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April 30, 2008

VIA HAND DELIVERY

Hon. Eddie Roberson, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

electronically filed in docket office on 04/30/08

Re: *Petition Regarding Notice of Election of Interconnection Agreement By
Nextel South Corporation*
Docket No. 07-00161

Dear Chairman Roberson:

Enclosed are the original and four copies of the following documents filed on behalf of AT&T Tennessee:

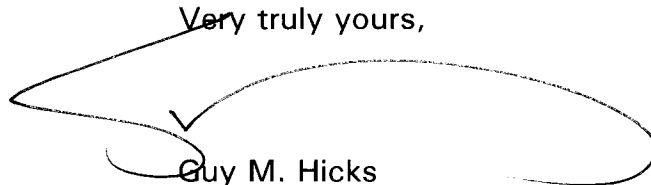
Brief in Accordance with Hearing Officer's April 22, 2008 Notice

Affidavit of Randy J. Ham

The original signature page for Mr. Ham's Affidavit will be provided to the Authority tomorrow.

Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH:ch

710427

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition Regarding Notice of Election of Interconnection Agreement By
Nextel South Corporation*
Docket No. 07-00161¹

AT&T TENNESSEE'S BRIEF IN ACCORDANCE WITH
HEARING OFFICER'S APRIL 22, 2008 NOTICE

COMES NOW BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T Tennessee") and files this Brief in accordance with the Tennessee Regulatory Authority ("Authority") Hearing Officer's Notice, dated April 22, 2008. In accordance with the Notice, this brief addresses: a) interpretation of the language contained in 47 C.F.R. §51.809 regarding adoption of the "entire" agreement as it relates to the parties and this agreement; b) interpretation of the language contained in Merger Commitment No. 1 regarding adoption of the "entire" agreement as it relates to the parties and this agreement; and c) address or distinguish the agreement contained in TRA Docket No. 04-00311 (Alltel).

I. Interpretation of Language Contained In 47 C.F.R. Section 51.809 Regarding Adoption of The Entire Agreement

Federal Communications Commission ("FCC") rule 47 C.F.R. § 51.809 ("Rule 51.809") is the FCC's implementing regulation for 47 U.S.C. § 252(i).

¹ This Docket is a consolidation of 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; and NPCR, Inc. d/b/a Nextel Partners' 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. 07-00162. The Nextel entities that are parties to this now consolidated Docket are referred to collectively herein as "Nextel."

Section 252(i), entitled “Availability to other telecommunications carriers,” provides:

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

In implementing Section 252(i), Rule 51.809 provides in pertinent part:

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement *in its entirety* to which the incumbent LEC 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.

(Emphasis added). That language: “any agreement in its entirety” is clear and unambiguous and should therefore be afforded its plain meaning.² Accordingly, Rule 51.809 establishes a clear duty for ILECs to make ***complete agreements*** available for adoption.

Importantly, the Rule does not require incumbent LECs to make ***portions*** of agreements available. Stated differently, the Rule does not require incumbent LECs to allow carriers to pick apart interconnection agreements and choose certain portions of the agreement while leaving other parts out. In only obligating incumbents to make entire agreements available, Rule 51.809 is the result of the FCC’s determination to change from the “Pick and Choose rule” to the “All or

² See, e.g., *Wells v. Tennessee Board of Regents, Tennessee State University, and James Hefner*, 231 S.W.3d 912, 916 (2007 Tenn.) (“If the statutory language is clear and unambiguous, we apply its plain meaning in its normal and accepted use and without a forced interpretation that would limit or expand the statute’s application”) citing *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004).

Nothing rule” as to the adoption of approved interconnection agreements within a state, pursuant to § 252(i).³ The all-or-nothing rule requires “a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement *in its entirety*, taking *all* rates, terms, and conditions from the adopted agreement.”⁴

In the present instance, Rule 51.809, in concert with the FCC’s determinations in moving to the all-or-nothing rule, makes it clear that Nextel is not entitled to the adoption. AT&T Tennessee does not have a legal obligation to make the agreement Nextel seeks to adopt, containing wireless and wireline provisions, available to Nextel because Nextel is admittedly not certificated to provide wireline services in Tennessee.

Given these FCC parameters, to effectively adopt an agreement in its entirety, a party must have a legal right to avail itself of all of the terms and conditions contained in the agreement it seeks to adopt. If a carrier cannot legally avail itself of portions of the agreement, but is nonetheless allowed to adopt and operate under the terms and conditions in the agreement that are legally available, it could not legitimately be said to have taken the agreement in its entirety.

If Nextel were allowed the adoption it could only attempt to pick and choose to use wireless provisions of the agreement. This Nextel cannot legally do, and

³ See Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 F.C.C.R. 13494 at ¶1 (July 13, 2004).

⁴ *Id.* (emphasis added).

allowing Nextel to adopt the Sprint interconnection agreement would result in an agreement that would be contrary to FCC rulings and internally inconsistent.

Nextel cannot avail itself of all of the interconnection services and network elements provided within the Sprint agreement. The Sprint agreement contains terms and conditions between AT&T Tennessee and the following Sprint entities: wireline providers Sprint Communications Company Limited Partnership and Sprint Communications Company L.P. (collectively referred to as "Sprint CLEC"); and wireless providers Sprint Spectrum L.P. and SprintCom, Inc. (collectively "Sprint PCS"). The Sprint interconnection agreement, therefore, addresses a unique mix of wireline and wireless items.

The terms and conditions of the Sprint interconnection agreement clearly apply only when the non-ILEC parties to the agreement are providing both wireline and wireless services. Nextel, however, does not provide both services in Tennessee. Nextel is not a certificated CLEC in Tennessee, and therefore it cannot legally provide such services in the State.

If Nextel were allowed to adopt the Agreement, such adoption would erroneously suggest that Nextel could avail itself of provisions in the Agreement that apply only to CLECs. For example, Attachment 2 of the Sprint agreement allows the Sprint CLEC entities to purchase unbundled network elements ("UNEs") from AT&T Tennessee. Allowing Nextel to adopt the agreement would result in erroneously suggesting that Nextel can purchase UNEs from AT&T Tennessee.

Nextel only provides wireless services in Tennessee, and is not certificated to provide any CLEC services in the State.

In its *Triennial Review Remand Order*, the FCC ruled that:

Consistent with [the D.C. Circuit Court of Appeal's opinion in] USTA II, we deny access to UNEs in cases where the requesting carrier seeks to provide service exclusively in a market that is sufficiently competitive without the use of unbundling. ***In particular, we deny access to UNEs for the exclusive provision of mobile wireless services***⁵

Nextel cannot purchase UNEs from AT&T Tennessee, and therefore granting the adoption would violate the FCC rules. There are various other terms and conditions within the agreement that cannot be applied to Nextel as a stand-alone wireless carrier.⁶

The language contained in 47 C.F.R. § 51.809, regarding adoption of the entire agreement, makes it clear that Nextel is not entitled to the adoption it seeks. Nextel cannot adopt the agreement in its entirety consistent with the FCC's rules because certain terms and conditions contained in the agreement are legally off limits to Nextel.

II. Interpretation of Language Contained In Merger Commitment No. 1 Regarding Adoption of The Entire Agreement

The relevant FCC Merger commitment provides:

1. The AT&T/BellSouth ILEC shall make available to any requesting telecommunications carrier any ***entire effective interconnection agreement***, whether negotiated or arbitrated,

⁵ See Order On Remand, In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 F.C.C.R. 2533 at ¶ 34 (February 4, 2005) (emphasis added).

⁶ The interconnection agreement Nextel seeks to adopt contains over 1,000 pages: an AT&T Tennessee stand alone CMRS agreement contains, on average, 30 pages.

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).

As is the case with interpretation of the language contained in Rule 51.809, the language contained in the Merger Commitment should be afforded its plain ordinary meaning.⁷ Hence the reference to an “entire” agreement means just that: the agreement is to be made available in its entirety. Likewise, just as Rule 51.809 is consistent with the FCC’s all-or-nothing rule, regarding adoption of entire agreements, so too is the language in the Merger Commitment.

Moreover, the Merger Commitment does not abrogate or otherwise alter these pre-existing FCC rules. There is nothing contained within the Merger Commitments or the Merger Order suggesting that the commitments should be read to confer broader rights than were sanctioned under existing FCC rules. On the contrary, the reference to an “entire agreement” contained within the Merger Commitment should be interpreted as in conformance with Rule 51.809 and the all-or-nothing rule.

⁷ *Well v. Tennessee Board of Regents*, fn. 2 *Supra*, at 917: “When a statute is not ambiguous, we need only to enforce the statute as written, with no recourse to the broader statutory scheme, legislative history, historical background, or other external sources.” The same statutory construction analysis should logically apply to interpretation of the Merger Commitments as well.

The limitation on adoptions that the FCC established in Rule 51.809 must apply under Merger Commitment No.1 and therefore, consistent with the Rule and the “entire effective interconnection agreement” language contained within the Merger Commitment, Nextel’s adoption should be denied because what Nextel seeks to adopt is less than the entire effective agreement.

III. **Analysis of The Agreement Contained in TRA Docket No. 04-00311⁸**

AT&T Tennessee’s position regarding the AT&T Tennessee/Alltel interconnection agreement at issue in Docket No. 04-00311 is consistent with AT&T Tennessee’s assertion in the present docket that stand alone CMRS providers, such as Nextel, that are not certificated to provide wireline services in Tennessee should not be allowed to adopt contracts containing wireline provisions.

The interconnection agreement in TRA Docket 04-00311 is between AT&T Tennessee and Alltel Communications, Inc. (“Alltel”). Originally, that regional interconnection agreement was between an ILEC, a CLEC and a CMRS (wireless) provider. Alltel subsequently withdrew its CLEC certificate in Tennessee. However, Alltel failed to notify the appropriate contacts within AT&T, as required by the agreement, that it had withdrawn its CLEC certificate in Tennessee. Since discovering that fact, AT&T Southeast has begun the process of negotiating a new stand alone CMRS contract with Alltel.⁹ AT&T has ***not agreed that Alltel*** may maintain the interconnection agreement as a stand alone CMRS agreement.

⁸ All of the facts set forth in this section of the brief are supported by the affidavit of Randy J. Ham filed herewith as Attachment 1.

⁹ AT&T Southeast, not AT&T Tennessee, has responsibility for negotiating interconnection agreements. AT&T Southeast employees are located in Atlanta, Georgia and Birmingham, Alabama.

The interconnection agreement between AT&T Tennessee and Alltel collectively addressed both wireline and wireless services. When the agreement between AT&T Tennessee and Alltel became effective, Alltel was certificated to provide wireline services in Tennessee, and provided wireline services in Tennessee.

However, in approximately 2006, Alltel Corporation embarked on a separation of its wireless and wireline businesses. At that time, AT&T Southeast (then BellSouth) inquired whether the Alltel parties to the original interconnection agreement “still have the same legal association as represented in the [original] interconnection agreement.” In August 2006, Alltel responded that “[it had] retained its CLEC certificates” and “Windstream has obtained its own (separate) CLEC certificates.” Exhibit 1 is a copy of the email string reflecting these Alltel representations. Given Alltel’s prior representations, and based upon the absence of any contractually required notification to the contrary by Alltel, until recently the AT&T Southeast negotiators believed that Alltel remain a certificated CLEC in Tennessee.

AT&T Southeast subsequently learned that these representations were not accurate when they were made. In fact, on July 16, 2007, the TRA entered an Order granting Alltel Communications, Inc.’s request to cancel its Certificate of

Public Convenience and Necessity. The Order stated that Alltel requested such cancellation on May 17, 2007.¹⁰

Pursuant to Section 9.2 of Alltel's interconnection agreement, Alltel has a contractual duty to inform AT&T in the manner specified in the interconnection agreement as soon as it changes its structure and/or is no longer certificated as a CLEC in the State. Specifically, Section 9.2 of the interconnection agreement provides that if Alltel "changes its name or makes changes to its company structure," Alltel must notify specific employment positions of AT&T Southeast of the change.

AT&T Southeast (then BellSouth) suggested this language because changes to Alltel's name or changes to its company structure could require amendments to the interconnection agreement. Rather than trying to keep track of such changes by indirect means (such as by monitoring press announcements or regulatory filings), AT&T Southeast needed Alltel to notify the appropriate people at AT&T Southeast directly of any such changes. Alltel agreed to the above-stated contractual language requiring it to do so.

However, despite spinning off its CLEC business and thereby changing its corporate structures, Alltel failed to provide the required notification to AT&T Southeast. That is, no such notification was provided by Alltel to any of the four (4) employment positions and addresses listed in Section 23 ("Notices") of the interconnection agreement. The lack of notification, coupled with Alltel's

¹⁰ See Order Granting Cancellation of Authority to Provide Telecommunications Services, entered July 15, 2007, in Docket No. 99-00149.

representation in August of 2006 that it was retaining its CLEC certification, led the AT&T Southeast representatives responsible for the interconnection agreement to believe that Alltel was still both a CLEC and a CMRS provider, capable of operating under the existing interconnection agreement.

Since discovering that Alltel no longer has a CLEC certificate in Tennessee, AT&T Southeast, in March of 2008, began negotiations with Alltel for a new CMRS stand alone agreement.

AT&T believes that it is preferable to attempt to negotiate an agreed solution with Alltel prior to filing a complaint with the TRA or taking unilateral action to enforce the terms of the interconnection agreement. AT&T believes this negotiation approach will avoid wasting the TRA's time if the matter can be resolved by agreement.

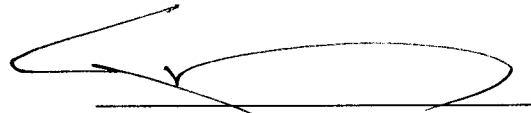
AT&T's position regarding the AT&T/Alltel interconnection agreement at issue in Docket No. 04-00311 is consistent with AT&T Tennessee's assertion in the present docket that stand alone CMRS providers, such as Nextel, that are not certificated to provide wireline services in Tennessee should not be allowed to adopt contracts containing wireline provisions.

CONCLUSION

For all the reasons stated above, the Authority should deny Nextel's Motion for Summary Judgment.

Respectfully submitted,

AT&T TENNESSEE

A 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

LISA S. FOSHEE

JOHN T. TYLER

AT&T Midtown Center – Suite 4300
675 West Peachtree Street, N.E.
Atlanta, GA 30375

EXHIBIT 1

Mattison, Jeanette

From: Ron.Williams@alltel.com
Sent: Wednesday, August 30, 2006 3:20 PM
To: Ham, Randy
Cc: Baldwin, Freida; White, Royce
Subject: RE: Alltel/Windstream

Randy,

Alltel Communications has retained its CLEC certificates and we are in compliance with our agreements. Windstream has obtained its own (separate) CLEC certificates. The person in the BellSouth organization that seems to have the most knowledge of this is Dwight Bailey.

Let me know if you have any further questions concerning this.

-----Original Message-----

From: Ham, Randy [mailto:Randy.Ham@bellsouth.com]
Sent: Friday, August 25, 2006 1:37 PM
To: Williams, Ron
Cc: Baldwin, Freida; White, Royce
Subject: FW: Alltel/Windstream

Ron,

As a follow up to the message I sent you this past Tuesday August 22nd, the BellSouth Invoice payment Center received numerous bills this week from Windstream for CLEC facility charges, I have attached one here for your review. This further heightens our concern about the Alltel entities not having the same legal association as represented in the interconnection agreement.

We would appreciate your prompt attention to this matter, thanks.

Randy
<<Windstream.pdf>>

From: Ham, Randy
Sent: Tuesday, August 22, 2006 10:45 AM
To: 'ron.williams@alltel.com'
Subject: Alltel/Windstream

Ron,

Per our discussion yesterday, here is the question we have about the Alltel split/merger and the creation of Windstream Corporation. We, of course, have seen numerous articles announcing the creation of Windstream Corporation and have received correspondence (attached) from Windstream that gave us the NENA ID for Windstream CLEC. As a result several questions have been posed to me concerning the new corporate structures of Alltel and Windstream.

Specifically, since BellSouth and Alltel have an interconnection agreement that is between BellSouth and the combined entities of Alltel Wireless and Alltel CLEC, our concern is if, in BellSouth territory, the two Alltel entities still have the same legal association as represented in the interconnection agreement that was effective 8/30/04 between BellSouth and Alltel. For your convenience I have attached a copy of that interconnection agreement. I would appreciate your response via email so I can have it for my files.

Please call me if you have any questions, you can reach me at 205-321-7795.

4/23/2008

Randy Ham
<<Notifications from Alltel concerning split of wireless and landline business>> <<Alltel Combo.pdf>>

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4/23/2008

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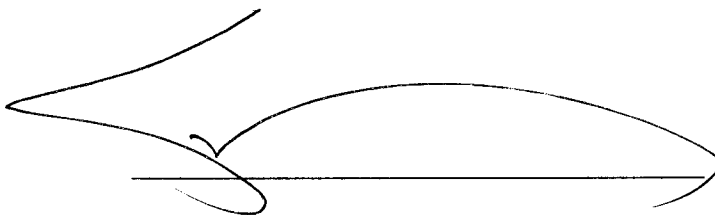
I hereby certify that on April 30, 2008, a copy of the foregoing document was served on the following, via the method indicated:

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

Melvin Malone, Esquire
Miller & Martin
150 Fourth Ave., N., #1200
Nashville, TN 37219-2433
mmalone@millermartin.com

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

Gary Hotvedt, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238
gary.hotvedt@state.tn.us

A handwritten signature in black ink, appearing to read 'Gary Hotvedt', with a long horizontal stroke extending to the right.

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

IN RE: *Petition Regarding the Notice of Election of Interconnection Agreement
by Nextel South, Inc. and NPCR, Inc. d/b/a Nextel Partners, Inc.*

Docket No 07-00161

AFFIDAVIT OF RANDY J. HAM
ON BEHALF OF AT&T TENNESSEE

STATE OF ALABAMA
COUNTY OF JEFFERSON

COMES NOW Randy J. Ham and states as follows:

1. My name is Randy J. Ham. I am Lead Interconnection Agreements Manager with AT&T Southeast. As such, I am responsible for certain issues related to interconnection agreements, primarily related to negotiation of the general terms and conditions of Interconnection Agreements throughout AT&T's operating regions, including Tennessee. My business address is 600 19th Street North, Birmingham, Alabama, 35203.

2. My career spans thirty-four (34) years in telecommunications with South Central Bell, BellSouth Corporation, BellSouth Telecommunications, Inc., and AT&T. During that time, I have held positions in Network, Internal Auditing, Comptrollers, Regulatory, and my current position as a lead negotiator for wireless interconnection.

3. Nextel¹ is seeking an Order approving its requests for adoption of the existing Interconnection Agreement between AT&T Tennessee, Sprint CLEC and Sprint PCS dated January 1, 2001 and initially approved by the Tennessee Regulatory Authority ("Authority") in Docket No. 00-00691, and most recently approved on January 25, 2008 in Docket No. 07-00132. AT&T Tennessee opposes this request.

4. On April 21, 2008, AT&T Tennessee was directed by the Authority to address the interconnection agreement in TRA Docket 04-00311. I will do so. That interconnection agreement is between AT&T Tennessee and Alltel Communications, Inc. ("Alltel"). Originally, that interconnection agreement was between an ILEC, a CLEC and a CMRS (wireless) provider. The facts I will provide show, among other things, that Alltel failed to notify the appropriate contacts within AT&T, as required by the agreement, that it had withdrawn its CLEC certificate in Tennessee. Since discovering that fact, AT&T Southeast has begun the process of negotiating a new stand alone CMRS contract with Alltel.

5. I am not an attorney, and my affidavit on these issues is provided with respect only to facts and policy. Therefore, my affidavit should not be construed as a waiver of any legal arguments.

6. As noted above, the interconnection agreement between AT&T Tennessee and Alltel collectively addresses both wireline and wireless services.

¹ As used in this Affidavit, "Nextel" refers collectively to Nextel South Corporation and NPCR, Inc., d/b/a Nextel Partners.

7. When the interconnection agreement between AT&T Tennessee and Alltel became effective, Alltel was certificated to provide wireline services in Tennessee, and provided wireline services in Tennessee.

8. Given Alltel's prior representations and based upon the absence of any contractually-required notification to the contrary by Alltel, until recently AT&T Southeast negotiators believed that Alltel remained a certificated CLEC in Tennessee.

9. However, in approximately 2006, Alltel Corporation embarked on a separation of its wireless and wireline businesses. At that time, AT&T Southeast (then BellSouth) inquired whether the Alltel parties to the original interconnection agreement "still have the same legal association as represented in the [original] interconnection agreement." In August 2006, Alltel responded that "[it had] retained its CLEC certificates" and "Windstream has obtained its own (separate) CLEC certificates." Exhibit 1 is a copy of the email string reflecting these Alltel representations.

10. AT&T Southeast subsequently learned that these representations were not accurate when they were made. In fact, on July 16, 2007, the TRA entered an Order granting Alltel Communications, Inc.'s request to cancel its Certificate of Public Convenience and Necessity. The Order stated that Alltel requested such cancellation on May 17, 2007.²

² See Order Granting Cancellation of Authority to Provide Telecommunications Services, entered July 15, 2007, in Docket No. 99-00149.

11. Pursuant to Section 9.2 of Alltel's interconnection agreement, Alltel has a contractual duty to inform AT&T as soon as it changes its structure and/or is no longer certificated as a CLEC in the State. As AT&T's lead negotiator for the Alltel interconnection agreement, I only recently learned that Alltel no longer has a CLEC certificate in Tennessee.

12. I personally participated in negotiations that led to the inclusion of language in the interconnection agreement requiring that Alltel notify AT&T Southeast (then BellSouth) of such changes.

13. Specifically, Section 9.2 of the interconnection agreement provides that if Alltel "changes its name or makes changes to its company structure," Alltel must notify specific employment positions of AT&T Southeast of the change.

14. AT&T Southeast (then BellSouth) suggested this language because changes to Alltel's name or changes to its company structure could require amendments to the interconnection agreement. Rather than trying to keep track of such changes by indirect means (such as by monitoring press announcements or regulatory filings), AT&T Southeast needed Alltel to notify the appropriate people at AT&T Southeast directly of any such changes. Alltel agreed to the above-stated contractual language requiring it to do so.

15. However, despite spinning off its CLEC business and relinquishing its Certificate, and thereby changing its corporate structures, Alltel failed to provide the required notification to AT&T Southeast. That is, no such notification was

provided by Alltel to any of the four (4) employment positions and addresses listed in Section 23 ("Notices") of the interconnection agreement.

16. Since discovering that Alltel no longer has a CLEC certificate in Tennessee, AT&T began negotiations with Alltel for a new CMRS stand-alone agreement.

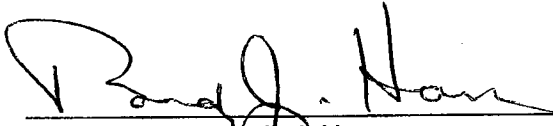
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18. AT&T's position regarding the AT&T/Alltel interconnection agreement at issue in Docket No. 04-00311 is consistent with AT&T Tennessee's assertion in the present docket that stand-alone CMRS providers, such as Nextel, that are not certificated to provide wireline services in Tennessee should not be allowed to adopt contracts containing wireline provisions.

19. I respectfully request the opportunity to present the facts summarized in this affidavit to the Authority through pre-filed written testimony.

FURTHER AFFIANT SAITH NOT.

Signed this 30th day of April, 2008


Randy J. Ham

STATE OF ALABAMA

COUNTY OF JEFFERSON

Sworn to and subscribed before me, this 30th day of April 2008.

My Commission Expires: 10-17-2011

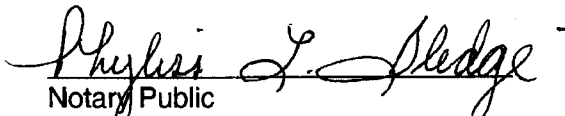

Notary Public

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4/23/2008

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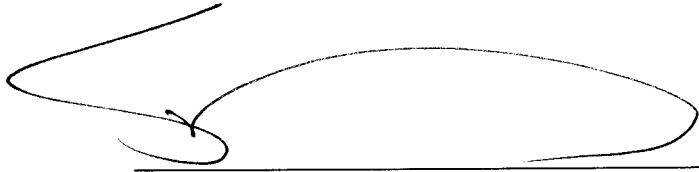
I hereby certify that on April 30, 2008, a copy of the foregoing document was served on the following, via the method indicated:

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

Melvin Malone, Esquire
Miller & Martin
150 Fourth Ave., N., #1200
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- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
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A handwritten signature in black ink, appearing to read "Gary Hotvedt", is written over a horizontal line.