| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | |
| | ) | **BEFORE THE** |
| **(Caption of Case)** | ) | **PUBLIC SERVICE COMMISSION** |
| **In the matter of Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Communications Company 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** | ) | **COVER SHEET** |
| | | **DOCKET NUMBER: 2007 - 255 - C** |
| **And** | | |
| **In the matter of Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement Between Sprint Communications Company 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 NUMBER: 2007 - 256 - C** |

**(Please type or print)**


**Submitted by:** J. Jeffrey Pascoe
**SC Bar Number:** 71104
**Address:** 550 So. Main Street, Suite 400
Greenville, SC 29601
**Telephone:** 864.255.5422
**Fax:** 864.239.5855
**Other:**
**Email:** jpascoe@wcsr.com


NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

## DOCKETING INFORMATION (Check all that apply)

☐ **Emergency Relief demanded in petition** ☐ **Request for item to be placed on Commission's Agenda expeditiously**

☐ **Other: Prefiled Direct Testimony of Mark G. Felton Filed October 16, 2007**

| **INDUSTRY (Check one)** | **NATURE OF ACTION (Check all that apply)** | | |
|---|---|---|---|
| ☐ Electric | ☐ Affidavit | ☐ Letter | ☐ Request |
| ☐ Electric/Gas | ☐ Agreement | ☐ Memorandum | ☐ Request for Certification |
| ☐ Electric/Telecommunications | ☐ Answer | ☐ Motion | ☐ Request for Investigation |
| ☐ Electric/Water | ☐ Appellate Review | ☐ Objection | ☐ Resale Agreement |
| ☐ Electric/Water/Telecom. | ☐ Application | ☐ Petition | ☐ Resale Amendment |
| ☐ Electric/Water/Sewer | ☐ Brief | ☐ Petition for Reconsideration | ☐ Reservation Letter |
| ☐ Gas | ☐ Certificate | ☐ Petition for Rulemaking | ☐ Response |
| ☐ Railroad | ☐ Comments | ☐ Petition for Rule to Show Cause | ☐ Response to Discovery |
| ☐ Sewer | ☐ Complaint | ☐ Petition to Intervene | ☐ Return to Petition |
| ☒ Telecommunications | ☐ Consent Order | ☐ Petition to Intervene Out of Time | ☐ Stipulation |

- [ ] Transportation
- [ ] Water
- [ ] Water/Sewer
- [ ] Administrative Matter
- [ ] Other:

- [ ] Discovery
- [ ] Exhibit
- [ ] Expedited Consideration
- [ ] Interconnection Agreement
- [ ] Interconnection Amendment
- [ ] Late-Filed Exhibit

- [x] Prefiled Testimony
- [ ] Promotion
- [ ] Proposed Order
- [ ] Protest
- [ ] Publisher's Affidavit
- [ ] Report

- [ ] Subpoena
- [ ] Tariff
- [ ] Other:

**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 |
| AND | ) | |
| 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 |

**PREFILED DIRECT TESTIMONY OF**
**MARK G. FELTON**
**FILED OCTOBER 16, 2007**

1 **I. INTRODUCTION**

2

3 **Q. Please state your name, business address, employer and current position.**

4 A. My name is Mark G. Felton. My business address is 6330 Sprint Parkway, Overland
5 Park, KS 66251. I am employed as a Contracts Negotiator III in the Access Solutions
6 group of Sprint United Management, the management subsidiary of Sprint Nextel
7 Corporation ("Sprint Nextel").

8

9 **Q. On whose behalf are you testifying?**

10 A. I am testifying on behalf of Nextel South Corporation, and NPCR, Inc., d/b/a Nextel
11 Partners. I refer to these entities collectively as "Nextel" in my testimony. Nextel is a
12 commercial mobile radio service ("CMRS") provider licensed by the Federal
13 Communications Commission ("FCC") to provide wireless services in South
14 Carolina.

15

16 **Q. Please describe your educational and business experience.**

17 A. I graduated from the University of North Carolina at Wilmington in 1988 with a B.S.
18 degree in Economics. In 1992, I received a Masters degree in Business
19 Administration from East Carolina University. I began my career as a Management
20 Intern with Carolina Telephone, a subsidiary of Sprint Nextel (or of its predecessor
21 parent), in 1988 and have held positions of increasing responsibility since that time.

In June, 1999 I assumed responsibility for negotiations and implementation of Sprint Nextel's interconnection agreements ("ICAs") with various telecommunications carriers, including the existing ICAs between the Sprint Nextel entities and BellSouth Telecommunications, Inc. ("legacy BellSouth"), which I understand to be the party in this docket now known as BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast ("AT&T"). I also have personal knowledge of, and had at the time either direct or supervisory responsibility regarding, each of the ten subsequent amendments to the existing ICA that Nextel seeks to adopt, *i.e.*, the currently existing ICA between Sprint Communications L.P., Sprint Spectrum L.P. d/b/a Sprint PCS (collectively "Sprint") and BellSouth Telecommunications, Inc. d/b/a South Carolina d/b/a AT&T Southeast (the "Sprint-AT&T ICA").

Throughout the performance of my interconnection-related responsibilities from 1999 through the present, I have been required to understand and implement on a day-to-day basis Sprint Nextel's rights and obligations under the Telecommunications Act of 1996 ("Act"), the FCC rules implementing the Act, and federal and state authorities regarding the Act and FCC rules.

**Q. Before what state regulatory Commissions have you provided testimony?**

A. I have provided testimony before the Public Service Commissions in Florida, Georgia, Kentucky, Louisiana and South Carolina, and the North Carolina Utilities

1 Commission.

2

3 **Q. Are you the same Mark G. Felton who filed Direct Testimony on July 9, 2007**
4 **and Rebuttal Testimony on July 30, 2007 in the arbitration case before the**
5 **Public Service Commission of South Carolina ("Commission"), Docket No. 2007-**
6 **215-C, which involves the continuing status of the Sprint-AT&T ICA?**

7 A. Yes, I am.

8

9 **Q. What is the purpose of your testimony?**

10 A. The purpose of my testimony is to provide input and background to the Commission
11 regarding Nextel's Petitions for approval of the adoption of the Sprint-AT&T ICA
12 pursuant to Merger Condition No. 1 and 2 as approved by the FCC in the merger of
13 AT&T, Inc. and BellSouth Corporation (collectively "AT&T/BellSouth").
14 Specifically, I will explain the current status of the existing Sprint / AT&T ICA ("the
15 Agreement"), the basis upon which Nextel requested to adopt the Agreement, and
16 Nextel's positions in light of AT&T's refusal to honor Nextel's request.

17

18 **Q. As a preliminary matter, does this Commission have jurisdiction to address this**
19 **issue?**

20 A. Yes. This Commission determined in Docket No. 2007-215-C that it has concurrent
21 jurisdiction with the FCC in Merger Commitment-related cases. The legal basis for
22 this Commission's jurisdiction to address AT&T's merger-related interconnection

obligations is included in Nextel's respectively filed Petitions for Approval of Nextel's adoption of the Sprint-AT&T ICA filed on June 28, 2007, as well as the legal briefs respectively filed by both Nextel in these Dockets, and Sprint in Docket 2007-215-C, in response to AT&T's Motions to Dismiss.

**Q. Please describe the status of the Sprint-AT&T ICA.**

A. The current Sprint-AT&T ICA was initially approved by the Commission in Docket No. 2000-23-C. By mutual agreement, the Interconnection Agreement has been amended ten times. It is my general understanding, and Sprint has relied upon, the general practice of legacy BellSouth to file all ICA amendments with the Commission. I believe a true and correct copy of the current Sprint-AT&T ICA, as amended, is available for public review as a composite 1,169 page document located on AT&T's website at:

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

The Agreement converted to a month-to-month, or "evergreen", status on December 31, 2004. Sprint and AT&T have continued to operate pursuant to the terms of the ICA and have executed 10 total amendments to it, six of which were executed after its conversion to evergreen status.

**Q. What happened on December 29, 2006?**

A. On December 29, 2006, the FCC approved the merger of AT&T, Inc. and BellSouth

Corporation (collectively "AT&T/BellSouth") subject to certain AT&T/BellSouth voluntary merger commitments ("Merger Commitments") which were set forth in a letter from AT&T, Inc.'s Senior Vice President – Federal Regulatory, Robert W. Quinn, Jr., that was filed with the FCC on December 28, 2006. Following the FCC's approval on December 29, 2006, the AT&T/BellSouth merger closed the same day, making December 29, 2006 the "Merger Closing Date".

The Merger Commitments can also be found in the FCC's March 26, 2007 formal Order authorizing the AT&T/BellSouth merger, which incorporated the AT&T/BellSouth offered Merger Commitments.[1] As an express condition of its merger authorization, the FCC ordered that "AT&T and BellSouth shall comply with the conditions [i.e., the 'Merger Conditions'] set forth in Appendix F" of the FCC Order.[2] A copy of the Table of Contents and Appendix F to the FCC Order is attached as Exhibit "A" to Nextel's Petitions for Approval.

**Q. Which Merger Commitments is Nextel concerned about in this docket?**

A. The Merger Commitment identified as "Reducing Transaction Costs Associated with Interconnection Agreements" paragraph No. 1, which provides:

> The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier *any entire effective interconnection agreement,*

---

[1] *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control,* WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007) ("FCC Order").

[2] FCC Order, Ordering Clause ¶ 227 at page 112.

> 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, than 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.
>
> And paragraph No. 2, which provides:
>
> 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.

FCC Order at p. 149, APPENDIX F (emphasis added).

**Q. Based on those two Merger Commitments, are the Nextel entities entitled to opt into the Sprint agreement in South Carolina?**

A. Yes, without a doubt. There is no reason, based on the unambiguous language of the Merger Commitments, that Nextel cannot opt into the Sprint-AT&T ICA. While there are indeed a few requirements that must be taken into consideration when a carrier is adopting an agreement under the Merger Commitments that was originally approved in another state or needs to be updated due to changes in law, none of those requirements or situations exist here. Nextel is seeking to adopt the very ICA that has already approved by this Commission, and it is already been updated by Sprint and AT&T to comply with all change of law requirements to date. There simply is no reason that the affiliated Sprint Nextel companies should not be allowed to utilize the

exact same Sprint-AT&T ICA if they so choose and for however long that ICA may remain in effect.

**Q. What action did Nextel take in order to exercise its rights to adopt the Sprint-AT&T ICA?**

A. I sent a letter dated May 18, 2007, to notify AT&T in writing that Nextel was exercising its rights pursuant to Merger Commitments Nos. 1 and 2 and § 252(i) to adopt the Sprint-AT&T ICA. In that letter I enclosed all necessary information and requested AT&T to execute and return two enclosed copies of a proposed adoption Agreement. Copies of my May 18, 2007 letter, enclosed forms and proposed adoption Agreement are attached to Nextel's Petitions as Exhibit B.

Although neither Nextel nor Sprint CLEC considered it either necessary or required by law, to avoid any potential delay regarding the exercise of Nextel's right to adopt the Sprint ICA, I specifically advised AT&T that Sprint CLEC also stands ready, willing and able to also execute the Sprint ICA as adopted by Nextel in order to expeditiously implement Nextel's adoptions.

To the extent it was considered or otherwise might be deemed necessary, my letter also provided notice pursuant to the existing interconnection agreements between Nextel and AT&T, conditional notice to terminate the existing interconnection

agreement between Nextel and AT&T upon acknowledgement by the Commission that Nextel has adopted the Sprint-AT&T ICA.

**Q. Did AT&T respond to your May 18 letter?**

A. Yes. A copy of AT&T's response letter dated May 30, 2007, is attached to Nextel's Petitions as Exhibit C. Notwithstanding AT&T's admissions in Docket No. 2007-215-C that it has "acknowledged that, pursuant to Interconnection Merger Commitment No. 4, Sprint can extend its current Interconnection Agreement for three years," by its May 30, 2007 letter, AT&T refused to permit Nextel to adopt the Sprint-AT&T ICA based upon assertions that the Sprint ICA "is expired," "is currently in arbitration at the relevant state commissions" and "is not available for adoption, as it was not adopted within a reasonable period of time as required by 47 C.F.R. § 51.809(c)."

**Q. What is your response to such AT&T assertions?**

A. First, AT&T is attempting to impose restrictions that AT&T believes exists with respect to a traditional § 252(i) adoption upon a carrier's rights to adopt an ICA pursuant to the merger commitments – for which there simply is no basis to make such claims. Second, AT&T's stated rationale that the Sprint-AT&T ICA has "expired" and, therefore, Nextel's request to adopt *under 252(i)* was not within a "reasonable period of time" is based on a fundamental mischaracterization of the status of the Sprint-AT&T ICA. The Sprint-AT&T ICA has *not* expired, and is in fact

1 continuing by its express terms on a month-to-month basis. As I discussed earlier,
2 upon the expiration of the fixed term of the ICA, it automatically converted to a
3 month-to-month term and remains current today. Therefore, to suggest the ICA is not
4 available for adoption under either § 252(i) or the Merger Commitments because it
5 has "expired" is, plain and simple, factually inaccurate.
6
7 **Q. Do you know if AT&T has taken any other position in these cases to oppose**
8 **Nextel's adoption of the Sprint-AT&T ICA?**
9 A. As I understand AT&T's positions, AT&T also claims that the FCC has exclusive
10 jurisdiction over the Merger Commitments, and that Nextel was somehow required to
11 exercise its rights to any Merger Commitment adoption under the prior Nextel-AT&T
12 ICA "dispute resolution" provisions.
13
14 **Q. What is your response to these AT&T positions?**
15 A. First, this Commission has already rejected AT&T's jurisdictional argument in the
16 Commission's October 5, 2007 "Order Ruling On Arbitration" in Docket No. 2007-
17 215-C. Although the Commission declined to rule on the merits of Sprint's issue
18 regarding when an undisputed 3-year extension of the Sprint-AT&T ICA commences,
19 it did find that it had "concurrent jurisdiction with the FCC" to decide the issue.
20
21 Second, regarding AT&T's suggestion that Sprint "failed to comply with the Parties'
22 existing [Nextel] Agreement" by not adhering to the dispute resolution procedures -

1 dispute resolution procedures are intended as a mechanism to resolve disputes arising
2 *under the agreement*. Since this dispute arose outside the agreement, there was no
3 reason for Nextel to pursue resolution pursuant to the procedure set forth in the
4 agreement. AT&T's "dispute resolution" argument has, based on prior rulings, been
5 rejected by the Florida Public Service Commission ("FPSC"). (See FPSC Staff
6 Memorandum dated September 13, 2007 and subsequent FPSC September 25, 2007
7 Vote Sheet, copies of which are respectively attached hereto as Exhibits MGF-1 and
8 MGF-2). And finally, it should be noted that since the filing of Nextel's adoption
9 petitions, on August 21, 2007, AT&T itself sent Nextel "notice" of termination of the
10 very agreements upon which AT&T bases its argument. (See letters of AT&T's
11 Randy Ham attached hereto as Exhibits MGF-3 and MGF-4). Nextel responded in
12 writing to AT&T's notice on August 27, 2007 pointing out the obvious – there is
13 nothing to terminate because Nextel has already exercised its right to adopt the Sprint-
14 AT&T ICA. (See letters of Sprint Nextel's Jim Kite attached hereto as Exhibits MGF-
15 5 and MGF-6).
16
17 Viewed in their entirety, the irony of AT&T's promises and subsequent actions
18 becomes obvious: On the one hand, in order to obtain approval of AT&T's desired
19 merger under which it expects to reap billions of dollars in benefits, AT&T promises
20 anything, *i.e.*, it "shall" allow carriers to extend existing ICAs, and any other carrier
21 "shall" be allowed to adopt *any ICA* without regard to any time limitation, *as a*
22 *purported mechanism to reduce the costs associated with the creation and*

*implementation of ICAs*. Yet, on the other hand, when asked merely to do what it promised in order to get what it wanted, at every conceivable opportunity, AT&T throws up roadblocks to Sprint's efforts to extend its ICA with AT&T *and* Nextel's efforts to adopt that extended ICA. And, the ultimate icing on the cake is that by its August 27, 2007 letters, AT&T seeks to affirmatively impose upon Nextel the time and costs of formal 251/252 negotiations for a new ICA, when - if AT&T had simply done what it promised it would do in the first place by timely executing the adoption documents that I tendered in my May 18, 2007 letter - Nextel *could have already been operating under the Sprint-AT&T ICA for almost five (5) months*

**Q. Is Nextel prepared to accept the "same terms and conditions as provided" in the Sprint-AT&T ICA?**

A. Yes.

**Q. Is there any technical infeasibility that would prevent Nextel or AT&T from operating under the same terms and conditions as provided in the Sprint-AT&T ICA?**

A. To my knowledge, there is no technical reason that Nextel could not adopt the Sprint-AT&T ICA.

**Q. Does Nextel rely solely upon the Merger Commitments as the basis to opt into the Sprint / AT&T ICA?**

1 A. No. As an alternative basis for relief, even if the Merger Commitments were not
2 offered as an inducement for the FCC to approve the AT&T / BellSouth merger,
3 Nextel would be entitled to adopt the Sprint-AT&T ICA in South Carolina pursuant
4 to Section 252(i) of the Act, which states:
5 "AVAILIBILITY TO OTHER TELECOMMUNICATIONS CARRIERS – A
6 local exchange carrier shall make available any interconnection, service, or
7 network element provided under an agreement approved under this section to
8 which it is a party to any other requesting telecommunications carrier upon the
9 same terms and conditions as those provided in the agreement."
10
11 **Q. In light of the current status of the Sprint-AT&T ICA, what is the practical**
12 **effect of AT&T's argument that Nextel cannot adopt the Sprint-AT&T ICA**
13 **under Section 252(i) of the Act?**
14 A. From a purely laymen's perspective, it looks to me like AT&T is simply saying
15 Nextel cannot adopt the Sprint-AT&T ICA because it is a month-to-month agreement
16 without a specified end in sight at this point in time.
17
18 **Q. From a business point of view, does it make any difference that the Sprint-**
19 **AT&T ICA is in month-to-month status?**
20 A. Absolutely not. From Sprint Nextel's perspective, for administrative and financial
21 reasons it is quite reasonable to get all of its entities operating under the same ICA
22 that Sprint Nextel believes will provide all of its entities the greatest benefits. That

1 the ICA is currently in a month-to-month status simply doesn't change the fact that, as
2 a practical matter, that is the ICA that Sprint and AT&T are operating under until the
3 litigation is concluded either through the regulatory process or other mutually
4 acceptable resolution. There simply is no reason that Nextel should not be allowed to
5 operate under that same ICA for however long it may continue to exist.
6
7 **Q. What does Nextel request that the Commission do?**
8 A. Based on the foregoing, Nextel asks this Commission to order AT&T to comply with
9 its obligations under the Merger Commitments and Section 252(i) of the Act, allow
10 Nextel to opt into the entire Sprint-AT&T ICA in South Carolina, and execute the
11 adoption documents that Nextel tendered AT&T pursuant to my May 18, 2007 letter.
12
13 **Q. Does this conclude your Direct Testimony?**
14 A. Yes, it does.

**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 Company 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 Company 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** |

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 16, 2007, she served a copy of the attached **Prefiled Direct Testimony of Mark G. Felton** by first-class mail, proper postage affixed addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es):

Patrick W. Turner, Esq.
General Counsel-South Carolina
BellSouth Telecommunications
Legal Department
1600 Williams Street
Suite 5200
Columbia, SC 29201

Nanette S. Edwards
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211

Julie A. Curll, Legal Assistant
Womble Carlyle Sandridge & Rice, PLLC
PO Box 10208
Greenville, SC 29603-0208

**THIS DOCUMENT IS AN EXACT DUPLICATION OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.**

# EXHIBIT MGF-1

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-

RECEIVED-FPSC
07 SEP 13 AM 11:53
COMMISSION CLERK

**DATE:** September 13, 2007

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Competitive Markets & Enforcement (Bates)
Office of the General Counsel (Teitzman, McKay)

**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.

**AGENDA:** 09/25/07 – Regular Agenda – Motion to Dismiss – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\070368.RCM.DOC

DOCUMENT NUMBER-DATE
08305 SEP 13 07
FPSC-COMMISSION CLERK

## 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] Staff's recommendation addresses AT&T's Motion.

---

[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.

## Discussion of Issues

**Issue 1:** Should the Commission grant AT&T's Motion to Dismiss?

**Recommendation:** No. Staff recommends that AT&T's Motion to Dismiss be denied, because Nextel's Notice of Adoption does state a cause of action upon which relief may be granted. **(TEITZMAN, BATES)**

### Parties' Arguments

AT&T's Motion to Dismiss

In its Motion, AT&T requests the Commission dismiss Nextel's Notice based on three contentions: 1) The 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.

*The Commission lacks authority.*

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

AT&T argues that although the Commission has authority under the Act in §252 arbitrations to interpret and resolve issues of federal law, the Act does not grant the Commission 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 the Commission held that "[f]ederal courts have ruled that a state agency is not authorized to take administrative actions based solely on federal statutes. 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.

[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

*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 the 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.

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

---

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.)

[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 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, the Commission 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.

*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, the Commission has authority to acknowledge Nextel's exercise of its right to adopt the Sprint ICA. Nextel asserts that the Commission's Sunrise Order actually supports Nextel's position that the Commission can interpret and apply federal law in the course of exercising authority that the Commission is conferred under the Act and state law. Nextel argues that the Commission 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 the Commission held it had no power under the Act to grant, in the instant case Nextel seeks the exact same relief that the Commission has 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 the 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.

*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 this Commission's 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 the Commission dismiss Volo's Notice of Adoption of an ICA that was set to expire

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

within 72 days after the adoption date, but was likely to remain in effect beyond the stated termination date. In the Volo Order, the Commission 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 the Commission rejected the identical argument asserted by AT&T in the instant case. In the Z-Tel Order, the Commission 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.

**Staff Analysis**:

**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, 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 previous Commission decisions, staff recommends that AT&T's Motion to Dismiss be denied, because Nextel's Notice of Adoption states a cause of action upon which relief may be granted. However, as noted in the Volo Order, staff believes AT&T raises a valid argument as to what constitutes a reasonable period of time under 47 C.F.R. §51.809(b), which staff believes 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 the Commission's further analysis and interpretation of 47 C.F.R. §51.809(c) in this proceeding.

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

Finally, consistent with the Commission's findings in the Z-Tel Order, staff believes 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. Staff does not believe 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, staff believes AT&T's Motion fails because Nextel's Notice, on its face, states a cause of action upon which relief could be granted.

**ISSUE 2:** Should this Docket be closed?

**RECOMMENDATION:** No. If the Commission approves staff's recommendation in Issue 1, this Docket should be held open pending further proceedings. **(TEITZMAN)**

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, this Docket should be held open pending further proceedings.[8]

[8] Staff notes that 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, the Commission 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. As of the filing of this recommendation, that Motion remains a pending matter.

# FLORIDA PUBLIC SERVICE COMMISSION

## VOTE SHEET

**September 25, 2007**

**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.

**Issue 1:** Should the Commission grant AT&T's Motion to Dismiss?

**Recommendation:** No. Staff recommends that AT&T's Motion to Dismiss be denied, because Nextel's Notice of Adoption does state a cause of action upon which relief may be granted.

# APPROVED

**COMMISSIONERS ASSIGNED: All Commissioners**

**COMMISSIONERS' SIGNATURES**

| MAJORITY | DISSENTING |
|---|---|
| Nancy A. Argenziano | |
| Katrina J. McMurrian | |
| Lisa C. Edwards | |
| Matthew S. Carter | |
| Stamey Alegado | |

**REMARKS/DISSENTING COMMENTS:**

DOCUMENT NUMBER-DATE
08757 SEP 25 ⁵
FPSC-COMMISSION CLERK

Vote Sheet
September 25, 2007
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.

(Continued from previous page)

**Issue 2**: Should this Docket be closed?
**Recommendation:** No. If the Commission approves staff's recommendation in Issue 1, this Docket should be held open pending further proceedings.

**APPROVED**

# EXHIBIT MGF-3

Randy Ham
8th Floor
600 North 19th Street
Birmingham, AL 35203

T: 205-321-7795
F: 205-321-4702
rh8556@att.com

***VIA ELECTRONIC MAIL & FedEx DELIVERY***

August 21, 2007

Bob Edgerly
Nextel Communications, Inc.
2001 Edmund Halley Dr.
Reston, VA 20191

James C. Kite II
6330 Sprint Parkway
Mail Stop KSOPHA0310-3B370
Overland Park, KS 66251
Jim.C.Kite@sprint.com

RE: CMRS Interconnection Agreement between Nextel South Corporation and BellSouth Telecommunications, Inc. d/b/a AT&T in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, effective on June 14, 2001.

Dear Mr. Edgerly and Mr. Kite:

As you know, the term of our interconnection agreement expired on June 13, 2003. This letter will serve as your official notice, specific to Section III that AT&T intends to terminate its existing interconnection agreement with Nextel South Corporation in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

In addition, please be advised that AT&T is hereby establishing a negotiations window with Nextel South Corporation, as of the date of this letter, pursuant to Section 252(b)(1) of the Telecommunications Act of 1996, by formally requesting that Nextel South Corporation negotiate a Cellular/PCS Interconnection Agreement with AT&T for the above referenced states.

Thank you for your prompt attention. I will be the contact for all correspondence concerning this matter and can be reached at the number listed above.

Sincerely,

Randy Ham

Randy Ham
Assistant Director

# EXHIBIT MGF-4

Randy Ham
8th Floor
600 North 19th Street
Birmingham, AL 35203

T: 205-321-7795
F: 205-321-4702
rh8556@att.com

***VIA ELECTRONIC MAIL & FedEx DELIVERY***

August 21, 2007

Brent G. Eilefson
Nextel Partners
10120 West 76th Street
Eden Prairie, MN 55344

James C. Kite II
6330 Sprint Parkway
Mail Stop KSOPHA0310-3B370
Overland Park, KS 66251
Jim.C.Kite@sprint.com

RE: CMRS Interconnection Agreement between NPCR, Inc. d/b/a Nextel Partners and BellSouth Telecommunications, Inc. d/b/a AT&T in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, effective on June 14, 2001.

Dear Mr. Eilefson and Mr. Kite:

As you know, the term of our interconnection agreement expired on June 13, 2003. This letter will serve as your official notice, specific to Section III that AT&T intends to terminate its existing interconnection agreement with Nextel Partners in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

In addition, please be advised that AT&T is hereby establishing a negotiations window with Nextel Partners, as of the date of this letter, pursuant to Section 252(b)(1) of the Telecommunications Act of 1996, by formally requesting that Nextel Partners negotiate a Cellular/PCS Interconnection Agreement with AT&T for the above referenced states.

Thank you for your prompt attention. I will be the contact for all correspondence concerning this matter and can be reached at the number listed above.

Sincerely,

Randy Ham

Randy Ham
Assistant Director

# EXHIBIT MGF-5

Sprint
Together with NEXTEL

**Sprint Nextel**
6330 Sprint Parkway, KSOPHA0310-3B370
Overland Park, KS 66251
Office: (913) 762-4281 Fax: (913) 762-0117

**James C. (Jim) Kite II**
Interconnection Solutions

**VIA ELECTRONIC MAIL& OVERNIGHT COURIER**

August 27, 2007

Mr. Randy Ham
Assistant Director
AT&T
8th Floor
600 North 19th Street
Birmingham, AL 35203

RE: CMRS Interconnection Agreement between Nextel South Corporation and BellSouth Telecommunications, Inc. d/b/a AT&T in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, effective on June 14, 2001.

Dear Randy:

I am writing in response to your August 21, 2007 letter addressed to Bob Edgerly and me regarding the above referenced matter. Your letter claims to:

a) provide "official notice, specific to Section III that AT&T intends to terminate its existing interconnection agreement with Nextel South Corporation in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee"; and,

b) advise that "AT&T is hereby establishing a negotiations window with Nextel South Corporation, as of the date of this letter, pursuant to Section 252(b)(1) of the Telecommunications Act of 1996, by formally requesting that Nextel South Corporation negotiate a Cellular/PCS Interconnection Agreement with AT&T for the above referenced states."

This response is to inform you that any and all notices provided in your August 21, 2007 letter are defective and without effect because they were not provided pursuant to any current interconnection agreement between Nextel South Corporation and BellSouth Telecommunications, Inc. d/b/a AT&T ("AT&T"). As you know, pursuant to the attached May 18, 2007 letter from Mark Felton, in which you were a named addressee and are a confirmed recipient, Nextel South Corporation and Nextel West Corporation (collectively "Nextel") already has exercised its right to adopt 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, filed and approved in each of the nine legacy BellSouth states, including each of the states mentioned in your August 21, 2007 letter. On page 3 of the May 18th letter, Nextel already has provided whatever notice may be deemed necessary pursuant to the former Nextel – AT&T agreements to terminate those agreements in a given state upon acknowledgment by such state's commission that Nextel has adopted the Sprint ICA.

We recognize that AT&T disputes Nextel's right to adopt the Sprint ICA. However, as you also know, Nextel's position is that Nextel's adoption of the Sprint ICA in each of the states mentioned in your letter became effective on May 18, 2007 and, therefore, the Sprint ICA is the current interconnection agreement in effect between the parties.

Finally, as you are also aware, the term of the Sprint ICA is the subject of arbitration proceedings in all nine legacy BellSouth states. Until arbitration of the dispute regarding the term is finished, the Sprint ICA remains in effect and is not subject to notice of termination pursuant to its terms. Similarly, it is not consistent with the terms of the Sprint ICA to open a negotiations window while an arbitration is ongoing.

Please feel free to contact me at 913-762-4281 if you would like to discuss or if you have questions regarding this response.

Sincerely.

James C. Kite II

Enclosures

CC: Mr. Joseph M. Chiarelli, Counsel for Nextel
Mr. William R. Atkinson, Counsel for Nextel
Mr. Keith Kassien, Interconnection Solutions

Sprint
Together with NEXTEL

**Sprint Nextel Access Solutions**
Mailstop KSOPHA0310-3B372
6330 Sprint Parkway
Overland Park, KS 66251
Office: (913) 762-4133 Fax: (913) 523-0608
Mark.G.Felton@sprint.com

**Mark G. Felton**
Interconnection Solutions

May 18, 2007

***Electronic and Overnight Mail***

Ms. Kay Lyon, Lead Negotiator
AT&T Wholesale
4 AT&T Plaza, 311 S. Akard
Room 2040.03
Dallas, Texas 75202

Mr. Randy Ham, Assistant Director
AT&T Wholesale
8th Floor
600 North 19th Street
Birmingham, Alabama 35203

Ms. Lynn Allen-Flood
AT&T Wholesale - Contract Negotiations
675 W. Peachtree St. N.E.
34S91
Atlanta, GA 30375

Re: Nextel South Corp. and Nextel West Corp. (collectively "Nextel") adoption of "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 Kay, Randy and Lynn:

The purpose of this letter is to notify BellSouth Telecommunications, Inc., d/b/a AT&T Southeast ("AT&T") that Nextel South Corp. and Nextel West Corp. (collectively "Nextel") is exercising its right to adopt 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, filed and approved in each of the 9-legacy BellSouth states[1]. Nextel is exercising its right

[1] For the purposes of this letter, the 9 legacy BellSouth states means: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

pursuant to the FCC 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[2], and 47 U.S.C. § 252(i).

The Nextel entities are wholly owned subsidiaries of Sprint Nextel Corporation, as are Sprint Communications Company L.P. ("Sprint CLEC") and Sprint Spectrum L.P. ("Sprint PCS"). Although neither Nextel nor Sprint CLEC consider it either necessary or required by law, to avoid any potential delay regarding the exercise of Nextel's right to adopt the Sprint ICA, Sprint CLEC stands ready, willing and able to also execute the Sprint ICA as adopted by Nextel in order to expeditiously implement Nextel's adoption.

As AT&T is aware, all relevant state-specific differences among the 9 legacy BellSouth states are already contained within the Sprint ICA. Since the same state-specific terms are applicable to Nextel on a state by state basis, there are no "state-specific pricing and performance plans and technical feasibility" issues to prevent AT&T from immediately making the Sprint ICA available within each applicable state to Nextel 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 to prevent AT&T from also making the Sprint ICA available to Nextel in each applicable state pursuant to Merger Commitment No. 2.

---

[2] 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 aground 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.

Enclosed are Nextel's completed AT&T forms with respect to Merger Commitment Nos. 1 and 2, with any language within such forms stricken to the extent such language is not contained within the Merger Commitments.

Also enclosed for AT&T's execution are two copies of an adoption document to implement Nextel's adoption of the Sprint ICA. Please sign and return both executed documents for receipt by me no later than Tuesday, May 29, 2007. Upon receipt I will have both documents executed on behalf of Nextel and return one fully executed adoption document to you. I will also cause to be filed with each of the 9 state commissions a copy of the fully executed adoption document along with a copy of the current 1,169 page Sprint ICA, as amended, which I will print off from your website at:

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

To the extent notice may be deemed necessary pursuant to the existing interconnection agreements between Nextel and AT&T, please also consider this letter as Nextel's conditional notice to terminate the existing interconnection agreements between Nextel and AT&T in a given state upon acknowledgement by such state's commission that Nextel has adopted the Sprint ICA. Upon such acknowledgement, the existing interconnection agreement between Nextel and BellSouth Telecommunications, Inc. will then be considered terminated and superseded by the adopted Sprint ICA.

Should AT&T have any questions regarding Nextel's adoption of the Sprint ICA, please do not hesitate to call.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Mark G. Felton

Mark G. Felton

Enclosures

CC: Mr. Joseph M. Chiarelli, Counsel for Nextel
Mr. William R. Atkinson, Counsel for Nextel
Mr. Jim Kite, Interconnection Solutions

# EXHIBIT MGF-6

Sprint
Together with NEXTEL

**Sprint Nextel**
6330 Sprint Parkway, KSOPHA0310-3B370
Overland Park, KS 66251
Office: (913) 762-4281 Fax: (913) 762-0117

**James C. (Jim) Kite II**
Interconnection Solutions

**VIA ELECTRONIC MAIL& OVERNIGHT COURIER**

August 27, 2007

Mr. Randy Ham
Assistant Director
AT&T
8th Floor
600 North 19th Street
Birmingham, AL 35203

RE: CMRS Interconnection Agreement between NPCR, Inc. d/b/a Nextel Partners and BellSouth Telecommunications, Inc. d/b/a AT&T in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, effective on June 14, 2001.

Dear Randy:

I am writing in response to your August 21, 2007 letter addressed to Brent Eilefson and me regarding the above referenced matter. Your letter claims to:

a) provide "official notice, specific to Section III that AT&T intends to terminate its existing interconnection agreement with Nextel Partners in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee"; and,

b) advise that "AT&T is hereby establishing a negotiations window with Nextel Partners as of the date of this letter, pursuant to Section 252(b)(1) of the Telecommunications Act of 1996, by formally requesting that Nextel Partners negotiate a Cellular/PCS Interconnection Agreement with AT&T for the above referenced states."

This response is to inform you that any and all notices provided in your August 21, 2007 letter are defective and without effect because they were not provided pursuant to any current interconnection agreement between Nextel Partners and BellSouth Telecommunications, Inc. d/b/a AT&T ("AT&T"). As you know, pursuant to the attached May 18, 2007 letter from Mark Felton, in which you were a named addressee and are a confirmed recipient, Nextel Partners has already exercised its right to adopt 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, filed and approved in each of the nine legacy BellSouth states, including each of the states mentioned in your August 21, 2007 letter. On page 3 of the May 18th letter, Nextel Partners already has provided whatever notice may be deemed necessary pursuant to the former Nextel Partners – AT&T agreements to terminate those agreements in a given state upon acknowledgment by such state's commission that Nextel Partners has adopted the Sprint ICA.

We recognize that AT&T disputes Nextel Partners' right to adopt the Sprint ICA. However, as you also know, Nextel Partners' position is that Nextel Partners' adoption of the Sprint ICA in each of the states mentioned in your letter became effective on May 18, 2007 and, therefore, the Sprint ICA is the current interconnection agreement in effect between the parties.

Finally, as you are also aware, the term of the Sprint ICA is the subject of arbitration proceedings in all nine legacy BellSouth states. Until arbitration of the dispute regarding the term is finished, the Sprint ICA remains in effect and is not subject to notice of termination pursuant to its terms. Similarly, it is not consistent with the terms of the Sprint ICA to open a negotiations window while an arbitration is ongoing.

Please feel free to contact me at 913-762-4281 if you would like to discuss or if you have questions regarding this response.

Sincerely.

James C. Kite II

Enclosures

CC: Mr. Joseph M. Chiarelli, Counsel for Nextel Partners
Mr. William R. Atkinson, Counsel for Nextel Partners
Mr. Keith Kassien, Interconnection Solutions

Sprint
Together with NEXTEL

**Sprint Nextel Access Solutions**
Mailstop KSOPHA0310-3B372
6330 Sprint Parkway
Overland Park, KS 66251
Office: (913) 762-4133 Fax: (913) 523-0608
Mark.G.Felton@sprint.com

**Mark G. Felton**
Interconnection Solutions

May 18, 2007

***Electronic and Overnight Mail***

Ms. Kay Lyon, Lead Negotiator
AT&T Wholesale
4 AT&T Plaza, 311 S. Akard
Room 2040.03
Dallas, Texas 75202

Mr. Randy Ham, Assistant Director
AT&T Wholesale
8th Floor
600 North 19th Street
Birmingham, Alabama 35203

Ms. Lynn Allen-Flood
AT&T Wholesale – Contract Negotiations
675 W. Peachtree St. N.E.
34S91
Atlanta, GA 30375

Re: NPCR, Inc. d/b/a Nextel Partners adoption of "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 Kay, Randy and Lynn:

The purpose of this letter is to notify BellSouth Telecommunications, Inc., d/b/a AT&T Southeast ("AT&T") that NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners') is exercising its right to adopt 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, filed and approved in each of the 9-legacy BellSouth states[1]. Nextel Partners is exercising its right pursuant to the

[1] For the purposes of this letter, the 9 legacy BellSouth states means: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

FCC 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[2], and 47 U.S.C. § 252(i).

Nextel Partners is a wholly owned subsidiary of Sprint Nextel Corporation, as are Sprint Communications Company L.P. ("Sprint CLEC") and Sprint Spectrum L.P. ("Sprint PCS"). Although neither Nextel Partners nor Sprint CLEC consider it either necessary or required by law, to avoid any potential delay regarding the exercise of Nextel Partner's right to adopt the Sprint ICA, Sprint CLEC stands ready, willing and able to also execute the Sprint ICA as adopted by Nextel Partners in order to expeditiously implement Nextel Partners' adoption.

As AT&T is aware, all relevant state-specific differences among the 9 legacy BellSouth states are already contained within the Sprint ICA. 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 to prevent AT&T from immediately making the Sprint ICA available within each applicable state to Nextel Partners 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 to prevent AT&T from also making the Sprint ICA available to Nextel Partners in each applicable state pursuant to Merger Commitment No. 2.

---

[2] 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 aground 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.

Enclosed are Nextel Partners' completed AT&T forms with respect to Merger Commitment Nos. 1 and 2, with any language within such forms stricken to the extent such language is not contained within the Merger Commitments.

Also enclosed for AT&T's execution are two copies of an adoption document to implement Nextel Partner's adoption of the Sprint ICA. Please sign and return both executed documents for receipt by me no later than Tuesday, May 29, 2007. Upon receipt I will have both documents executed on behalf of Nextel Partners and return one fully executed adoption document to you. I will also cause to be filed with each of the 9 state commissions a copy of the fully executed adoption document along with a copy of the current 1,169 page Sprint ICA, as amended, which I will print off from your website at:

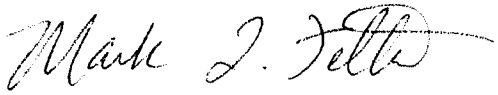
http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf

To the extent notice may be deemed necessary pursuant to the existing interconnection agreements between Nextel Partners and AT&T, please also consider this letter as Nextel Partners' conditional notice to terminate the existing interconnection agreements between Nextel Partners and AT&T in a given state upon acknowledgement by such state's commission that Nextel Partners has adopted the Sprint ICA. Upon such acknowledgement, the existing interconnection agreement between Nextel Partners and BellSouth Telecommunications, Inc. will then be considered terminated and superseded by the adopted Sprint ICA.

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

Thank you in advance for your prompt attention to this matter.

Sincerely,



Mark G. Felton

Enclosures

CC: Mr. Joseph M. Chiarelli, Counsel for Nextel Partners
Mr. William R. Atkinson, Counsel for Nextel Partners
Mr. Jim Kite, Interconnection Solutions