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November 10, 2008

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: In the Matter of Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Communications L.P., Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina, d/b/a AT&T Southeast
Docket No. 2007-255-C

In the Matter of Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement Between Sprint Communications L.P./ Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina, d/b/a AT&T Southeast
Docket No. 2007-256-C

Dear Mr. Terreni:

Enclosed for filing in the above-referenced matters is AT&T South Carolina's Response to Nextel's Application for Reconsideration.

By copy of this letter, I am serving all parties of record with a copy of this response as indicated on the attached Certificate of Service.

Sincerely,

Patrick W. Turner by nml

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
724085

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

IN THE MATTER OF PETITION FOR APPROVAL OF NEXTEL SOUTH CORP.'S ADOPTION OF THE INTERCONNECTION AGREEMENT BETWEEN SPRINT COMMUNICATIONS L.P., SPRINT SPECTRUM L.P. D/B/A SPRINT PCS AND BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T SOUTH CAROLINA D/B/A AT&T SOUTHEAST	)	Docket No. 2007-255-C
IN THE MATTER OF PETITION FOR APPROVAL OF NPCR, INC. D/B/A NEXTEL PARTNERS' ADOPTION OF THE INTERCONNECTION AGREEMENT BETWEEN SPRINT COMMUNICATIONS L.P., SPRINT SPECTRUM L.P. D/B/A SPRINT PCS AND BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T SOUTH CAROLINA D/B/A AT&T SOUTHEAST	)	Docket No. 2007-256-C

AT&T SOUTH CAROLINA'S RESPONSE TO NEXTEL'S APPLICATION FOR RECONSIDERATION

AT&T South Carolina respectfully submits this brief Response to the Application for Reconsideration submitted by Nextel in this docket.

Nextel argues that a literal application of the operative language in the adopted agreement does not trigger any renegotiation rights because Nextel has not literally opted into a different interconnection agreement. In making this argument, Nextel speaks out

of both sides of its mouth. On the one hand, Nextel successfully argued that it does not have to comply with the literal language of the adopted agreement that expressly states that a party to that agreement is a wireline service provider certificated to do business in South Carolina.[1] Yet, after having received the benefit of that non-literal application of the language of the adopted agreement, Nextel makes a sharp about-face and demands that the Commission apply Nextel's view of a literal application of different language in the same agreement against AT&T South Carolina. The Commission should not allow Nextel to have its cake and eat it too.

To the contrary, as the Commission specifically acknowledged in its Order, the clear intent of the agreement Nextel sought to adopt was that it would apply only to a situation where both a CLEC and wireless carrier would be parties to the agreement with AT&T South Carolina.[2] Thus, while the Commission determined that it was constrained by federal law to allow Nextel to adopt the Sprint agreement even though Nextel does not comply with the literal language of that agreement, the Commission appropriately effectuated the clear intent of the adopted agreement by allowing AT&T South Carolina to renegotiate the agreement in the absence of a certificated wireline carrier on the other

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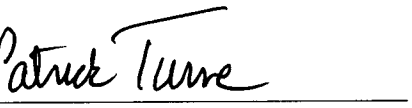
[1] *See* Adopted Sprint Agreement at p.1 ("WHEREAS, Sprint Communications Company Limited Partnership is a Competitive Local Exchange Carrier ("CLEC") authorized to provide telecommunications services in the state of . . . South Carolina . . . .") The adopted agreement, available at http://cpr.bellsouth.com/clec/docs/all_states/index7.htm, is part of the record pursuant to the Commission's February 20, 2008 Order in these consolidated dockets.

[2] *See* Commission Order No. 2008-649 at 9. The South Carolina Court of Appeals recently confirmed that "[t]he primary test of a contract's character is 'the intention of the parties, such intention to be gathered from the whole scope and effect of the language used." *M&M Group, Inc. v. Holmes*, 666 S.E.2d 262, 266 (S.C. Ct. App 2008). The Court of Appeals further confirmed that in determining this controlling intent, a court (and this Commission) may consider *all* language of the contract, including language set forth in Recitals and "Whereas" clauses. *Id.* at 265-266.

side. AT&T South Carolina respectfully submits that the Commission acted well within its authority in doing so and that the Commission should reject Nextel's arguments to the contrary.

Respectfully submitted this 10th day of November, 2008.

AT&T SOUTH CAROLINA



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STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for AT&T South Carolina ("AT&T") and that she has caused AT&T South Carolina's Response to Nextel's Application for Reconsideration in Docket Nos. 2007-255-C and 2007-256-C to be served upon the following on November 10, 2008.

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