State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 25, 2009

TO: Ann Cole, Commission Clerk - PSC, Office of Commission Clerk

FROM: Samantha M. Cibula, Attorney Supervisor, Office of the General Counsel SMC

RE: Docket No. 070368 -TP - Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners.

Docket No. 070369-TP - Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp. and Nextel West Corp.

Attached is a complaint which is now pending in the United States District Court for the Northern District of Florida pertaining to the above-referenced dockets. Please place this document in Docket Nos. 070368-TP and 070369-TP and change the dockets to litigation status.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

BELLSOUTH TELECOMMUNICATIONS, INC., d/b/a AT&T FLORIDA Plaintiff, v. FLORIDA PUBLIC SERVICE COMMISSION, MATTHEW M. CARTER II, in his official capacity as the Chairman of the PSC, LISA POLAK EDGAR, in her official capacity as Commissioner of the PSC, KATRINA J. MCMURRIAN, in her official capacity as Commissioner of the PSC, NANCY ARGENZIANO, in her official capacity as Commissioner of the PSC, NATHAN A. SKOP, in his official capacity as Commissioner of the PSC; NPCR, INC. d/b/a NEXTEL PARTNERS, NEXTEL SOUTH CORP., and NEXTEL WEST CORP., Defendants.	Civil Action No. ____

COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

Nature of the Action

1. Plaintiff BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") brings this action seeking declaratory and injunctive relief from decisions of the Florida Public Service Commission ("Florida PSC" or "PSC") that are contrary to and preempted by federal law, arbitrary and capricious, not adequately reasoned, and unsupported by record evidence.

Parties, Jurisdiction, and Venue

2. Plaintiff BellSouth Telecommunications, Inc. d/b/a AT&T Florida is a Georgia corporation with its principal place of business at 675 W. Peachtree Street, Atlanta, GA 30375. AT&T Florida provides telecommunications service in parts of Florida.

3. Defendant the Florida PSC is an agency of the State of Florida. The PSC is a "State commission" within the meaning of the Telecommunications Act of 1996, 47 U.S.C. § 251 *et seq.*

4. Defendant Matthew M. Carter II is the Chairman of the Florida PSC. Defendant Lisa Polak Edgar, Defendant Katrina J. McMurrian, Defendant Nancy Argenziano, and Defendant Nathan A. Skop are Commissioners of the Florida PSC. They are sued only in their official capacities for declaratory and injunctive relief.

5. Defendant Nextel South Corp. is a Georgia corporation that is licensed by the Federal Communications Commission ("FCC") to provide, and does provide, wireless telecommunications services in the State of Florida. On information and belief, its principal place of business is in Overland Park, Kansas.

6. Defendant NPCR, Inc. d/b/a Nextel Partners is a Delaware corporation that is licensed by the FCC to provide, and that does provide, wireless telecommunications services in the State of Florida. On information and belief, its principal place of business is in Overland Park, Kansas.

7. Defendant Nextel West Corp. is a Delaware corporation that is licensed by the FCC to provide, and that does provide, wireless telecommunications services in the

State of Florida. On information and belief, its principal place of business is in Overland Park, Kansas.

8. Defendants Nextel South Corp., Nextel West Corp., and Nextel Partners are collectively referred to here as "Nextel."

9. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and, to the extent any issue here is construed to involve state law, 28 U.S.C. § 1367. The Court also has subject matter jurisdiction over the action pursuant to the Supremacy Clause of the U.S. Constitution, *see* U.S. Const. art. VI, and 28 U.S.C. § 1343(a)(3). Should 47 U.S.C. § 252(e)(6) be construed as jurisdictional, this Court also has jurisdiction under that provision.

10. Venue is proper in this District under 28 U.S.C. § 1391. Venue is proper under § 1391(b)(1) because the Florida PSC resides in this District. Venue is proper under § 1391(b)(2) because a substantial part of the events giving rise to this action occurred in this District, in which the PSC sits.

Regulatory Background

11. The Telecommunications Act of 1996 ("1996 Act" or "Act"), Pub. L. No. 104-104, 110 Stat. 56, requires all "telecommunications carrier[s]" — including wireless providers such as Nextel and local exchange carriers such as AT&T Florida — "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a). In addition, the 1996 Act requires incumbent local exchange carriers ("incumbent LECs" or "ILECs") — such as AT&T Florida — to make certain "network elements" and "interconnection" services available

to requesting telecommunications carriers. *See id.* § 251(c). "Interconnection" involves the physical connection of two networks so that subscribers of one carrier can place calls to subscribers of the other carrier, and vice versa. *See id.* § 251(c)(2); 47 C.F.R. § 51.5 (defining interconnection). "Network elements" are piece-parts of the incumbent LEC's network — for example, the "local loop," which is the wire or equivalent facility that connects customers' homes or businesses to the network. *See* 47 U.S.C. § 251(c)(3), (d)(2) (providing the standards under which the FCC must determine whether incumbent LECs must make available (or "unbundle") particular network elements).

12. These federal-law requirements to provide access to network elements and interconnection to requesting telecommunications carriers are implemented through "interconnection agreements" between incumbent LECs and the requesting carriers. Such agreements may be arrived at through negotiation or arbitration, *see id.* § 252(a), (b), and are then submitted to an appropriate state commission for approval, *see id.* § 252(e)(1). *See generally BellSouth Telecomms., Inc. v. MCImetro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1273-74 (11th Cir. 2003) (discussing § 252 procedures); *GTE North, Inc. v. Strand*, 209 F.3d 909, 912-13 (6th Cir. 2000) (same).

13. The 1996 Act is clear, moreover, that approval of an interconnection agreement by a state commission is a condition precedent to the effectiveness of the agreement. *See* 47 U.S.C. § 252(e). Furthermore, although "the 1996 Act entrusts state commissions with the job of approving interconnection agreements," state commissions are bound to follow federal law, including rules issued by the FCC that implement the

1996 Act, in reviewing and approving those interconnection agreements. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999).

14. In addition to arriving at an interconnection agreement through negotiation or arbitration, a requesting telecommunications carrier may, in certain circumstances, "opt in" to an existing agreement between an incumbent LEC and another telecommunications carrier that has already been approved by a state commission. Specifically, § 252(i) provides that an incumbent LEC shall make available "any interconnection, service, or network element provided under an agreement . . . to which it is a party" and which is approved by a state commission "upon the same rates, terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i).

15. The FCC had adopted binding, national rules implementing § 252(i) and establishing procedures for this opt-in process. *See* 47 C.F.R. § 51.809. The FCC elected to promulgate national rules, rather than relying on a state-by-state approach, in order to achieve national uniformity. *See* First Report and Order, *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16139, ¶ 1309 (1996) ("*Local Competition Order*") ("We conclude that it will assist the carriers in determining their respective obligations, facilitate the development of a single, uniform legal interpretation of the Act's requirements and promote a procompetitive, national policy framework to adopt national standards to implement Section 252(i).").

16. The FCC's first round of rules implementing § 252(i) were promulgated shortly after enactment the 1996 Act. In the *Local Competition Order*, the FCC promulgated a so-called "pick-and-choose rule" to implement § 252(i) under which a

requesting carrier could adopt any individual term or condition of any other approved interconnection agreement. *See Local Competition Order* ¶ 1314. The opt-in process under that rule, however, was subject to a number of limitations, and the FCC's rules recognized that state commissions were required to resolve disputes about these limitations in the first instance in order to determine whether an opt-in request was lawful. *See, e.g.*, 47 C.F.R. § 51.809(b) (1997). In 2004, the FCC replaced the pick-and-choose rule with a so-called "all-or-nothing rule" under which a requesting telecommunications carrier could opt in to an interconnection agreement, if at all, only in its entirety. *See* Second Report and Order, *Review of the Section 251 Unbundling Obligations of Local Exchange Carriers*, 19 FCC Rcd 13494 (2004). The all-or-nothing regime — like the prior pick-and-choose regime — provides incumbent LECs a number of grounds upon which they can object to a requesting carrier's opt-in request. *See* 47 C.F.R. § 51.809.

17. Under both the pick-and-choose rule and the all-or-nothing rule, the procedures that the FCC has established for the approval of opt-in requests make clear that such requests are not self-executing. Rather, incumbents such as AT&T Florida must make interconnection agreements available "without unreasonable delay." 47 C.F.R. § 51.809. On its face, that textual command to allow adoption "without unreasonable delay" is inconsistent with any theory that the § 252(i) opt-in process is an immediate or self-executing one. *See, e.g.*, *Muldrow v. United States*, 281 F.2d 903, 906 (9th Cir. 1960) ("It is obvious that 'without unnecessary delay' does not and cannot mean 'instantly.'").

18. That requesting telecommunications carriers' opt-in requests are not self-executing — such that a mere request to opt in gives a carrier a right to operate under an existing interconnection agreement immediately — is also clear from the express recognition of an incumbents' right to object to opt-in requests in the FCC's rules. As explained above, under the FCC's rules implementing § 252(i), incumbents have several grounds on which they can object to an opt-in request and, importantly, they have a right under the rules to raise these objections with a state commission before an opt-in request takes effect. *See* 47 C.F.R. § 51.809(b)-(c); *see also BellSouth Telecomms., Inc. v. Southeast Tel., Inc.*, 462 F.3d 650, 653 (6th Cir. 2006) (noting that the pick-and-choose rule "explicitly permitted ILECs to raise specified challenges before the state commission regarding a CLEC's attempt to opt in to the terms of an existing agreement").

19. For example, under both the pick-and-choose and the all-or-nothing rule, an incumbent is not required to make an interconnection agreement available for opt in indefinitely; rather, an agreement is to be available for opt in only "for a reasonable period of time after the approved agreement is available for public inspection." 47 C.F.R. § 51.809(c); *see also BellSouth Telecomms,. Inc. v. Universal Telecom Inc.*, 454 F.3d 559, 560 (6th Cir. 2006) ("The right to adopt an existing interconnection agreement contains several limitations, one of which is time. Under a regulation promulgated by the [FCC], an entrant seeking to adopt an approved agreement must do so within 'a reasonable period of time after the approved agreement is available for public inspection,' 47 C.F.R. § 51.809(c), which is to say a reasonable time after the state commission has approved the underlying agreement, 47 U.S.C. § 252(e)(1), (h).").

Incumbent LECs that believe an opt-in request is untimely under this standard have a right to have this issue resolved by a state commission. *See* 47 C.F.R. § 51.809.

20. The FCC's rules are equally clear that resolution of objections raised by incumbent LECs is a condition precedent to the effectiveness of an opt-in request: "[t]he obligations of paragraph (a) [*i.e.*, to allow an opt-in request] *shall not apply* where the incumbent LEC proves to the state commission" that certain defenses foreclose the opt-in request. 47 C.F.R. § 51.809(b) (emphasis added). Until a state commission has resolved any objections by an incumbent LEC, there is thus no underlying legal obligation for an incumbent to treat the interconnection agreement as effective. For that reason, approval by an appropriate state commission is necessary to render an opt-in effective. *See Southeast Tel.*, 462 F.3d at 658-59 ("Neither § 252(i) of the Act nor the FCC regulations interpreting it create an unconditional opt-in right or a 'guarantee' that a CLEC's adoption request will be granted."); *id.* at 660 ("the right to adopt the provision of an existing agreement is contingent upon a state commission's determination that such an adoption is proper under the statute and the governing regulation"); *see also Millennium One Communications, Inc. v. Public Util. Comm'n of Tex.*, 361 F. Supp. 2d 634, 637 (W.D. Tex. 2005) ("Regardless of how the interconnection agreement is formed, the final version must be submitted to the state commission for its review and approval."). Indeed, the Sixth Circuit has expressly held that there is nothing extraordinary about an incumbent "availing [itself] of an express legal right to interpose an objection" under the FCC's rules and, for that reason, an opt-in request should not be treated as legally operative at the time of the request. *Southeast Tel.*, 462 F.3d at 666; *see id.* (rejecting

state commission's argument that "but for" the incumbent's objection, the opt-in request would have been effective at the time of the request).

21. Moreover, the principle that opt-in requests are not self executing and that they require the approval of state commissions before effectiveness is consistent with the overall structure of the 1996 Act. The 1996 Act's provisions governing the approval of negotiated or arbitrated interconnection agreements establish that state commission approval is a condition precedent to the effectiveness of an interconnection agreement. *See* 47 U.S.C. § 252(a)(1) (voluntary agreements "shall be submitted to the State commission under [§ 252(e)]"); *id.* § 252(b)(1) (establishing that state commissions shall "arbitrate any open issues" arising in interconnection negotiations); *id.* § 252(e)(1) ("Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies."). Because an opt-in request is simply another means for a requesting telecommunications carrier to enter into an interconnection agreement, opt-in requests — like arbitrated and negotiated agreements — must be approved by a state commission before effectiveness. *See* 47 C.F.R. § 51.809.

22. The 1996 Act invests exclusive jurisdiction in federal courts to review interconnection decisions made by state commissions. The 1996 Act provides that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." 47 U.S.C. § 252(e)(4). Instead, "[i]n any case in which a State commission makes a determination under [47 U.S.C. § 252], any

party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of [47 U.S.C. §] 251 and [§ 252]." *Id.* § 252(e)(6).

The Florida PSC Proceedings

23. On June 8, 2007, Nextel — a wireless telecommunications carrier — filed a unilateral notice with the Florida PSC of its intent to adopt an interconnection agreement between AT&T Florida and various Sprint entities ("Sprint Interconnection Agreement"). *See* Notice of the Adoption by NPCR, Inc. of the Existing Interconnection Agreement, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP (Fla. PSC filed June 8, 2007) (attached as Exhibit 1).

24. Consistent with its explicitly recognized rights under federal law, *see* 47 C.F.R. § 51.809; *Southeast Tel., Inc.*, 462 F.3d at 653, AT&T Florida objected to the opt-in request and filed a motion to dismiss the request on June 28, 2007. *See* AT&T Florida's Motion to Dismiss, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP (Fla. PSC filed June 28, 2007). AT&T Florida objected to Nextel's opt-in because, among other things, the Sprint Interconnection Agreement that Nextel attempted to opt in to had *expired* (more than two years earlier on December 31, 2004) and, under federal law, a requesting carrier has no right to opt into an expired agreement. AT&T Florida pointed out that federal law requires that agreements be made available for opt in only for a "reasonable period of time" after their approval, 47 C.F.R. § 51.809(c), and that opt-in requests several months prior to the expiration of an agreement had been deemed

unlawful. It followed, AT&T Florida argued, that Nextel had no right to opt in to an expired agreement.

25. On September 13, 2007, the staff of the Florida PSC issued a recommended decision that recognized the merit of AT&T Florida's objection that Nextel's request was untimely, but determined that factual issues might need to be decided that made the matter inappropriate for a motion to dismiss. More specifically, the staff concluded that AT&T Florida had "raise[d] a *valid argument* as to what constitutes a reasonable period of time under 47 C.F.R. § 51.809(b)" for a requesting carrier to adopt an existing agreement. Memorandum, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP, at 6 (Fla. PSC Sept. 13, 2007) ("*Motion to Dismiss Memorandum*") (emphasis added). The staff explained, however, that resolution of that question "may involve legal and policy arguments that could implicate a dispute of material fact." *Id.* For that reason, resolution of Nextel's opt-in request on a motion to dismiss was improper. The Florida PSC subsequently adopted the staff's recommendation based on the same reasoning. *See* Order Denying Motion to Dismiss, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP (Fla. PSC Oct. 16, 2007) ("*Motion to Dismiss Order*") (attached as Exhibit 2).

26. More than two months later, on December 26, 2007, Nextel filed a motion for a summary final order that would "acknowledge[] Nextel's adoption[]" of the Sprint Interconnection Agreement and that would require AT&T Florida to "execute the Adoption Agreements." Motion for Summary Final Order, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP, at 1 (Fla. PSC Dec. 26, 2007). Nextel argued that, since the

time of the denial of AT&T Florida's Motion to Dismiss, AT&T Florida and Sprint had agreed to extend the terms of the Sprint Interconnection Agreement. *See id.* at 4-5. According to Nextel, that development established that Nextel's opt-in request was proper. *See id.* AT&T Florida opposed Nextel's motion, arguing that genuine issues of material fact remained with respect to AT&T Florida's other objections to Nextel's opt-in request that rendered summary adjudication improper. *See* AT&T Florida's Response in Opposition to Motion for Summary Final Order, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP (Fla. PSC Jan. 21, 2008).

27. Subsequently, the parties agreed to a statement of issues that remained to be resolved in the agency proceeding. That statement of issues included the question of what the effective date of the new interconnection agreement should be if the PSC approved Nextel's adoption request. AT&T Florida explained that, in view of the federal-law principle that interconnection agreements are not effective until they are approved by state commissions, "the effective date of Nextel's adoption of the Sprint ICA should be thirty (30) calendar days after the final party executes the adoption document." AT&T's Statement of Positions, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP, at 2 (Fla. PSC June 17, 2008). Nextel, in contrast, argued that the "effective date" of the new interconnection agreement should be retroactive to the date that Nextel filed its opt-in request with the PSC. *See* Nextel Issue Position Statements, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP, at 1 (Fla. PSC June 17, 2008). The parties filed briefs on this and other outstanding issues on June 26, 2008.

28. The staff issued a recommended decision on these outstanding issues on August 7, 2008, and the PSC issued a final order approving Nextel's opt-in request on September 10, 2008. The PSC held that Nextel was entitled to adopt the Sprint Interconnection Agreement. The PSC further held that the effective date should be the date of the opt-in request notwithstanding that the underlying Sprint Interconnection Agreement had expired prior to that time. *See* Final Order Granting Adoption by Nextel of Sprint-AT&T Interconnection Agreement, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP (Fla. PSC Sept. 10, 2008) ("*Approval Order*") (attached as Exhibit 3). The PSC based its effective date conclusion on its belief that, under federal law, "[w]hen an interconnection agreement is available for adoption . . . the adoption is considered presumptively valid and effective upon receipt of the notice by the adoption party." *Id.* at 11. The PSC cited no legal authority in support of the proposition that such adoptions are "presumptively valid and effective" as of the date of the request, regardless of the statutory and regulatory right of incumbents to object to such requests on a number of bases (including, here, that the agreement sought to be adopted had expired, which the PSC itself had concluded was a potentially meritorious objection). Indeed, in the order, the PSC made the agreement effective retroactively to a date upon which the Sprint Interconnection Agreement — the agreement Nextel sought to adopt — had expired, even though the PSC itself had previously found that factual issues (which the PSC never purported to decide) surrounded whether Nextel's adoption request was proper at that time. *See Motion to Dismiss Memorandum* at 6 (finding AT&T raised a "valid argument" regarding Nextel's entitlement to opt in to the Sprint Interconnection

Agreement); *Motion to Dismiss Order* at 6 (same). On the basis of this reasoning, the PSC concluded that the effective date of the opt-in should be "June 8, 2007." *Approval Order* at 11.

29. AT&T Florida promptly filed a motion for reconsideration of the *Approval Order*. *See* AT&T Florida's Motion for Reconsideration, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP (Fla. PSC Sept. 17, 2008) ("Mot. for Recon."). In its motion, AT&T Florida argued, first, that the decision to make the effective date retroactive to June 8, 2007 was inconsistent with Florida law and previous PSC orders concluding that interconnection agreements (including those adopted under § 252(i)) are not effective until they are approved by the PSC. *See id.* at 6-7; Fla. Stat. § 364.162(1) ("Whether set by negotiation or by the commission, interconnection and resale prices, rates, terms, and conditions shall be filed with the commission before their effective date."); Final Order on Petition for Approval of Section 252(i) Election of Interconnection Agreement, *Petition for Approval of Election of Interconnection Agreement with GTE Florida Inc. Pursuant to Section 252(i)*, Docket No. 971159-TP, 1998 WL 85730, at *9 (Fla. PSC Feb. 6, 1998); Order, *MCImetro Access Transmission Servs. LLC*, Docket No. 000-649-TP, PSC 01-0824-FOF-TP, at *120-*121, 2001 WL 460666 (Fla. PSC Mar. 30, 2001). AT&T Florida also argued that the PSC's effective date decision conflicted with the Sixth Circuit's decision in *Southeast Telephone* — which held that opt-in requests were *not* sufficient to vest a right to operate under an interconnection agreement, *see* Mot. for Recon. at 8-9 — and with process for approval

of opt-in requests established by the1996 Act, as interpreted by regulations issued by the FCC, *see id.* at 9-15.

30. The PSC denied AT&T Florida's motion for reconsideration on December 18, 2008. *See* Final Order Denying Motion for Reconsideration, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP (Fla. PSC Dec. 18, 2008) ("*Reconsideration Order*") (attached as Exhibit 4). The PSC held that Florida law and its prior orders involved arbitrated or negotiated interconnection agreements, not agreements opted in to under § 252(i). *See id.* at 3-4. The PSC further explained that AT&T Florida's other legal arguments had been addressed in the *Approval Order*. *Id.* at 5-6. In addition, the PSC purported to "clarif[y]" that its previous order required AT&T Florida to allow Nextel to opt in to the "current Sprint ICA" notwithstanding that the Sprint Interconnection Agreement was not extended until after June 8, 2007. *Id.* at 5.

31. The PSC ordered to "AT&T and Nextel . . . to refile the adoption . . . with conforming language." *Id.* at 6. A final, signed agreement was executed on February 4, 2009, and filed with the Florida PSC on February 11, 2009. On March 11, 2009, PSC staff issued two memoranda finding that the agreement satisfied the requirements of the PSC's orders and "complie[d] with Section 252(i) of the Act." Approving Memorandum, *Notice of Adoption by NPCR, Inc.*, Docket No. 070368-TP (Fla. PSC Mar. 11, 2008) (attached as Exhibit 5); Approving Memorandum, *Notice of Adoption by Nextel West and Nextel South*, Docket No. 070369-TP (Fla. PSC Mar. 11, 2008) (attached as Exhibit 6). Because a state commission is deemed to have approved an interconnection agreement (other than one that has been negotiated by the parties) 30 days after the parties have

submitted the agreement for approval, *see* 47 U.S.C. § 252(e)(4), the new interconnection agreement would be effective as of March 11, 2009 in all events.

First Claim for Relief

32. Plaintiff incorporates paragraphs 1-31 as if set forth completely herein.

33. In the orders on review, the Florida PSC set an effective date for an interconnection agreement adopted under 47 U.S.C. § 252(i) that predates approval of the adopted agreement by the state commission. Such backdating of interconnection agreement effective dates is inconsistent with, and does not meet the requirements of, the 1996 Act and the FCC's orders and regulations implementing the 1996 Act. Moreover, the Florida PSC's orders are arbitrary and capricious, represent an unexplained and unreasonable departure from state law and prior PSC orders, not adequately reasoned, inconsistent with the record evidence, and are otherwise unlawful and preempted.

Second Claim for Relief

34. Plaintiff incorporates paragraphs 1-33 as if set forth completely herein.

35. In the orders on review, the Florida PSC allowed an opt-in request and set an effective date for an interconnection agreement adopted under 47 U.S.C. § 252(i) of June 8, 2007, notwithstanding that, on that date, the underlying Sprint Interconnection Agreement was expired. The result of the orders is effectively to allow Nextel to adopt an expired interconnection agreement — a fact that is underscored by the Florida PSC's requirement that AT&T Florida allow Nextel to opt in to a later-approved interconnection agreement. The Florida PSC's orders are therefore inconsistent with, and do no meet the requirements of, the 1996 Act and the FCC's orders and regulations implementing the

1996 Act. Moreover, the Florida PSC's orders are arbitrary and capricious, not adequately reasoned, inconsistent with the record evidence, and are otherwise unlawful and preempted.

Prayer for Relief

WHEREFORE, AT&T Florida prays that the Court enter an order:

1. Declaring that the orders on review, and the resulting interconnection agreement, do not meet the requirements of the 1996 Act and are unlawful and preempted by federal law as to the issues identified in this complaint;

2. Enjoining all defendants, and all parties acting in concert therewith, from seeking to enforce those unlawful decisions and the relevant portions of the relevant interconnection agreements against AT&T Florida;

3. Order that the PSC require Nextel to make AT&T Florida whole for the losses, including interest, that have resulted from the PSC's unlawful orders[1]; and/or

4. Granting AT&T Florida such further relief as the Court may deem just and reasonable.

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[1] *See BellSouth Telecomms., Inc. v. Georgia PSC*, 400 F.3d 1268, 1271 (11th Cir. 2005) ("In light of the Supreme Court's interpretation of § 252(e)(6), we see no basis to question the power of the district court, acting under the ordinary federal question jurisdiction of 28 U.S.C. § 1331, to award relief by requiring the GPSC, upon remand, to recompense BellSouth for any damages suffered as a result of the erroneous rates set by the GPSC.").

Dated: March 18, 2009

Respectfully submitted,

/s/ Manuel A. Gurdian

Manuel A. Gurdian
Florida Bar Number: 162825
AT&T Florida Legal Department
150 W. Flagler Street, Suite 1910
Miami, FL 33130
Telephone: (305) 347-5561
Facsimile: (305) 577-4491
mg2708@att.com

Sean A. Lev
Kelly P. Dunbar, *admission pending*
Kellogg, Huber, Hansen, Todd,
Evans & Figel, P.L.L.C.
1615 M. Street, NW, Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
slev@khhte.com
kdunbar@khhte.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2009, I electronically filed the foregoing Complaint for Declaratory and Injunctive Relief with the Clerk of Court using the CM/ECF.

/s/ Manuel A. Gurdian

Manuel A. Gurdian
Florida Bar Number: 162825
AT&T Florida Legal Department
150 W. Flagler Street, Suite 1910
Miami, FL 33130
Telephone: (305) 347-5561
Facsimile: (305) 577-4491
mg2708@att.com

Exhibit 1

ORIGINAL

Timolyn Henry 070848-TP

From: Nelson, Douglas [GA] [Douglas.C.Nelson@sprint.com]
Sent: Friday, June 08, 2007 4:19 PM
To: Filings@psc.state.fl.us
Cc: kay.lyon@bellsouth.com; Randy.Ham@bellsouth.com; la2177@att.com; Chiarelli, Joe M [LEG]; Atkinson, Bill R [GA]; Nelson, Douglas [GA]; Kite, Jim C [NTK]; Felton, Mark G [NTK]
Subject: ELECTRONIC FILING - NOTICE OF ADOPTION OF AN INTERCONNECTION AGREEMENT BY NPCR, Inc. d/b/a NEXTEL PARTNERS
Attachments: Notice of Adoption by NPCR Inc.pdf

A.

Douglas C. Nelson

Sprint Nextel

233 Peachtree Street, N.E., Suite 2200

Atlanta, GA 30303

Tel: 404-649-0003

douglas.c.nelson@sprint.com

B.

No docket number. Title of Filing: 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.

C.

NPCR, Inc. d/b/a NEXTEL PARTNERS

D.

2 pages total (Notice of Adoption).

E.

Letter to Ann Cole, Commission Clerk, providing notice to the Florida Public Service Commission that NPCR, Inc. d/b/a Nextel Partners has adopted the existing interconnection agreement between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P.

<<Notice of Adoption by NPCR Inc.pdf>>

Douglas C. Nelson
Attorney, State Regulatory Affairs

Sprint Nextel

DOCUMENT NUMBER-DATE
04648 JUN-8 S
FPSC-COMMISSION CLERK

6/8/2007

233 Peachtree St., NE

Suite 2200

Atlanta, GA 30303

(o) 404-649-0003
(m) 678-777-8473

[redacted]

June 8, 2007 **ORIGINAL**

By Electronic Filing

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

070368-TP

Re: 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.

Dear Ms. Cole:

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") hereby provides notice to the Florida Public Service Commission that effective immediately Nextel Partners has adopted in its entirety, the "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P.[1]." dated January 1, 2001 ("Sprint ICA") as amended.[2] The agreement has been filed and approved in each of the 9-legacy BellSouth states, including Florida[3]. Nextel Partners has exercised its right pursuant to the Federal Communications Commission approved Merger Commitment Nos. 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements" as ordered by ("Merger Commitments") in the BellSouth – AT&T merger, WC Docket No. 06-74[4], and 47 U.S.C. § 252(i).

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

[2] BellSouth Telecommunications, Inc. is now registered in Florida as BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and is referred to herein as "AT&T Southeast."

[3] For the purposes of this letter, the 9 legacy BellSouth states means: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. The Sprint ICA was initially approved by the Florida Public Service Commission in Dockets No. 000828-TP and 000761-TP. A true and correct copy of the 1,169 page Interconnection Agreement, as amended, can be viewed at: http://cpr.bellsouth.com/clec/docs/all_states/000a029.pdf., and is incorporated fully herein by reference. Due to the size of the file and its general availability, we are not providing a copy of the agreement with this letter, but will provide paper or electronic copies upon request.

[4] Merger Commitment No. 1 states:

> *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."* (Emphasis added).

Merger Commitment No. 2 states:

> 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.

All relevant state-specific differences among the 9 legacy BellSouth states are already contained within the Sprint ICA, including Florida. Since the same state-specific terms are applicable to Nextel Partners on a state-by-state basis, there are no "state-specific pricing and performance plans and technical feasibility" issues pursuant to Merger Commitment No. 1. Likewise, since the Sprint ICA is already TRRO compliant and has an otherwise effective change of law provision, there is no issue preventing Nextel Partners from adopting the Sprint ICA in each applicable state, including Florida, pursuant to Merger Commitment No. 2.

The Sprint ICA is current and effective, although Sprint and AT&T Southeast have a dispute regarding the term of the agreement.[1] Sprint believes the term of the agreement ends March 19, 2010 while AT&T Southeast has maintained, among other things, that the term may end no later than December 31, 2007.

Nextel Partners has contacted AT&T Southeast regarding Nextel Partners' adoption of the Sprint ICA, but AT&T Southeast refuses to voluntarily acknowledge and honor Nextel Partners' rights regarding such adoption.

The Sprint ICA adopted today replaces in its entirety the existing interconnection agreement between Nextel Partners and AT&T Southeast.

Should you have any questions regarding Nextel Partners' adoption of the Sprint ICA, please do not hesitate to call.

Sincerely,

Douglas C. Nelson

CC by email unless otherwise noted:
Mr. Eddie A. Reed, Jr., AT&T Director-Contract Management (by US mail)
Ms. Kay Lyon, Lead Negotiator, AT&T Wholesale
Mr. Randy Ham, Assistant Director, AT&T Wholesale
Ms. Lynn Allen-Flood, AT&T Wholesale – Contract Negotiations
Mr. Joseph M. Chiarelli, Counsel for Nextel Partners
Mr. William R. Atkinson, Counsel for Nextel Partners
Mr. Jim Kite, Sprint Nextel Interconnection Solutions

[1] See Docket No. 070249-TP.

Exhibit 2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners.	DOCKET NO. 070368-TP
In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp. and Nextel West Corp.	DOCKET NO. 070369-TP ORDER NO. PSC-07-0831-FOF-TP ISSUED: October 16, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

I. Case Background

On June 8, 2007, NPCR, Inc. d/b/a Nextel Partners, Nextel South Corp. and Nextel West Corp. (collectively "Nextel") filed their Notice of Adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P. (Notice). In its Notice, Nextel states 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[1] and 47 U.S.C. § 252(i), it has adopted, effective immediately, in its entirety the "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P" dated January 1, 2001 ("Sprint ICA") as amended. Nextel asserts that the Sprint ICA is current and effective, although Sprint and AT&T have a dispute regarding the terms of the agreement. Nextel asserts further that it has contacted AT&T regarding Nextel's adoption of the Sprint ICA, but AT&T refuses to voluntarily acknowledge and honor Nextel's rights regarding such adoption.

On June 28, AT&T filed its Motion to Dismiss Nextel's Notice (Motion). On July 9, 2007, Nextel filed its Response.[2]

II. Parties' Arguments

AT&T's Motion to Dismiss

In its Motion, AT&T requests this Commission dismiss Nextel's Notice based on three contentions: 1) This Commission does not have the authority to interpret and enforce the AT&T merger conditions; 2) Nextel is attempting to adopt an expired agreement and thus, the adoption request does not meet the legal timing requirement under the Telecommunications Act of 1996 (the Act); and 3) Nextel's Notice is premature because Nextel failed to abide by contractual obligations regarding dispute resolution found in its existing interconnection agreement with AT&T.

Lack of authority.

AT&T contends that because Nextel relies on the merger commitments approved by the FCC in the Merger Order, Nextel is requesting this Commission to enforce federally approved merger commitments via a state proceeding. Consequently, AT&T argues that we must determine whether the legislature has granted us any authority to construe AT&T's federal merger commitments because our powers are only those granted by statute expressly or by necessary implication.

AT&T argues that although this Commission has authority under the Act in §252 arbitrations to interpret and resolve issues of federal law, the Act does not grant us any general authority to resolve and enforce purported violations of federal law or FCC orders. In support of its contention, AT&T cites Order No. PSC-03-1392-FOF-TP, issued December 11, 2003, in Docket No. 030349-TP, (Sunrise Order) in which we held that "[f]ederal courts have ruled that a state agency is not authorized to take administrative actions based solely on federal statutes.

[1] See In Re: In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order, Order No. 06-189, released March 26, 2007, WC Docket No. 06-74. (Merger Order)

[2] Nextel's initial filing omitted seven pages of Attachment A attached to the Response. A corrected filing was made on that same day.

AT&T further asserts that the United States Supreme Court has held that the interpretation of an agency order, when issued pursuant to the agency's established regulatory authority, falls within the agency's jurisdiction. Serv. Storage & Co. v. Virginia, 359 U.S. 171, 177 (1959).

AT&T argues that the FCC explicitly reserved jurisdiction over the merger commitments contained in the Merger Order.[3] Therefore, AT&T asserts that the FCC alone possesses the jurisdiction to interpret and enforce the merger commitments.

Nextel did not request adoption within a reasonable period of time.

AT&T asserts that Nextel seeks to adopt an expired agreement. AT&T argues that its obligation to provide competing carriers with any interconnection, service or network element on the same terms contained in any approved and publicly filed AT&T Florida contract is limited to a "reasonable period of time" after the original contract is approved.[4] AT&T contends that although there is no definition of a "reasonable time period," other state commissions have found that attempting to adopt an agreement several months before expiration of an agreement is not within "a reasonable period of time."[5]

In the instant case, AT&T contends that Nextel seeks to adopt an agreement that has been expired for over two years. AT&T argues further that it is currently engaged in arbitrating a new interconnection agreement with Sprint. AT&T notes it would be highly inefficient and impractical to allow Nextel to adopt an antiquated expired agreement when the parties to the original agreement are themselves moving to an updated agreement.

Nextel failed to comply with the parties' existing agreement.

AT&T contends that Nextel failed to comply with the dispute resolution provisions of the parties' existing interconnection agreement, and therefore, its Notice is improperly before this Commission. AT&T asserts that Nextel's right to adopt an interconnection agreement is addressed in Article XVI "Modification of Agreement" of the parties' existing interconnection agreement. Consequently, because AT&T objects to Nextel's adoption of the Sprint ICA, AT&T argues that the dispute resolution provisions of the parties' existing interconnection agreement are triggered requiring negotiation for a period of thirty (30) days.

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[3] See Merger Order at p. 147. "[f]or the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter."

[4] See 47 C.F.R. §51.809(c).

[5] In Re: Global NAPs South, Inc., 15 FCC R'cd 23318 (August 5, 1999). (In this case, Global NAPs sought to adopt an agreement with ten (10) months remaining.; In re: Global NAPs South, Inc., Case No. 8731 (Md. PSC July 15, 1999). (In this case, Global NAPs sought to adopt an agreement with seven (7) months remaining.)

Nextel's Response

In its Response, Nextel argues that it has exercised its adoption rights pursuant to Merger Commitments Nos. 1 and 2 to adopt, in its entirety, the Sprint ICA filed and approved in Florida. Nextel asserts further that the Sprint ICA is not expired, although Nextel acknowledges that AT&T and Sprint have a dispute regarding the remaining term of the agreement.[6]

AT&T's Motion must be decided based on facts alleged in Nextel's Notice.

Nextel contends that a Motion to Dismiss must, as a matter of law, address the sufficiency of the facts alleged in the Petition to state a cause of action. Nextel argues that for AT&T's Motion to be sustained AT&T must demonstrate that, accepting all allegations in Nextel's Notice as facially correct, the Notice fails to state a cause of action for which relief can be granted. Nextel asserts further that in determining the sufficiency of the petition, we may not look beyond the four corners of the petition, may not consider any evidence likely to be produced, and may not consider any affirmative defenses raised by AT&T.

This Commission's authority to acknowledge Nextel's exercise of its right to adopt the Sprint ICA.

Nextel contends that contrary to AT&T's assertion, we have authority to acknowledge Nextel's exercise of its right to adopt the Sprint ICA. Nextel asserts that the Sunrise Order actually supports Nextel's position that we can interpret and apply federal law in the course of exercising authority that this Commission is conferred under the Act and state law. Nextel argues that we recognized in the Sunrise Order that the Act expressly provides a jurisdictional scheme of "cooperative federalism" under which Congress and the FCC have specifically designated areas in which they anticipate that state commissions do have a role. Nextel asserts that this includes matters relating to approval of interconnection agreements consistent with the Act and orders of the FCC. Nextel argues that contrary to the relief sought in the Sunrise Order case which this Commission held it had no power under the Act to grant, in the instant case Nextel seeks the exact same relief that we have historically rendered to carriers that exercise their right to adopt.

Nextel argues that the fact that requesting carriers have been granted expanded adoption rights by the Merger Order does not divest this Commission of its existing authority to acknowledge a carrier adoption pursuant to §252(i) of the Act, or §364.01(4), Florida Statutes. Nextel contends that the FCC expects the states to be involved in the ongoing administration of interconnection-related merger conditions. In support of its assertion, Nextel cites Appendix F of the Merger Order which explicitly states that the FCC has no authority to alter the states' concurrent statutory jurisdiction under the Act over interconnection matters addressed in the Merger Commitments.

[6] See In re: Petition by Sprint Communications Company Limited Partnership and Sprint Spectrum Limited Partnership d/b/a Sprint PCS for arbitration of rates, terms and conditions of interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast, Docket No. 070249-TP. (Sprint-AT&T Arbitration)

Nextel's Notice of Adoption is timely

Nextel contends that AT&T's assertion that Nextel's Notice is untimely is erroneous because AT&T fails to recognize either: a) the express provisions of the Sprint ICA that establish it currently continues and is "deemed extended on a month-to-month basis"[7], or b) AT&T admits without qualification that it acknowledged to Sprint that the Sprint ICA can be extended 3-years pursuant to Merger Commitment No. 4. Therefore, Nextel argues that the Sprint ICA not only continues to be effective, but there is a good faith argument that by Sprint's exercise of its right to a 3-year extension of the Sprint ICA, the Sprint ICA is not scheduled to expire until March 19, 2010.

In response to AT&T's reliance on the Global NAPs cases, Nextel cites our decision in Order No. PSC-04-1109-PCO-TP, issued November 8, 2004 in Docket No. 040343-TP. (Volo Order) In that docket Alltel cited the same Global NAPs cases in requesting dismissal of Volo's Notice of Adoption of an ICA that was set to expire within 72 days after the adoption date, but was likely to remain in effect beyond the stated termination date. In the Volo Order, we held that there is no definitive standard set forth by the FCC as to what constitutes a reasonable time, and furthermore, that Alltel's Motion to Dismiss failed because, on its face, Volo's Notice of Adoption stated a cause of action on which relief could be granted. Nextel contends that similar to the Volo Order, Nextel's Notice states a cause of action on its face, and AT&T has failed to establish as a matter of fact or law that Nextel's Notice is untimely.

Nextel was not required to invoke the parties' existing dispute resolution provisions.

Nextel argues that AT&T's assertion that Nextel was required to invoke the parties' existing dispute resolution provisions is erroneous. In support of its contention, Nextel cites Order No. PSC-05-0158-PAA-TP, issued February 9, 2005, in Docket No. 040779-TP (Z-Tel Order). Nextel asserts that in the Z-Tel Order this Commission rejected the identical argument asserted by AT&T in the instant case. In the Z-Tel Order, we held that "Z-Tel's adoption [was] well within its statutory right under §252(i) to opt-in to such an agreement in its entirety." Nextel also notes that AT&T fails to cite any authority in support of its contention that Nextel must invoke the parties' dispute resolution provisions under these circumstances.

Nextel argues that there is no basis for requiring it to engage in a dispute resolution process based upon AT&T's failure to voluntarily acknowledge its obligation to make the Sprint ICA available to Nextel.

III. Analysis and Decision

Standard of Review

Under Florida law the purpose of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349,

[7] Sprint ICA, Section 2.1 at page 815.

350 (Fla. 1st DCA 1993). In order to sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted. In re Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc., 95 FPSC 5:339 (1995); Varnes, 624 So. 2d at 350. When "determining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side." Id. The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations. Matthews v. Matthews, 122 So. 2d 571 (2nd DCA 1960).

Upon review of the parties' arguments and consistent with our previous decisions, we find it appropriate to deny AT&T's Motion to Dismiss, because Nextel's Notice of Adoption states a cause of action upon which relief may be granted. However, as noted in the Volo Order, AT&T raises a valid argument as to what constitutes a reasonable period of time under 47 C.F.R. §51.809(b), which may involve legal and policy arguments that could implicate a dispute of material fact.

Although the FCC has adopted a regulation implementing §252(i) of the Act that requires an ILEC to make an interconnection agreement available for a reasonable period of time, there seems to be no definitive standard set forth by the FCC as to what constitutes a reasonable time. Whether such a limitation would apply to Nextel's adoption of the Sprint ICA may depend on further analysis and interpretation of 47 C.F.R. §51.809(c) in this proceeding.

Similarly, whether the Sprint ICA Nextel seeks to adopt has expired is a disputed material fact. As stated above, in resolving AT&T's Motion, we must consider Nextel's allegations as facially correct. Consequently, whether the Sprint ICA has expired may require further fact finding and policy analysis.

Finally, 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.

Accordingly, AT&T's Motion fails because Nextel's Notice, on its face, states a cause of action upon which relief could be granted. These Dockets shall remain open pending further proceedings.[8]

[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. Pursuant to Order No. PSC-07-0680-FOF-TP, issued August 21, 2007, we granted AT&T's Motion to Dismiss Sprint's Petition for Arbitration in that proceeding. However, on August 9, 2007, Sprint filed its Motion for Leave to File Amended Petition.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast's Motion to Dismiss is denied. It is further

ORDERED that these dockets shall remain open.

By ORDER of the Florida Public Service Commission this 16th day of October, 2007.

ANN COLE
Commission Clerk

(SEAL)

AJT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Exhibit 3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners.	DOCKET NO. 070368-TP
In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp. and Nextel West Corp.	DOCKET NO. 070369-TP ORDER NO. PSC-08-0584-FOF-TP ISSUED: September 10, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

FINAL ORDER GRANTING ADOPTION BY NEXTEL OF SPRINT - AT&T INTERCONNECTION AGREEMENT

BY THE COMMISSION:

I. Case Background

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

In its Notice, Nextel stated that pursuant to Merger Commitment Nos. 7.1 and 7.2[1] 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 §252(i), Nextel has adopted in its entirety, effective immediately, the "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 ("Sprint ICA") as amended. Nextel asserted that it has contacted AT&T regarding Nextel's adoption of the Sprint ICA, but AT&T refused to voluntarily acknowledge and honor Nextel's rights regarding such adoption.

On June 28, 2007, AT&T filed a motion to dismiss Nextel's adoption on three bases: the FCC maintains sole jurisdiction regarding the Merger Commitments; the adoption was not requested in a reasonable period of time; and Nextel did not comply with dispute resolution provisions of the existing agreement. On July 9, 2007, Nextel filed a Response in Opposition to AT&T's motion. Nextel countered that adoption rights are enhanced by the Merger Commitments and remain subject to concurrent FCC/Florida Public Service Commission (FPSC or Commission) jurisdiction; the underlying agreement is currently "deemed extended on a month-to-month basis"[2]; and the FPSC has previously rejected the argument that a CLEC must comply with dispute resolution procedures in its existing agreement when adopting a new one.[3]

By Order No. PSC-07-0831-FOF-TP (Order Denying Dismissal), issued October 16, 2007, AT&T's Motion to Dismiss was denied, and the dockets were to remain open pending resolution of Docket No. 070249-TP. Docket No. 070249-TP dealt with whether the underlying agreement between Sprint and AT&T (the agreement to be adopted by Nextel) had expired. The Sprint – AT&T docket was resolved when the parties filed a Joint Motion on December 4, 2007, to approve an amendment extending the underlying agreement for three years. By Order No.

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[1] Merger Commitment No. 7.1 states:

> 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.

Merger Commitment No. 7.2 states:

> 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.

[2] Nextel cites to Docket No. 040343-TP, Order No. PSC-04-1109-PCO-TP (Volo Order), as addressing a similar situation in which the LEC's motion to dismiss was denied.

[3] Docket No. 040799-TP, Order No. PSC-05-0158-PAA-TP (Z-Tel Order).

PSC-08-0066-FOF-TP, issued on January 29, 2008, we acknowledged the amendment of the Sprint ICA.[4]

Nextel filed a Motion for Summary Final Order on December 26, 2007, requesting that the FPSC acknowledge Nextel's adoptions of the existing Sprint ICA. On January 22, 2008, AT&T filed a Response in Opposition to Nextel's Motion for Summary Final Order.

In February, AT&T filed several pleadings with this Commission which included copies of pleadings it had filed at the FCC seeking a ruling on AT&T's Merger Commitments. On February 7, 2008, AT&T filed a supplemental submission in support of its Response in Opposition to Nextel's Motion for Summary Final Order.[5] On February 13, 2008, AT&T filed a letter with an attached FCC order.[6] On February 19, 2008, AT&T filed a letter requesting this Commission to place the Nextel dockets in abeyance, pending FCC review of its Petition for Declaratory Statement regarding AT&T Merger Commitments.[7]

On February 18, 2008, Nextel filed a motion for leave to file a reply to AT&T's Response and Supplemental Submissions in Opposition to Nextel's Motion for Summary Final Order, which was granted by Order No. PSC-08-0242-PCO-TP, issued April 15, 2008.

On February 20, 2008, Nextel filed a notice of supplemental authority, which contained an order issued by the Public Service Commission of the Commonwealth of Kentucky in Case No. 2007-0255 and Case No. 2007-0256.[8] AT&T filed a letter on March 28, 2008, that attached a ruling issued by the California Public Utilities Commission.[9]

By Order No. PSC-08-0415-FOF-TP, issued June 23, 2008, this Commission denied Nextel's Motion for Summary Final Order and set Docket Nos. 070368-TP and 070369-TP for a proceeding under Section 120.57(2), Florida Statutes. By Order No. PSC-08-0402-PCO-TP,

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[4] Docket No. 070249-TP, Petition by Sprint Communications Company Limited Partnership and Sprint Spectrum Limited Partnership d/b/a Sprint PCS for arbitration of rates, terms and conditions of interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast.

[5] AT&T filed its *Petition of the AT&T ILECs for a Declaratory Ruling*, WC Docket No. 08-23 (filed February 5, 2008), in which AT&T requests a ruling regarding the Merger Commitment allowing porting of interconnection agreements from one AT&T state to another.

[6] The order was issued in *In Re Ameritech Operating Companies Tariff FCC No. 2 et. Al.*, Transmittal No. 1666, which stated that parties remain free to file a complaint if parties believe AT&T has not complied with the Merger Commitments as they relate to detariffing and/or access services.

[7] *Petition of the AT&T ILECs for a Declaratory Ruling*, filed February 2008, WC Docket No. 08-23.

[8] Case No. 2007-0255 and Case No. 2007-0256, *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 issued by the Public Service Commission of the Commonwealth of Kentucky. The Kentucky cases appear to be mirrors of the instant Florida dockets.

[9] Application of Sprint Communications Company L.P. (T 5112 C), Sprint Spectrum L.P. as agent for Wireless Co., L.P. (U 3062 C) and Sprint Telephony PCS, L.P. (U 3064 C), and Nextel of California, Inc. (U 3066 C) for Commission Approval of an Interconnection Agreement with Pacific Bell Telephone Company d/b/a AT&T California pursuant to the "Port-In-Process" Voluntarily Created and Accepted by AT&T Inc. as a Condition of Securing Federal Communications Commission Approval of AT&T Inc.'s Merger with BellSouth Corporation.

issued on June 17, 2008, the issues on which the parties were to file basic position statements and legal briefs were established. On this same date, the parties filed corrected stipulations of fact, which replace those included in Attachment B of Order No. PSC-08-0402-PCO-TP.

On June 26, 2008, Nextel timely filed its brief. On June 27, 2008, AT&T filed its brief and accompanying motion for extension of time to file brief and to accept brief as timely filed. AT&T's motion was granted by Order No. PSC-08-0456-PCO-TP, issued July 16, 2008.

On July 1, 2008, Nextel filed a motion to strike the affidavit of P.L. Ferguson, which was included as Attachment A to AT&T's legal brief. By Order No. PSC-08-0484-PCO-TP, issued July 28, 2008, Nextel's motion was granted in full.

II. Analysis

A. Nextel's adoption of the Sprint ICA

AT&T

AT&T asserts the Sprint ICA relies on a balance of traffic between the original parties to the agreement. According to AT&T, the bill-and-keep arrangement was "the result of negotiation, compromise, and an extensive evaluation of costs incurred by each party for the termination of traffic."[10] AT&T is concerned that other stand-alone wireless carriers will adopt the Sprint ICA if Nextel prevails, and to the extent there is a traffic imbalance, AT&T will experience higher costs in providing the agreement as compared to its costs of providing the agreement to the original parties.[11] A further concern of AT&T is that interstate porting of the adopted agreement through AT&T/BellSouth Merger Commitment 7.1 could further increase AT&T's costs of providing the agreement.

If Nextel had adopted the Sprint ICA prior to AT&T's merger with BellSouth, "any imbalance of traffic . . . would have been limited to Florida." If Nextel is permitted to adopt post-merger, "[it] (and possibly other stand-alone wireless carriers) could improperly attempt to use the Merger Commitments" to "operate under the adopted agreement in one or more of the other 21 states in which AT&T is an ILEC." Defending against these adoptions and the increased costs incurred for transporting and terminating wireless traffic adds to AT&T's concerns. AT&T is particularly concerned that Nextel would have a favorable traffic imbalance in the legacy AT&T ILEC states, which would enable Nextel to receive a "free ride" or subsidy from AT&T.[12]

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[10] AT&T Brief, pp. 4-5.
[11] AT&T argues other "wireless carriers could avoid providing [a] cost study supporting [their] costs . . . avoid an examination of the costs associated with a "bill-and-keep" arrangement . . . and simply walk into a 'bill-and-keep' arrangement for wireless local traffic despite an imbalance of such traffic." AT&T Brief, p. 7.
[12] AT&T Brief, pp. 2-3.

AT&T takes the position that the Sprint ICA requires a specific mix of parties: both a wireline carrier and a wireless carrier.[13] By not bringing in a wireline CLEC, AT&T suggests that Nextel would not be adopting the agreement "upon the same terms and conditions" as the parties to the original agreement.[14] AT&T offers three examples to address the various conceivable scenarios for Nextel to obtain the Sprint ICA and discusses the fallacies it sees with each:

- The addition of Nextel as a party to the Sprint ICA is an amendment, not an adoption;
- An amendment scenario in which Nextel replaces Sprint PCS creates a situation where the Sprint CLEC would be party to two agreements with AT&T, which is not possible; and
- An adoption in which Nextel replaces both Sprint entities violates the all-or-nothing rule since this necessarily implies that Nextel can avail itself of all elements of the agreement, which it cannot; Nextel cannot pick and choose just the wireless provisions.[15]

AT&T argues that provisions in the Sprint ICA are only available to a group of entities comprising the same mix of parties as those in the underlying ICA and asserts this on two fronts. AT&T argues that certain provisions (the bill-and-keep and equal sharing of facility costs for wireless service) contained in the underlying agreement are unavailable for adoption. Secondly, since Nextel is a stand-alone wireless carrier, it cannot avail itself of various elements of the underlying agreement. Therefore, in effect, Nextel is "picking and choosing" elements rather than adopting in whole, and not adopting on "the same terms and conditions as those provided in the agreement."[16]

Nextel

Nextel's brief relies on two types of arguments to support its adoption of the Sprint ICA. First, using the implementing rule, 47 C.F.R. §51.809, Nextel notes that: AT&T is not relying on either exception,[17] an adoption cannot be restricted to carriers serving a comparable class of subscribers or providing the same service,[18] and any requesting telecommunications carrier

[13] AT&T believes that "[i]f Nextel wishes to rely on Section 252(i) to receive the benefits of the wireless provisions of [the] agreement . . . it must bring wireline interests to the table comparable to those brought by the original wireless party to the agreement." AT&T Brief, p. 12.
[14] AT&T argues, "Nextel, therefore, is seeking to adopt the Sprint ICA as a stand-alone wireless provider, which is not an adoption 'upon the same terms and conditions as those provided in the agreement.'" AT&T Brief, p. 13
[15] AT&T Brief, pp. 10-15.
[16] AT&T Brief, p. 13
[17] Nextel Brief, pp. 3, 8. Nextel cites the June 3, 2008 Agenda Conference transcript.
[18] Nextel Brief, pp. 7-8 cites to the First Report and Order in the Matter of FCC Docket No. 96-98 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and FCC Docket No. 95-185 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, (First Report and Order) ¶1318.

includes a wireless carrier (not just a CLEC).[19] Nextel clarifies that the only two bases for restricting an adoption were unaffected by the FCC's decision to modify 47 C.F.R. §51.809 eliminating the pick-and-choose option and requiring that adoptions be all or nothing.[20] Further, Nextel explains that the FCC has expressly rejected the concept that the adopting carrier(s) must be "similarly situated" to the original party.[21]

Nextel then notes that a careful review of the Sprint ICA indicates a stand-alone wireless carrier can operate under the agreement if the wireline carrier opts into a different bill-and-keep arrangement with AT&T. Contrary to AT&T's representation that the Sprint ICA requires both wireless and wireline parties, Nextel observes that the "trigger" for termination/renegotiation of the bill-and-keep provision in the ICA is when one Sprint entity adopts a different AT&T ICA that requires payment of reciprocal compensation.[22] Therefore, Sprint PCS may operate in a stand-alone capacity if Sprint CLEC leaves the agreement without activating the "trigger." By extension, the same applies to Nextel. Nextel also notes that the bill-and-keep provision does not have a balance-of-traffic requirement,[23] the provision for equal sharing of facility costs is an express wireless provision,[24] and there is a prohibition on using unbundled network elements (UNEs) for the exclusive provision of wireless or interexchange services.[25]

Decision

The Act tasks each telecommunications carrier with "interconnect[ing] directly or indirectly with the facilities and equipment of other telecommunications carriers."[26] Along with the duty to interconnect, carriers have the duty to negotiate through the process in good faith. This obligation applies to both the incumbent LEC and the requesting carrier.

The Act defines a telecommunications carrier as "any provider of telecommunications services." In the context of this proceeding, this definition applies equally to AT&T and Nextel. In the First Report and Order, in discussing jurisdictional issues, the FCC notes that it also believed that "sections 251 and 252 will foster regulatory parity in that these provisions establish

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[19] Nextel Brief, pp. 8, 12. Nextel clarifies that the First Report And Order and Second Report And Order were "certainly not 'issued' in the limited 'context of a CLEC and ILEC', much less any limited context of only a 'CLEC/ILEC agreement'."
[20] Nextel Brief, pp. 8-9.
[21] Nextel Brief, pp. 5, 11. Nextel believes "[the similarly situated argument] is a legally deficient argument."
[22] Nextel Brief, p. 17.
[23] Nextel Brief, pp. 3, 18-19. "AT&T has failed to cite to a single provision in the Sprint ICA that requires the original Sprint parties, either individually or collectively, to maintain any particular 'balance of traffic' with AT&T . . . "
[24] Nextel Brief, pp. 15, 19. "The provision for equal sharing of interconnection facilities that is applicable to Nextel is an express 'wireless' provision . . . "
[25] Nextel Brief, p. 16. "There is an express TRRO UNE restriction in amended Attachment 2 – an Attachment that Sprint PCS did elect to use – that states 'Sprint shall not obtain a Network Element for the exclusive provision of mobile wireless services or interexchange services'."
[26] 47 U.S.C. 251(a)(1).

a uniform regulatory scheme governing interconnection between incumbent LECs and all requesting carriers, including CMRS providers."[27]

There are two ways for a telecommunications carrier to interconnect with an incumbent LEC. The first method, described in §252(a), is through negotiation, and the second, detailed in §252(b), is through compulsory arbitration. In addition to these two processes, §252(i) of the Act describes the alternative to the aforementioned processes: adoption of an existing interconnection agreement.

> **Availability To Other Telecommunications Carriers** – 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.

At its sole discretion, an interested carrier may choose to adopt an existing interconnection agreement on file with the Commission that best meets its business needs. The requesting carrier must adopt all terms and conditions included within the existing interconnection agreement; however, there is no requirement in the Act that mandates the carrier utilize every service contained within the subject agreement. The FCC acknowledged that a carrier would not necessarily use every service or rate contained in an agreement when it addressed protections against discrimination.[28]

Whether a telecommunications carrier may adopt an entire, effective interconnection agreement is determined by whether a genuine exception to the above provision exists. The rule which implements §252(i), 47 C.F.R. §51.809, describes the only two instances where an incumbent LEC may deny a requesting carrier the right to adopt an entire effective agreement. 47 C.F.R. §51.809(b) provides "[t]he 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."

Unless an incumbent LEC can demonstrate its costs will be greater to provide the agreement to the new carrier(s), or the agreement is not technically feasible to provide to the new carrier(s), the incumbent LEC may not restrict the carrier's right to adopt. The FCC said that it would "deem an incumbent LEC's conduct discriminatory if it denied a requesting carrier's

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[27] The First Report and Order ¶1024. Nextel is a commercial mobile service provider, which meets the definition of telecommunications carrier in the Act.
[28] Second Report and Order In the Matter of FCC Docket No. 01-338 Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, (Second Report and Order) ¶18.

request to adopt an agreement to which it is entitled under section 252(i) and our all-or-nothing rule."

All of AT&T's arguments are fatally flawed since each of them gives weight to considerations that are, at a minimum, inappropriate in the general context of adoptions, and specifically in the case of the instant dockets.

The definition of "telecommunications carrier" does not include references to facilities used or customers served. The lack of further qualifying information related to facilities used or customers served is significant to these proceedings because these factors cannot be taken into account when an incumbent LEC considers the appropriateness of an adoption per §252(i).

AT&T's argument that the adopting party must be "similarly situated" to the original party or parties and able to avail itself of all applicable elements is not supported by 47 C.F.R. §51.809 or related FCC orders. In the First Report and Order, the FCC made explicitly clear that incumbent LECs must permit requesting carriers to interconnect and that CMRS providers are telecommunications carriers. The FCC further held that "incumbent LECs therefore must make interconnection available to these CMRS providers in conformity with sections 251(c) and 252."[29]

AT&T's argument that Nextel "must bring wireline interests to the table comparable to those brought by the original wireless party to the agreement"[30] is directly at odds with the applicable FCC rule and finding set forth in the Second Report and Order. The FCC noted:

> We also reject the contention of at least one commenter that incumbent LECs should be permitted to restrict adoptions to "similarly situated" carriers.[31]

We find that assertions related to facilities used, customers served, or the mix of parties fall under the general category of "similarly situated" arguments, which the FCC has made clear are inappropriate. Moreover, even if AT&T's "similarly situated" argument had any merit, Nextel has argued persuasively that the Sprint ICA does not require both wireline and wireless parties and contains limiting language to ensure appropriate use of provisions.

The FCC concluded "an all-or-nothing rule would benefit competitive LECs because competitive LECs that are sensitive to delay would be able to adopt whole agreements . . . while others would be able to reach agreements on individually tailored provisions more efficiently."[32] Clearly, the FCC recognized that a competitive telecommunications carrier could adopt an agreement in whole but not make use of all its provisions, or the carrier could negotiate an

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[29] First Report and Order ¶¶26, 34.
[30] AT&T Brief at p. 12.
[31] Second Report And Order ¶30 In addition, "[w]e 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." Citing to the BellSouth/Hendrix affidavit.
[32] Second Report and Order ¶15.

agreement tailored to the specific needs of the carrier. We find an interpretation of §252(i) suggesting the all-or-nothing rule requires a telecommunications carrier to use every service in an adopted ICA is not consistent with the FCC's view of "all or nothing."

The FCC made clear in the Second Report and Order that it did not believe §252(i) needed to be further clarified. In addition, the FCC put incumbent LECs on notice when it issued the Second Report and Order:

> We also clarify that in order to allow this regime to have the broadest possible ability to facilitate compromise, the new all-or-nothing rule will apply to all effective interconnection agreements, including those approved and in effect before the date the new rule goes into effect.[33]

That is, all agreements in effect on July 13, 2004, became available for adoption under the new all-or-nothing rule. The underlying agreement that Nextel seeks to adopt was in effect on that date. Any suggestion by AT&T that merger commitments shield this agreement from adoption is not supported by applicable law and is at odds with the FCC's prohibition on discrimination. Any limitation on Nextel's right to adopt the underlying agreement must "comply with the 1996 Act's general nondiscrimination provisions."[34]

As demonstrated by Nextel and confirmed by our staff, the Sprint ICA has no balance-of-traffic requirement despite AT&T's arguments to the contrary. AT&T's arguments go more to the background of the Sprint ICA, which is recited within the contract, but the controlling language does not require the original parties to maintain a balance of traffic. Any future intrastate or interstate porting of the adoption and any resulting traffic imbalances for AT&T are not relevant at this time, as such matters are outside the scope of the FPSC's consideration in approving Nextel's adoption.

If AT&T's "free ride" argument were true in the context of Nextel's adoption of the Sprint ICA in Florida, AT&T would have asserted and attempted to prove an exception under 47 C.F.R. §51.809(b)(1). AT&T has not proffered such an argument.[35] Since AT&T stated that it will not maintain the cost exception in 47 C.F.R. §51.809 as a defense, we infer that Nextel would not receive a "free ride" or subsidy from AT&T if this adoption is permitted. AT&T's complaint that intrastate or interstate porting of the adopted agreement would result in a traffic and/or cost imbalance is not an appropriate concern of this Commission at this time. If this situation should develop, AT&T can attempt to protect its interests through use of the cost exception in 47 C.F.R. §51.809(b) in proceedings before the applicable state commissions.

If Nextel adopts the Sprint ICA, AT&T's costs apparently will not increase as a result. Arguing speculative cost increases, using speculative scenarios, right after admitting AT&T does not have a cost exception under 47 C.F.R. §51.809, is a red herring within the context of these

[33] Second Report and Order ¶10.
[34] First Report and Order ¶1315.
[35] At the June 3, 2008 Agenda Conference, AT&T indicated it was not claiming either exception under §51.809(b).

dockets. We find that AT&T has attempted to use the instant dockets as a vehicle for pre-empting speculative adverse consequences.

B. Effective Date of Nextel's Adoption of the Sprint ICA.

AT&T

AT&T argues that the effective date should be 30 calendar days after the final party executes the adoption contract. AT&T argues that the Sprint ICA was not available when Nextel requested its adoption on June 8, 2007 because the contract was in an "expired" status and therefore cannot have an effective date of June 8, 2007.[36] AT&T asserts that its obligation under 252(i) to make an agreement available is limited to a "reasonable period of time," and the Sprint ICA was no longer available at the time of Nextel's adoption request.

AT&T argues that by applying a June 8, 2007 effective date, this Commission will in effect create a retroactive effective date. AT&T states that a retroactive effective date is counter to "basic rules of contract formulation," and is, in addition, not required by the Merger Commitments.[37] AT&T further argues that this would impose a financial penalty by negating the reciprocal compensation paid by Nextel and would be equivalent to retroactive ratemaking. AT&T asserts that it did not wrongfully or otherwise delay the adoption process.[38]

AT&T requests this Commission set forth certain conditions should this Commission decide to allow Nextel to adopt the Sprint ICA. AT&T requests that this Commission "specify in its Order that: (1) AT&T Florida is entitled to terminate the bill-and-keep arrangement in the adopted agreement; (2) if AT&T Florida terminates the bill-and-keep arrangement in the adopted agreement, Nextel and AT&T Florida must negotiate new reciprocal compensation arrangements; (3) any new reciprocal compensation arrangements, whether resulting from mutual agreement of the parties or from a ruling by this Commission or the FCC, shall apply as of the effective date of the adoption."

Nextel

Nextel argues its statutory rights must be obtained on an expedited basis, and AT&T's litigation strategy consisting of "serial objections" served to delay the proceeding. Nextel asserts AT&T's actions have been contrary to federal law.[39] Nextel argues that the adoption is presumptively effective from the date of Nextel's notice (June 8, 2007), consistent with the federal law that requires AT&T as an ILEC to respond expediently.[40] Nextel further argues that a June 8, 2007 effective date is Nextel's right by due process if this Commission follows its existing procedure with respect to adoption notices, as AT&T has failed to prove to this Commission any exception to the adoption. Nextel contends that AT&T must honor this date

[36] AT&T Brief, p. 26.
[37] AT&T Brief, p. 28.
[38] AT&T Brief, p. 29.
[39] Nextel Brief, p. 28.
[40] Nextel Brief, p. 29.

since the Sprint ICA is current and effective. Under the concept of "true-up" AT&T must not benefit from its delay in honoring its obligation and must provide the requested adoption as if no protest had occurred.[41]

Decision

The Act states that an ILEC shall make available any interconnection, service, or network element provided under an agreement approved under this section. The adoption of an ICA does not create or modify an approved ICA, but simply replicates the agreement and substitutes one or more new entities for the original non-ILEC party or parties. The underlying ICA between AT&T and Sprint, submitted by a joint motion, extended their existing interconnection agreement as of March 20, 2007, in Docket No. 070249-TP.[42]

Two issues based on the Sprint ICA have been raised by AT&T: the Sprint ICA was "expired" on June 8, 2007, when Nextel's filed its Notice of Adoption, and AT&T has an alleged right to terminate the "bill-and-keep" arrangement. When Sprint and AT&T filed their joint motion to approve amendment, the parties stated that it was an effective interconnection agreement. AT&T and Sprint stated the interconnection agreement was in operation and enforceable by both parties. This Commission subsequently approved the Sprint ICA amendment in Order No. PSC-08-0066-FOF-TP.

When an interconnection agreement is available for adoption under 47 C.F.R. 51.809(a), the adoption is considered presumptively valid and effective upon receipt of the notice by the adoption party. Without objection from the ILEC, the adoption would be acknowledged effective as of the filing date.

In the instant dockets, AT&T filed a Motion to Dismiss, which this Commission denied on October 16, 2007, in Order No. PSC-07-0831-FOF-TP. The Motion to Dismiss pauses the Adoption but does not halt the process entirely. When a party files a Notice of Adoption, the adoption is considered presumptively valid and effective upon receipt of the adoption notice. We find that Nextel is allowed to adopt the Sprint ICA, which means that AT&T did not have a valid objection to the Adoption. Therefore, we believe the process shall continue where paused as there is no barrier to adoption under FCC Rule 47 C.F.R. 51.809(a). The effective date should not be affected by the passage of time during the litigation of this issue, and the effective date shall remain June 8, 2007.

AT&T requests this Commission approve conditions should this Commission acknowledge Nextel's adoption. With the exception of the previous conclusion that the Sprint ICA does not require both a wireline and a wireless party, we believe it is not ripe to address AT&T's list of conditions. To the extent that there is a future dispute between the parties, any party to the agreement may pursue their rights pursuant to the dispute resolution provision in the interconnection agreement.

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[41] Nextel Brief, p. 29.
[42] Sprint ICA, Section 2.1 states "Agreement is extended three years from March 20, 2007 and shall expire as of March 19, 2010."

III. Conclusion

We find that Nextel's adoption of the Sprint ICA shall be upheld as valid pursuant to 47 U.S.C. §252(i) and the FCC's implementing rule, 47 C.F.R. §51.809. In keeping with Order No. PSC-07-0831-FOF-TP, we affirm that Nextel is within its rights to adopt the Sprint ICA. We further find that the adoption is effective as of June 8, 2007.

Docket Nos. 070368-TP and 070369-TP shall remain open pending the filing of the signed adoption between the parties, which shall occur no later than 7 days following this Commission's vote. These dockets shall be closed administratively upon issuance of a memo by our staff acknowledging the Adoption of the Sprint – AT&T Interconnection Agreement.[43]

Based on the foregoing, it is

ORDERED that the Florida Public Service that Nextel's adoption of the Sprint – AT&T ICA is valid pursuant to 47 U.S.C. §252(i) and 47 C.F.R. §51.809. It is further

ORDERED that the effective date of Nextel's adoption of the Sprint ICA shall be June 8, 2007. It is further

ORDERED that Docket Nos. 070368-TP and 070369-TP shall remain open pending the filing of the signed adoption between the parties, which shall occur no later than 7 days following this Commission's vote. It is further

ORDERED that these dockets shall be closed administratively upon issuance of a memo by our staff acknowledging the Adoption of the Sprint – AT&T Interconnection Agreement.

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[43] If Nextel's Adoption is granted under Section 252(i), the adoption may be acknowledged by administrative memo pursuant to A.P.M. 2.07.C.5.b. If Nextel's Adoption occurs under Merger Commitments, administrative acknowledgment is granted by Docket No. 020353-TP, Order No. PSC-02-1174-FOF-TP, Order Approving Petition for Acknowledgment of Adoption of an Agreement under FCC Approved Merger Conditions and Granting Staff Authority to Administratively Acknowledge Adoption of Agreements Under FCC Approved Merger Conditions and Order Amending Administrative Procedures Manual.

By ORDER of the Florida Public Service Commission this 10th day of September, 2008.

ANN COLE
Commission Clerk

(SEAL)

TLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Exhibit 4

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners.	DOCKET NO. 070368-TP
In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp. and Nextel West Corp.	DOCKET NO. 070369-TP ORDER NO. PSC-08-0817-FOF-TP ISSUED: December 18, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

FINAL ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

I. Case Background

On June 8, 2007, NPCR, Inc. d/b/a Nextel Partners, Nextel South Corp. and Nextel West Corp. (collectively "Nextel") filed its Notice of Adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., and Sprint Spectrum L.P. (collectively "Sprint")[1], pursuant to AT&T/BellSouth Merger Commitments and Section 252(i) of the Federal Telecommunications Act of 1996 (Act).

[1] "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 ("Sprint ICA") as amended.

We approved Nextel's adoption of the Sprint ICA[2] on September 4, 2008. This Commission's vote was finalized by Order No. PSC-08-0584-FOF-TP, issued September 10, 2008. On September 11, 2008, AT&T filed the Notice of Adoption by Nextel of the Sprint ICA on September 11, 2008. On September 17, 2008, AT&T filed a Motion for Reconsideration of a portion of Order No. PSC-08-0584-FOF-TP.

Nextel filed a Motion for Extension of Time to Respond to AT&T Florida's Motion for Reconsideration on September 17, 2008. On September 22, 2008, AT&T filed its Response to Nextel's Motion for Extension of Time. The Prehearing Officer issued Order PSC-08-0627-PCO-TP on September 24, 2008, granting Nextel's motion for extension of time. On September 30, 2008, Nextel filed a Response in Opposition to AT&T's Motion for Reconsideration.

On October 10, 2008, Nextel filed a letter with this Commission regarding the adoption of the Sprint ICA, stating that the pro forma language currently in the signed Adoption of the Sprint ICA did not include the Extension Amendment granted in Docket No. 070249-TP (Order No. PSC-08-0066-FOF-TP). Nextel requests that this Commission require the parties to execute and file revised adoption documents. Nextel also states that Nextel raised the language inconsistency to AT&T and was advised that AT&T will wait for resolution of the Motion for Reconsideration. AT&T filed a response on October 13, 2008, arguing that Nextel requested to adopt only the Sprint ICA and all amendments thereto that were filed and approved by this Commission as of Nextel's original filing of June 8, 2007. AT&T further argues that we should deny Nextel the relief sought in Nextel's October 10, 2008, letter.

II. Analysis

A. Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which this Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959) citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

B. AT&T's Motion for Reconsideration

AT&T seeks reconsideration of the portion of our decision allowing Nextel to adopt the Sprint ICA with an effective date of June 8, 2007. AT&T asserts that the effective date should properly be no earlier than the date upon which this Commission approved the adoption. In support of its Motion, AT&T argues that we overlooked or failed to consider several points of

[2] By Order No. PSC-08-0066-FOF-TP, issued on January 29, 2008, we approved the amendment of the Sprint ICA, effective March 29, 2007, per the express terms of the amendment.

fact or law in reaching our decision. Particularly, AT&T contends that we failed to consider Section 364.162(1) of the Florida Statutes, as well as prior Commission rulings within which the Commission found an adopted interconnection agreement effective only after we approve it.

With regards to Section 364.162(1), Florida Statutes (F.S.), AT&T specifically pinpoints the portion which states explicitly that "whether set by negotiation or by the commission, *interconnection and resale prices, terms and conditions shall be filed with the commission before their effective date.*" AT&T contends that this requires that interconnection rates, terms and conditions be filed with us before they go into effect and therefore, prohibits retroactive effective dates. AT&T argues that our decision in this docket establishes a retroactive effective date for Nextel's adoption of the Sprint ICA.

Furthermore, AT&T argues that in previous Commission rulings involving contested adoptions, this Commission established precedent which makes adopted agreements effective prospectively, and rejected arguments to adopt the terms and conditions of an interconnection agreement upon notice of adoption. AT&T refers to Order No. PSC-98-0251-FOF-TP (Sprint-GTE Order), issued February 6, 1998 in Docket No. 971159-TP and Order No. PSC-01-0824-FOF-TP (MCImetro-BellSouth Order), issued on March 30, 2001 in Docket 000649-TP, as examples of prior Commission action regarding the effective dates of adopted ICAs. Relying on what it considers "well-established procedure," AT&T argues that the earliest date upon which the adopted agreement could have possibly been filed was September 11, 2008, when the parties filed the signed adoption papers with this Commission.

C. Nextel's Response

In its response, Nextel asserts that reconsideration is not appropriate under these circumstances. Nextel argues that AT&T has wholly failed to identify any controlling point of fact or law that this Commission overlooked or failed to consider. Nextel contends that the issue of the proper effective date for Nextel's adoption was raised in Nextel's Notice of Adoption, where it was clearly asserted that it was effective immediately, and that this Commission has been well informed as to each party's position and arguments in support thereof. Nextel further contends that AT&T's Motion should be denied because it only seeks a second hearing on the same contentions, and that errors alleged by AT&T were major issues which have already been fully argued before this Commission.

Nextel argues that AT&T is inappropriately attempting to reargue a position with new arguments and citing new authorities. Particularly, Nextel contends that AT&T's argument as it pertains to Section 364.162(1), F.S., should be rejected because the statute pertains only to negotiated and arbitrated interconnection agreements. Furthermore, Nextel argues that the previous Commission rulings relied upon by AT&T do not establish a precedent for the effective date of contested adoptions.

D. Prior Commission Orders

AT&T argues that we failed to consider the following Commission Orders, the Sprint-GTE Order and the MCImetro-BellSouth Order, which discussed effective dates of interconnection agreements. AT&T argues that we established precedent in these orders. However, each Order involved a different set of facts and circumstances. The Sprint-GTE Order involved the parties entering into an arbitrated interconnection agreement and subsequently requesting to adopt a different interconnection agreement while still bound by our approved

arbitrated interconnection order. At the time of the MCImetro-BellSouth Order, CLECs were still permitted to "pick and choose" provisions from various interconnection agreements pursuant to FCC rules, which were amended later to require the "all or nothing" approach currently in place today. The petitioners had requested that we approve their new interconnection agreement created from language from other interconnection agreements, which were specifically requested by the petitioners. These Orders dealt with specific facts and actions requested by the petitioners, neither of which were an adoption of an approved interconnection agreement pursuant to 47 U.S.C. § 252(i).

E. Consideration of Section 364.162(1), F.S.

AT&T argues that we erred by failing to consider 364.162(1), F.S., when establishing an effective date for the adoption of the Sprint-AT&T Interconnection Agreement by Nextel. We find that AT&T has not demonstrated that 364.162(1), F.S., is controlling in our consideration of an effective date for an adopted interconnection agreement. Section 364.162(1), F.S., offers a timeline specifically for negotiated or arbitrated interconnection agreements, stating that:

> Whether set by negotiation or by the commission, interconnection and resale prices, rates, terms, and conditions shall be filed with the commission before their effective date. The commission shall have the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions.

At issue here is not an approved interconnection agreement that is negotiated or arbitrated, but rather the adoption of an interconnection agreement. This statute therefore does not pertain to the effective date of an adopted agreement, which is governed by Section 252(i) of the Act, consistent with Section 120.80(13), Florida Statutes. Therefore, Section 364.162(1), F.S., is not applicable to our consideration of Nextel's adoption of the Sprint ICA.

F. Previous Actions

Specifically, AT&T argues that a new effective date should be considered because we failed to consider previous Commission action and restates the reason AT&T believes that the effective date is incorrect. AT&T is simply rearguing the points that were already asserted by AT&T in its post-hearing brief. Both AT&T and Nextel extensively briefed the issue of the effective date, and AT&T's arguments regarding the effective date were considered. Re-argument or reweighing of the evidence is improper in the context of a motion for reconsideration. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959), Stewart Bonded Warehouse, Inc. v. Bevis, 293 So. 2d 315 (Fla. 1974).

Both AT&T and Nextel have discussed the effective date. However, we do not have to explicitly respond in our opinion to every argument and fact raised by each party. We have fully considered both parties' arguments. The Court in State ex. Rel. Jaytex Realty Co. V. Green, 105 So. 2d 817 (Fla. 1st DCA 1959) stated:

> An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered.[3]

Rather than point to a fact or law that we failed to consider, AT&T simply reargues its position regarding the effective date and therefore fails to meet the standard for reconsideration. AT&T has not demonstrated that we failed to consider or overlook any point of fact or law. Thus, AT&T's motion is mere re-argument, which is inappropriate for a motion for reconsideration.

G. Clarification

Nextel has identified an aspect of the Order that should be clarified. As noted in the Case Background, both parties filed letters addressing whether the interconnection agreement is properly referenced in the Notice of Adoption filed by AT&T pursuant to Order No. PSC-08-0584-FOF-TP. In particular, we find it appropriate to clarify that our Order approved the adoption of the current Sprint ICA by Nextel.

The basis for this clarification is that the 3-year extension amendment of the underlying agreement, which was jointly filed by Sprint and AT&T, established an effective date of March 20, 2007 for the extension. Order No. PSC-08-0066-FOF-TP, issued January 29, 2008, approved the amendment, which includes the following language:

> This Agreement is extended three years from March 20, 2007 and shall expire as of March 19, 2010. Upon mutual agreement of the Parties, the term of this agreement may be extended. If, as of the expiration of this Agreement, a Subsequent Agreement . . . has not been executed by the Parties, this Agreement shall continue on a month-to-month basis.

We established that the effective date of Nextel's adoption is June 8, 2007. Therefore, Nextel's adoption of the current Sprint ICA includes the 3-year extension amendment, which was effective on March 20, 2007. The Adoption filed on September 22, 2008, by Nextel and AT&T, states the following:

> As of the Effective Date of this Agreement, Nextel Partners adopts in its entirety the 2001 AT&T Florida/Sprint Agreement and any and all amendments to said agreement executed and approved by the Florida Public Service Commission as of the Effective Date of this Agreement.

To avoid any misinterpretation of the Order, we find it appropriate to clarify that Nextel is adopting the current Sprint ICA, which includes the 3-year Extension Amendment jointly filed on December 4, 2007 by AT&T Florida and Sprint in Docket No. 070249-TP, which was

[3] Id. at 819.

effective March 20, 2007. The above cited language is inconsistent with the clarification since the 3-year Extension Amendment was not approved until Order No. PSC-08-0066-FOF-TP was issued January 29, 2008. AT&T and Nextel will need to refile the adoption in both of the instant dockets with conforming language.

III. Decision

We find that AT&T fails to identify any points of fact or law that we overlooked or failed to consider in our decision; therefore, AT&T's Motion for Reconsideration shall be denied. We also find it appropriate to clarify that Nextel is adopting the current Sprint ICA as amended by the 3-year term Extension Amendment jointly filed on December 4, 2007 by AT&T Florida and Sprint in Docket No. 070249-TP, which was effective March 20, 2007.

Docket Nos. 070368-TP and 070369-TP shall be closed administratively by our staff once the parties refile the adoption in both of the instant dockets, and our staff determines that the contractual language conforms with our decisions in the these dockets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission, that AT&T's Motion for Reconsideration be denied. It is further

ORDERED that Order No. PSC-08-0584-FOF-TP is clarified to reflect that Nextel is adopting the current Sprint ICA as amended by the 3-year term Extension Amendment jointly filed on December 4, 2007 by AT&T Florida and Sprint in Docket No. 070249-TP, which was effective March 20, 2007. It is further

ORDERED that Docket Nos. 070368-TP and 070369-TP shall be closed administratively once the parties refile the adoption in both of the instant dockets, and our staff determines that the contractual language conforms with our decisions in the these dockets.

By ORDER of the Florida Public Service Commission this 18th day of December, 2008.

ANN COLE
Commission Clerk

(SEAL)

TLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Exhibit 5

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 10, 2009

TO: Docket File

FROM: Jeff Bates (Division of Regulatory Compliance) JB SAB
Lee Eng Tan (Office of the General Counsel) LET
Victor McKay (Office of the General Counsel) VM AT

RE: Docket No. 070368-TP – Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners.

By letter received June 8, 2007, NPCR, Inc. d/b/a Nextel Partners filed a notice of adoption of the existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., and Sprint Spectrum L.P. which was approved by the Commission in Docket Nos. 000828-TP and 000761-TP. NPCR, Inc. d/b/a Nextel Partners is adopting the existing agreement pursuant to Section 252(i) of the Telecommunications Act of 1996.

Under the requirements of 47 U.S.C. § 252(e), negotiated agreements must be submitted to the state commission for approval. Section 252(i) requires that a local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved by the state commission to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety. Any exception to said obligation is governed by 47 U.S.C. § 51.809(b) and was not raised in this docket.

Staff reviewed the agreement in this Docket on February 11, 2009. The filing met the criteria outlined in Order No. PSC-08-0817-FOF-TP and Section 2.07.C.5.b of the Administrative Procedures Manual in that it complies with Section 252(i) of the Act. Accordingly, with this Memorandum, the docket is hereby closed.

CC: Office of the Commission Clerk (H. Wang)

OK to close
3-11-09

Exhibit 6

State of Florida

Public Service Commission

CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 10, 2009

TO: Docket File

FROM: Jeff Bates (Division of Regulatory Compliance) JB SAS
Lee Eng Tan (Office of the General Counsel) LET AT
Victor McKay (Office of the General Counsel) VSM

RE: Docket No. 070369-TP – Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp. and Nextel West Corp.

By letter received June 8, 2007, Nextel South Corp. and Nextel West Corp. filed a notice of adoption of the existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., and Sprint Spectrum L.P. which was approved by the Commission in Docket Nos. 000828-TP and 000761-TP. Nextel South Corp. and Nextel West Corp. are adopting the existing agreement pursuant to Section 252(i) of the Telecommunications Act of 1996.

Under the requirements of 47 U.S.C. § 252(e), negotiated agreements must be submitted to the state commission for approval. Section 252(i) requires that a local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved by the state commission to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety. Any exception to said obligation is governed by 47 U.S.C. § 51.809(b) and was not raised in this docket.

Staff reviewed the agreement in this Docket on February 11, 2009. The filing met the criteria outlined in Order No. PSC-08-0817-FOF-TP and Section 2.07.C.5.b of the Administrative Procedures Manual in that it complies with Section 252(i) of the Act. Accordingly, with this Memorandum, the docket is hereby closed.

CC: Office of the Commission Clerk (H. Wang)

Ok to close
3-11-09