 22-state operating territory; and

WHEREAS, Nextel Partners has exercised its right to adopt in its entirety the effective interconnection agreement between Sprint Communications Company Limited Partnership a/k/a Sprint Communications Company L.P. ("Sprint CLEC") Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint PCS") and BellSouth Telecommunications, Inc. Dated January 1, 2001 for the state of Florida ("the Sprint ICA").

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

1. Nextel Partners and AT&T shall adopt in its entirety the Sprint ICA, which is incorporated by this reference herein, and is also available for public view on the AT&T website at:

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

2. The term of this Agreement shall be from the Effective Date as set forth above and shall coincide with any expiration or extension of the Sprint ICA.

3. Nextel Partners and AT&T shall accept and incorporate into this Agreement any amendments to the Sprint ICA executed as a result of any final judicial, regulatory, or legislative action.

4. Every notice, consent or approval of a legal nature, required or permitted by this Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid (and email to the extent an email has been provided for notice purposes) to the same person(s) at the same addresses as identified in the Sprint ICA, including any revisions to such notice information as may be provided by Sprint CLEC and Sprint PCS from time to time, and will be deemed to equally apply to Nextel Partners unless specifically indicated otherwise in writing.

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

BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast	**NPCR, Inc. d/b/a Nextel Partners**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

By and Between

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

And

Nextel South Corp. and Nextel West Corp.

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., d/b/a AT&T Florida d/b/a AT&T Southeast ("AT&T"), a Georgia Corporation, having offices at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns, and Nextel South Corp. ("Nextel South") a Georgia Corporation, and Nextel West Corp. ("Nextel West") a Delaware Corporation (Nextel South and Nextel West are collectively referred to herein as "Nextel"), and shall be deemed effective in the state of Florida as of _____ ("the Effective Date").

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

WHEREAS, pursuant to section 252(i) of the Act, AT&T is required to make available any interconnection agreement filed and approved pursuant to 47 U.S.C. § 252; and

WHEREAS, pursuant to Merger Commitment Nos. 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements" as required by the Federal Communications Commission in its AT&T, Inc. – BellSouth Corporation Order, i.e., *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control,* Memorandum Opinion and Order, Ordering Clause ¶ 227 at page 112 and Appendix F at page 149, WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007), AT&T is also required to make available any entire effective interconnection agreement that an AT&T/BellSouth ILEC has entered in any state in the AT&T/BellSouth 22-state operating territory; and

WHEREAS, Nextel has exercised its right to adopt in its entirety the effective interconnection agreement between Sprint Communications Company Limited Partnership a/k/a Sprint Communications Company L.P. ("Sprint CLEC") Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint PCS") and BellSouth Telecommunications, Inc. Dated January 1, 2001 for the state of Florida ("the Sprint ICA").

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

1. Nextel and AT&T shall adopt in its entirety the Sprint ICA, which is incorporated by this reference herein, and is also available for public view on the AT&T website at:

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

2. The term of this Agreement shall be from the Effective Date as set forth above and shall coincide with any expiration or extension of the Sprint ICA.

3. Nextel and AT&T shall accept and incorporate into this Agreement any amendments to the Sprint ICA executed as a result of any final judicial, regulatory, or legislative action.

4. Every notice, consent or approval of a legal nature, required or permitted by this Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid (and email to the extent an email has been provided for notice purposes) to the same person(s) at the same addresses as identified in the Sprint ICA, including any revisions to such notice information as may be provided by Sprint CLEC and Sprint PCS from time to time, and will be deemed to equally apply to Nextel Partners unless specifically indicated otherwise in writing.

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

BellSouth Telecommunications, Inc. **d/b/a AT&T Florida d/b/a AT&T Southeast**	**Nextel South Corp. and** **Nextel West Corp.**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit B

Eddie A. Reed, Jr.
Director-Contract Management
AT&T Wholesale Customer Care

AT&T Inc.
311 S. Akard, Room 940.01
Dallas, TX 75202
Fax 214 464-2006

at&t

May 30, 2007

Mark G. Felton
Interconnection Solutions
Sprint Nextel Access Solutions
Mailstop KSOPHA0310-3B372
6330 Sprint Parkway
Overland Park, KS 66251

Re: Nextel South Corp., Nextel West Corp. and NPCR, Inc. d/b/a Nextel Partners' Section 252(i) adoption request

Dear Mr. Felton:

Your letters dated May 18, 2007, on behalf of Nextel South Corp., Nextel West Corp. and NPCR, Inc. d/b/a Nextel Partners (collectively "Nextel") were received via FedEx on May 21, 2007. The aforementioned letters state that, pursuant to Merger Commitments 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements," effective December 29, 2006, and associated with the merger of AT&T Inc. and BellSouth Corp. ("Commitment 7.1 and Commitment 7.2")," as well as pursuant to 47 U.S.C. Section 252(i), Nextel is exercising its right to adopt the Interconnection Agreement ("ICA") between BellSouth Telecommunications, Inc.[1] and Sprint Communications Company L.P., Sprint Spectrum L.P. in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. The letters are also to be considered Nextel South Corp., Nextel West Corp. and NPCR, Inc. d/b/a Nextel Partners' conditional notice to terminate their existing ICAs with BellSouth Telecommunications, Inc. upon approval of the adopted ICAs.

First, it is unclear how Nextel's request implicates Commitment 7.1. As the requested ICA has been filed and approved in each of the states where requested, Nextel's adoption request appears to be based solely on Section 252(i).

As you know, the purpose of the merger commitments related to "Reducing Transaction Costs Associated with Interconnection Agreements" is to allow carriers to reduce transaction costs associated with the allegedly "continuous" cycle of ICA renegotiations and arbitrations.[2] Pursuant to Commitment 7.2, rather than negotiating and possibly arbitrating a successor ICA, a carrier can avoid such costs by adopting another carrier's ICA without the need to amend the ICA prior to adoption to bring it into compliance with changes in law. Commitment 7.2 does not expand a carrier's rights generally pursuant to Section 252(i) of the Telecommunications Act of 1996, but merely adds the provision that during the period in which the merger commitments are in effect, the adoption cannot be delayed while negotiating a change of law amendment.

The Sprint ICA was entered into on January 1, 2001, and was amended twice to extend the term to December 31, 2004. Since the expiration date, the parties have been operating under the Sprint ICA while the parties have been negotiating a successor ICA. As that ICA is expired and is currently in arbitration at the relevant state commissions, it is not available for adoption, as it was not adopted within a reasonable period of time as required by 47 C.F.R. § 51. 809(c).

Randy Ham will continue to be the AT&T Lead Negotiator assigned to Nextel for the 9-state region. He may be contacted at (205) 321-7795. Please direct any questions or concerns you may have to Randy.

If you would like to have further discussions regarding this matter, AT&T would be happy to participate in order to bring these issues to a quick and amicable resolution.

Sincerely,

Eddie A. Reed, Jr.

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[1] BellSouth Telecommunications, Inc. is now doing business in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee as AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and/or AT&T Tennessee, and will be referred to herein as "AT&T".

[2] *See, e.g., Comments of Cable Companies*, WC Docket No. 06-74 at pp. 9-10 (Oct. 24, 2006).

Exhibit C

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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

O R D E R

On May 7, 2007, Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS (collectively, "Sprint") filed a petition for arbitration pursuant to 47 U.S.C. § 252(b) seeking resolution of one issue. In its petition, Sprint requests that the Commission determine the commencement date of the 3-year extension of its interconnection agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast ("AT&T").

On June 1, 2007, AT&T filed its response to Sprint's petition. In conjunction with its answer to the petition, AT&T moved for dismissal of the commencement date issue but also submitted an additional arbitration issue to the Commission concerning the adoption of certain portions of the interconnection agreement.

The parties have participated in an informal conference, and oral arguments were held in this matter on August 23, 2007. Briefs were filed by the parties. To date, the parties have not reached an agreement on the questions presented in this arbitration. Therefore, there are 3 issues to be decided by the Commission: (1) the

commencement date for the Sprint-AT&T agreement; (2) AT&T's motion to dismiss the Sprint petition; and (3) AT&T's request that the Commission adopt portions of the agreement.

The Commission is obligated to resolve each issue that is raised within a petition for arbitration and the responses thereto. Pursuant to the schedule outlined in 47 U.S.C. § 252, the Commission's decision on these matters is due no later than September 18, 2007.

BACKGROUND

Sprint operates as a telecommunications carrier, offering both competitive local exchange carrier ("CLEC") and commercial mobile radio service ("CMRS"). AT&T serves as an incumbent local exchange carrier ("ILEC"). This background section contains details on the recent commercial history between the two carriers and a recent Federal Communications Commission ("FCC") order affecting the Sprint-AT&T interconnection relationship.

Interconnection Agreement

Sprint and AT&T previously entered into an interconnection agreement that was approved by the Commission in Case No. 2000-00480.[1] By agreement, the parties amended that agreement at various times. On July 1, 2004, Sprint sent AT&T a request for negotiation of an extension of the parties' interconnection agreement pursuant to

[1] Case No. 2000-00480, The Petition of Sprint Communications Company, L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of the Telecommunications Act of 1996. The interconnection agreement was approved by Order dated June 25, 2002.

Sections 251, 252, and 332 of the Telecommunications Act of 1996.[2] Since that date, the parties have conducted negotiations toward the goal of developing a comprehensive subsequent agreement. However, no agreement was reached prior to the expiration date of the existing contract on December 31, 2004. Pursuant to the terms of the original agreement, and to prevent the disruption of service to consumers while allowing the parties to continue negotiating the terms of a new agreement, Sprint and AT&T have operated on a month-to-month basis since January 1, 2005.

AT&T and BellSouth Corporation Merger

On December 29, 2006, the FCC approved the merger of AT&T, Inc. and BellSouth Corporation ("BellSouth").[3] AT&T and BellSouth also closed their corporate merger on December 29, 2006.[4] On March 26, 2007, the FCC issued its final Order authorizing the merger. This Order contained certain voluntary merger commitments to be followed by the new AT&T-BellSouth corporate entity.[5] As an express condition of its merger authorization, the FCC ordered that the companies comply with the conditions set out in Appendix F of the FCC Order.

After the December 29, 2006 announcement of the FCC's approval of the merger, Sprint and AT&T deliberated the impact of the merger commitments upon their

[2] 47 U.S.C. §§ 251, 252, 332.

[3] FCC WC Docket No. 06-74, Order dated March 26, 2007.

[4] This Commission also issued an Order approving the merger of AT&T and BellSouth Corporation, pursuant to KRS 278.020. Case No. 2006-00136, Joint Application for Approval of the Indirect Transfer of Control Relating to the Merger of AT&T, Inc. and BellSouth Corporation, final Order dated July 25, 2006.

[5] FCC WC Docket 06-74, Appendix F at 147, Order dated March 26, 2007.

negotiations of their interconnection agreement. The parties agree that during the course of the deliberations, AT&T acknowledged that, pursuant to the merger commitments, Sprint could extend its current agreement for 3 years. However, despite this agreement on the right to extend the contract, the parties have not reached a consensus as to the exact date of commencing the extension.

The specific merger commitment that is the subject of Sprint's petition is titled "Reducing Transaction Costs Associated with Interconnection Agreements." Paragraph 4 of this commitment[6] states:

> 4. The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.[7]

On March 20, 2007, by letter, Sprint informed AT&T that it considered the merger commitment to equal AT&T's latest offer for consideration within the Sprint-AT&T current interconnection agreement negotiations. Pursuant to Merger Commitment No. 4, Sprint requested that the current month-to-month status of the interconnection agreement be converted to a 3-year term, commencing on March 20, 2007 and terminating on March 19, 2010, in addition to other terms and considerations. Although AT&T acknowledged receipt of Sprint's March 20, 2007 letter request, AT&T provided no response and did not execute the proposed amendment outlining the

[6] Hereinafter, Paragraph 4 will be referred to as "Merger Commitment No. 4."

[7] FCC WC Docket No. 06-74, Appendix F at 150, Order dated March 26, 2007.

commencement date for the new 3-year interconnection agreement. Sprint then filed its petition for arbitration on May 7, 2007.

This matter is currently before the Commission, as the parties cannot reach an agreement as to the commencement date for the 3-year extension. AT&T has moved to dismiss the issue, arguing that this Commission is without jurisdiction to decide this matter. Additionally, AT&T has submitted a second issue for arbitration. The second issue, which AT&T contends does fall within this Commission's jurisdiction to decide, concerns the adoption of certain portions of the proposed Sprint-AT&T interconnection agreement, titled "Attachments 3A and 3B." The Commission shall first address AT&T's motion to dismiss.

MOTION TO DISMISS

In conjunction with its response to Sprint's petition, AT&T included a motion to dismiss the arbitration issue. AT&T argues that Sprint is improperly seeking to arbitrate the interpretation of a merger commitment, which lies within the exclusive jurisdiction of the FCC. AT&T contends that, since the FCC was the agency that issued the Order approving the national AT&T-BellSouth merger and issued the appendix adopting the voluntary commitments to be followed by the companies after merger, it is the only agency with the authority to "interpret, clarify, or enforce any issues involving merger conditions. . . ."[8] AT&T admits that it agreed to extend the interconnection agreement with Sprint, but claims that the merger commitment which is the subject of Sprint's

[8] AT&T's Motion to Dismiss and Answer at 3.

petition is "separate and distinct from any obligations set forth in Section 251 of the Telecommunications Act of 1996"[9] and, therefore, results in a non-arbitrable issue.

The petition, as filed by Sprint, concerns the issue of determining the commencement date for an interconnection agreement. Interconnection agreements establish the rates, terms, and conditions concerning the services and facilities to be provided between utilities operating in states such as Kentucky. This Commission is charged by statute with overseeing the rates, terms, and conditions of service provided by and between utilities operating in Kentucky.[10]

The Telecommunications Act of 1996 has been interpreted to confer upon the state commissions the authority to oversee the implementation of, and to enforce the terms of, interconnection agreements they approve.[11] 47 U.S.C. § 251 defines the specific interconnection duties of carriers. Under that statute, each carrier has the duty to interconnect directly or indirectly with the facilities or equipment of other carriers. Pursuant to 47 U.S.C. § 252, any party negotiating the terms of an interconnection agreement has the right, in the course of negotiations, to ask a state commission to mediate any differences arising during negotiations. When presented with a petition for arbitration, Section 252 requires that state commissions ensure that the resolution of disputed issues meets the requirements of Section 251, in addition to establishing rates for interconnection, services, or network elements and providing a schedule for the implementation of the terms and conditions of the agreements. Section 251(c)(2)(D)

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[9] Id.

[10] KRS 278.040.

[11] Iowa Utilities Board v. FCC, 120 F.3d 753, 804 (8th Cir. 1997).

requires an ILEC to interconnect on rates, terms, and conditions that are just, reasonable, and non-discriminatory. Section 252(b)(4)(B) gives each state commission the power to arrive at its best decision based upon the information provided during the arbitration process. The 1996 Telecommunications Act gives suitable room for the promulgation and enforcement of state regulations, orders, and requirements of state commissions as long as they do not prevent the implementation of federal statutory requirements.[12]

In its March 26, 2007 Order approving the merger between AT&T and BellSouth, the FCC made no statement or ruling that state commissions would be without jurisdiction to address interconnection agreement questions stemming from the merger commitments.[13] Therefore, both federal and state laws unequivocally empower this Commission to hear this case.[14] Laws existing at the time that an agreement is made become part of that agreement.[15]

The Commission finds that AT&T's argument that the FCC is the sole and exclusive agency with the authority to arbitrate the commencement date issue lacks merit. The Commission reviewed the FCC's Order approving merger, as well as the arguments presented by AT&T regarding the FCC's alleged jurisdiction over interconnection commencement dates. However, no argument or evidence has been

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[12] BellSouth Telecommunications, Inc. v. Cinergy Communications, Co., 297 F. Supp. 2d 946, 952 (E.D. Ky., 2003).

[13] FCC WC Docket 06-07, Order dated March 26, 2007.

[14] Pursuant to KRS Chapter 278 et seq., the Commission is vested with the authority to regulate telephone companies providing service within this state.

[15] *See generally* Whitaker v. Louisville Transit Co., 274 S.W.2d 391 (1954).

presented that is so compelling as to convince the Commission that simply because AT&T and BellSouth chose to submit voluntary commitments to the FCC in conjunction with the request for merger approval, this serves as an affirmative demonstration that the Commission would suddenly lose jurisdiction over intrastate interconnection matters, including the commencement date of an agreement. AT&T has not presented a sufficient argument or evidence to establish the presumption that a federal order was intended to supersede the exercise of power of the state. For this to be true, AT&T needed to present evidence of a clear manifestation of the FCC's intention to do so. The exercise of federal supremacy cannot be and should not be lightly presumed.[16] The FCC stated that "all conditions and commitments. . .are enforceable by the FCC."[17] However, even under the most liberal interpretation, the phrase "are enforceable" in reference to the merger commitments is not synonymous with the word "exclusive." Simply because the Commission has to refer to a federal agency's Order to resolve a dispute does not mean that the Commission is completely preempted from using its statutorily bestowed power of arbitration. The FCC may have created and issued its merger Order, but it did not restrict the rights of state commissions to review, interpret, and apply the meaning of that document.

The Commission believes it maintains concurrent jurisdiction with the FCC to resolve such post-merger or merger-related disputes, unless clearly and unequivocally told otherwise pursuant to an FCC Order or regulation. The Commission has primary

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[16] *See* BellSouth Telecommunications, Inc. v. Cinergy Communications, supra, 297 F. Supp. 2d 946 at 953.

[17] FCC WC Docket No. 06-74, supra, Appendix F at 147 (emphasis added).

jurisdiction over general issues regarding the interpretation and implementation of interconnection agreements[18] and has affirmatively maintained jurisdiction over previous arbitration matters concerning the commencement and termination dates of carrier-to-carrier contracts.[19] Therefore, the Commission finds that it has jurisdiction and it is appropriate for the Commission to review and adjudicate this petition and the issue

[18] *See* Verizon Maryland, Inc. v. Public Service Commission of Maryland, 535 U.S. 635, 642 (2002) and BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services, Inc., 317 F. 3d 1270, 1275 (11th Cir., 2003).

[19] *See generally* Case No. 2001-00224, Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, As Amended by the Telecommunications Act of 1996, Order dated November 15, 2001; and Case No. 2004-00044, Joint Petition for Arbitration of NewSouth Communications Corp., Nuvox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Communications, LLC on Behalf of Its Operating Subsidiaries Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, Order dated March 14, 2006.

contained therein.[20] For these reasons, AT&T's motion to dismiss the commencement date issue in the petition on the ground that this state lacks jurisdiction is denied.[21]

COMMENCEMENT DATE

Sprint argues that there are two potential dates the Commission could determine as the date by which the 3-year extension of the current interconnection agreement would commence. Sprint first proposes March 20, 2007 as a potential commencement date, as it is the date on which Sprint notified AT&T in writing that the merger commitments, as outlined in the FCC's merger approval Order, qualified as AT&T's most recent offer for consideration within the parties' negotiations to extend the current interconnection agreement.[22] As stated previously in this Order, although AT&T acknowledged receipt of this letter, it provided no response by the due date outlined in the letter. In the alternative, Sprint also proposes a commencement date of December

[20] Specifically, the Commission has previously retained jurisdiction to determine the termination date of an interconnection agreement. *See* Case No. 1996-00478, Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Order dated February 14, 1997.

[21] The case currently before the Commission is one of 9 identical actions that have been filed by Sprint against AT&T in every state within the former BellSouth service territory. The actions are identical and concern exactly the same issues that are presented in this action. On August 10, 2007, Commission Staff for the Louisiana PSC moved to hold Sprint's petition in abeyance. Louisiana Docket No. U-30179. If the motion is granted by their PSC, the Louisiana staff intends to seek a declaratory ruling from the FCC to clarify when the 3-year period for interconnection agreements was intended to commence. *See* Letter from AT&T to Beth O'Donnell, August 17, 2007, and letter from Sprint to Beth O'Donnell, August 22, 2007. As of the date of this Order, this Commission is not aware if the Louisiana petition has been filed with the FCC or the likely date the FCC would issue a ruling after the petition is filed. This Commission shall go forward in ruling upon the issues that have been presented before it in this matter.

[22] Petition for Arbitration at 6.

29, 2006, which is the date of the AT&T-BellSouth merger and the effective date of the FCC merger Order and merger commitments.[23] Sprint contends this date is the absolute earliest date by which the commencement of the 3-year extension could occur.[24]

AT&T's primary argument in regard to this petition issue is that the Commission lacks the jurisdiction to adjudicate the commencement date issue. However, in addition to arguing for dismissal by alleging that the merger commitments are beyond the scope of an arbitration under 47 U.S.C. § 251, AT&T alternatively contends that December 31, 2004 is the only conceivable commencement date for the extension of the interconnection agreement.[25] December 31, 2004 is the date on which the most recent Sprint-AT&T agreement concluded under a fixed term and converted to a month-to-month operation.

In light of evidence and arguments presented, the Commission finds that the date of December 29, 2006 is the proper commencement date of the extension of the

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[23] Petition for Arbitration at 8, 9.

[24] *See* North Carolina Utilities Commission, Transcript of Evidence, Docket No. P-294, Sub 31, dated May 1, 2007. Pre-Filed Testimony of Felton at 16,17,18. Filed in the record of the Commission on August 22, 2007. By agreement, Sprint and AT&T filed copies of the transcript of the hearing and portions of the record, as filed in the arbitration matter before the North Carolina Commission. As stated previously, this arbitration petition is one of 9 identical cases filed by Sprint against AT&T before every state commission within the former BellSouth service territory. The Commission has given the appropriate weight to the North Carolina Commission's record, as it felt was necessary and due.

[25] AT&T's Pre-Argument Brief at 3. AT&T contends that December 31, 2004 was the amended expiration date of the last 3-year agreement between the parties. Based on this date, AT&T states that the 3-year agreement would expire on December 31, 2007.

interconnection agreement between the parties. This is the effective date of the FCC Order and the merger commitments, including Merger Commitment No. 4, which compels AT&T to extend the life of a current interconnection agreement at the request of a connecting carrier, regardless of whether the initial term has expired. In the preamble of Appendix F of the Memorandum Opinion and Order approving merger, the FCC stated:

> The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them. Unless otherwise specified herein, the commitments described herein shall become effective on the Merger Closing Date. . . .
>
> It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.[26]

AT&T's assertion that the interconnection agreement should be extended for 3 years from the initial expiration date of December 31, 2004 is wholly inconsistent with the FCC merger commitment directive and would create an unreasonable result. The Commission finds that within the terms of its merger order, the FCC clearly contemplated situations where interconnection agreements would be extended and effective beyond the initial term of the agreement. Again, the FCC stated in Merger Commitment No. 4 that "[t]he AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial terms has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law." AT&T and Sprint have been,

[26] FCC WC Docket No. 06-74, Appendix F, p. 147 (emphasis added).

and are currently, operating under the interconnection agreement, as amended, originally established in Case No. 2000-00480.[27] In fact, the agreement has been repeatedly amended by both parties at various times well after the initial expiration date of December 31, 2004 specified in the original agreement.[28] If this Commission followed AT&T's reasoning and chose a commencement date of December 31, 2004, this would result in the extension of the interconnection agreement being applied in a retroactive manner prior to existence of the newly merged AT&T-BellSouth entity which is the subject of the FCC order. The FCC's merger commitments in question did not exist until December 29, 2006, and its only purpose was to direct the commercial behavior, in part, of this brand new entity collectively known as "AT&T." The Commission has found no portion of the FCC's merger order dictating that it should be applied retroactively. The Commission finds that the FCC's merger order was intended to be applied on a going-forward basis so as to address competitive concerns and other commercial issues resulting from the unification of AT&T and BellSouth. It is for these reasons that the Commission finds that the date of December 29, 2006 is to serve as the date for the commencement of the extension of the AT&T-Sprint interconnection agreement.

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[27] *See* n. 1.

[28] *See* North Carolina Utilities Commission, Transcript of Evidence, Docket No. P-294 Sub 31, dated July 31, 2007. Testimony of Felton at pages 21-24. By agreement, Sprint and AT&T filed copies of the transcript of the hearing and portions of the record, as filed in the arbitration matter before the North Carolina Commission. As stated previously, this arbitration petition is one of 9 identical cases filed by Sprint against AT&T before every state commission within the former BellSouth service territory. The Commission will examine and give the appropriate weight to the North Carolina Commission's record, as it feels is necessary and due.

ATTACHMENTS 3A AND 3B

In responding to a petition for arbitration, under 47 U.S.C. § 252(b), the non-petitioning party may also provide additional information. Pursuant to this section, AT&T, in combination with its motion to dismiss the commencement date issue, responded by submitting to the Commission a request for approval of a proposed section of the Sprint-AT&T interconnection agreement.

AT&T contends that, during the course of interconnection extension negotiations with Sprint, the companies had reached a point of consensus, in principle, on every issue within the proposed agreement when Sprint allegedly withdrew from negotiations and filed the petition for arbitration.[29] AT&T argues that, prior to Sprint's withdrawal, the only issues under discussion and to be subsequently finalized were the terms to be enumerated in Attachment 3A, which concern wireless interconnection services, and Attachment 3B, which concern wireline interconnection services. AT&T is requesting that the Commission approve the adoption of these "generic" attachments"[30] so that they may be included in the General Terms and Conditions and all other attachments of the Sprint-AT&T interconnection agreement.

In response to this issue, Sprint denies that the parties reached any final agreement, in principle or otherwise, and no such agreement was ever reduced to

[29] Attached as Exhibit B to its response to the petition, AT&T provided what it categorized as the final agreement the parties had reached through negotiations for the General Terms and Conditions and attachments. *See* AT&T Answer to Petition at 10 and Exhibit B.

[30] AT&T Pre-Argument Brief at 14.

writing or signed by the parties.[31] Additionally, Sprint states that the terms outlined within Attachments 3A and 3B were not part of any discussion between the parties.[32]

The Commission finds that the generic language for Attachments 3A and 3B as proposed by AT&T should not be adopted for the extension of the Sprint-AT&T interconnection agreement. The Commission declines to approve the adoption, as there is no evidence that the parties adhered to the single most important and basic rule of contract law, which is a "meeting of the minds." As stated in previous parts of this Order, the parties are currently functioning on month-to-month contract terms and have not agreed upon final terms of the 3-year extension. Because of this fact, the Commission cannot approve the proposed Attachments 3A and 3B, as submitted by AT&T, when Sprint has not approved one word of their terms. To constitute a binding contract, or any portion thereof, the minds of the parties must meet, and one party cannot be bound to uncommunicated terms without consent.[33] For these reasons, this issue, as submitted by AT&T, is dismissed as a matter of law.

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[31] Sprint's Response to AT&T's Motion to Dismiss and Answer at 15.

[32] Sprint Pre-Argument Brief at 21.

[33] Oakwood Mobile Homes, Inc. v. Sprowls, 82 S.W.3d 193 (Ky. 2002), citing Harlan Public Service Co. v. Eastern Construction Co., 71 S.W.2d 24 (Ky. App. 1934).

CONCLUSION

The Commission, having considered the petition of Sprint, AT&T's response and motion, and the evidence of the record in this proceeding and other sufficient advice, HEREBY ORDERS that:

1. AT&T's motion to dismiss is denied.

2. The commencement date for the new Sprint-AT&T interconnection agreement is December 29, 2006 for a fixed 3-year term.

3. AT&T's petition to adopt Attachments 3A and 3B is dismissed.

4. This Order is final and appealable.

Done at Frankfort, Kentucky, this 18th day of September, 2007.

By the Commission

ATTEST:

Executive Director

Exhibit D

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION BY NEXTEL WEST CORP. 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.	)))))))	CASE NO. 2007-00255

O R D E R

On June 21, 2007, Nextel West Corporation ("Nextel") filed what it styled as a "notice of adoption" of the currently effective interconnection agreement between BellSouth Telecommunications, Inc. ("BellSouth") d/b/a AT&T Kentucky, Inc. ("AT&T Kentucky") and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P. ("Sprint Interconnection Agreement"). The Sprint Interconnection Agreement was dated January 1, 2001 and has been amended. Nextel asserts that it is adopting the Sprint Interconnection Agreement pursuant to a Federal Communications Commission ("FCC") order and 47 U.S.C. § 252(i). Nextel contends that the FCC order approving merger commitments between BellSouth and AT&T Corporation authorizes this adoption.[1] Merger Commitment No. 1 of that order states that AT&T/BellSouth incumbent local exchange carriers ("ILECs") shall make available to any requesting telecommunications carrier

[1] FCC WC Docket No. 06-74, Appendix F, Order dated March 26, 2007.

any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory.

Based on this merger commitment and on 47 U.S.C. § 252(i), Nextel requests to adopt the Sprint Interconnection Agreement initially approved by the Commission in Case No. 2000-00480[2] in its entirety and as amended. The agreement which Nextel seeks to adopt was arbitrated pursuant to 47 U.S.C. §§ 251 and 252.

On July 5, 2007, AT&T Kentucky submitted an objection to Nextel's notice of adoption and submitted a motion to dismiss this proceeding. AT&T Kentucky claimed that the Commission has no jurisdiction over matters that arose from its merger commitments. For reasons set forth in the Commission's September 18, 2007 Order in Case No. 2007-00180,[3] the Commission finds that AT&T's motion must be denied.

The Sprint Interconnection Agreement has been extended for 3 additional years pursuant to Merger Commitment No. 4, agreed upon by AT&T and BellSouth in the FCC merger proceeding. In an Order dated September 18, 2007, this Commission determined that the agreement in question is extended for 3 years from the date of the AT&T/BellSouth merger, December 29, 2006. Thus, the term of the agreement which

[2] Case No. 2000-00480, The Petition of Sprint Communications Company, L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of the Telecommunications Act of 1996.

[3] Case No. 2007-00180, 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.

Nextel seeks to adopt extends to December 29, 2009. The Commission finds that there is a reasonable time left to this agreement, making its adoption lawful.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The request of Nextel to adopt the currently effective Sprint Interconnection Agreement is granted, effective the date of this Order.

2. AT&T Kentucky's motion to dismiss Nextel's adoption petition is hereby denied.

3. Within 20 days of the date of this Order, Nextel and AT&T Kentucky shall submit their executed adoption of the Sprint Interconnection Agreement.

4. This Order is final and appealable.

Done at Frankfort, Kentucky, this 18th day of December, 2007.

By the Commission

ATTEST:

Executive Director

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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.	)))))))	CASE NO. 2007-00256

O R D E R

On June 21, 2007, NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") filed what it styled as a "notice of adoption" of the currently effective interconnection agreement between BellSouth Telecommunications, Inc. ("BellSouth") d/b/a AT&T Kentucky, Inc. ("AT&T Kentucky") and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P. ("Sprint Interconnection Agreement"). The Sprint Interconnection Agreement was dated January 1, 2001 and has been amended. Nextel Partners asserts that it is adopting the Sprint Interconnection Agreement pursuant to a Federal Communications Commission ("FCC") order and 47 U.S.C. § 252(i). Nextel Partners contends that the FCC order approving merger commitments between BellSouth and AT&T Corporation authorizes this adoption.[1] Merger Commitment No. 1 of that order states that AT&T/BellSouth

[1] FCC WC Docket No. 06-74, Appendix F, Order dated March 26, 2007.

incumbent local exchange carriers ("ILECs") shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory.

Based on this merger commitment and on 47 U.S.C. § 252(i), Nextel Partners requests to adopt the Sprint Interconnection Agreement initially approved by the Commission in Case No. 2000-00480[2] in its entirety and as amended. The agreement which Nextel Partners seeks to adopt was arbitrated pursuant to 47 U.S.C. §§ 251 and 252.

On July 5, 2007, AT&T Kentucky submitted an objection to Nextel Partners' notice of adoption and submitted a motion to dismiss this proceeding. AT&T Kentucky claimed that the Commission has no jurisdiction over matters that arose from its merger commitments. For reasons set forth in the Commission's September 18, 2007 Order in Case No. 2007-00180,[3] the Commission finds that AT&T's motion must be denied.

The Sprint Interconnection Agreement has been extended for 3 additional years pursuant to Merger Commitment No. 4, agreed upon by AT&T and BellSouth in the FCC merger proceeding. In an Order dated September 18, 2007, this Commission determined that the agreement in question is extended for 3 years from the date of the

[2] Case No. 2000-00480, The Petition of Sprint Communications Company, L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of the Telecommunications Act of 1996.

[3] Case No. 2007-00180, 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.

AT&T/BellSouth merger, December 29, 2006. Thus, the term of the agreement which Nextel Partners seeks to adopt extends to December 29, 2009. The Commission finds that there is a reasonable time left to this agreement, making its adoption lawful.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The request of Nextel Partners to adopt the currently effective Sprint Interconnection Agreement is granted, effective the date of this Order.

2. AT&T Kentucky's motion to dismiss Nextel Partners' adoption petition is hereby denied.

3. Within 20 days of the date of this Order, Nextel Partners and AT&T Kentucky shall submit their executed adoption of the Sprint Interconnection Agreement.

4. This Order is final and appealable.

Done at Frankfort, Kentucky, this 18th day of December, 2007.

By the Commission

ATTEST:

Executive Director

Exhibit E

at&t

John T. Tyler
Senior Attorney
Legal Department

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Tallahassee, FL 32301

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December 18, 2007

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

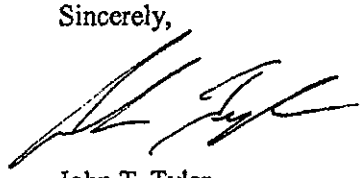
Re: **Docket No. 070368-TP (Nextel Partners)**
Docket No. 070369-TP (Nextel)

Dear Ms. Cole:

Enclosed is AT&T Florida's Notice of Rule 1.310(b)(6) Deposition, 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 Nos. 070368-TP; 070369

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 18th day of December, 2007 to the following:

Florida Public Service Commission
Adam Teitzman, Staff Counsel
Rick Mann, Staff Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6212
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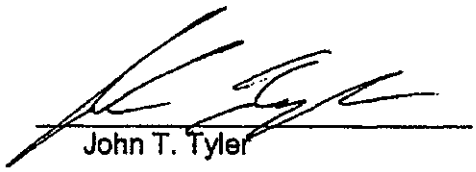

John T. Tyler

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699331

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

AT&T FLORIDA'S NOTICE OF RULE 1.310(b)(6) DEPOSITION

PLEASE TAKE NOTICE that pursuant to Florida Rules of Civil Procedure, Rule 1.310(b)(6), BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T") through its undersigned counsel will take the deposition of NPCR, Inc. d/b/a Nextel Partners; Nextel South Corp. and Nextel West Corp. (collectively "Nextel") upon oral examination for purposes of discovery, for use at trial, or for any other purpose allowed under the Florida Rules of Civil Procedure, the Uniform Rules of Procedure, and the Rules of the Florida Public Service Commission.

The deposition, before a duly authorized officer certified to administer oaths, will be held, beginning on a date to be agreed upon by the parties during the first two weeks of January 2008, at 150 South Monroe Street, Suite 400, Tallahassee, Florida. If necessary, the deposition will be conducted telephonically.

In accordance with Fla.R.Civ.P 1.310(b)(6), Nextel shall designate one or more officers, directors, or managing agents, or other persons, to testify on its behalf, and the person so designated shall testify about matters known or reasonably available to the organization. The matters upon which examination is requested may include, but may not be limited to:

a. The corporate structure of Sprint Nextel Corp.: including all subsidiaries and affiliated business entities.

b. The corporate relationship between Nextel West Corp., Nextel South Corp. and all other Sprint Nextel entities.

c. The relationship between Sprint Communications Company L.P. and Sprint Nextel Corp.

d. The complete suite of services offered by Nextel South Corp. and Nextel West Corp.

e. The complete suite of services offered by Sprint Spectrum L.P. d/b/a Sprint PCS.

f. The manner in which the above-referenced services are provisioned.

g. Traffic patterns associated with delivery of the above-referenced services.

h. OCN codes assigned to each entity.

i. The types of circuits utilized by each entity.

j. The interconnection services and network elements Nextel South Corp. and Nextel West Corp. seek to order from AT&T Florida via the ICA they seek to adopt.

k. The interconnection services and network elements Sprint Communications Company Limited Partnership; Sprint Communications Company L.P. and Sprint Spectrum, L.P. order from AT&T Florida via the ICA that Nextel seeks to adopt.

l. A list of all Sprint Nextel Corp. entities certificated by the Florida Public Service Commission.

The deposition will continue from day to day until examination is complete.

This 18th day of December 2007.

AT&T Florida

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681195

Exhibit F

BELLSOUTH

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mary.henze@bellsouth.com

Mary L. Henze
Assistant Vice President
Federal Regulatory

202 463 4109
Fax 202 463 4631

May 11, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

Re: Pick & Choose NPRM; CC Dkts 01-338, 96-98, and 98-147; Review of Sec. 251 Unbundling obligations of Incumbent Local Exchange Carriers

Dear Ms. Dortch,

BellSouth is submitting for the record in the above proceedings the attached affidavit of Jerry D. Hendrix, Assistant Vice President-Interconnection Services Marketing for BellSouth. Mr. Hendrix describes in detail how the FCC's current pick and choose rules affect interconnection negotiations in inefficient and non-productive ways.

This notice is being filed pursuant to Sec. 1.1206(b)(2) of the Commission's rules. If you have any questions regarding this filing please do not hesitate to contact me.

Sincerely,

Mary L. Henze

Mary L. Henze

cc: J. Minkoff
C. Shewman

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act Of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services of Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

AFFIDAVIT OF JERRY D. HENDRIX
ON BEHALF OF BELLSOUTH TELECOMMUNICATIONS INC. ("BELLSOUTH")

The undersigned being of lawful age and duly sworn, does hereby state as follows:

QUALIFICATIONS

1. My name is Jerry D. Hendrix. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. My title is Assistant Vice President - Interconnection Services Marketing for BellSouth. I am responsible for overseeing the negotiation of Interconnection Agreements between BellSouth and Competitive Local Exchange Carriers ("CLECs"). Prior to assuming my present position, I held various positions in the Network Distribution Department and then joined the BellSouth Headquarters Pricing and Regulatory Organizations. I have been employed with BellSouth since 1979.

PURPOSE OF AFFIDAVIT

2. The purpose of this affidavit is to follow up on questions raised by the Commission during a recent BellSouth *ex parte* presentation, notice of which was subsequently filed in this proceeding, Letter from Mary L. Henze to Marlene Dortch (April 27, 2004), and to specifically provide additional record evidence that the current pick and choose rules affect interconnection negotiations in inefficient and non-productive ways.

THE PICK AND CHOOSE RULES AFFECT INTERCONNECTION NEGOTIATIONS IN INEFFICIENT AND NON-PRODUCTIVE WAYS:

3. For example, in an effort to incorporate into its existing Interconnection Agreements ("IAs") the changes of law that resulted from the FCC's *Triennial Review Order* ("*TRO*"), BellSouth forwarded to each CLEC an amendment to its specific IA. The amendment contained all changes that the *TRO* specified, regardless of whether BellSouth viewed the change as beneficial to BellSouth or to the CLEC. Also, in the majority of its states, BellSouth filed new SGATs reflecting the current state of the law, which included the changes from the *TRO*. Before BellSouth could get the new SGAT filed in the remainder of its states, the D.C. Circuit Court of Appeals issued its Opinion and stayed significant sections of the *TRO*; therefore, BellSouth chose not to proceed with the rest of its SGAT filings until the situation stabilized. In one of the states where BellSouth filed a new SGAT, CLEC A submitted to that state commission a request to adopt only the commingling language from the SGAT. Apparently, CLEC A was attempting to avoid incorporating into its IA the remaining provisions of the *TRO*, wanting instead to incorporate into its IA only those provisions from the *TRO* that CLEC A deemed beneficial to it.

4. CLEC B, apparently in an effort to eliminate specific provisions of its negotiated IA that it now views as not being beneficial, has requested to adopt specific provisions from another carrier's agreement, even though the other carrier's agreement is actually silent on the provisions at issue. In other words, CLEC B seeks to adopt the absence of a provision.

5. A CLEC affiliate of a large, established CLEC has requested to adopt the established CLEC's IA (and, where the established CLEC has no adoptable agreement, the CLEC affiliate has requested to adopt the IA of another large, unaffiliated CLEC). The requested IAs, in most cases, were filed with and approved by the state commissions more than two years ago and do not reflect changes in law that have occurred since the agreements were signed and approved. Further, the CLEC affiliate did not request the adoption until a matter of days before the DC Circuit Court of Appeals released its March 2, 2004, Opinion regarding the TRO. The CLEC affiliate is new, has no customers, and has not even completed the certification process in at least one of BellSouth's states in which the CLEC affiliate has requested adoption of an existing IA. Nonetheless, the CLEC affiliate is requesting to adopt agreements that are no longer compliant with law, presumably in an attempt to perpetuate those portions of the agreement that it finds beneficial but that are not compliant with law. BellSouth's response to the CLEC affiliate was that it could adopt the requested IAs, but only if it agreed to amend the IAs so that they would be compliant with current law. The CLEC affiliate has, thus far, refused to amend the IAs as a condition of adoption.

6. CLEC C has a very specific business plan and customer base, and seeks certain bill and keep arrangements in connection with its interconnection with BellSouth. In this specific instance, both parties would benefit from such an arrangement. However, in other circumstances, this particular arrangement would be extremely costly to BellSouth. Rather than being able simply to agree to the arrangement with CLEC C, BellSouth's negotiator and the negotiating attorney have spent many hours consulting with BellSouth's network engineers, sales teams and billing personnel to attempt to identify and discuss all potential risks. Due to the pick and choose option, such caution is necessary in order to craft the language addressing the specific interconnection arrangement so that another CLEC cannot adopt it unless that CLEC also meets the same qualifications as CLEC C. Under the specter of pick and choose, what should be a simple negotiation that could be handled in a matter of days turns into a series of meetings with numerous people, and takes significantly longer to negotiate. Furthermore, even if BellSouth agrees to CLEC C's request and does its best to construct contract language specific to this situation, there is still the risk that CLECs who are not similarly situated will argue that they should be allowed to adopt the language, or parts thereof. Most likely, protracted litigation would occur, and if the CLEC prevailed, the result would be financial harm to BellSouth.

7. The pick and choose rules cause BellSouth to incur costs in litigation not only to defend against adoption where BellSouth believes the adopting CLEC is not similarly situated, but also to arbitrate issues with a particular carrier that could be successfully negotiated if the pick and choose rules did not exist. In a true negotiation, unrelated contract provisions left to be resolved are often "horse-traded." For example, BellSouth may agree to a CLEC's requested provision in exchange for the CLEC's agreement to an unrelated provision. Two problems can occur where BellSouth agrees to such exchanges. First, in situations where such trades are made, it is difficult, if not impossible, to track the exchanges. Thus, adopting CLECs can pick and choose certain language that includes the beneficial provision without taking the other provision that was part of the bargain (and that was beneficial to BellSouth). Second, if BellSouth insists that the CLEC also adopt the other provision that was part of the exchange, the CLEC will likely consider the other provision as being unrelated to the provision the CLEC wants to adopt, and the parties may spend months attempting to resolve the issue. Where BellSouth does not agree to the exchange for the reasons discussed above, the parties are forced to arbitrate issues that neither party truly has the inclination to fight.

8. Larger CLECs often request specialized services, such as downloads of databases, development of specialized systems or other costly endeavors, and these CLECs often want to negotiate those requests in connection with an IA. In some cases, BellSouth may be willing to agree to the request, provided that it can collect appropriate compensation. Because most of these negotiated items are not actually developed unless and until the CLEC makes a request, some such items are never actually developed and implemented. The large requesting CLEC

prefers to make a request, obtain the specialized service, system or database from BellSouth, and then reimburse BellSouth for the costs incurred. However, BellSouth cannot agree to anything other than advance payment. Otherwise, a CLEC without the financial means to pay for the development of the service could adopt the language, request development, obtain the benefit of the service and then be unable to pay for it. The large CLEC may ultimately arbitrate the issue in an effort to avoid advance payment or other terms that, for that particular CLEC and its financial capability and business plan, may actually be acceptable to BellSouth, but that BellSouth cannot agree to because the terms would then be available for adoption by other CLECs.

9. A CLEC may have a novel approach to a particular problem that BellSouth has not operationalized. That CLEC desires to include the terms and conditions of this proposed solution in its IA, and BellSouth generally would be willing to do so in order to test the concept on a small scale with that one CLEC or with a small subset of CLECs. Obviously, if the concept were successful, BellSouth would be willing to offer the same arrangement to additional CLECs. BellSouth, however, is unable to include such untested concepts in an IA, because if the solution proves to be operationally problematic, too costly or otherwise unworkable for BellSouth, adoption perpetuates the problem and causes it to grow. Thus, BellSouth generally cannot agree to incorporate innovative but untested solutions for a single carrier into an IA.

10. During 1998 and 1999, BellSouth participated in multiple arbitrations relating to the treatment of ISP-bound traffic in each of the nine states in which it provides local exchange and exchange access services. BellSouth considered attempting to settle these disputes with some CLECs with a going-forward remedy proposal. The settlement decision would have been based on each arbitrating CLEC's specific situation. Due to the uncertainty caused by the current pick and choose rules, however, BellSouth was unable to proceed in a timely manner with these settlement proposals due to the risk that CLECs that were not similarly situated to the arbitrating CLECs would attempt to obtain, and would indeed ultimately obtain, the same provisions.

11. Generally, BellSouth's Interconnection Services contract negotiators, product managers and upper management, along with BellSouth's network and billing personnel and its counsel, expend substantial resources in assessing risk of adoption, trying to develop contract language that limits adoption to similarly situated CLECs, and handling disputes involving adoption requests. Each and every issue must be considered carefully in regards to pick and choose and the potential results of including provisions in the agreement that can be adopted by other carriers. While BellSouth can attempt to craft language that would restrict the provisions only to similarly situated CLECs, such an exercise is time consuming, and often the CLEC has no inclination to expend time and resources to negotiate or agree to such language, even if the language is not problematic for the negotiating CLEC. Further, BellSouth has no assurance of prevailing at the

state commissions if the CLEC argues that it should not be required to adopt all of the restrictions along with the language it desires to adopt. The following are examples of adoption requests that BellSouth has received from multiple CLECs that impede negotiations and require a great amount of time and resources to resolve:

- Requests to adopt provisions that are beyond the scope of 252(i), such as requests to adopt dispute resolution provisions, governing law provisions, and deposit provisions that are based on the original negotiating CLEC's financial status.

- Requests to adopt specific provisions without accepting other legitimately related provisions, such as a request to adopt a "bill and keep" provision without accepting the associated network interconnection arrangements provision.

- Requests to adopt provisions to which the CLEC is not legally entitled, such as a request to adopt reciprocal compensation for ISP traffic provisions from an existing IA when the adopting CLEC did not exchange traffic with BellSouth in 2001, as is required by law to entitle that CLEC to compensation for ISP traffic.

- Requests to adopt a specific provision in order to avoid change of law provisions, such as a request to adopt specific provisions from the *TRO*, but refusing to accept all of the provisions, especially those that are more beneficial to the ILEC.

12. This concludes my affidavit.

Jerry D. Hendrix

Sworn to and subscribed before me
A Notary Public, this 10th
day of May, 2004.

Notary Public

RUDINE J. DAVIS
Notary Public, Fulton County, Georgia
My Commission Expires May 16, 2006

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

MOTION TO QUASH NOTICE OF DEPOSITION AND FOR PROTECTIVE ORDER

Pursuant to Rules 28-106.206 and 28-106.212(3), Florida Administrative Code and Rule 1.280(c), Florida Rules of Civil Procedure, NPCR, Inc., d/b/a Nextel Partners, and Nextel South Corp. (collectively, "Nextel") hereby respectfully request the Prehearing Officer to quash the Notice of Rule 1.310(b)(6) Deposition served on December 18, 2007 by BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T") in the above-captioned dockets and enter an Order protecting Nextel from the annoyance, oppression, and undue burden and expense resulting from the current Notice of Deposition and possible further discovery.

As noted in Nextel's Motion for Summary Final Order filed today in these dockets, there is no genuine issue as to any material fact regarding Nextel's adoption of

the underlying Sprint-AT&T interconnection agreement ("ICA"), and accordingly, Nextel is entitled to adopt the Sprint ICA as a matter of law. Therefore, the Commission should act on Nextel's Motion for Summary Final Order and foreclose any further discovery in these matters. At minimum, the Commission should prohibit any discovery by AT&T pending a ruling on Nextel's Motion for Summary Final Order. AT&T's Notice of Deposition appears to be nothing more than a "fishing expedition" to attempt to identify factual bases to support a new argument AT&T failed to raise in these dockets: namely, that Nextel and the Sprint entities that are parties to the Sprint ICA are not "similarly-situated" and therefore may not adopt the Sprint ICA.

Permitting AT&T to engage in this "fishing expedition" will only serve to delay unnecessarily the final disposition of these dockets and will cause undue burden and expense on Nextel and the Commission. In further support of this Motion, Nextel states as follows:

1. On June 8, 2007, Nextel filed its Notices of Adoption with the Commission, wherein Nextel notified the Commission of its intent to adopt the underlying Sprint-AT&T ICA pursuant to AT&T Merger Commitment Nos. 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements"[1] and 47 U.S.C. Section 252(i). AT&T filed a Motion to Dismiss the Nextel Notices on June 28, 2007. In its Motion, AT&T asked the Commission to dismiss the Nextel Notices on three grounds: 1) that only the FCC, and not the Commission, possesses the authority to enforce the AT&T merger conditions; 2) that Nextel is attempting to adopt an expired ICA, and thus Nextel's requested adoption does not comport with the timing requirement

[1] See Federal Communications Commission ("FCC") WC Docket No. 06-74, Memorandum Opinion and Order (rel. March 26, 2007), Appendix F.

under 47 C.F.R. 51. 809(c); and 3) that Nextel's Notice of Adoption is premature because Nextel did not abide by the dispute resolution provisions in the existing Nextel-AT&T ICA. On July 9, Nextel filed a Response to the AT&T Motion.

2. On October 16, 2007, the Commission issued its Order denying AT&T's Motion to Dismiss in the above-styled dockets, in which, among other determinations, the Commission stated that "[b]ecause Nextel seeks to adopt the existing Sprint ICA, the procedure and ultimate resolution of this docket may rely heavily on the outcome of the Sprint – AT&T Arbitration in Docket No. 070249-TP."

3. In the arbitration proceedings in Docket No. 070249-TP, Sprint and AT&T filed a Joint Motion to Approve Amendment on December 4, 2007. In their Joint Motion, Sprint and AT&T asked the Commission to approve pursuant to 47 U.S.C. Section 252(e) the recently executed Amendment to the existing Sprint-AT&T ICA that extends the ICA for three years from Sprint's extension request date of March 20, 2007. Sprint and AT&T further state in the Joint Motion that "[u]pon Commission approval of the three-year term extension Amendment, the issues in the above-styled arbitration proceeding will be resolved."

4. On December 18, 2007, AT&T served its Notice of Rule 1.310(b)(6) Deposition announcing it "will take the deposition of NPCR, Inc., d/b/a Nextel Partners; Nextel South Corp. and Nextel West Corp. (collectively "Nextel") upon oral examination for purposes of discovery, for use at trial, or for any other purpose allowed under the Florida Rules of Civil Procedure, the Uniform Rules of Procedure, and the Rules of the Florida Public Service Commission." AT&T states the deposition will be on a date to be agreed upon by the parties during the first two weeks of January 2008 in Tallahassee, or

telephonically if necessary, and will include, but may not be limited to, matters relating to the corporate structure of Sprint Nextel Corp. including all subsidiaries and affiliated business entities; the corporate relationship between Nextel West Corp, Nextel South Corp. and all other Sprint Nextel entities; the relationship between Sprint Communications Company, L.P. and Sprint Nextel Corp.; the complete suite of services offered by Nextel South Corp. and Nextel West Corp.; the complete suite of services offered by Sprint Spectrum L.P. d/b/a Sprint PCS; the manner in which the above-referenced services are provisioned; traffic patterns associated with delivery of the above-referenced services; OCN codes assigned to each entity; the types of circuits utilized by each entity; the interconnection services and network elements Nextel South Corp. and Nextel West Corp. seek to order from AT&T Florida via the ICA they seek to adopt; the interconnection services and network elements Sprint Communications Company Limited Partnership; Sprint Communications Company L.P. and Sprint Spectrum L.P. order from AT&T Florida via the ICA that Nextel seeks to adopt; and a list of all Sprint Nextel Corp. entities certificated by the Florida Public Service Commission.

5. Today, December 26, 2007, Nextel filed its Motion for Summary Final Order in the above-styled dockets, asking the Commission to require AT&T to permit Nextel's requested adoption because, due to the extension of the Sprint ICA filed in Docket No. 070249-TP, AT&T can no longer prevail based on any of the three objections to the adoption stated in AT&T's Motion to Dismiss. Those objections have either been rejected by the Commission or are now moot. AT&T's first objection, that only the FCC has authority to interpret and enforce the AT&T Merger Commitments, was rejected by the Commission's finding that Nextel's Notices of Adoption stated a cause of action upon

which relief may be granted. AT&T's second objection, that Nextel is attempting to adopt an expired ICA, is now moot because Sprint and AT&T recently executed and filed with this Commission an Amendment extending the underlying ICA for three years from March 20, 2007. Lastly, in its Order denying AT&T's Motion to Dismiss, the Commission rejected AT&T's third objection to Nextel's requested adoption, i.e., that Nextel did not abide by the dispute resolution provisions in the existing Nextel-AT&T ICA, stating that "[w]e do not find that Nextel is obligated to invoke the parties' existing dispute resolution provisions", and that "Nextel's adoption is well within its statutory right to opt-in to the Sprint Agreement in its entirety."

WHEREFORE, Nextel respectfully requests that the Commission:

a) Quash AT&T's December 18, 2007 Notice of Deposition;

b) Enter an order protecting Nextel from the annoyance, oppression, and undue burden and expense resulting from the current and further Notices of Deposition.

IN THE ALTERNATIVE, should the Commission deny Nextel's Motion to Quash and for Protective Order or decline to rule on it immediately, Nextel respectfully requests that the Commission grant a continuance of the time set forth in the Notice of Deposition until the Commission rules on Sprint's Motion for Summary Final Order.

Respectfully submitted this 26th day of December, 2007.

/s/ Marsha E. Rule
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished by U.S. Mail and email to the following parties on this 26th day of December, 2007:

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/s/ Marsha E. Rule
Marsha E. Rule

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
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NEXTEL'S REQUEST FOR ORAL ARGUMENT ON MOTION FOR SUMMARY FINAL ORDER AND MOTION TO QUASH AND FOR PROTECTIVE ORDER

NPCR, Inc., d/b/a Nextel Partners, and Nextel South Corp. (collectively, "Nextel") pursuant to Rule 25-22.0022, Florida Administrative Code, hereby requests that the Commission grant oral argument concerning Nextel's Motion for Summary Final Order and Motion to Quash Notice of Deposition and for Protective Order, filed this day in the above-styled dockets. In support of its request, Nextel respectfully states as follows:

1. Nextel has filed with the Commission this day a Motion for Summary Final Order, in which Nextel asserts that there is no genuine issue as to any material fact regarding Nextel's June 8, 2007 notice of adoption of the underlying interconnection

agreement effective January 1, 2001 between Sprint Communications Company Limited Partnership and Sprint Spectrum, Limited Partnership ("Sprint"), and BellSouth Telecommunications, Inc., d/b/a AT&T Florida ("AT&T") (hereinafter, "Sprint ICA"), and accordingly, Nextel is entitled to adopt the Sprint ICA as a matter of law.

2. Also this day, Nextel has filed a Motion to Quash Notice of Deposition and for Protective Order, in which Nextel requests the Prehearing Officer to quash AT&T's Notice of Rule 1.310(b)(6) Deposition issued on December 18, 2007 in the above-captioned dockets and enter an Order protecting Nextel from the annoyance, oppression, and undue burden and expense resulting from the current Notice of Deposition and possible further attempted discovery.

3. Oral argument will aid the Commission in understanding and evaluating the legal bases for Nextel's Motions, and in particular, how the standard for summary final order provided in Rule 28-106.204(4), Florida Administrative Code, has been met in this instance. Specifically, oral argument will aid the Commission's understanding and evaluation of AT&T's attempt to avoid the application of applicable law which clearly authorizes Nextel's right to adopt the Sprint ICA and that permitting further discovery by AT&T amounts to a waste of the parties' and the Commission's time and resources to the ultimate detriment to consumers in this State.

4. Nextel requests that each side (Nextel and AT&T) be granted ten (10) minutes for oral argument.

WHEREFORE, Nextel respectfully requests that the Commission grant this Request for Oral Argument.

Respectfully submitted this 26th day of December, 2007.

/s/ Marsha E. Rule
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request has been furnished by U.S. Mail and email to the following parties on this 26th day of December, 2007:

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