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February 13, 2008

IN REGULATORY DIVISION
DOCKET ROOM

Hon. Eddie Roberson, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

FOR HAND DELIVERY

RE: In the Matter 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., TRA Docket No. 07-00161

In the Matter of NPCR, Inc.'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., TRA Docket No. 07-00162

Dear Chairman Roberson:

We are in receipt of BellSouth Telecommunications, Inc., d/b/a AT&T Tennessee's ("AT&T") letter, dated February 8, 2008, requesting that the Tennessee Regulatory Authority ("TRA" or "Authority") schedule a status conference in the above-referenced dockets to discuss a procedural schedule, including an evidentiary hearing, and suggesting that the Authority should hold these dockets in abeyance pending the Federal Communications Commission's ("FCC") determinations regarding the AT&T Petition for Declaratory Ruling¹ attached to AT&T's letter. Nextel South Corp.'s and NPCR, Inc., d/b/a Nextel Partners' (collectively, "Nextel") maintain that the TRA should proceed to rule on AT&T's Motion to Dismiss and rule on Nextel's Motion for Summary Judgment before a status conference is scheduled. In order to facilitate the Authority ruling on the pending motions and to avoid further delay, the TRA should immediately set a deadline for AT&T to respond to Nextel's Motion for Summary Judgment.² If a status conference is necessary after the TRA's rulings on the motions, the Authority can then schedule a status conference.

Nextel also takes this opportunity to preliminarily comment on *AT&T's FCC Petition*. In sum, *AT&T's FCC Petition* is nothing more than another delay tactic in a long line of such tactics employed

¹ WC Docket No. _____, Petition of the AT&T ILECs for a Declaratory Ruling (Feb. 5, 2008) ("*AT&T's FCC Petition*" or "*FCC Petition*").

² In establishing this deadline, the agency should consider the date on which Nextel's Motion for Summary Judgment was served and that Nextel responded to AT&T's Motion to Dismiss within seven (7) days.

by AT&T to avoid complying with the Merger Commitments and its obligations under Section 252(i) of the Telecommunications Act of 1996 ("Act").

Nextel requests the TRA to carefully weigh the inconsistencies between assertions in *AT&T's FCC Petition* and assertions made by AT&T in prior filings before state Commissions. Specifically, AT&T is now arguing before the FCC precisely what Nextel has argued in this proceeding and before other state Commissions: that there "is no need for extensive evidence-gathering or fact-finding"³ that requires further proceedings before making a determination on Nextel's adoption of the Sprint ICA.⁴ In other words, in Tennessee, AT&T's tactic is to delay by arguing more proceedings are needed, including a hearing and further evidence. At the FCC, where declaratory ruling requests have taken months or years to resolve, AT&T is happy to inform the FCC that the issue is ripe for decision without extensive evidence gathering or fact-finding. The Authority should not permit AT&T's filing at the FCC to distract it from ruling on Nextel's pending Motion for Summary Judgment, particularly given that AT&T argues in its *FCC Petition* that there is no need for further determinations of fact.

The TRA has previously determined that it has concurrent jurisdiction with the FCC over the Merger Commitments,⁵ and Nextel urges the TRA to continue to exercise that jurisdiction.⁶ There is no legal or logical reason for the Authority to defer final action on Nextel's adoption requests while the matter is pending, for an indefinite period, at the FCC. AT&T could have sought FCC intervention earlier; however, by waiting until state Commissions, such as the Authority, are already proceeding to decide these issues, AT&T is attempting to reap the benefit of yet further delay. By waiting until this juncture in the Authority proceedings to interpose its filing with the FCC, AT&T is demonstrating a callous disregard for the efforts of both the Nextel entities, the TRA and the TRA Staff involved in this matter. Moreover, such intentional delay to the resolution of the issues pending in TRA Docket Nos. 07-00161 and 07-00162 is a clear demonstration of bad faith by AT&T under FCC Rule 51.301, which should not be tolerated by the Authority.

AT&T fervently wishes the Authority to delay final disposition of this matter while *AT&T's FCC Petition* is pending. As the TRA is aware, however, there is no guarantee of prompt FCC action, nor that the FCC would reverse any of the state Commission decisions that have already been made. Further, nothing prevents the Authority from reexamining its determinations regarding Nextel's adoptions, if necessary, should the FCC issue a future ruling on *AT&T's FCC Petition* that might have some substantive bearing upon any Authority determination. Delay directly harms Nextel because AT&T will undoubtedly argue that the 42-month "clock" on the effectiveness of the AT&T Merger Commitments pursuant to Appendix F of the AT&T Merger Order is running all the while that *AT&T's FCC Petition* is pending. If the TRA defers to the FCC, then AT&T will likely benefit from its obvious delay tactics, and Nextel may never in practical terms get the benefit of what AT&T promised

³ *AT&T FCC Petition* at 17.

⁴ The "Sprint ICA" is the currently effective interconnection agreement between AT&T Tennessee and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P. dated January 1, 2001, as amended and extended by this Authority in Docket No. 07-00132.

⁵ See *Order Denying Motions to Dismiss, Accepting Matter for Arbitration, and Appointing Pre-Arbitration Officer*, TRA Docket No. 07-00132, p. 6 (Oct. 5, 2007) ("[T]he Authority possesses concurrent jurisdiction with the FCC to review interconnection issues raised by the voluntary commitments.").

⁶ It is the very exercise of such state Commission jurisdiction – or at least the acknowledgement of the same – that led to the resolution of the Sprint-AT&T arbitrations in the nine (9) legacy BellSouth states.

in the Merger Commitments or to which Nextel is independently entitled under section 252(i). AT&T's approach cannot be the "streamlined" process envisioned by the FCC in relation to the Merger Commitments.

Nextel also notes that the same day AT&T filed its *FCC Petition*, the Ohio Public Utilities Commission ("Ohio PUC") issued a *Finding and Order* that allows one wireline Sprint entity and three wireless Sprint entities, including Nextel West Corp. and NPCR, Inc., d/b/a Nextel Partners (collectively "Sprint") to port and adopt in Ohio the Sprint ICA (referred to in Ohio as the "BellSouth ICA") as extended for 3 years by the Kentucky Commission, subject to the state-specific modifications mentioned in AT&T Merger Commitment 7.1. In its *Finding and Order*, the Ohio PUC denied AT&T Ohio's motion to dismiss Sprint's complaint based on AT&T Merger Commitment 7.1, found that it had concurrent jurisdiction with the FCC to interpret the Merger Commitments, and ordered AT&T Ohio to permit Sprint "to port to Ohio the BellSouth ICA, subject to state-specific modifications."⁷ Further, the Ohio PUC specifically found as follows:

Concluding that the FCC has specifically carved out a place for state jurisdiction in the enforcement of merger commitments, it would be contrary to the FCC's policy aims to defer this matter to the FCC, as AT&T would urge us to do.⁸

This finding was based on the Ohio PUC's conclusion that "the FCC clarified that the states have jurisdiction over matters arising under the [AT&T] commitments[.]" and that "[e]ven more, states are granted authority to adopt rules, regulations, programs, and policies respecting the commitments."⁹ Nextel urges the TRA to follow the same reasoning as the Ohio Commission and reject AT&T's attempt to do an "end run" around state Commissions' authority to interpret and enforce Merger Commitments.

Even assuming a valid basis to the allegations set forth in *AT&T's FCC Petition*, an assumption which Nextel vehemently denies, the allegations are irrelevant to the proceedings pending in the nine-state legacy-BellSouth region with respect to the application of 252(i) of the Act. *AT&T's FCC Petition* does not and can not alter how 252(i) and the FCC rules promulgated there under are applied.

Nextel's Motion for Summary Judgment extensively addresses the rights and obligations under Section 252(i), including any anticipated AT&T arguments that Nextel cannot adopt the Sprint ICA because, as a purported stand-alone wireless carrier, it is not "similarly situated" to the original parties to the Sprint ICA. Such an argument is contrary to the express provisions of § 51.809(a) and has been rejected by the FCC and, regarding any belated concerns of additional "costs" under § 51.809(b) that AT&T may assert, the FCC has held that the fact a carrier serves a different class of customers, or provides a different type of service does not bear a direct relationship with the costs incurred by the LEC to interconnect with that carrier. AT&T has not contended in these proceedings, nor can it, that it

⁷ *In the Matter of the Carrier-to-Carrier Complaint and Request for Expedited Ruling of Sprint Communications Company L.P., Sprint Spectrum, L.P., Nextel West Corp., and NPCR, Inc.*, Finding and Order, Ohio PUC Case No.07-1136-TP-CSS, p. 15 (Feb. 5, 2008) ("*Finding and Order*") (attached as Exhibit D to Nextel's Motion for Summary Judgment in TRA Docket Nos. 07-00161 and 07-00162).

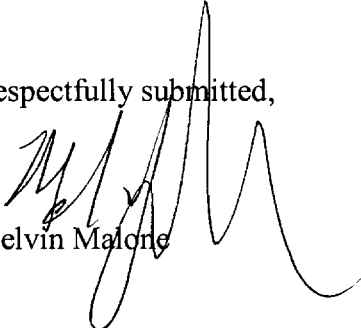
⁸ *Finding and Order* at 13-14.

⁹ *Finding and Order* at 13.

will incur any additional costs to provide the exact same services to Nextel than it cost to provide such services to Sprint PCS. *AT&T's FCC Petition* adds nothing to the arguments that are pending before the Authority.

In conclusion, the suggestions offered by AT&T in its February 8 letter are nothing more than further delay tactics in a long line of such tactics employed by AT&T to avoid complying with its voluntarily offered Merger Commitments and its obligations under Section 252(i).¹⁰ As the TRA knows, Sprint Nextel subsidiaries, including Nextel, have been attempting to accept AT&T's offer of the Merger Commitments for almost a year, and at every turn, have met with strong resistance from AT&T. There is no legal or logical reason for the Authority to refrain from acting on its concurrent authority over the AT&T Merger Commitments, and even less reason for the TRA not to act under its authority delegated by Congress to approve 252(i) adoptions. Accordingly, Nextel respectfully requests that the TRA establish a date for AT&T's response to Nextel's Motion for Summary Judgment and proceed to timely rule on AT&T's Motion to Dismiss and Nextel's Motion for Summary Judgment.

Respectfully submitted,



Melvin Malone

c: Parties of Record
Rebecca S. Montgomery

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¹⁰ AT&T has filed yet another letter dated today suggesting that the FCC is the proper forum based on language in an order released February 7, 2008 by the FCC in *In Re Ameritech Operating Companies Tariff FCC. No 2 et al.*, Transmittal No. 1666. In this Order, the FCC denied the petitions of Sprint Nextel, Time Warner Telecom Inc. and COMPTel to reject or suspend AT&T's tariff revisions withdrawing from its operating companies' interstate access tariffs certain broadband transmission services, including Frame Relay, ATM, Ethernet, Remote Network Access, SONET, Optical Network and Wave-Based services, with the exception of certain Frame Relay and ATM services operating below 200 Kbps in each direction. This matter concerns the FCC's previous order in the *Petition of AT&T, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services and Petition of BellSouth Corporation for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007). This proceeding has nothing to do with the matters currently before the Authority in TRA Docket Nos. 07-00161 and 07-00162. This is another attempt by AT&T to obfuscate the clear issues to be decided.