BEFORE THE

PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina and Sprint Spectrum L.P., Nextel South Corp., and NPCR, Inc. d/b/a Nextel Partners	)))))))	Docket No. 2010-154-C
In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina and Sprint Communications Company L.P.	))))))	Docket No. 2010-155-C

MOTION OF SPRINT SPECTRUM, L.P. D/B/A SPRINT PCS, NEXTEL SOUTH CORP., NPCR, INC. D/B/A NEXTEL PARTNERS AND SPRINT COMMUNICATIONS COMPANY L.P., TO CONSOLIDATE ARBITRATION PETITIONS

Pursuant to Section 252(g) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), and Commission Rule 103-840, Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS"), Nextel South Corp. ("Nextel"), NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") and Sprint Communications Company L.P. (collectively "Sprint") respectfully move the Public Service Commission of South Carolina ("SCPSC" or "Commission") to consolidate the two above-captioned arbitration proceedings initiated by BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T" or "AT&T South

Carolina") on April 23, 2010. In support of its Motion, Sprint respectfully sets forth the arguments below.

BACKGROUND AND SUPPORT

On April 23, 2010, AT&T filed a petition for arbitration against Sprint Spectrum, L.P. d/b/a Sprint PCS, Nextel South Corp., and NPCR, Inc. d/b/a Nextel Partners (the *Wireless Petition*), which was assigned Docket No. 2010-154-C. On that same date, AT&T filed a petition for arbitration against Sprint Communications Company L.P., (the *Wireline Petition*) which was assigned Docket No. 2010-155-C. [1] The *Wireless Petition* and the *Wireline Petition* involve both substantially similar subject matter and substantially similar disputed issues as set forth in detail in Sprint's Joint Response filed today.[2]

Section 252(g) of the Act grants the Commission the express authority to consolidate arbitration proceedings "in order to reduce administrative burdens on telecommunications carriers, other parties to the proceeding and the State commission in carrying out its

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[1] *See and cf. In the Matter of Petition For Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina and Sprint Spectrum L.P., Nextel South Corp., and NPCR, Inc., d/b/a Nextel Partners*, SCPSC Docket No. 2010-154-C ("*Wireless Petition*"); and *In the Matter of Petition For Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina and Sprint Communications Company L.P.*, SCPSC Docket No. 2010-155-C ("*Wireline Petition*").

[2] *Joint Response of Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel South Corp., NPCR, Inc. d/b/a Nextel Partners and Sprint Communications Company L. P., to BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina's Duplicative Petitions for Section 252(b) Arbitration*, SCPSC Docket Nos. 2010-154-C and 2010-155-C (May 18, 2010) ("Joint Response"). *See also In Re: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners*, AT&T Kentucky's Response to Motion to Consolidate and to Procedural Proposals in Sprint CMRS's Response to Petition for Arbitration, Kentucky Pub. Serv. Commission Case No. 2010-00061, p. 6 (Mar. 29, 2010) ("AT&T Kentucky hopes to be able to agree to consolidation after the parties' renewed negotiations have run their course."); and *In Re: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Communications Company L.P.*, AT&T Kentucky's Response to Motion to Consolidate and to Procedural Proposals in Sprint CLEC's Petition for Arbitration, Kentucky Pub. Serv. Commission Case No. 2010-00062, p. 6 (Mar. 29, 2010) ("AT&T Kentucky hopes to be able to agree to consolidation after the parties' renewed negotiations have run their course.").

responsibilities under the Act."[3] Further, Commission Rule 103-840 authorizes the Commission to order two or more proceedings involving a similar question of law or fact to be consolidated for hearing where rights of the parties or the public interest will not be prejudiced by such action. The Commission has long recognized, and often employed, this authority to consolidate cases in order to conserve resources and promote efficiencies.[4] Given the materially overlapping nature of the *Wireless Petition* and the *Wireline Petition*, consolidating these petitions into one proceeding will, among other things, dramatically preserve the SCPSC's valuable resources, allow for immeasurable efficiencies and lessen the likelihood of unintended regulatory inconsistencies. The resources of the Commission and the parties that would be expended to litigate and resolve two separate, potentially massive and overlapping arbitrations are extensive, to say the least, and the Commission's and parties' investment in substantially duplicative efforts

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[3] 47 U.S.C. § 252(g) ("Where not inconsistent with the requirements of this Act, a State Authority may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State Authority in carrying out its responsibilities under this Act.").

[4] *See, e.g., Application of Time-Warner Cable Information Services (South Carolina, LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and necessity to Provide Telephone Services in the Services Areas of Farmers Telephone Cooperative, Inc., Fort Mill Telephone Co., Home Telephone Co., PBT Telecom, Inc., and Rock Hill Telephone Co., and for Alternative Regulation*, Commission Hearing Officer Directive, SCPSC Docket Nos. 2008-325-C, 2008-326-C, 2008-327-C, 2008-328-C, 2008-329-C (December 11, 2008) ("The Hearing Officer finds that the subject dockets involve common questions of law or fact, that judicial economy would be served by consolidation of these dockets for hearing, and that no prejudice to any party will result from such consolidation."); *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*; *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*, Order Granting Motion for Consolidation of Dockets, SCPSC Docket Nos. 2007-255-C, 2007-256-C (Oct. 9, 2007) ("The Commission finds that judicial economy would be served by consolidating the two dockets, and therefore grants the Motion to Consolidate"); *Petition of South Carolina Electric & Gas Company for assignment of Electric Service Area in Fairfield County, South Carolina, Town of Winnsboro vs. Fairfield Electric Cooperative, Inc.; Application of Town of Winnsboro for a Certificate of Public Convenience and Necessity to Sell and Distribute Electricity in Certain Unassigned Areas; Application of Fairfield Electric Cooperative, Inc. for assignment of Electric Service Area in Fairfield County, South Carolina*, Order Consolidating Dockets, SCPSC Docket Nos. 16,493, 80-195-E, 80-196-E, 80-264-E (September 1, 1981) ("[T]he Commission has determined that the legal and factual matters are substantially similar and that the administration of these proceedings would be most efficiently undertaken by a consolidation of these proceedings."

is simply unwarranted under the circumstances presented. Moreover, consolidation will not prejudice the rights of the parties or the public interest.

Sprint is entitled to one ICA with AT&T that supports unified interconnection arrangements and the exchange of all interconnection traffic (telecommunications and information services traffic exchanged over the same arrangements[5] – be it wireless, wireline and/or IP-enabled traffic) between Sprint and AT&T. Even if the parties were to ultimately use the "form" of two contracts, Sprint is still entitled to consistent and non-discriminatory terms and conditions in any ICA(s) it enters into with AT&T, except in very limited areas where either Sprint may consent to (or the FCC has expressly provided for) disparate treatment based upon "wireless" or "wireline" telecommunications concepts. Whether one or two contracts are used, the vast majority of the language in each contract should be the same so that Sprint is still able to have unified interconnection arrangements under which it can exchange all interconnection traffic with AT&T.

However, AT&T's *Wireline Petition* and *Wireless Petition* and their accompanying decision point lists ("DPLs") are not consistent in how they present competing language, in some places showing competing language as "stacked" (resulting in competing provisions being visually separated, thereby hindering comparison to confirm either accuracy or substantive differences between provisions), and in other sections showing differences only through "inter-lineated" text comparison. Neither AT&T approach provides a simple side-by-side comparison of competing language *in context*. Additionally, neither AT&T DPL expressly identifies all of the provisions where affirmative resolution appears to exist based on either party's acceptance of the other's proposed language or position. Further, the inconsistencies in AT&T's DPLs are not

[5] *See* 47 C.F.R. § 51.100(b) ("A telecommunications carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement so long as it is offering telecommunications services through the same arrangement as well.")

limited to problems of mere presentation of disputed language or lack of identification of resolved language. Even a cursory review of AT&T's separate DPLs confirms that AT&T takes inexplicably inconsistent positions as to *the same Sprint-proposed contract language even in the absence of any potential wireless vs. wireline concerns.*

For the purposes of this Motion, it is unnecessary and inefficient for Sprint to expend the resources to outline each and every similar disputed issue of fact and law and each instance of inconsistent treatment by AT&T in the *Wireless Petition* and the *Wireline Petition*. Still, by way of example, Sprint notes that when each Sprint issue is mapped/traced to its respective location in the AT&T Wireline and AT&T Wireless DPLs, it is clear that almost every one of Sprint's issues is present in both Docket No. 2010-154-C and 2010-155-C.[6] The following is a list of examples of various actions that AT&T appears to have taken/not taken as to Sprint issues, which demonstrates the need for all of Sprint's issues to be addressed in one proceeding to ensure consistency in issue-specific considerations and ultimate resolution:

- AT&T does not acknowledge and include the following Sprint-identified and unresolved Preliminary Issues in either of AT&T's DPLs:

    1. Have the parties had adequate time to engage in good faith negotiations?

    2. When can AT&T require Sprint Affiliated entities to have different contract provisions regarding the same Issues, or even entirely separate Agreements, based upon the technology used by a given Sprint entity?

    3. Should defined terms not only be consistent with the law, but also consistently used through the entire Agreement?

- As to various definitions and contract provisions, AT&T appears to have accepted Sprint's proposed language or deletions, but does not note such

[6] *See, e.g.,* **SPRINT EXHIBIT 2** (attached to *Joint Response*), General Terms and Conditions ("GTC") Part B collective definitions Issue 32, such as "Interconnection Facilities" which cross-reference identifies same definitional dispute to exist in both AT&T Wireless and Wireline DPLs; and substantive issues, such as **SPRINT EXHIBIT 2**, Attachment 3, Issue 4 regarding "Methods of Interconnection" which cross-reference maps the same Issue to AT&T Wireless Attachment 3, Issues 3 and 4, and AT&T Wireline Attachment 3, Issue 3.

items as "Resolved" in its DPLs.[7] Instead, AT&T appears to have intended to show such language in plain text in its proposed contract documents. The problem is that without a clear DPL indication as to what is "Resolved," ambiguities arise as to whether plain text language truly reflects agreed to "Resolved" language or not, as demonstrated by further categories below.

- There are numerous instances where, if a term may ultimately be determined to be necessary, in light of Sprint's position that it is entitled to unified interconnection arrangements, such terms may need to be included in the parties' ultimate contract(s) whether one contract or two may be used, but AT&T only includes a given provision in either its Wireline or Wireless DPL/proposed language, but not in both.[8]

- AT&T takes inconsistent positions between its two DPLs as to Sprint language.[9]

- AT&T fails to accurately depict Sprint language in one of its DPLs.[10]

If the Commission were to proceed to consider and adjudicate two separate arbitration proceedings and compile two separate evidentiary records, the Commission would risk the very real possibility of inadvertently rendering inconsistent determinations with regard to the same subject matter, the same contract language at issue and the same or related parties. To avoid the foregoing, which would only lead to further petitions, motions, hearings and decisions, and for administrative efficiency and judicial economy as provided for in 47 U.S.C. Section 252(g) and Commission Rule 103-840, the Commission should consolidate these proceedings.

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[7] *See, e.g.*, **SPRINT EXHIBIT 2**, Sprint Attachment 3, Issue 15. This Sprint Issue referred to two items, Dialing Parity and AT&T's "Attachment 3a – Out of Exchange-LEC". AT&T's plain text reflects the Dialing Parity language, but the Attachment 3a issue is still disputed.

[8] *See, e.g.* **SPRINT EXHIBIT 2** GTC, Part B, collective definitions Issue 32, such as "IntraMTA" or "InterMTA Traffic" as to which AT&T includes the term in its wireless DPL but not in its wireline DPL.

[9] *See, e.g.* **SPRINT EXHIBIT 2**, Attachment 3, Issue 3 Section 2.1 language regarding AT&T providing Interconnection at any Technically Feasible point *and cf.* AT&T wireless Attachment 3 Issue 3 which disputes Sprint Section 2.1 language and AT&T wireline Attachment 3 which accepts the same Sprint Attachment 3 Section 2.1 language.

[10] **SPRINT EXHIBIT 2**, Attachment 3, Issues 16 and 17 regarding whether there need to be two or more "Authorized Service traffic categories" and, depending on the answer to that question, how to describe the necessary categories, and *see and cf.* AT&T Wireless Attachment 3 Issue 14 and Wireline Attachment 3 Issue 14, but note that the Wireline DPL Issue 14 does not accurately depict Sprint's language.

CONCLUSION

For the foregoing reasons, and consistent with Section 252(g) of the Act, Commission Rule 103-840, and past Commission practice, Sprint respectfully requests that the Commission consolidate Docket Nos. 2010-154-C and 2010-155-C at the outset and without delay in order to immediately capture the efficiencies and benefits at risk. Both petitions share common issues of fact and law, and consolidation will promote the just, speedy, and inexpensive resolution of the proceedings without any prejudice to AT&T or to the public interest. Further, consolidating these petitions will preserve the SCPSC's and the parties' resources, allow for immeasurable efficiencies compared to proceeding with separate wireline and wireless arbitrations and lessen the likelihood of unintended regulatory inconsistencies.

PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth above, Sprint respectfully requests:

a) that AT&T's arbitration petitions in SCPSC Docket Nos. 2010-154-C and 2010-155-C be consolidated without delay for all purposes; and

b) that the Commission grant such other and further relief as it deems just and proper.

Respectfully submitted this 18th day of May, 2010.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by electronic mail service on the following this 18th day of May, 2010:

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