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May 6, 2008

VIA HAND DELIVERY

electronically file in docket office on 0506/08

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

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 AT&T Tennessee's *Response Brief in Accordance with Hearing Officer's April 22, 2008 Notice*.

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. 07-00161[1]

AT&T TENNESSEE'S RESPONSE 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 Response Brief in accordance with the Tennessee Regulatory Authority ("Authority") Hearing Officer's Notice, dated April 22, 2008.

I. Nextel's Interpretation of Language Contained In 47 C.F.R. § 51.809 Regarding Adoption of The Entire Agreement Is Wrong.

Nextel's interpretation of Rule 51.809 as it relates to an entire agreement would leave that language superfluous and of no force and effect. 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.

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[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."

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, the carrier could not legitimately be said to have adopted the agreement in its entirety.

In its initial brief ("Nextel Brief"), Nextel erroneously asserts that AT&T Tennessee is attempting to "interject [a] discriminatory poison pill" into the terms and conditions of the agreement.[2] AT&T Tennessee has never suggested any alteration to "terms and conditions [of] the Sprint ICA" as Nextel suggests.[3] On the contrary, AT&T Tennessee has consistently asserted that, by operation of law, all of the terms and conditions of an agreement must remain intact and operable as written for a party to make a lawful adoption.

The plain unambiguous meaning of the FCC's all-or-nothing rule makes this point patently clear requiring: "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]

Nextel's argument that it can take the entire agreement but choose not to use those certain terms and conditions that are not legally available to Nextel

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[2] Nextel Brief at pp. 2, 8.

[3] *Id.* at p. 2.

[4] *See* FCC Second Report and Order 04-164, CC Docket 01-338 released July 13, 2004, page 2 (emphasis added).

would completely eviscerate Rule 51.809, which is the all-or-nothing rule and the FCC's order adopting same.[5] The dispositive issue is not whether a party adopts an agreement "without any intent of using the entire agreement"[6] but rather whether an adopting party has the legal right and ability to utilize the entire agreement.

It is certainly true that parties who have the legal right to utilize certain terms and conditions in an interconnection agreement sometimes choose not to utilize portions of the agreement. That fact, however, is of no consequence here. Again, the question in this instance is not about choice—it is about legal right, and specifically in the case of Nextel, the lack thereof. Parties that cannot legally avail themselves of all of the terms and conditions in a given interconnection agreement should not be allowed to adopt such an agreement. Allowing such an adoption would erroneously suggest that an adopting party has rights to terms and conditions that are in direct contravention of the law.

Consistent with the all-or-nothing rule, if a party cannot legally avail itself of the entire agreement, it cannot nonetheless adopt the agreement with the caveat that it will choose not to utilize some terms and pick out for use others that it considers preferable. The correct analysis is not whether Nextel decides it might use only certain portions of an adopted agreement, but rather whether it is legally capable of using the entire agreement.

During the course of this dispute Nextel has erroneously attempted to rely upon the case of *Sage Telecom, L.P. v. Public Utility Commission of Texas*, 2004

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[5] *See e.g.*, pp. 12-13

[6] *Id.* at p. 13.

U.S. Dist. Lexis 28357. However, that case has absolutely nothing to do with an adoption and to the extent that it is relevant to any issues before the Authority it is favorable to the position consistently taken by AT&T Tennessee. The case deals with a dispute between the Public Utility Commission of Texas and two telecommunications companies, Southwestern Bell, Telephone, L.P. d/b/a SBC Texas and Sage Telecom, L.P. over the public filing requirements of the Telecommunications Act of 1996.[7] Importantly, the case deals with a ***certificated CLEC***, and consistent with AT&T Tennessee's position makes clear that **CLECs** are entitled to ***entire agreements***.

Specifically, in concert with AT&T Tennessee's position, the United States District Court for the Western District of Texas asserts: "[t]he obligation to make all the terms and conditions of an interconnection agreement to any requesting **CLEC** follows plainly from §252(i) and the FCC's all-or-nothing rule interpreting it."[8] The case has nothing to do with non-certificated CMRS providers attempting to adopt bits and pieces of effective ILEC/CLEC/CMRS agreements.

Nextel is not a certificated CLEC and cannot legally avail itself of the entire wireline/wireless agreement. To give requisite meaning and effect to the language in Rule 51.809 regarding adoption of the entire agreement, and to give effect to the intent of the parties in negotiating a joint wireline/wireless agreement, Nextel's adoption should be denied.

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[7] *Sage Telecom, P.P., v. Public Utility Commission of Texas* 2004 U.S. Dist. Lexis 28357, at *2.

[8] *Id.* at *24.

II. Nextel's Interpretation of Language Contained In Merger Commitment No. 1 Regarding Adoption of The Entire Agreement Ignores The Fact That The Merger Commitment Does Not Abrogate Pre-existing Law.

In its Brief, Nextel asserts that the Merger Commitment provides an almost unfettered right to adoption—limited only by the restrictions "expressly identified in the Commitment."[9] Nextel is wrong, and did not and cannot point to any language contained in the Merger Commitment or Merger Order where the FCC stated that the Merger Commitment somehow rendered pre-existing rules and regulations null and void.

There is nothing contained within the Merger Commitment 7.1 suggesting that the commitments should be read to confer broader rights than were sanctioned under existing FCC rules for in-state interconnection agreement adoptions. On the contrary, the reference to an "entire agreement" contained within the Merger Commitment should be interpreted as in conformance with Rule 51.809, the all-or-nothing rule.

The Merger Commitment does not abrogate or otherwise alter these pre-existing FCC rules. 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.

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[9] Nextel Brief at p. 24.

III. Nextel's Reliance on The Agreement Contained in TRA Docket No. 04-00311 as Proof of Prejudicial Treatment is Misplaced. [10]

Nextel's view that "AT&T appears to take diametrically opposed positions regarding a Nextel wireless-only adoption of the Sprint ICA versus an Alltel wireless-only use of the Alltel ICA approved in TRA Docket No. 04-00311" is inaccurate. AT&T Tennessee's position regarding wireless only companies obtaining (or in the case of Alltel attempting by artifice to remain in) wireline/wireless interconnection agreements is entirely consistent. For all of the reasons stated above, AT&T Tennessee maintains that it is unlawful for non-CLEC certificated wireless only carriers to obtain or maintain access to interconnection agreements containing express wireline terms and conditions. To find otherwise puts AT&T Tennessee in a position of arguably being contractually obligated to provide CLEC facilities and services to a company that is not lawfully certificated to purchase those services or provide them to end users. Nextel's assertion that it simply will not avail itself of the terms and conditions applicable to CLECs is as meaningless as any non-certificated carrier adopting a CLEC agreement and assuring AT&T Tennessee and this Authority that it doesn't plan to order services under the agreement.

In Nextel's brief, Nextel makes the incorrect assumption that AT&T Tennessee has extended the interconnection agreement of a wireless only carrier in direct contradiction to its position in this proceeding. The interconnection

[10] 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.

agreement in question was between an ILEC, a CLEC and a CMRS (wireless) provider, specifically Alltel Communications, Inc. ("Alltel"). Alltel failed to notify the appropriate contacts within AT&T, as required by the agreement, that it had withdrawn its CLEC certificate in Tennessee as well as other states. Since discovering that fact, AT&T Southeast has begun the process of negotiating a new stand alone CMRS contract with Alltel.

The Alltel agreement required that notification be sent to appropriate contacts set forth in Section 23 ("Notices") of the interconnection agreement. However, Alltel did not provide AT&T notice to any of the four (4) employment positions and addresses listed in the Notices provision. While Alltel in South Carolina has claimed that communication between Randy Ham, of AT&T Southeast, and Chuck Cleary, of Alltel, indicates that AT&T did have knowledge of the withdrawal of Alltel's CLEC certification and that AT&T was willing to extend Alltel's interconnection agreement, that claim is incorrect. Alltel never notified AT&T that it was withdrawing its CLEC certificate, and as a result, AT&T continued to operate with the understanding that Alltel was maintaining its certificate as it expressly indicated.

AT&T Southeast continues to negotiate with Alltel for a new CMRS stand-alone agreement, which AT&T believes is preferable to filing a complaint with the Authority or taking unilateral action to enforce the terms of the interconnection agreement. AT&T Tennessee believes this negotiation approach will avoid wasting the Authority's time if the matter can be resolved by agreement.

In its brief, Nextel also questions why the amendment to extend the interconnection agreement was not filed for approval in Tennessee. The amendment was not filed in Tennessee because, as stated previously, AT&T Tennessee became aware that Alltel's CLEC certification was no longer valid in Tennessee. When AT&T learned that Alltel was no longer certificated in the nine (9) Southeast states, AT&T began addressing the issue diligently with Alltel and either took or held action in each state, depending on the circumstance in that state. Because the amendment had not yet been filed in Tennessee, AT&T did not file it in Tennessee. In contrast, the amendments had been filed, and then approved, in Alabama and Kentucky. Nonetheless, AT&T took immediate action by attempting to re-negotiate the appropriate interconnection agreement based on the ability of Alltel to provide wireless only services in those states.

AT&T Tennessee'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.

IV. The Effective Date Issue Nextel Raised is Improperly Beyond The Scope of The Hearing Officer's Order, and In Any Event Nextel's Suggested Effective Date Would be Wrong.[11]

The Authority made clear that, in directing the parties to file additional briefs in this Docket, it was purposely restricting the scope of areas the parties were to

[11] On page 28 of its brief, Nextel states that an adoption should be granted "with an effective date the same day as Nextel's adoption request of May 18, 2007."

address in their briefs. Specifically, the Hearing Officer's notice, dated March 25, 2008 expressly stated that "[t]he precise issues to be briefed are as follows:"

> a) interpretation of the language in Rule 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) the agreement contained in TRA Docket No. 04-00311.

The parties were directed to address those issues and those issues *only*. Nowhere in the Order are the parties directed to address an effective date. Nextel nonetheless ignored the Authority's clear directive and raised a specious effective date issue. Therefore, should the Authority decide to consider Nextel's stray issue (which AT&T asserts the Authority should not do), AT&T Tennessee respectfully requests that the Authority consider AT&T Tennessee's position on the issue.

First and foremost, AT&T Tennessee maintains that the adoption Nextel seeks is unlawful and should therefore be denied. However, in the event the Authority ultimately decides to approve the adoption, a retroactive effective date of May 18, 2007 would, for reasons further explained below, be entirely inappropriate.

Nextel's faulty justification for an effective date of May 18, 2007 is that it requested the adoption on that date.[12] That rationalization simply makes no sense. At the time of that request, May 18, 2007, the underlying agreement was not available for adoption and the request was untimely.[13] This is so because, in accordance with federal law, AT&T Tennessee's obligation to provide an adoption is limited to a "reasonable period of time" after the original contract is approved,[14] and the interconnection agreement was, at that time, by its express terms expired. AT&T Tennessee and Sprint were only operating under the terms and conditions of the agreement on a month-to-month basis as the parties labored towards a new agreement. A party attempting to adopt an expired agreement cannot rationally be said to have requested the adoption within the required "reasonable period of time."

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 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

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[12] *Id.*

[13] AT&T Tennessee and Sprint subsequently entered into an amendment of the interconnection agreement on December 7, 2007 and thereby amended the term of the agreement. However, that amendment is of no consequence to this analysis because at the time of Nextel's request, May 18, 2007, the agreement was by its express terms expired and the parties were involved in arbitrating a new agreement.

[14] 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 § 252(h) of the Act" (emphasis added).

request to adopt an interconnection agreement within approximately ten months and seven months, respectively, of each adopted agreement's termination date was found to be beyond the "reasonable period of time" requirement.[15]

For instance, in *Global NAPs One*, 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.[16]

Likewise, in *Global NAPs Two*, 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.[17]

At the time of Nextel's request it was erroneously attempting to push the "reasonable period of time" envelope even further as Nextel sought to adopt an *expired* agreement.[18] It stretches credulity to assert that an attempt to adopt an expired agreement (and in this case, one that had been *expired for over two years*)

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[15] *See In Re: Global NAPs South, Inc.*, 15 FCC R'cd 23318 (August 5, 1999) *In re: Notice of Global NAPs South, Inc.*, Case No. 8731 (Md. PSC July 15, 1999).

[16] *See Global NAPs One.*

[17] *See Global NAPs Two.*

[18] The interconnection agreement was entered into on January 1, 2001, and was amended twice to extend the term to December 31, 2004.

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

Furthermore, imposing a retroactive effective date would be contrary to basic rules of contract formation (requiring a meeting of the minds and agreement on terms before a contract is formed) and to the 1996 Act, which requires state commission approval of an interconnection agreement before it becomes binding. 47 U.S.C. § 252(e). Indeed, even when parties to an interconnection agreement have *agreed to* an effective date, an interconnection agreement still cannot lawfully take effect until the Authority approves the interconnection agreement under § 252(e) of the 1996 Act.

As for the merger commitment, it plainly does not contemplate that a ported agreement will be effective as of the day of the request. It certainly says no such thing, and since it requires the ported agreement to be modified in light of the "subject to" conditions, which requires a review of the requested agreement against pricing, performance measure, technical feasibility, OSS and network attributes and limitations, and legal and regulatory considerations of the port-to state, the commitment did not contemplate agreements somehow instantaneously becoming effective. If the FCC did not require ported agreements to be effective on the day of the request, which it plainly did not, it is illogical to assume that the

FCC contemplated that adoptions would become effective on the date of the request.[19]

Nextel evidently seeks a retroactive effective date to penalize AT&T Tennessee for allegedly having delayed the process. To be clear, Nextel's proposal to back-date the interconnection agreement is tied to its positions on the bill-and-keep and facility sharing provision. If Nextel prevails, its proposal for a retroactive effective date is, in effect, a contention that AT&T Tennessee should be penalized in an amount equal to reciprocal compensation payments and/or interconnection facility payments for AT&T Tennessee's alleged delay.

For example, Nextel wants a retroactive rate of ***zero*** under bill and keep for traffic AT&T terminated on Nextel's behalf. But there is no legal or factual basis for any such penalty. AT&T Tennessee did not delay the process, wrongfully or otherwise. There can be no serious contention that AT&T Tennessee's positions on why the adoption is unlawful constitute bona fide, defensible positions. And as with any disputed matter, reaching resolution requires time and effort.

Moreover, retroactive ratemaking is prohibited in Tennessee. As explained by the Tennessee Court of Appeals in *South Central Bell Telephone Company v. Tennessee Public Service Commission,* 675 SW2d 718, 719 (Tenn. Ct. App 1984), the General Assembly never intended to extend retroactive ratemaking power to the Authority. Consistent with this general prohibition, the Authority has

[19] As previously asserted, AT&T Tennessee continues to maintain that neither of the Merger Commitments Nextel relies on support the adoption that Nextel is seeking.

consistently refused to or refrained from imposing changes in wholesale pricing that would take effect retroactively.

In 1997, for example, when the Authority convened its docket to establish UNE rates in accordance with the 1996 Telecommunications Act[20], it made no provision to make the effect of such UNE prices retroactive to 1996. This was the case notwithstanding the fact that the docket to establish such rates was not completed for more than three years. The newly established UNE rates took effect only prospectively after they were established.

Similarly, the Authority rejected BellSouth's requests in other dockets[21] to issue an order applying any future FCC reciprocal compensation rate for ISP-bound traffic retroactively. In that docket, CLECs Time Warner, Nextlink, and ITCDeltaCom argued vigorously in opposition to such a retroactive application of the rate on the basis that the Directors lacked the jurisdiction to impose retroactive rates on parties in the absence of the agreement of the affected carriers.

Finally, the Authority is well aware that, in the context of interconnection agreements, the parties are routinely required by the terms of such agreements to renegotiate a new agreement or term to conform to regulatory changes - rather than simply alter the agreements retroactively to reflect such changes. This is still

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[20] *See* Docket No. 97-01262, *Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "permanent Prices" for Interconnection and Unbundled Network Elements.*

[21] *See* May 15, 2000, *Response to BellSouth's Motion for Clarification* in Docket No. 98-00123, *Petition of Nextlink Tennessee, LLC for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc.;* Docket No. 99-00430, *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996;* and Docket No. 99-00797, *Petition for Arbitration of the Interconnection Agreement between BellSouth Telecommunications, Inc. and Time Warner Telecom of the Mid-South, L.P. Pursuant to the Telecommunications Act of 1996.*

further indication of the well-accepted practice of avoiding any type of retroactive alteration of pricing.

In addition to the potential impact on current subscribers of imposing new costs on carriers retroactively (and encouraging carriers in turn to recoup those costs for old services on new customers), the concept of retroactive rate-making is fundamentally unfair and raises due process concerns. Retroactive rate-making, like prohibited *ex post facto* laws, changes the rules after the fact and alters the legal impact of conduct after that conduct has occurred.

If the Authority were to ultimately approve the adoption, which it should not do, there is no valid justification for applying a retroactive effective date. Thus, the only lawful course under the 1996 Act and established practice is to have newly approved interconnection agreements take effect only after Authority approval.

CONCLUSION

Interpretation of the language contained in Rule 51.809, and the language contained in the Merger Commitment should be afforded its plain ordinary meaning.[22] 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 ruling regarding adoption of entire agreements, so too is the language in the Merger Commitment.

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[22] *Wells v. Tennessee Board of Regents, Tennessee State University, and James Hefner,* 231 S.W.3d 912, 916 (2007 Tenn.), fn. 2 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."

Moreover, 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.

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

Respectfully submitted,

AT&T TENNESSEE

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ATTACHMENT 1

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. This affidavit is in reply to the brief filed by Nextel[1] on April 30, 2008.

4. In Nextel's brief, Nextel discussed, as directed by the Authority, TRA docket 04-00311. Nextel makes the incorrect assumption that AT&T has extended the interconnection agreement of a wireless only carrier in direct contradiction to its position in this proceeding. This is incorrect and I will explain the differences.

5. As stated in my previous affidavit, that interconnection agreement was between an ILEC, a CLEC and a CMRS (wireless) provider and Alltel Communications, Inc. ("Alltel") failed to notify the appropriate contacts within AT&T, as required by the agreement, that it had withdrawn its CLEC certificate in Tennessee as well as other states. Since discovering that fact, AT&T Southeast has begun the process of negotiating a new stand alone CMRS contract with Alltel.

6. I reiterate, that notification to the appropriate contacts, as addressed in Section 23 ("Notices") of the interconnection agreement was not provided by Alltel to any of the four (4) employment positions and addresses listed.

7. While Alltel in South Carolina makes the argument that communication between myself and Chuck Cleary indicates that AT&T did have knowledge of the withdrawal of Alltel's CLEC certification and that AT&T was willing to extend Alltel's interconnection agreement, that claim is incorrect, as the correspondence indicates.

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

8. AT&T Southeast continues to negotiate with Alltel for a new CMRS stand-alone agreement, which AT&T believes is preferable 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.

9. AT&T continues to reiterate it'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.

10. In its brief, Nextel questions why the amendment to extend the interconnection agreement was not filed for approval in Tennessee. The amendment was not filed in Tennessee because, as stated previously, AT&T Tennessee became aware that Alltel's CLEC certification was no longer valid in Tennessee.

11. When AT&T learned that Alltel was no longer certificated in the nine (9) Southeast states, AT&T began addressing the issue diligently with Alltel and either took or held action in each state, depending on the circumstance in that state. Because the amendment had not yet been filed in Tennessee, AT&T did not file it in Tennessee. In contrast, the amendments had been filed, and then approved, in Alabama and Kentucky. Nonetheless, AT&T took immediate action by

attempting to re-negotiate the appropriate interconnection agreement based on the ability of Alltel to provide wireless only services in those states.

12. 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 2nd day of May 2008

Randy J. Ham

STATE OF ALABAMA

COUNTY OF JEFFERSON

Sworn to and subscribed before me, this 2nd day of May 2008.

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 19, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2008, a copy of the foregoing document was served on the following, via the method indicated:

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[✓] Electronic

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