

GMH:ch

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

In Re: *Nextel South Corp.'s Notice of Election 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.*

Docket No. 07-00161

**BELLSOUTH TELECOMMUNICATIONS, INC. d/b/a
AT&T TENNESSEE'S MOTION TO DISMISS**

INTRODUCTION

BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T Tennessee") submits the following Motion to Dismiss the Petition Regarding Notice of Election of the Existing Interconnection Agreement ("Petition") filed by Nextel South Corp. ("Nextel"). In the Petition, Nextel seeks to adopt the interconnection agreement between AT&T Tennessee and Sprint. However, the basis upon which Nextel relies for its requested adoption is misplaced. First, the requested adoption is premature because Nextel failed to abide by contractual obligations regarding dispute resolution found in its existing interconnection agreement with AT&T Tennessee.¹ Second, Nextel is attempting to adopt an expired agreement and thus the adoption request does not meet the legal timing requirement under the

¹ AT&T Tennessee requests that, in resolving this matter, the TRA take judicial notice of the existing interconnection agreement between Nextel and AT&T Tennessee, dated January 1, 2001, referred to by Nextel on pages 1-2 of its Petition. Terms and conditions found within that existing interconnection agreement between Nextel and AT&T Tennessee require Nextel to "abide by FCC rules and regulations" regarding adoption of interconnection agreements. AT&T Tennessee/Nextel Interconnection Agreement, Article XVI. That interconnection agreement also contains a dispute resolution process by which the parties must abide in resolving disputes. See *Id.*, Article XIX.

Telecommunications Act of 1996 (the "Act"). Third, the Tennessee Regulatory Authority ("TRA") does not have the authority to interpret and enforce the AT&T merger conditions resulting from the Federal Communications Commission's ("FCC") AT&T Inc. and BellSouth Corp. merger proceeding. For these reasons, and as further explained below, pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure, the TRA should dismiss, as a matter of law, Nextel's Petition.

I. Standard For Motion To Dismiss

The TRA properly grants a Rule 12.02(6) motion when a respondent demonstrates that a complainant has failed to state, within the pleadings, facts sufficient to constitute a cause of action.² As a preliminary matter, in determining the sufficiency of a complaint, the TRA should confine its consideration to the complaint and the grounds asserted in the motion to dismiss. However, in accordance with Tennessee Rules of Evidence, Rule 201, the TRA may take notice of judicially cognizable facts. Moreover, in accordance with Rule 201 (d), the TRA shall take judicial notice of facts that are generally known and whose accuracy cannot reasonably be disputed "if requested by a party and supplied with the necessary information."³

In its Petition, Nextel refers to the existing interconnection agreement between AT&T Tennessee and Nextel as well as the interconnection agreement between AT&T Tennessee and Sprint that it seeks to adopt.⁴ Those interconnection

² See Tenn. R. Civ. P. 12.02(6); *Merriman v. Smith*, 599 S.W. 2d 548 (Tenn. Ct. App. 1979.)

³ Tenn. R. Evid. 201(d).

⁴ See Petition at 1-2.

agreements are generally known by the TRA and the TRA is capable of accurate and ready determination of the content and applicability of those documents to the instant matter. Accordingly, AT&T Tennessee requests, pursuant to Rule 201(d), that the TRA take judicial notice of the existing interconnection agreements between AT&T Tennessee and Nextel and AT&T Tennessee and Sprint.

II. Nextel Failed To Comply With The Parties' Existing Agreement.

Nextel did not comply with the requisite steps for dispute resolution set forth in the parties' current interconnection agreement, and therefore its Petition is improperly before the TRA.⁵ Nextel and AT&T Tennessee entered into an interconnection agreement with an effective date of June 14, 2001. That agreement is currently operational and its terms and conditions are binding. The agreement contains a provision addressing Nextel's right to adopt interconnection agreements AT&T Tennessee has entered into with other carriers. Specifically, under Article XVI titled "Modification of Agreement," the AT&T Tennessee/Nextel interconnection agreement provides in pertinent part:

- A. [AT&T Tennessee] shall make available, ***pursuant to 47 USC §252 and the FCC rules and regulations regarding such availability***, to Carrier any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC §252. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service, or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection,

⁵ AT&T Tennessee requests that, in resolving this matter, the TRA take judicial notice of the existing interconnection agreement between Nextel and AT&T Tennessee referred to by Nextel in its Notice.

service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement.

(emphasis added).

As conceded by Nextel in its Petition, AT&T Tennessee disagrees with Nextel's position. See Petition at Exhibit C. Nevertheless, Nextel unilaterally filed its Petition with the TRA on June 22, 2007. However, the AT&T Tennessee/Nextel agreement contains provisos designed to assist the parties in resolving any and all disputes regarding terms and conditions contained within the agreement. The dispute resolution clause precludes Nextel from unilaterally filing an adoption in this disputed matter. Specifically, pursuant to the dispute resolution clause:

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the appropriate company representatives. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute. However, each party reserves the right to seek judicial review of any ruling made by the Commission concerning this Agreement.

Here, because Nextel disagreed with AT&T Tennessee, Nextel was contractually bound to follow the dispute resolution process contained in the parties' agreement which it did not do. Accordingly, Nextel's Petition is improperly before the TRA and should be dismissed.

III. Nextel Did Not File The Petition Within “A Reasonable Period Of Time” As Required By 47 C.F.R. §51.809(c).

The TRA should dismiss the attempted adoption because it is contrary to federal law. This is so because Nextel wants to adopt an expired agreement.⁶ Section 252(i) of 47 U.S.C. obligates AT&T Tennessee to provide competing carriers with “any interconnection, service or network element” on the same terms contained in any approved and publicly-filed AT&T Tennessee contract. However, this obligation is not unlimited. Particularly, in accordance with federal law, AT&T Tennessee’s obligation to provide the facilities and services to carriers such as Nextel is limited to only a “reasonable period of time” after the original contract is approved.⁷

Although there is no precise definition of a “reasonable period of time,” other commissions have found that attempting to adopt an agreement several months *before* expiration of an agreement is not within “a reasonable period of time”. For example, in two cases from other jurisdictions, *In Re: Global NAPs South, Inc.*, 15 FCC R’cd 23318 (August 5, 1999) (“*Global NAPs One*”) and *In re: Notice of Global NAPs South, Inc.*, Case No. 8731 (Md. PSC July 15, 1999) (“*Global NAPs Two*”), a CLEC’s request to adopt an interconnection agreement within approximately ten months and seven months, respectively, of each adopted

⁶ Pursuant to the authority cited above, AT&T Tennessee requests that the TRA take judicial notice of the TRA-approved AT&T Tennessee/Sprint ICA that Nextel seeks to adopt and which is the subject of its Petition.

⁷ In limiting the period of time during which an interconnection agreement can be adopted, 47 C.F.R. §51.809(c) asserts: “[i]ndividual agreements shall remain available for use by telecommunications carriers pursuant to this section **for a reasonable period of time after the approved agreement is available for public inspection** under section 252(h) of the Act” (emphasis added).

agreement's termination date was found to be beyond the "reasonable period of time" requirement.⁸

For instance, in *Global NAPs One*, attached hereto as "Exhibit C," Global NAPs requested adoption of an interconnection agreement approved in 1996. Global NAPs sought adoption of the agreement in August 1998, when the agreement was by its terms set to expire on July 1, 1999. The Virginia State Corporation Commission ("Virginia Commission") denied Global NAP's request because of the limited amount of time remaining under the agreement. As a result, Global NAPs petitioned the FCC for an order preempting the Virginia Commission's decision. The FCC denied Global NAP's petition.⁹

Likewise, in *Global NAPs Two*, attached hereto as "Exhibit D," the Maryland Public Service Commission held that it was unreasonable to allow Global NAPs to adopt a three year interconnection agreement approximately two and a half years into its term.¹⁰

Nextel is erroneously attempting to push the "reasonable period of time" envelope even further as Nextel seeks to adopt an *expired* agreement.¹¹ It stretches credulity to assert that an attempt to adopt an expired agreement (and in this case, one that has been *expired for over two years*) has been made within a

⁸ See *In Re: Global NAPs South, Inc.*, 15 FCC R'cd 23318 (August 5, 1999) (attached hereto as "Exhibit C"); *In re: Notice of Global NAPs South, Inc.*, Case No. 8731 (Md. PSC July 15, 1999) (attached hereto as "Exhibit D").

⁹ See *Global NAPs One*.

¹⁰ See *Global NAPs Two*.

¹¹ The ICA was entered into on January 1, 2001, and was amended twice to extend the term to December 31, 2004.

reasonable period of time after the agreement was approved by the TRA and made available for public inspection.

Furthermore, AT&T Tennessee and Sprint are currently engaged in arbitrating a new interconnection agreement. It would be highly inefficient and impractical to allow Nextel to adopt an antiquated expired agreement when parties to the original agreement are themselves moving to an updated agreement. Clearly such a result was never contemplated under the “reasonable period of time” limitation found in 47 C.F.R. §51.809(c) and would be inconsistent with common sense and good public policy.

Indeed, the telecommunications industry is highly dynamic and undergoes rapid technological and regulatory changes. To maintain efficiencies and encourage innovation, interconnection agreements must be updated to keep pace with the ever-advancing industry. Allowing carriers to opt into antiquated expired agreements would be inconsistent with that goal. For example, since the ICA Nextel seeks to adopt became effective in 2001, the wireless industry’s traffic patterns have continued to evolve. To address proper jurisdictionalization of traffic for billing purposes, AT&T Tennessee has developed a methodology to accurately measure the traffic between Major Trading Areas (“InterMTA traffic”) based upon wireless carriers populating a new field found in call detail records. The old ICA Nextel wishes to adopt does not address this issue; however, any new ICA will.

Simply put, Nextel’s requested adoption of the expired ICA falls far beyond the “reasonable period of time” requirement mandated by law and common sense.

Accordingly, the TRA should determine, as a matter of law, that Nextel did not file its Petition for adoption of the ICA within a reasonable period of time as prescribed in 47 C.F.R. §51.809(c) and dismiss the Petition for failure to state a cause of action.

IV. The Authority Does Not Have Jurisdiction Over AT&T Tennessee's Merger Commitments.

In a letter to AT&T Tennessee dated May 18, 2007, and in its Petition, Nextel claims to rely upon merger commitments adopted and approved by the FCC in the BellSouth/AT&T merger order *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 ("Merger Order"), as the basis for adoption of the ICA.¹² However, the federal merger commitments approved by the FCC cannot support Nextel's claims because the TRA does not have jurisdiction over them.

It is well settled that the TRA must possess jurisdiction over the parties, as well as the subject matter.¹³ Moreover, "[a]ny authority exercised by the Public Service Commission must be as the result of an express grant of authority by statute or arise by necessary implication from the expressed statutory grant of power."¹⁴ A body "acting without jurisdiction of the subject matter, or beyond the

¹² See Letter at 1, 2 (attached hereto as "Exhibit A"); Notice at 5.

¹³ See, e.g., *Riden v. Snider*, 832 S.W. 2d 341 (1991).

¹⁴ *Tennessee Public Service Commission v. Southern Railway Company*, 554 S.W. 2d 612, 613 (1977) (citations omitted).

jurisdiction conferred upon it, is therefore acting without authority of law and its judgments and decrees in so acting are void and bind no one.”¹⁵

Accordingly, a complaint or request for relief is properly dismissed if it asks the TRA to address matters over which it has no jurisdiction or if it seeks relief that the TRA is not authorized to grant. In the present instance, because the TRA does not possess subject matter jurisdiction over the merger commitments upon which Nextel relies, the Petition should be dismissed as a matter of law.

More specifically, while the TRA has authority under the Act in Section 252 arbitrations to interpret and resolve issues of federal law, including whether or not the arbitrated issues comply with Section 251 and the FCC regulations prescribed pursuant to Section 251, the Act does not grant the TRA with any general authority to resolve and enforce purported violations of federal law or FCC orders.¹⁶

The Florida Public Service Commission (“Florida Commission”) addressed a similar issue in Order No. PSC-03-1392-FOF-TP (“Sunrise Order”). In the Sunrise Order, the Florida Commission held that “[f]ederal courts have ruled that a state agency is not authorized to take administrative action based solely on federal statutes” and that “[s]tate agencies, as well as federal agencies, are only empowered by the statutes pursuant to which they are created.”¹⁷ The Florida Commission further noted, however, it can construe and apply federal law “in order

¹⁵ *Mid-South Pavers v. Arncos Construction, Inc.*, 771 S.W. 2d 420, 423 (Tenn. App. 1989) (citations omitted.)

¹⁶ *See e.g.*, 47 U.S.C. § 251.

¹⁷ *See Sunrise Order* at 3 (citations omitted).

to make sure [its] decision under state law does not conflict” with federal law.¹⁸ Accordingly, in the Sunrise Order, the Florida Commission determined that it cannot provide a remedy (federal or state) for a violation of federal law but that the Commission can interpret and apply federal law to ensure that its decision under state law does not conflict with federal law.¹⁹

The Florida Commission echoed these same principles in Order No. PSC-04-0423-FOF-TP (Docket No. 031125-TP), wherein it dismissed a request by a Competitive Local Exchange Carrier (“CLEC”) to find that BellSouth violated federal law. Based on the Sunrise Order, the Florida Commission dismissed the federal law count of the complaint, holding “[s]ince Count Five relies solely on a federal statute as the basis for relief, we find it appropriate to dismiss Count Five.”²⁰

Consistent with the above decisions, 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.²¹

Here, Nextel’s claim is not under state law; instead, it is attempting to enforce federal merger commitments via a state proceeding. Consequently, the FCC alone possesses the jurisdiction to interpret and enforce the subject merger commitments.

Indeed, the FCC explicitly reserved jurisdiction over the merger commitments contained in the Merger Order. Specifically, the FCC stated that “[f]or the

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ *Serv. Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 177 (1959).

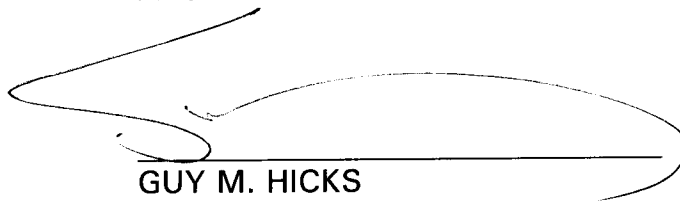
avoidance of doubt, unless otherwise expressly stated to the contrary, ***all conditions and commitments proposed in this letter are enforceable by the FCC*** and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.”²² Nowhere in the Merger Order does the FCC provide that the interpretation of merger commitments is to occur outside the FCC.²³

Further, recognition of the FCC’s exclusive authority ensures a uniform regulatory framework and avoids a conflicting and diverse interpretation of FCC requirements. Any other decision would result in the potential for conflicting rulings and piece-meal litigation. For these reasons, the TRA should dismiss the Petition.

CONCLUSION

For the foregoing reasons, AT&T Tennessee respectfully requests the TRA to dismiss the Petition filed by Nextel in this Docket.

AT&T TENNESSEE

A large, stylized handwritten signature in black ink, appearing to read 'GUY M. HICKS', is written over a horizontal line.

GUY M. HICKS
JOELLE PHILLIPS
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-1800
(615) 214-6301

²² Merger Order (Appendix F), p. 147 (attached hereto as “Exhibit B”) (emphasis added).

²³ AT&T Tennessee recognizes that the FCC stated in the Merger Order that “[i]t is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended....” Merger Order at 147. However, the purported source of Nextel’s adoption right, at least in part, is pursuant to the Merger Order and not the Act. Thus, the above statement from the FCC does not salvage Nextel’s argument.

E. EARL EDENFIELD JR.
JOHN T. TYLER
675 West Peachtree Street, N.E., #4300
Atlanta, GA 30375

EXHIBIT A



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 states¹. 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. 06-74², 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 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.

Ms. Kay Lyon, Mr. Randy Ham and Ms. Lynn Allen-Flood
May 18, 2007
Page 3

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

Enclosures

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

TO: Contract Management
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

May 18, 2007

RE: ^{Notice}~~Request~~ to Port Interconnection Agreement

Director – Contract Management:

Pursuant to ICA Merger Commitment 7.1 under "Reducing Transaction Costs Associated with Interconnection Agreements," effective December 29, 2006, associated with the merger of AT&T Inc. and BellSouth Corp. ("ICA Merger Commitment 7.1"), Nextel South Corp. & Nextel West Corp. ("Nextel") ("Carrier") desires to exercise its right to port the existing Interconnection Agreement between BellSouth Telecom, Inc. ("AT&T") and Sprint Comm. Co. L.P. & Sprint Spectrum L.P. in the state of AL, FL, GA, KY, LA, MS, NC, SC & TN to the state of MS, NC, SC & TN and, by this notice, requests AT&T to ~~initiate a review to support this request~~ ^{notice request} to support this request. Carrier understands that pursuant to ICA Merger Commitment 7.1, porting of the Interconnection Agreement is subject to a variety of conditions including (without limitation) technical feasibility and state-specific pricing, terms and conditions. Carrier understands AT&T will reply in writing when its review of this porting ~~request~~ ^{notice request} has been completed.

CARRIER NOTICE CONTACT INFO*	
NOTICE CONTACT NAME	Please see attached
NOTICE CONTACT TITLE	
STREET ADDRESS	
ROOM OR SUITE	
CITY, STATE, ZIP CODE	
E-MAIL ADDRESS	
TELEPHONE NUMBER	
FACSIMILE NUMBER	
STATE OF INCORPORATION	Delaware
TYPE OF ENTITY (corporation, limited liability company, etc.)	Corporation

Enclose proof of certification for state requested.

Enclose documentation from Telcordia as confirmation of AGNA.

Enclose documentation from NECA as confirmation of OGN(s).

Enclose verification of type of entity and registration with Secretary of State.

AT&T already has any necessary, applicable information in its systems.

Form completed and submitted by:

Nextel

Contact number:

Jim Kite @ 913-762-4281

* All requested carrier notice contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.

**Nextel South Corp. and Nextel West Corp. (collectively "Nextel"),
and NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners")
Carrier Contact Notice Information Attachment**

All AT&T notices to Nextel or Nextel Partners are to be sent to the same person(s) at the same addresses as identified in the interconnection agreement between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P. a/k/a Sprint Communications Company Limited Partnership and Sprint Spectrum L.P. (collectively "Sprint") dated January 1, 2001 ("the Sprint ICA"). Nextel and Nextel Partners understand Sprint is in the process of preparing a separate written notice to likewise provide AT&T the following updated information regarding the sending of any notices pursuant to the Sprint ICA:

For Sprint, Nextel or Nextel Partners:

Manager, ICA Solutions
Sprint
P. O. Box 7954
Shawnee Mission, Kansas 66207-0954

or

Manager, ICA Solutions
Sprint
KSOPHA0310-3B268
6330 Sprint Parkway
Overland Park, KS 66251
(913) 762-4847 (overnight mail only)

With a copy to:

Legal/Telecom Mgmt Privacy Group
P O Box 7966
Overland Park, KS 66207-0966

or

Legal/Telecom Mgmnt Privacy Group
Mailstop: KSOPKN0214-2A568
6450 Sprint Parkway
Overland Park, KS 66251
913-315-9348 (overnight mail only)

TO: Contract Management
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

May 18, 2007

RE: ~~Request~~ ^{Notice} to Adopt Interconnection Agreement

Director – Contract Management:

Pursuant to ICA Merger Commitment 7.2 under "Reducing Transaction Costs Associated with Interconnection Agreements," ordered by the FCC effective December 29, 2006 in connection with the merger of AT&T Inc. and BellSouth Corporation ("ICA Merger Commitment 7.2"), Nextel South Corp. & Nextel West Corp. ("Nextel") ("Carrier") ~~desires to exercise~~ its right to opt into the existing Interconnection Agreement, ("ICA") between BellSouth Telecomm, Inc. ("AT&T") and Sprint Com. Co. L.P. & Sprint Spectrum L.P. in the state of AL, FL, GA, KY, LA, MS, NC, SC & TN. ~~Carrier understands that its request to opt into the ICA is subject to applicable requirements governing this process as set forth in Section 252(i) and Rule 51.809. Moreover, pursuant to ICA Merger Commitment 7.2, if the Agreement has not been amended to reflect changes of law, Carrier acknowledges that it is obligated to negotiate in good faith the execution of an Amendment regarding such change of law and agrees to complete said execution within 30 days after it has opted into the ICA. AT&T will reply in writing to this formal request.~~ ^{notice}

	CARRIER NOTICE CONTACT INFO*
NAME, TITLE	
STREET ADDRESS	
ROOM OR SUITE	
CITY, STATE, ZIP CODE	
E-MAIL ADDRESS	
TELEPHONE NUMBER	
FACSIMILE NUMBER	
STATE OF INCORPORATION	Delaware
TYPE OF ENTITY (corporation, limited liability company, etc.)	Corporation

Enclose proof of certification for state requested:

Enclose ~~documentation from Telcordia~~ as confirmation of ACNA.

Enclose ~~documentation from NECA~~ as confirmation of OCN(s).

Enclose ~~verification~~ of type of entity and registration with Secretary of State.

} AT&T already has any necessary, applicable information in its systems.

Form completed and submitted by:

Nextel

Contact number:

JimKite@913-762-4281

* All requested carrier contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.

**Nextel South Corp. and Nextel West Corp. (collectively "Nextel"),
and NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners")
Carrier Contact Notice Information Attachment**

All AT&T notices to Nextel or Nextel Partners are to be sent to the same person(s) at the same addresses as identified in the interconnection agreement between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P. a/k/a Sprint Communications Company Limited Partnership and Sprint Spectrum L.P. (collectively "Sprint") dated January 1, 2001 ("the Sprint ICA"). Nextel and Nextel Partners understand Sprint is in the process of preparing a separate written notice to likewise provide AT&T the following updated information regarding the sending of any notices pursuant to the Sprint ICA:

For Sprint, Nextel or Nextel Partners:

Manager, ICA Solutions
Sprint
P. O. Box 7954
Shawnee Mission, Kansas 66207-0954

or

Manager, ICA Solutions
Sprint
KSOPHA0310-3B268
6330 Sprint Parkway
Overland Park, KS 66251
(913) 762-4847 (overnight mail only)

With a copy to:

Legal/Telecom Mgmt Privacy Group
P O Box 7966
Overland Park, KS 66207-0966

or

Legal/Telecom Mgmnt Privacy Group
Mailstop: KSOPKN0214-2A568
6450 Sprint Parkway
Overland Park, KS 66251
913-315-9348 (overnight mail only)

By and Between

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

And

**Nextel South Corp.
(For the States of Alabama, Florida, Georgia, Louisiana,
Mississippi, North Carolina, Tennessee, and South Carolina)**

And

**Nextel West Corp.
(For the State of Kentucky)**

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., d/b/a AT&T Southeast ("AT&T"), a Georgia Corporation, having offices at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns, and Nextel South Corp. ("Nextel South"), a Delaware Corporation, and Nextel West Corp. ("Nextel West"), a Delaware Corporation (Nextel South and Nextel West are collectively referred to herein as "Nextel"), and shall be deemed effective in the respective states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee and South Carolina as of the date it is filed with each state Commission or applicable Authority in such states ("the Effective Date").

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

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

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

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

WHEREAS, Nextel is a wholly owned subsidiary of Sprint Nextel Corporation, as are Sprint CLEC and Sprint PCS and, 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 adoption of the Sprint ICA, Sprint CLEC is ready, willing and able to also execute this Agreement as an accommodation party.

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

1. Nextel and AT&T shall adopt in its entirety the 1,166 page Sprint ICA, a copy of which is attached hereto as Exhibit A, and is also available for public view on the AT&T website at:

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

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

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

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

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

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

**Nextel South Corp. and
Nextel West Corp.**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Sprint Communications Company
Limited Partnership a/k/a Sprint
Communications Company L.P. Sprint
Spectrum L.P., as an Accommodating
Party**

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT B

APPENDIX F

Conditions

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them. Unless otherwise specified herein, the commitments described herein shall become effective on the Merger Closing Date. The commitments described herein shall be null and void if AT&T and BellSouth do not merge and there is no Merger Closing Date.

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

MERGER COMMITMENTS

For 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.

Repatriation of Jobs to the U.S.

AT&T/BellSouth¹ is committed to providing high quality employment opportunities in the U.S. In order to further this commitment, AT&T/BellSouth will repatriate 3,000 jobs that are currently outsourced by BellSouth outside of the U.S. This repatriation will be completed by December 31, 2008. At least 200 of the repatriated jobs will be physically located within the New Orleans, Louisiana MSA.

Promoting Accessibility of Broadband Service

1. By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (*i.e.*, Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory.² To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). AT&T/BellSouth will make available broadband Internet access service to the remaining living units using alternative technologies

¹ AT&T/BellSouth refers to AT&T Inc., BellSouth Corporation, and their affiliates that provide domestic wireline or Wi-Max fixed wireless services.

² As used herein, the "AT&T/BellSouth in-region territory" means the areas in which an AT&T or BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i). "AT&T in-region territory" means the area in which an AT&T operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i), and "BellSouth in-region territory" means the area in which a BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.³

2. AT&T/BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, between July 1, 2007, and June 30, 2008, replace their AT&T/BellSouth dial-up Internet access service with AT&T/BellSouth's ADSL service and elect a term plan for their ADSL service of twelve months or greater.

3. Within six months of the Merger Closing Date, and continuing for at least 30 months from the inception of the offer, AT&T/BellSouth will offer to retail consumers in the Wireline Buildout Area, who have not previously subscribed to AT&T's or BellSouth's ADSL service, a broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of \$10 per month.

Statement of Video Roll-Out Intentions

AT&T is committed to providing, and has expended substantial resources to provide, a broad array of advanced video programming services in the AT&T in-region territory. These advanced video services include Uverse, on an integrated IP platform, and HomeZone, which integrates advanced broadband and satellite services. Subject to obtaining all necessary authorizations to do so, AT&T/BellSouth intends to bring such services to the BellSouth in-region territory in a manner reasonably consistent with AT&T's roll-out of such services within the AT&T in-region territory. In order to facilitate the provision of such advanced video services in the BellSouth in-region territory, AT&T/BellSouth will continue to deploy fiber-based facilities and intends to have the capability to reach at least 1.5 million homes in the BellSouth in-region territory by the end of 2007. AT&T/BellSouth agrees to provide a written report to the Commission by December 31, 2007, describing progress made in obtaining necessary authorizations to roll-out, and the actual roll-out of, such advanced video services in the BellSouth in-region territory.

Public Safety, Disaster Recovery

1. By June 1, 2007, AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster.

2. In order to further promote public safety, within thirty days of the Merger Closing Date, AT&T/BellSouth will donate \$1 million to a section 501(c)(3) foundation or public entities for the purpose of promoting public safety.

³ For purposes of this commitment, a low income living unit shall mean a living unit in AT&T/BellSouth's in-region territory with an average annual income of less than \$35,000, determined consistent with Census Bureau data, *see* California Public Utilities Code section 5890(j)(2) (as added by AB 2987) (defining low income households as those with annual incomes below \$35,000), and a rural area shall consist of the zones in AT&T/BellSouth's in-region territory with the highest deaveraged UNE loop rates as established by the state commission consistent with the procedures set forth in section 51.507 of the Commission's rules. 47 C.F.R. § 51.507.

Service to Customers with Disabilities

AT&T/BellSouth has a long and distinguished history of serving customers with disabilities. AT&T/BellSouth commits to provide the Commission, within 12 months of the Merger Closing Date, a report describing its efforts to provide high quality service to customers with disabilities.

UNEs

1. The AT&T and BellSouth ILECs shall continue to offer and shall not seek any increase in state-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. For purposes of this commitment, an increase includes an increased existing surcharge or a new surcharge unless such new or increased surcharge is authorized by (i) the applicable interconnection agreement or tariff, as applicable, and (ii) by the relevant state commission. This commitment shall not limit the ability of the AT&T and BellSouth ILECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.
2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.
3. AT&T/BellSouth shall cease all ongoing or threatened audits of compliance with the Commission's EELs eligibility criteria (as set forth in the *Supplemental Order Clarification's* significant local use requirement and related safe harbors, and the *Triennial Review Order's* high capacity EEL eligibility criteria), and shall not initiate any new EELs audits.

Reducing Transaction Costs Associated with Interconnection Agreements

1. 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.
2. 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.
3. The AT&T/BellSouth ILECs shall allow a requesting telecommunications carrier to use its pre-existing interconnection agreement as the starting point for negotiating a new agreement.

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

Special Access

Each of the following special access commitments shall remain in effect until 48 months from the Merger Closing Date.

1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act ("AT&T/BellSouth BOCs")⁴ will implement, in the AT&T and BellSouth Service Areas,⁵ the Service Quality Measurement Plan for Interstate Special Access Services ("the Plan"), similar to that set forth in the SBC/AT&T Merger Conditions, as described herein and in Attachment A to this Appendix F. The AT&T/BellSouth BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T/BellSouth BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T and BellSouth Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and BellSouth section 272(a) affiliates, (ii) their BOC and other affiliates, and (iii) non-affiliates.⁶ The AT&T/BellSouth BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T/BellSouth BOCs shall implement the Plan for the first full quarter following the Merger Closing Date. This commitment shall terminate on the earlier of (i) 48 months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth files its 16th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

2. AT&T/BellSouth shall not increase the rates paid by existing customers (as of the Merger Closing Date) of DS1 and DS3 local private line services that it provides in the AT&T/BellSouth in-region territory pursuant to, or referenced in, TCG FCC Tariff No. 2 above their level as of the Merger Closing Date.

3. AT&T/BellSouth will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a)

⁴ For purposes of clarity, the special access commitments set forth herein do not apply to AT&T Advanced Solutions, Inc. and the Ameritech Advanced Data Services Companies, doing business collectively as "ASI."

⁵ For purposes of this commitment, "AT&T and BellSouth Service Areas" means the areas within AT&T/BellSouth's in-region territory in which the AT&T and BellSouth ILECs are Bell operating companies as defined in 47 U.S.C. § 153(4)(A).

⁶ BOC data shall not include retail data.

affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates. AT&T/BellSouth also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.⁷

5. No AT&T/BellSouth ILEC may increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T/BellSouth in-region territory, as set forth in tariffs on file at the Commission on the Merger Closing Date, and as set forth in tariffs amended subsequently in order to comply with the provisions of these commitments.

6. In areas within the AT&T/BellSouth in-region territory where an AT&T/BellSouth ILEC has obtained Phase II pricing flexibility for price cap services ("Phase II areas"), such ILEC will offer DS1 and DS3 channel termination services, DS1 and DS3 mileage services, and Ethernet services,⁸ that currently are offered pursuant to the Phase II Pricing Flexibility Provisions of its special access tariffs,⁹ at rates that are no higher than, and on the same terms and conditions as, its tariffed rates, terms, and conditions as of the Merger Closing Date for such services in areas within its in-region territory where it has not obtained Phase II pricing flexibility. In Phase II areas, AT&T/BellSouth also will reduce by 15% the rates in its interstate tariffs as of the Merger Closing Date for Ethernet services that are not at that time subject to price cap regulation. The foregoing commitments shall not apply to DS1, DS3, or Ethernet services provided by an AT&T/BellSouth ILEC to any other price cap ILEC, including any affiliate of such other price cap ILEC,¹⁰ unless such other price cap ILEC offers DS1 and DS3 channel termination and mileage services, and price cap Ethernet services in all areas in which it has obtained Phase II pricing flexibility relief for such services (hereinafter "Reciprocal Price Cap Services") at rates, and on the terms and conditions, applicable to such services in areas in which it has not obtained Phase II pricing flexibility for such services, nor shall AT&T/BellSouth provide the aforementioned 15% discount to such price cap ILEC or affiliate thereof unless such ILEC makes generally available a reciprocal discount for any Ethernet service it offers outside of price cap regulation (hereinafter "Reciprocal Non-Price Cap Services"). Within 14 days of the Merger Closing Date, AT&T/BellSouth will provide notice of this commitment to each price cap ILEC that purchases, or that has an affiliate that purchases, services subject to this commitment from an AT&T/BellSouth ILEC. If within 30 days thereafter, such price cap ILEC does not: (i) affirmatively inform AT&T/BellSouth and the Commission of its intent to sell Reciprocal Price Cap Services in areas where it has received Phase II pricing flexibility for such services at the rates, terms, and conditions that apply in areas where it has

⁷ Neither this merger commitment nor any other merger commitment herein shall be construed to require AT&T/BellSouth to provide any service through a separate affiliate if AT&T/BellSouth is not otherwise required by law to establish or maintain such separate affiliate.

⁸ The Ethernet services subject to this commitment are AT&T's interstate OPT-E-MAN, GigaMAN and DecaMAN services and BellSouth's interstate Metro Ethernet Service.

⁹ The Phase II Pricing Flexibility Provisions for DS1 and DS3 services are those set forth in Ameritech Tariff FCC No. 2, Section 21; Pacific Bell Tariff FCC No. 1, Section 31; Nevada Bell Tariff FCC No. 1, Section 22; Southwestern Bell Telephone Company Tariff FCC No. 73, Section 39; Southern New England Telephone Tariff FCC No. 39, Section 24; and BellSouth Telecommunications Tariff FCC No. 1, Section 23.

¹⁰ For purposes of this commitment, the term "price cap ILEC" refers to an incumbent local exchange carrier that is subject to price cap regulation and all of its affiliates that are subject to price cap regulation. The term "affiliate" means an affiliate as defined in 47 U.S.C. § 153(1) and is not limited to affiliates that are subject to price cap regulation.

not received such flexibility, and to provide a 15% discount on Reciprocal Non-Price Cap Services; and (ii) file tariff revisions that would implement such changes within 90 days of the Merger Closing Date (a "Non-Reciprocating Carrier"), the AT&T/BellSouth ILECs shall be deemed by the FCC to have substantial cause to make any necessary revisions to the tariffs under which they provide the services subject to this commitment to such Non-Reciprocating Carrier, including any affiliates, to prevent or offset any change in the effective rate charged such entities for such services. The AT&T/BellSouth ILECs will file all tariff revisions necessary to effectuate this commitment, including any provisions addressing Non-Reciprocating Carriers and their affiliates, within 90 days from the Merger Closing Date.

7. AT&T/BellSouth will not oppose any request by a purchaser of interstate special access services for mediation by Commission staff of disputes relating to AT&T/BellSouth's compliance with the rates, terms, and conditions set forth in its interstate special access tariffs and pricing flexibility contracts or to the lawfulness of the rates, terms, and conditions in such tariffs and contracts, nor shall AT&T/BellSouth oppose any request that such disputes be accepted by the Commission onto the Accelerated Docket.

8. The AT&T/BellSouth ILECs will not include in any pricing flexibility contract or tariff filed with the Commission after the Merger Closing Date access service ratio terms which limit the extent to which customers may obtain transmission services as UNEs, rather than special access services.

9. Within 60 days after the Merger Closing Date, the AT&T/BellSouth ILECs will file one or more interstate tariffs that make available to customers of DS1, DS3, and Ethernet service reasonable volume and term discounts without minimum annual revenue commitments (MARC) or growth discounts. To the extent an AT&T/BellSouth ILEC files an interstate tariff for DS1, DS3, or Ethernet services with a varying MARC, it will at the same time file an interstate tariff for such services with a fixed MARC. For purposes of these commitments, a MARC is a requirement that the customer maintain a minimum specified level of spending for specified services per year.

10. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC, AT&T/BellSouth will offer an alternative proposal that gives the customer the option of obtaining a volume and/or term discount(s) without a MARC. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC that varies over the life of the contract, AT&T/BellSouth will offer an alternative proposal that includes a fixed MARC.

11. Within 14 days of the Merger Closing Date, the AT&T/BellSouth ILECs will give notice to customers of AT&T/BellSouth with interstate pricing flexibility contracts that provide for a MARC that varies over the life of the contract that, within 45 days of such notice, customers may elect to freeze, for the remaining term of such pricing flexibility contract, the MARC in effect as of the Merger Closing Date, provided that the customer also freezes, for the remaining term of such pricing flexibility contract, the contract discount rate (or specified rate if the contract sets forth specific rates rather than discounts off of referenced tariffed rates) in effect as of the Merger Closing Date.

Transit Service

The AT&T and BellSouth ILECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth ILECs provide in the AT&T/BellSouth in-region territory.¹¹

ADSL Service¹²

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the “Implementation Date” in that state. For purposes of this commitment, the “Implementation Date” for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth’s in-region territory in that state.¹³ Within twenty days after meeting the Implementation Date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.

2. AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within AT&T’s in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).

3. Within twelve months of the Merger Closing Date, AT&T/BellSouth will make available in its in-region territory an ADSL service capable of speeds up to 768 Kbps to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service (“Stand Alone 768 Kbps service”). AT&T/BellSouth will continue to offer the 768 Kbps service in a state for thirty months after the “Stand Alone 768 Kbps Implementation Date” for that state. For purposes of this commitment, the “Stand Alone 768 Kbps Implementation Date” for a state shall be the date on which AT&T/BellSouth can offer the Stand Alone 768 Kbps service to eighty percent of the ADSL-capable premises in AT&T/BellSouth’s in-region territory in that state. The Stand Alone 768 Kbps service will be offered at a rate of not more than \$19.95 per month (exclusive of regulatory fees and taxes). AT&T/BellSouth may make available such services at other speeds at prices that are competitive with the broadband market taken as a whole.

ADSL Transmission Service

AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the combined

¹¹ Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier.

¹² The commitments set forth under the heading “ADSL Service” are, by their terms, available to retail customers only. Wholesale commitments are addressed separately under the heading “ADSL Transmission Service.”

¹³ After meeting the implementation date in each state, AT&T/BellSouth will continue deployment so that it can offer the service to all ADSL-capable premises in its in-region territory within twelve months of the Merger Closing Date.

AT&T/BellSouth territory that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date.¹⁴ Such wholesale offering will be at a price not greater than the retail price in a state for ADSL service that is separately purchased by customers who also subscribe to AT&T/BellSouth local telephone service.

Net Neutrality

1. Effective on the Merger Closing Date, and continuing for 30 months thereafter, AT&T/BellSouth will conduct business in a manner that comports with the principles set forth in the Commission's Policy Statement, issued September 23, 2005 (FCC 05-151).

2. AT&T/BellSouth also commits that it will maintain a neutral network and neutral routing in its wireline broadband Internet access service.¹⁵ This commitment shall be satisfied by AT&T/BellSouth's agreement not to provide or to sell to Internet content, application, or service providers, including those affiliated with AT&T/BellSouth, any service that privileges, degrades or prioritizes any packet transmitted over AT&T/BellSouth's wireline broadband Internet access service based on its source, ownership or destination.

This commitment shall apply to AT&T/BellSouth's wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, defined as the point of interconnection that is logically, temporally or physically closest to the customer's premise where public or private Internet backbone networks freely exchange Internet packets.

This commitment does not apply to AT&T/BellSouth's enterprise managed IP services, defined as services available only to enterprise customers¹⁶ that are separate services from, and can be purchased without, AT&T/BellSouth's wireline broadband Internet access service, including, but not limited to, virtual private network (VPN) services provided to enterprise customers. This commitment also does not apply to AT&T/BellSouth's Internet Protocol television (IPTV) service. These exclusions shall not result in the privileging, degradation, or prioritization of packets transmitted or received by AT&T/BellSouth's non-enterprise customers' wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, as defined above.

¹⁴ An ADSL transmission service shall be considered "functionally the same" as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date if the ADSL transmission service relies on ATM transport from the DSLAM (or equivalent device) to the interface with the Internet service provider, and provides a maximum asymmetrical downstream speed of 1.5Mbps or 3.0Mbps, or a maximum symmetrical upstream/downstream speed of 384Kbps or 416Kbps, where each respective speed is available (the "Broadband ADSL Transmission Service"). Nothing in this commitment shall require AT&T/BellSouth to serve any geographic areas it currently does not serve with Broadband ADSL Transmission Service or to provide Internet service providers with broadband Internet access transmission technology that was not offered by AT&T to such providers in its in-region territory as of the Merger Closing Date.

¹⁵ For purposes of this commitment, AT&T/BellSouth's wireline broadband Internet access service and its Wi-Max fixed wireless broadband Internet access service are, collectively, AT&T/BellSouth's "wireline broadband Internet access service."

¹⁶ "Enterprise customers" refers to that class of customer identified as enterprise customers on AT&T's website (<http://www.att.com>) as of December 28, 2006.

This commitment shall sunset on the earlier of (1) two years from the Merger Closing Date, or (2) the effective date of any legislation enacted by Congress subsequent to the Merger Closing Date that substantially addresses “network neutrality” obligations of broadband Internet access providers, including, but not limited to, any legislation that substantially addresses the privileging, degradation, or prioritization of broadband Internet access traffic.

Internet Backbone

1. For a period of three years after the Merger Closing Date, AT&T/BellSouth will maintain at least as many discrete settlement-free peering arrangements for Internet backbone services with domestic operating entities within the United States as they did on the Merger Closing Date, provided that the number of settlement-free peering arrangements that AT&T/BellSouth is required to maintain hereunder shall be adjusted downward to account for any mergers, acquisitions, or bankruptcies by existing peering entities or the voluntary election by a peering entity to discontinue its peering arrangement. If on the Merger Closing Date, AT&T and BellSouth both maintain a settlement free peering arrangement for Internet backbone services with the same entity (or an affiliate thereof), the separate arrangements shall count as one settlement-free peering arrangement for purposes of determining the number of discrete peering entities with whom AT&T/BellSouth must peer pursuant to this commitment. AT&T/BellSouth may waive terms of its published peering policy to the extent necessary to maintain the number of peering arrangements required by this commitment. Notwithstanding the above, if within three years after the Merger Closing Date, one of the ten largest entities with which AT&T/BellSouth engages in settlement free peering for Internet backbone services (as measured by traffic volume delivered to AT&T/BellSouth’s backbone network facilities by such entity) terminates its peering arrangement with AT&T/BellSouth for any reason (including bankruptcy, acquisition, or merger), AT&T/BellSouth will replace that peering arrangement with another settlement free peering arrangement and shall not adjust its total number of settlement free peers downward as a result.

2. Within thirty days after the Merger Closing Date, and continuing for three years thereafter, AT&T/BellSouth will post its peering policy on a publicly accessible website. During this three-year period, AT&T/BellSouth will post any revisions to its peering policy on a timely basis as they occur.

Forbearance

1. AT&T/BellSouth will not seek or give effect to a ruling, including through a forbearance petition under section 10 of the Communications Act (the “Act”) 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

2. AT&T/BellSouth will not seek or give effect to any future grant of forbearance that diminishes or supersedes the merged entity’s obligations or responsibilities under these merger commitments during the period in which those obligations are in effect.

Wireless

1. AT&T/BellSouth shall assign and/or transfer to an unaffiliated third party all of the 2.5 GHz spectrum (broadband radio service (BRS)/educational broadband service (EBS)) currently licensed to or leased by BellSouth within one year of the Merger Closing Date.

2. By July 21, 2010, AT&T/BellSouth agrees to: (1) offer service in the 2.3 GHz band to 25% of the population in the service area of AT&T/BellSouth’s wireless communications services (WCS) licenses,

for mobile or fixed point-to-multi-point services, or (2) construct at least five permanent links per one million people in the service area of AT&T/BellSouth's WCS licenses, for fixed point-to-point services. In the event AT&T/BellSouth fails to meet either of these service requirements, AT&T/BellSouth will forfeit the unconstructed portion of the individual WCS licenses for which it did not meet either of these service requirements as of July 21, 2010; provided, however, that in the event the Commission extends the July 21, 2010, buildout date for 2.3GHz service for the WCS industry at large ("Extended Date"), the July 21, 2010 buildout date specified herein shall be modified to conform to the Extended Date. The wireless commitments set forth above do not apply to any 2.3 GHz wireless spectrum held by AT&T/BellSouth in the state of Alaska.

Divestiture of Facilities

Within twelve months of the Merger Closing Date, AT&T/BellSouth will sell to an unaffiliated third party(ies) an indefeasible right of use ("IRU") to fiber strands within the existing "Lateral Connections," as that term is defined in the *SBC/AT&T Consent Decree*,¹⁷ to the buildings listed in Attachment B to this Appendix F ("BellSouth Divestiture Assets"). These divestitures will be effected in a manner consistent with the divestiture framework agreed to in the *SBC/AT&T Consent Decree*, provided that such divestitures will be subject to approval by the FCC, rather than the Department of Justice.

Tunney Act

AT&T is a party to a Consent Decree entered into following the merger of SBC and AT&T (the "Consent Decree"). The Consent Decree documents the terms under which AT&T agreed to divest special access facilities serving 383 buildings within the former SBC in-region ILEC territory (the "SBC Divestiture Assets"). In its Order approving the AT&T/SBC merger, the Commission also required the divestiture of these same facilities on the terms and conditions contained in the Consent Decree. The Consent Decree is currently under review pursuant to the Tunney Act in the U.S. District Court for the District of Columbia (the "Court") in *U.S. v. SBC Communications, Inc. and AT&T Corp.*, Civil Action No. 1:05CV02102 (EGS) (D.D.C.), where the Court is reviewing the adequacy of the remedy contained in the Consent Decree to address the competitive concerns described in the Complaint filed by the Department of Justice (DOJ).

If it is found in a final, non-appealable order, that the remedy in the Consent Decree is not adequate to address the concerns raised in the Complaint and AT&T and the DOJ agree to a modification of the Consent Decree (the "Modified Consent Decree"), then AT&T agrees that (1) AT&T/BellSouth will conform its divestiture of the BellSouth Divestiture Assets to the terms of the Modified Consent Decree; and (2) AT&T/BellSouth will negotiate in good faith with the Commission to determine whether the conditions imposed on AT&T/BellSouth in the Commission order approving the merger of AT&T and BellSouth satisfies, with respect to the BellSouth territory, the concerns addressed in the Modified Consent Decree.

Certification

AT&T/BellSouth shall annually file a declaration by an officer of the corporation attesting that AT&T/BellSouth has substantially complied with the terms of these commitments in all material

¹⁷ See *United States v. SBC Communications, Inc.*, Civil Action No. 1:05CV02102, Final Judgment (D.D.C. filed Oct. 27, 2005).

respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, and the second, third, and fourth declarations shall be filed one, two, and three years thereafter, respectively.

**Conditions
ATTACHMENT A**

**Service Quality Measurement Plan
For Interstate Special Access**

Contents

Section 1: Ordering

FOCT: Firm Order Confirmation (FOC) Timeliness

Section 2: Provisioning

PIAM: Percent Installation Appointments Met

NITR: New Installation Trouble Report Rate

Section 3: Maintenance and Repair

CTRR: Failure Rate/Trouble Report Rate

MAD: Average Repair Interval/Mean Time to Restore

Section 4: Glossary

Section 1: Ordering**FOCT: Firm Order Confirmation (FOC) Timeliness****Definition**

Firm Order Confirmation (FOC) Timeliness measures the percentage of FOCs returned within the Company-specified standard interval.

Exclusions

- Service requests identified as “Projects” or “ICBs”
- Service requests cancelled by the originator
- Weekends and designated holidays of the service center
- Unsolicited FOCs
- Administrative or test service requests
- Service requests that indicate that no confirmation/response should be sent
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Counts are based on the first instance of a FOC being sent in response to an ASR. Activity starting on a weekend or holiday will reflect a start date of the next business day. Activity ending on a weekend or holiday will be calculated with an end date of the last previous business day. Requests received after the company’s stated cutoff time will be counted as a “zero” day interval if the FOC is sent by close of business on the next business day. The standard interval will be that which is specified in the company-specific ordering guide.

Calculation

Firm Order Confirmation (FOC) Interval = (a - b)

- a = Date and time FOC is returned
- b = Date and time valid access service request is received

Percent within Standard Interval = (c / d) X 100

- c = Number of service requests confirmed within the designated interval
- d = Total number of service requests confirmed in the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation (Percent FOCs returned within Standard Interval)

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 2: Provisioning**PIAM: Percent Installation Appointments Met****Definition**

Percent Installation Appointments Met measures the percentage of installations completed on or before the confirmed due date.

Exclusions

- Orders issued and subsequently cancelled
- Orders associated with internal or administrative (including test) activities
- Disconnect Orders
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

This measurement is calculated by dividing the number of service orders completed during the reporting period, on or before the confirmed due date, by the total number of orders completed during the same reporting period. Installation appointments missed because of customer caused reasons shall be counted as met and included in both the numerator and denominator. Where there are multiple missed appointment codes, each RBOC will determine whether an order is considered missed.

Calculation

Percent Installation Appointments Met = $(a / b) \times 100$

- a = Number of orders completed on or before the RBOC confirmed due date during the reporting period
- b = Total number of orders where completion has been confirmed during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

NITR: New Installation Trouble Report Rate**Definition**

New Installation Trouble Report Rate measures the percentage of circuits or orders where a trouble was found in RBOC facilities or equipment within thirty days of order completion.

Exclusions

- Trouble tickets issued and subsequently cancelled
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- RBOC troubles associated with administrative service
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions defined by each RBOC to reflect system and operational differences
- Subsequent trouble reports

Business Rules

Only the first customer direct trouble report received within thirty calendar days of a completed service order is counted in this measure. Only customer direct trouble reports that required the RBOC to repair a portion of the RBOC network will be counted in this measure. The RBOC completion date is when the RBOC completes installation of the circuit or order.

Calculation

Trouble Report Rate within 30 Calendar Days of Installation = $(a / b) \times 100$

- a = Count of circuits/orders with trouble reports within 30 calendar days of installation
- b = Total number of circuits/orders installed in the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 3: Maintenance & Repair

CTRR: Failure Rate/Trouble Report Rate

Definition

The percentage of initial and repeated circuit-specific trouble reports completed per 100 in-service circuits for the reporting period.

Exclusions

- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports/circuits associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this report. The trouble report rate is computed by dividing the number of completed trouble reports handled during the reporting period by the total number of in-service circuits for the same period.

Calculation

Percent Trouble Report Rate = $(a / b) \times 100$

- a = Number of completed circuit-specific trouble reports received during the reporting period
- b = Total number of in-service circuits during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

MAD: Average Repair Interval/Mean Time to Restore**Definition**

The Average Repair Interval/Mean Time to Restore is the average time between the receipt of a customer trouble report and the time the service is restored. The average outage duration is only calculated for completed circuit-specific trouble reports.

Exclusions

- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this measure. The average outage duration is calculated for each restored circuit with a trouble report. The start time begins with the receipt of the trouble report and ends when the service is restored. This is reported in a manner such that customer hold time or delay maintenance time resulting from verifiable situations of no access to the end user premise, other CLEC/IXC or RBOC retail customer caused delays, such as holding the ticket open for monitoring, is deducted from the total resolution interval ("stop clock" basis).

Calculation

Repair Interval = (a – b)

- a = Date and time trouble report was restored
- b = Date and time trouble report was received

Average Repair Interval = (c / d)

- c = Total of all repair intervals (in hours/days) for the reporting period
- d = Total number of trouble reports closed during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

GLOSSARY

Access Service Request (ASR)	A request to the RBOC to order new access service, or request a change to existing service, which provides access to the local exchange company's network under terms specified in the local exchange company's special or switched access tariffs.
RBOC 272 Affiliates Aggregate	RBOC Affiliate(s) authorized to provide long distance service as a result of the Section 271 approval process.
RBOC Affiliates Aggregate	RBOC Telecommunications and all RBOC Affiliates (including the 272 Affiliate). Post sunset, comparable line of business (e.g., 272 line of business) will be included in this category.
Business Days	Monday thru Friday (8AM to 5PM) excluding holidays
CPE	Customer Provided or Premises Equipment
Customer Not Ready (CNR)	A verifiable situation beyond the normal control of the RBOC that prevents the RBOC from completing an order, including the following: CLEC or IXC is not ready to receive service; end user is not ready to receive service; connecting company or CPE supplier is not ready.
Firm Order Confirmation (FOC)	The notice returned from the RBOC, in response to an Access Service Request from a CLEC, IXC or affiliate, that confirms receipt of the request and creation of a service order with an assigned due date.
Unsolicited FOC	An Unsolicited FOC is a supplemental FOC issued by the RBOC to change the due date or for other reasons, e.g., request for a second copy from the CLEC/IXC, although no change to the ASR was requested by the CLEC or IXC.
Project or ICB	Service requests that exceed the line size and/or level of complexity that would allow the use of standard ordering and provisioning interval and processes. Service requests requiring special handling.
Repeat Trouble	Trouble that reoccurs on the same telephone number/circuit ID within 30 calendar days
Service Orders	Refers to all orders for new or additional lines/circuits. For change order types, additional lines/circuits consist of all C order types with "I" and "T" action coded line/circuit USOCs that represent new or additional lines/circuits, including conversions for RBOC to Carrier and Carrier to Carrier.

**Conditions
ATTACHMENT B**

Building List

Metro Area	CLLI	Address	City	State	Zip Code
Atlanta	ALPRGAVP	5965 CABOT PKWY	ALPHARETTA	GA	30005
Atlanta	ATLNGABI	2751 BUFORD HWY NE	ATLANTA	GA	30324
Atlanta	CHMBGAJG	2013 FLIGHTWAY DR	CHAMBLEE	GA	30341
Atlanta	NRCRGAER	6675 JONES MILL CT	NORCROSS	GA	30092
Atlanta	NRCRGAIJ	4725 PEACHTREE CORNERS CIR	NORCROSS	GA	30092
Atlanta	NRCRGANX	3795 DATA DR NW	NORCROSS	GA	30092
Atlanta	NRCRGARC	335 RESEARCH CT	NORCROSS	GA	30092
Birmingham	BRHMALKU	101 LEAF LAKE PKWY	BIRMINGHAM	AL	35211
Charlotte	CHRMNCXI	2605 WATER RIDGE PKWY	CHARLOTTE	NC	28217
Chattanooga	CHTGTNAC	537 MARKET ST	CHATTANOOGA	TN	37402
Jacksonville	JCVNFLHK	10201 CENTURION PKWY N	JACKSONVILLE	FL	32256
Knoxville	KNVLTNHB	8057 RAY MEARS BLVD	KNOXVILLE	TN	37919
Knoxville	KNVNTN82	2160 LAKESIDE CENTER WAY	KNOXVILLE	TN	37922
Miami	BCRTFLAU	851 NW BROKEN SOUND PKWY	BOCA RATON	FL	33487
Miami	BCRTFLCM	501 E CAMINO REAL	BOCA RATON	FL	33432
Miami	DLBHFLDU	360 N CONGRESS AVE	DELRAY BEACH	FL	33445
Miami	JPTRFLAC	100 MARQUETTE DR	JUPITER	FL	33458
Miami	JPTRFLBC	1001 N USHWY 1	JUPITER	FL	33477
Miami	PLNBFLAZ	1601 SW 80TH TER	PLANTATION	FL	33324
Miami	PLNBFLCQ	1800 NW 69TH AVE	PLANTATION	FL	33313
Miami	SUNRFLCF	720 INTERNATIONAL PKWY	SUNRISE	FL	33325
Nashville	BRWDTNEV	210 WESTWOOD PL	BRENTWOOD	TN	37027
Nashville	NSVLTNIH	1215 21ST AVE S	NASHVILLE	TN	37212
Nashville	NSVLTNWL	28 OPRYLAND DR	NASHVILLE	TN	37204
Nashville	NSVNTNFO	252 OPRY MILLS DR	NASHVILLE	TN	37214
Nashville	NSVPTNIJ	332 OPRY MILLS DR	NASHVILLE	TN	37214
Nashville	NSVPTN98	427 OPRY MILLS DR	NASHVILLE	TN	37214
Nashville	NSVPTNJX	540 OPRY MILLS DR	NASHVILLE	TN	37214
Miami	LDHLFLAC	4300 N UNIVERSITY DR	LAUDERHILL	FL	33351
Miami	SUNRFLBD	440 SAWGRASS CORP. PARKWAY	SUNRISE	FL	33325
Orlando	ORLFFLYL	8350 PARKLINE BLVD	ORLANDO	FL	32809

EXHIBIT C

Aug 25 10 00 AM '99

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Global NAPs South, Inc. Petition for)
Preemption of Jurisdiction of the Virginia)
State Corporation Commission Regarding)
Interconnection Dispute with)
Bell Atlantic-Virginia, Inc.)

CC Docket No. 99-198

MEMORANDUM OPINION AND ORDER

Adopted: August 5, 1999

Released: August 5, 1999

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This *Memorandum Opinion and Order* addresses the petition of Global NAPs South, Inc. (GNAPs) for preemption of jurisdiction of the Virginia State Corporation Commission (Virginia Commission) with respect to an arbitration proceeding involving GNAPs and Bell Atlantic-Virginia, Inc. (Bell Atlantic).¹ The Commission placed GNAPs' preemption petition on public notice on May 24, 1999.² Ameritech, Bell Atlantic, Connect!, Cox Communications, Inc., and the Virginia Commission filed comments, and GNAPs filed a reply.

2. GNAPs seeks preemption of the Virginia Commission pursuant to section 252(e)(5) of the Communications Act of 1934, as amended.³ Section 252(e)(5) authorizes the

¹ Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission, CC Docket No. 99-198, filed with the Commission on May 19, 1999 (Virginia Petition).

² *Pleading Cycle Established for Comments on Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic - Virginia*, Public Notice, CC Docket No. 99-198, DA 99-984 (rel. May 24, 1999) (Public Notice). The Public Notice established a deadline for comment of June 8, 1999, and a deadline for reply comments of June 17, 1999. On May 26, 1999, GNAPs requested that the Commission extend the comment and reply dates by one week because the Virginia Commission was not served with the Virginia Petition until May 26, 1999. On June 3, 1999, the Common Carrier Bureau released an order extending the deadline for comment to June 15, 1999, and the deadline for reply comments to June 24, 1999. *In the Matter of Global NAPs South, Inc. Petition for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia*, Order, CC Docket No. 99-198, DA 99-1090 (rel. Jun. 3, 1999).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), codified at 47 U.S.C. §§ 151 *et seq.* Hereafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934,

Commission to preempt a state commission in any proceeding or matter in which the state commission "fails to act to carry out its responsibility" under section 252.⁴ Section 252 sets out the procedures by which telecommunications carriers may request and obtain interconnection, resale services or unbundled network elements from an incumbent local exchange carrier (LEC).⁵ For the reasons discussed below, we find that the Virginia Commission has not "failed to act" within the meaning of our rules implementing section 252(e)(5).⁶ We therefore deny GNAPs' petition and do not preempt the Virginia Commission.

II. BACKGROUND

A. Statutory Provisions

3. Congress adopted sections 251 and 252 of the 1996 Act to foster local exchange competition by imposing certain requirements on incumbent LECs that are designed to facilitate the entry of competing telecommunications carriers. Section 251 describes the various requirements designed to promote market entry, including incumbent LECs' obligations to provide requesting telecommunications carriers interconnection, unbundled network elements, and services for resale.⁷ Section 252 sets forth the procedures by which telecommunications carriers may request and obtain interconnection, unbundled network elements, and services for resale from an incumbent LEC pursuant to section 251.⁸ Specifically, sections 252(a) and (b) establish a scheme whereby telecommunications carriers may obtain interconnection with the incumbent according to agreements fashioned through (1) voluntary negotiations between the

as amended, as "the Communications Act" or "the Act."

⁴ 47 U.S.C. § 252(e)(5).

⁵ See generally 47 U.S.C. § 252.

⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16122-16132 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *petition for cert. granted*, Nos. 97-829, 97-830, 97-831, 97-1097, 97-1099, and 97-1141 (U.S. Jan. 26, 1998) (collectively *Iowa Utils. Bd. v. FCC*), *aff'd in part and remanded, AT&T Corp., et al. v. Iowa Utils. Bd. et al.*, 119 S.Ct. 721 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996); Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending*; see also 47 C.F.R. §§ 51.801(b), 51.803(b).

⁷ See generally 47 U.S.C. § 251(c). For purposes of this order, the interconnection, access to unbundled elements, services for resale and other items for which incumbent LECs have a duty to negotiate pursuant to section 251(c)(1) are sometimes referred to collectively as "interconnection."

⁸ See generally 47 U.S.C. § 252.

carriers, (2) mediation by state commissions, or (3) arbitration by state commissions.⁹ These interconnection agreements must then be submitted for approval to the appropriate state commission.¹⁰

4. In addition, section 252(i) provides another means for establishing interconnection. Pursuant to section 252(i), local exchange carriers must “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.”¹¹ Negotiation is not required to implement a section 252(i) opt-in arrangement; indeed, neither party may alter the terms of the underlying agreement. Although there is no arbitration or negotiation as identified in section 252(e)(1) for the state to approve,¹² states may adopt “procedures for making agreements available to requesting carriers on an expedited basis.”¹³ As the Commission observed three years ago, a party seeking interconnection pursuant to section 252(i) “need not make such requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis.”¹⁴ Otherwise, the “non-discriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251.”¹⁵

5. Section 252(e)(5) directs the Commission to assume responsibility for any proceeding in which the state commission “fails to act to carry out its responsibility” under section 252:

(5) COMMISSION TO ACT IF STATE WILL NOT ACT.—If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an

⁹ See 47 U.S.C. § 252(a), (b).

¹⁰ 47 U.S.C. § 252(e)(1).

¹¹ 47 U.S.C. § 251(i).

¹² 47 U.S.C. § 252(e)(1) (“Any interconnection agreement adopted by negotiation or arbitration shall be submitted to the State commission”); see also *Local Competition Order*, 11 FCC Rcd at 16141, ¶ 1321 (indicating that carriers “seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 252 requests”).

¹³ *Local Competition Order*, 11 FCC Rcd at 16141, ¶ 1321.

¹⁴ *Id.* An expedited process for section 252(i) opt-ins would necessarily be substantially quicker than the time frame for negotiation, and approval, of a new interconnection agreement since the underlying agreement has already been subject to state review under section 252(e).

¹⁵ *Id.*

order within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.¹⁶

B. Commission's Rules

6. The *Local Competition Order* adopted "interim procedures" to exercise preemption authority under section 252(e)(5) in order to "provide for an efficient and fair transition from state jurisdiction should [the Commission] have to assume the responsibility of the state commission"¹⁷ The *Local Competition Order* concluded that the Commission would not take an "expansive view" of what constitutes a state commission's "failure to act" for purposes of section 252(e)(5).¹⁸ Rather, the *Local Competition Order* interpreted "failure to act" to mean a state's failure to complete its duties in a timely manner. The *Local Competition Order* limited the instances under which Commission preemption pursuant to section 252(e)(5) is appropriate to "when a state commission fails to respond, within a reasonable time, to a request for mediation or arbitration, or fails to complete arbitration within the time limits of section 252(b)(4)(c)."¹⁹ Under the Commission's rules, "[t]he party seeking preemption [pursuant to section 252(e)(5)] must prove that the state [commission] has failed to act to carry out its responsibilities under section 252 of the Act."²⁰

C. Procedural History

7. On July 2, 1998, GNAPs asked Bell Atlantic to commence negotiations for interconnection.²¹ The parties subsequently attempted to negotiate the terms of an interconnection agreement.²² In August 1998, GNAPs concluded that it could meet its

¹⁶ 47 U.S.C. § 252(e)(5).

¹⁷ *Local Competition Order*, 11 FCC Rcd at 16127, ¶ 1283.

¹⁸ *Id.* at 16128, ¶ 1285.

¹⁹ *Id.* at 16128, ¶ 1285. See also 47 C.F.R. § 51.801(b); *In the Matter of Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with Ameritech Illinois Before the Illinois Commerce Commission, with BellSouth Before the Georgia Public Service Commission, and with GTE South Before the Public Service Commission of South Carolina*, Order, 13 FCC Rcd 1755, 1758-1759, ¶ 5 (1997) (*Low Tech Order*), recon. denied, CC Docket Nos. 97-163, 97-164, 97-165, FCC 99-71 (rel. Apr. 13, 1999). The Commission has indicated that there is no "failure to act" when an interconnection agreement is "deemed approved" under section 252(e)(4) as a result of state commission inaction. *Local Competition Order*, 11 FCC Rcd at 16128, ¶ 1285; 47 U.S.C. § 252(e)(4).

²⁰ 47 C.F.R. § 51.803(b); see also *Local Competition Order*, 11 FCC Rcd at 16128, ¶ 1285.

²¹ Virginia Petition at 1.

²² *Id.*

interconnection needs by opting-into a 1996 agreement between Bell Atlantic and MFS Intelenet (MFS) pursuant to section 252(i).²³ As a result, GNAPs advised Bell Atlantic that GNAPs wanted to interconnect with Bell Atlantic on the same terms as contained in Bell Atlantic's 1996 agreement with MFS (1996 MFS Agreement).²⁴ According to GNAPs, Bell Atlantic refused to honor GNAPs' right to opt-into the 1996 MFS Agreement without modifications.²⁵

8. On November 16, 1998, GNAPs filed a petition for arbitration with the Virginia Commission,²⁶ pursuant to section 252(b) of the Act.²⁷ On November 25, 1998, GNAPs filed a motion requesting expedited treatment of its petition and further requesting that Bell Atlantic

²³ *Id.* Section 252(i) provides that: "[a] local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). At the time GNAPs first sought to interconnect with Bell Atlantic, carriers were subject to the Eighth Circuit's interpretation of section 252(i). As a result, requesting carriers such as GNAPs were required to opt-into an existing contract as a whole rather than "pick and choose" different elements from different existing contracts. *Iowa Utils. Bd.*, 120 F.3d at 800-801. The Supreme Court since overturned the Eighth Circuit's interpretation of section 252(i) and reinstated the Commission's "pick and choose" approach. *AT&T Corp.*, 119 S.Ct. at 738; *see generally* 47 C.F.R. § 51.809.

²⁴ Virginia Petition at 1.

²⁵ *Id.* at 2. If a local exchange carrier fails to recognize the rights of an opt-in carrier, that carrier may seek expedited relief from this Commission pursuant to section 208. *Local Competition Order*, 11 FCC Rcd at 16141, ¶ 1321; 47 U.S.C. § 208. In this case, GNAPs decided to pursue arbitration pursuant to section 252(b) and during the arbitration proceeding that followed, sought to enter into an interconnection agreement with Bell Atlantic identical to the 1996 MFS Agreement. Bell Atlantic asserts in this proceeding that GNAPs has no right to opt-into provisions relating to reciprocal compensation, arguing that section 252(i) only permits carriers to opt-into provisions of interconnection agreements that are based on the requirements of section 251. Bell Atlantic Comments at 4. We reject Bell Atlantic's argument, as our rules establish only two limited exceptions to the right of carriers to opt-into an interconnection agreement. *See* 47 C.F.R. § 51.809(b).

²⁶ *Petition of Global NAPs South, Inc. for Arbitration of Unresolved Issues from Interconnection Negotiations with Bell Atlantic-Virginia, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996*, Final Order, No. PUC980173 (Virginia Commission Apr. 2, 1999) at 1 (Virginia Final Order) (filed as an attachment to Virginia Petition).

²⁷ The procedural history of this proceeding is complex because it involves both opt-in and arbitration attempts by GNAPs. GNAPs should have been able to exercise its opt-in right under section 252(i) on an expedited basis. *Local Competition Order*, 11 FCC Rcd at 16141, ¶ 1321. Thus, for example, a carrier should be able to notify the local exchange carrier that it is exercising this right by submitting a letter to the local exchange carrier identifying the agreement (or the portions of an agreement) it will be using and to whom invoices, notices regarding the agreement, and other communication should be sent. In such circumstances, the carrier opting-into an existing agreement takes all the terms and conditions of that agreement (or the portions of that agreement), including its original expiration date.

provide GNAPs interconnection on an interim basis.²⁸ On December 11, 1998, Bell Atlantic filed its response to the GNAPs arbitration petition and motion.²⁹

9. In a January 29, 1999 order, the Virginia Commission determined that there was no need to hold an evidentiary hearing in the GNAPs/Bell Atlantic arbitration proceeding, having found that the issues raised by the parties presented only legal questions.³⁰ In the same order, however, the Virginia Commission encouraged the parties to supplement their pleadings in order to further clarify their positions on the issues, and to address how the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board* might impact the arbitration of unresolved issues between GNAPs and Bell Atlantic.³¹

10. On February 10, 1999, Bell Atlantic filed a supplemental brief in response to the January 29, 1999 order.³² According to the Virginia Commission's April 2, 1999 final order, Bell Atlantic argued in its supplemental brief that the Supreme Court's reinstatement of section 51.809 of the Commission's rules did not entitle GNAPs to adopt Bell Atlantic's 1996 MFS Agreement.³³ On February 10, 1999, GNAPs also filed a supplemental brief in response to the January 29, 1999 order.³⁴ According to the Virginia Commission's April 2, 1999 final order, GNAPs argued in its supplemental brief that it was entitled to reciprocal compensation for terminating Internet Service Provider (ISP) traffic; that it should be able to opt-into the 1996 MFS Agreement for a full three-year term; and that section 51.809 of the Commission's rules did not prevent GNAPs from adopting Bell Atlantic's 1996 MFS Agreement.³⁵ GNAPs further asserted that Bell Atlantic acted in bad faith by not permitting it to opt-into the 1996 MFS Agreement in August 1998.³⁶

²⁸ Virginia Final Order at 2.

²⁹ *Id.* at 1.

³⁰ *Id.* at 2.

³¹ *Id.* See generally *AT&T Corp.*, 119 S.Ct. at 738.

³² Virginia Final Order at 2.

³³ *Id.* at 2-3. See also 119 S.Ct. at 738. Section 51.809 of the Commission's rules describes the availability of provisions of existing interconnection agreements to other telecommunications carriers under section 252(i) of the Act. 47 C.F.R. § 51.809.

³⁴ Virginia Final Order at 2.

³⁵ *Id.* at 3-4.

³⁶ *Id.* at 3.

11. On February 26, 1999, the Commission released its *ISP Compensation Ruling and NPRM*.³⁷ On March 11, 1999, the Virginia Commission released an order scheduling oral argument so that the parties could address what effect, if any, the Commission's *ISP Compensation Ruling and NPRM* and the Supreme Court's decision might have on the resolution of the GNAPs/Bell Atlantic arbitration proceeding.³⁸ Oral argument was held on March 25, 1999.³⁹

12. On April 2, 1999, the Virginia Commission issued its final order in the GNAPs/Bell Atlantic arbitration proceeding. In its final order, the Virginia Commission acknowledged that the 1996 MFS Agreement would terminate on July 1, 1999 and that any carrier opting-into this agreement would necessarily find themselves bound by this termination date, unless otherwise negotiated.⁴⁰ The Virginia Commission noted that in light of the very limited time remaining under the 1996 MFS Agreement, there would likely be only thirty days, at most, from the time an adopted GNAPs/Bell Atlantic agreement based on the 1996 MFS Agreement would be approved until Bell Atlantic could terminate the agreement pursuant to the contract terms.⁴¹ Thus, citing both the maxim "equity will not do a vain or useless thing," and the "reasonable time" language in section 51.809(c) of the Commission's rules, the Virginia Commission denied GNAPs' petition to adopt the 1996 MFS Agreement and dismissed the GNAPs/Bell Atlantic arbitration proceeding.⁴²

13. On April 21, 1999, GNAPs filed a petition for reconsideration of the April 2, 1999 final order with the Virginia Commission.⁴³ Under the Virginia Commission's rules, an order becomes final within 21 days after entry, unless modified or vacated in a response to a petition for reconsideration or on the Virginia Commission's own motion.⁴⁴ The Virginia Commission

³⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68 (rel. Feb. 26, 1999) (*ISP Compensation Ruling and NPRM*).

³⁸ Virginia Final Order at 4-5.

³⁹ *Id.* at 5.

⁴⁰ *Id.*

⁴¹ *Id.* at 5-6.

⁴² *Id.* Section 51.809(c) of the Commission's rules provides that "[I]ndividual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers . . . for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the Act." 47 C.F.R. § 51.809(c).

⁴³ Virginia Petition at 6.

⁴⁴ *Id.*

elected not to act in response to GNAPs' petition for reconsideration and therefore allowed its April 2, 1999 order to become final.⁴⁵

D. GNAPs' Petition for Preemption of Jurisdiction

14. GNAPs requests in its petition that the Commission "preempt the jurisdiction" of the arbitration proceeding it requested before the Virginia Commission, pursuant to section 252(e)(5).⁴⁶ GNAPs alleges that the April 2, 1999 final order is a "plain failure of the [Virginia Commission] to fulfill its responsibilities under the Act."⁴⁷ GNAPs does not allege, however, that the Virginia Commission "failed to act" upon its arbitration request in a timely manner, nor that the April 2, 1999 final order was untimely rendered.⁴⁸

15. GNAPs alleges that, without identifying any provision of the 1996 MFS Agreement that was technically infeasible or impractical, or any rate in that agreement that was based on outdated cost analyses, the Virginia Commission found that the 1996 MFS Agreement was too old to be opted-into and denied and dismissed GNAPs' arbitration petition.⁴⁹ GNAPs maintains that it does not know whether the Virginia Commission's April 2, 1999 final order is the product of confusion regarding whether or not its efforts to opt-into the 1996 MFS Agreement were subject to arbitration; confusion regarding the jurisdictional status of ISP-bound calls; uncertainty following the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*; or some other misunderstanding.⁵⁰ GNAPs argues, however, that the effect of the April 2, 1999 final order is to put them "back at ground zero" and leave them without an interconnection agreement nearly a year after their negotiations with Bell Atlantic began.⁵¹ In light of this outcome, GNAPs alleges that the Virginia Commission has "failed to act to carry out its responsibilities under section 252 of the Act."⁵²

⁴⁵ *Id.*

⁴⁶ *Id.* at 1.

⁴⁷ *Id.* at 6.

⁴⁸ State commissions are required to respond to a request for arbitration within a "reasonable time," *Local Competition Order*, 11 FCC Rcd 16128, ¶ 1285; 47 C.F.R. § 51.801(b), and to conclude an arbitration no later than nine months after the date on which the incumbent LEC receives a request for negotiation under section 252. 47 U.S.C. § 252(b)(4)(C).

⁴⁹ Virginia Petition at 5.

⁵⁰ *Id.* at 6.

⁵¹ *Id.*

⁵² *Id.* at 7. See also 47 C.F.R. § 51.803(b).

III. DISCUSSION

16. Section 252(e)(5) directs the Commission to preempt the jurisdiction of a state commission in any proceeding or matter in which a state commission "fails to act to carry out its responsibility under [section 252]."⁵³ Here, the Virginia Commission has not "failed to act" under Commission rules implementing section 252(e)(5) solely because it has issued a decision denying GNAPs the terms and conditions on which it sought to interconnect with Bell Atlantic.⁵⁴ As noted above, in the *Local Competition Order*, the Commission concluded that it would not take an "expansive view" of what constitutes a state commission's failure to act, noting its belief that "states [would] meet their responsibilities and obligations under the 1996 Act."⁵⁵ Therefore, the Commission determined that it would preempt a state commission's jurisdiction for "failure to act" under section 252(e)(5) only in those "instances where a state commission fails to respond, within a reasonable time, to a request for mediation or arbitration, or fails to complete arbitration within the time limits of section 252(b)(4)(C)."⁵⁶ Thus, under the Commission's current rules, a state commission does not "fail to act" when it responds to a request for arbitration but subsequently dismisses or denies an arbitration within the nine month time limit in section 252(b)(4)(C).

17. Applying the Commission's rules in this instance, we find that the Virginia Commission responded to GNAPs' request for arbitration by quickly initiating proceedings. The Virginia Commission established a series of pleading cycles and afforded the parties opportunities to address the impact of the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board* and the Commission's *ISP Compensation Ruling and NPRM*. In addition, an oral argument was held on March 25, 1999.

18. Moreover, GNAPs does not claim that the Virginia Commission acted outside of any statutory time frame.⁵⁷ Although GNAPs contends that the Commission "failed to act to carry out its responsibilities under section 252 of the Act," we note that the Virginia Commission issued its April 2, 1999 final order within nine months after Bell Atlantic received GNAPs' request for interconnection, consistent with the requirements of section 252(b)(4)(C). According to the Virginia Commission, GNAPs presented no evidence regarding terms for an

⁵³ 47 U.S.C. § 252(e)(5).

⁵⁴ See Virginia Commission Comments at 1.

⁵⁵ *Local Competition Order*, 11 FCC Rcd at 16128, ¶ 1285.

⁵⁶ 47 C.F.R. § 51.801(b). See also *Local Competition Order*, 11 FCC Rcd at 16128, ¶ 1285; Bell Atlantic Comments at 3.

⁵⁷ See Bell Atlantic Comments at 3.

interconnection agreement with Bell Atlantic in the event the Virginia Commission determined it was not reasonable to require Bell Atlantic to offer the soon to expire 1996 MFS Agreement to GNAPs.⁵⁸ Because section 51.801 of the Commission's rules does not focus on the validity of state commission decisions, we do not see a basis for examining the underlying reasoning of the Virginia Commission. While we recognize the frustration GNAPs has experienced in its efforts to obtain interconnection with Bell Atlantic, we cannot conclude that the Virginia Commission has "failed to act" under the Commission's rules implementing section 252(e)(5).

19. Commission precedent supports our conclusion that there is no basis for preemption here. In the *Low Tech Order*, the Commission denied three preemption petitions filed by Low Tech Designs, Inc. (Low Tech), pursuant to section 252(e)(5).⁵⁹ The three state commission arbitration proceedings at issue dismissed or denied Low Tech's arbitration petition on the basis that Low Tech was not yet a certified carrier in the relevant state.⁶⁰ The Commission held that a state commission has not "failed to act" when it issues a decision that dismisses or denies an arbitration petition on grounds that prevent it from resolving the substantive issues in the arbitration petition.⁶¹ There, as here, the petitioner essentially argued that there was a failure to act because the state commission had erroneously applied the law and our rules in rendering its decision. The Commission concluded that there was no basis to examine the substantive validity of the state commission's decision under section 51.801 of its rules. Accordingly, we do not preempt the Virginia Commission's jurisdiction and do not assume responsibility for this arbitration.

20. Finally, we note that the Commission's decision not to preempt the jurisdiction of the Virginia Commission does not leave GNAPs without a remedy. Pursuant to section 252(e)(6), a party aggrieved by a state commission arbitration determination under section 252 has the right to bring an action in federal district court.⁶² Thus, GNAPs may still challenge the Virginia Commission determination in federal district court pursuant to section 252(e)(6).

21. In sum, we conclude that GNAPs has not met its burden of demonstrating that the Virginia Commission has "failed to act" within the meaning of the Commission's rules implementing section 252(e)(5). Rather, the Virginia Commission has met the requirements of

⁵⁸ Virginia Commission Comments at 1-3.

⁵⁹ *Low Tech Order*, 13 FCC Rcd at 1759-1768.

⁶⁰ *Id.*

⁶¹ Low Tech argued that a state commission has not acted until it has ruled on the merits of the issues raised in the arbitration petition. *Id.* at 1733-1774, ¶ 33 n.122. The Commission rejected Low Tech's argument and held that under its current rules, a state commission does not "fail to act" when it dismisses or denies an arbitration petition on the ground that it is procedurally defective, the petitioner slacks standing to arbitrate, or the state commission lacks jurisdiction over the proceeding. *Id.* at 1774, ¶ 33.

⁶² 47 U.S.C. § 252(e)(6); *Local Competition Order*, 11 FCC Rcd 15563, ¶ 124; Bell Atlantic Comments at 2.

the statute and our rules by responding to GNAPs' request for arbitration and rendering a final decision in the arbitration within nine months after Bell Atlantic received GNAPs' request for interconnection. We therefore do not preempt the jurisdiction of the Virginia Commission pursuant to the authority granted the Commission in section 252(e)(5).

IV. CONCLUSION

22. For the foregoing reasons, we deny GNAPs' petition for Commission preemption of jurisdiction of GNAPs' arbitration proceeding with Bell Atlantic in Virginia.

VI. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that, pursuant to section 252 of the Communications Act of 1934, as amended, and section 51.801(b) of the Commission's rules, 47 U.S.C. § 252 and 47 C.F.R. § 51.801(b), the petition for Commission preemption of jurisdiction filed by Global NAPs South, Inc. on May 19, 1999 is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Robert C. Atkinson
Deputy Chief
Common Carrier Bureau

EXHIBIT D

ORDER NO. 75360

IN THE MATTER OF THE PETITIONS	*	BEFORE THE
FOR APPROVAL OF AGREEMENTS	*	PUBLIC SERVICE COMMISSION
AND ARBITRATION OF UNRESOLVED	*	OF MARYLAND
ISSUES ARISING UNDER SECTION	*	
252 OF THE TELECOMMUNICATIONS	*	
ACT OF 1996.	*	
	*	
PETITION OF GLOBAL NAPS SOUTH,	*	
INC. FOR ARBITRATION OF	*	
INTERCONNECTION RATES, TERMS	*	
AND CONDITIONS AND RELATED	*	
RELIEF.	*	

CASE NO. 8731

I. Procedural History

On December 7, 1998, Global Naps South, Inc. (“GNAPS”) filed its Petition for Arbitration with the Commission.¹ GNAPS requested arbitration of rates, terms and conditions and related arrangements for interconnection concerning a proposed interconnection agreement between GNAPS and Bell Atlantic – Maryland, Inc. (“BA-MD”) pursuant to §§252(b) and 252(i) of the Telecommunications Act of 1996 (“1996 Act”). BA-MD filed a response to the Petition on February 9, 1999. The Commission Staff filed comments on March 9, 1999.

II. Discussion

In 1996, Congress amended the Communications Act of 1934 with the purpose of fostering competition in both the interexchange and local exchange markets. The Telecommunications Act of 1996 (“1996 Act”) was designed, in part, to facilitate the entry of competing companies into local telephone service markets. The 1996 Act

requires incumbent local exchange carriers (“ILECs”) to allow new entrants access to their networks in three different ways. Specifically, an ILEC must: (1) permit requesting competitors to interconnect with the ILECs local network; (2) provide competitors with access to individual elements of its network on an unbundled basis; and (3) allow competitors to purchase its telecommunications services for resale. 47 USCA §251(c)(2)-(4) (West Supp. 1997). Together these duties regarding interconnection, unbundled network elements, and resale are intended to provide would-be competitors with realistic opportunities to enter the market for local exchange service. Through these three duties, and the 1996 Act in general, Congress sought “to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”²

The 1996 Act also establishes a system of negotiations and arbitrations in order to facilitate voluntary agreements between ILECs and competing carriers to implement the 1996 Act’s substantive requirements. When a competing carrier asks an ILEC to provide interconnection, unbundled network elements, or resale, both the ILEC and the competing carrier have a duty to negotiate in good faith the terms and conditions of an agreement that accomplishes the 1996 Act’s goals. 47 USCA §§251(c)(1), 252(a)(1). If the parties fail to reach an agreement through voluntary negotiation, either party may petition the respective state utility commission to arbitrate and resolve any open issues.

¹ Due to some confusion regarding the service of process, the parties agreed that Bell Atlantic – Maryland, Inc. would respond to the Petition within twenty-five days after January 15, 1999.

² Telecommunications Act of 1996, Pub. L. No. 104-104, purpose statement, 110 Stat 56, 56 (1996).

47 USCA §252(b). The final agreement, whether accomplished through negotiation or arbitration, must be approved by the state commission. 47 USCA §252(e)(1).

The key provision of the 1996 Act at issue here is §252(i). Under this subsection, a competitive local exchange carrier (“CLEC”) may “opt in” to the terms of any other existing interconnection agreement between the incumbent local exchange carrier (“ILEC”) and another CLEC. Specifically, §252(i) states:

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

GNAPS has sought to “opt in” to the terms of BA-MD’s approved interconnection agreement with MFS Intelenet of Maryland, Inc. (“MFS”). GNAPS claims, however, that BA-MD seeks to impose conditions on GNAPS to which MFS is not subject, in violation of §252(i). Specifically, GNAPS requested to “opt in” to the MFS interconnection agreement but requested a three-year contract term, rather than the date certain which actually appears in the MFS agreement.³ In contrast, BA-MD argued that GNAPS can only “opt in”, if at all, under the exact terms of the MFS agreement. We find that under the Federal Communications Commission’s (“FCC”) interconnection rules, GNAPS is not entitled to the relief it seeks.

In its First Report and Order implementing the local competition provisions of the 1996 Act, the FCC interpreted §252(i) as permitting CLECs to “pick and choose” among

³ GNAPS also requested that we order BA-MD to provide interconnection on an interim basis on terms consistent with the MFS agreement. We rejected this request on June 14, 1999.

the provisions of existing interconnection agreements.⁴ This interpretation is reflected in the FCC's rule at 47 CFR §51.809 which provides:

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to Section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) the costs of providing a particular interconnection, service, or element 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 interconnection, service or element to the requesting carrier is not technically feasible.

(c) Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under Section 252(f) of the Act.

Although Rule 51.809 generally requires ILECs to make individual interconnection arrangements from existing contracts available to requesting carriers,

⁴ *In Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Red. 15499 (1996) ("First Report & Order").

contrary to GNAPS interpretation, this requirement is not without limitations. The rule limits the amount of time during which ILECs must make the terms of existing agreements available to a “reasonable period of time.” Thus, under the FCC’s reinstated interpretation of §252(i),⁵ BA-MD is not required to make the terms and conditions of an existing agreement available to requesting carriers indefinitely, but only for a “reasonable period.”

While we decline to set forth the full parameters of a “reasonable period of time” in this proceeding, we do find that GNAPS request, occurring approximately two and a half years after the MFS agreement was available for public inspection, exceeded the bounds of “reasonable period of time.” MFS requested interconnection with BA-MD on February 8, 1996. The parties signed the agreement at issue here on July 16, 1996 and filed a joint petition for approval of the agreement on the following day, July 17, 1996. We approved the agreement on October 9, 1996. Unlike most interconnection agreements, the MFS agreement contains a specific termination date. Thus, the MFS agreement ends on July 1, 1999.

According to GNAPS, it first requested terms contained in the MFS agreement in September, 1998. This request occurred nearly two years after the MFS agreement had been approved by this Commission and only ten months before the agreement was to expire. More importantly, GNAPS did not request arbitration of the “opt in” issue until December, 1998. At this point, the MFS agreement was scheduled to expire in

⁵ The Eighth Circuit vacated Rule 51.809 on the ground that it would deter the “voluntarily negotiated agreements” favored by the 1996 Act. *Iowa Utilities Board v. FCC*, 120F.3d 753, 801 (8th Cir. 1998). The Supreme Court subsequently disagreed and reinstated the rule. *AT&T v. Iowa Utilities Board*, ___ U.S. ___ (Jan. 25, 1999).

approximately six months. We find that GNAPS request for arbitration did not occur within the reasonable period of time called for by the FCC rules.

Furthermore, we find that even if it were reasonable to permit GNAPS to “opt in” to the MFS agreement at this late date, GNAPS would be entitled to the terms of the MFS agreement only until the termination date of July 1, 1999. GNAPS cannot avoid the fact that the language of the agreement says that its term ends on a stated date, not “three years from the date hereof.” This term was negotiated and agreed upon by both MFS and BA-MD and there is no support for the argument that the length of the contract is not an integral part of the agreement. GNAPS seeks not only to “opt in” to the MFS agreement, but also to change one of its terms. There is nothing in the 1996 Act nor the FCC rules which would permit a CLEC to choose to opt in to an agreement while at the same time changing the terms of that agreement. Opting into contracts must occur upon the same terms and conditions as those which appear in the original agreement.⁶

IT IS THEREFORE, this 15th day of July in the year Nineteen Hundred and Ninety-Nine, by the Public Service Commission of Maryland,

ORDERED: 1) That the request of Global NAPS South, Inc. to opt in to the MFS agreement pursuant to §252(i) of the Telecommunications Act of 1996 is hereby denied.

2) That motions not granted by the actions taken herein are denied.

⁶ Given our resolution of this matter, we find that it is unnecessary for us to address the other issues raised in the Petition.

SIGNATURE PAGE


Commissioners

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2007, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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A handwritten signature in black ink, appearing to read 'Melvin Malone', is written over a horizontal line.