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February 20, 2008

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

filed electronically in docket office on 02/20/08

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

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

Dear Chairman Roberson:

On February 13, 2008, the Nextel companies filed a letter with the Tennessee Regulatory Authority ("Authority") in which they made baseless disparaging accusations regarding AT&T Tennessee's requests that the Authority hold the above-referenced dockets in abeyance pending the outcome of a relevant proceeding currently pending before the Federal Communications Commission ("FCC"). Contrary to Nextel's ill-founded contentions, AT&T Tennessee's actions throughout the course of this docket and in making its recent filing at the FCC have been appropriate and entirely consistent with AT&T Tennessee's desire to have this matter appropriately resolved as soon as possible.

For example, Nextel claims that AT&T Tennessee's request that the FCC expeditiously resolve the underlying merger commitment dispute is inconsistent with AT&T Tennessee's request that the Authority hold proceedings in abeyance (pending resolution of the FCC docket), or, in the alternative, convene a status conference to allow the parties to discuss the current procedural posture of this

case, (i.e., the status of AT&T Tennessee's pending motions to dismiss and whether an evidentiary hearing is needed). Nextel is wrong.

Throughout the course of this matter, beginning with its Motion to Dismiss, AT&T Tennessee has continued asserting that the FCC should be allowed to resolve merger commitments adopted and approved by the FCC in the BellSouth/AT&T merger order.¹ Likewise, in its supplemental submission filed with the Authority on February 8, 2007, AT&T Tennessee expressed its expectation that an expedited resolution by the FCC of the issues presented in AT&T's FCC Petition may render unnecessary any further proceedings in these dockets.²

Furthermore, in support of AT&T Tennessee's contention that resolution of this matter should be effectuated by the FCC, AT&T Tennessee hereby requests that the Authority take notice of the Order that the FCC released on February 7, 2008, in *In Re Ameritech Operating Companies Tariff FCC No. 2 et al.*, Transmittal No. 1666. The FCC's Order states (at ¶ 8):

Petitioners [including Sprint Nextel] remain free to file a complaint if they believe that AT&T has not complied with the commitments it made in the *AT&T/BellSouth Merger Order*. Indeed, the Commission stands ready to enforce such commitments should it receive complaints that AT&T is not complying with its commitments.³

Accordingly, even if the Authority were to conclude – as AT&T Tennessee contends it should not – that it has authority to enforce the FCC Merger Commitment at issue here, the Authority should allow the FCC to decide the potentially dispositive questions AT&T has asked it to decide before conducting any further proceedings in this docket.

Moreover, contrary to Nextel's contention that the FCC filing will only delay resolution of this matter indefinitely, AT&T is expressly seeking an expedited declaratory ruling. And recent activity in FCC WC Docket No. 08-23 (opened to

¹ See *Motion to Dismiss* p. 8.

² The FCC opened WC Docket No. 08-23 to address AT&T's Petition seeking an expedited declaratory ruling.

³ A copy of the FCC's Order in *In Re Ameritech Operating Companies Tariff FCC No. 2 et al.*, Transmittal No. 1666 is enclosed as Attachment A.

address AT&T's petition for expedited declaratory ruling) may well demonstrate the FCC's willingness to promptly resolve the issues presented in AT&T's Petition.

Specifically, on February 14, 2008, the FCC released a Public Notice inviting interested parties to comment on the Petition by no later than February 25, 2008 with reply comments due on or before March 3, 2008.⁴ The particularly short comment cycle established by the Public Notice may indicate the FCC's intent to promptly resolve the matter, and may thereby render further proceedings in this docket moot.

Nextel's claim that something is wrong with AT&T Tennessee seeking resolution at the FCC, and also requesting that, if the Authority exercises jurisdiction, the Authority review the procedural posture and potential necessity for further proceedings, cannot be taken seriously. As the Authority knows, the practice of preserving rights by arguing matters in the alternative is commonplace and entirely appropriate.

Although AT&T Tennessee firmly believes that this matter should be resolved by the FCC, and therefore the dockets held in abeyance pending FCC resolution, AT&T Tennessee has wisely preserved its due process right to bring any and all relevant substantive arguments before the Authority should the Authority decide to exercise jurisdiction. Furthermore, if the FCC's determinations do not yield a complete resolution of the parties' disagreements concerning the Complainants' porting request, it is logical to expect that the Authority may then choose to decide such questions of state law as may remain.

Equally frivolous is Nextel's cavalier claim that AT&T Tennessee has demonstrated bad faith in contravention of FCC Rule 51.301. AT&T Tennessee takes seriously all of its legal requirements, and has not intentionally sought to delay resolution of issues pending in these dockets, or otherwise demonstrated bad faith. Under Nextel's irrational view it would be difficult to imagine any instance in which a docket is opened before the Authority or a state commission and wherein a party argues that the matter should be resolved elsewhere, that would not constitute bad faith. Clearly that is nonsensical. Viewed through the lens of factual reality, a difference in legal opinion, regarding the manner and forum in which a matter should properly be resolved, does not in and of itself constitute bad

⁴ A copy of the FCC's Public Notice in WC Docket No. 08-23 is enclosed as Attachment B.

faith. If Nextel has any legitimate evidence that AT&T Tennessee has violated FCC Rule 51.301, it should bring that evidence to the Authority's attention, or withdraw its baseless disparaging statement.

Additionally, Nextel's renditions regarding adoption under Section 252(i), completely miss the mark. Nextel's confusion further underscores why allowing adoption without an accurate evaluation of the facts and arguments would be entirely improper. Although AT&T Tennessee does not seek to set forth all of its legal arguments in this filing, and does not waive its rights to raise them as appropriate in their entirety, the following is an example of just how far off the mark Nextel is.

For example, Nextel contends that it is entitled to adopt the Sprint ICA by virtue of Section 252(i) of the 1996 Act. This provision states:

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.⁵

However, none of the relief Nextel seeks constitutes an adoption of the Sprint interconnection agreement ("ICA") as contemplated by Section 252(i).

When a requesting telecommunications carrier appropriately adopts an ICA pursuant to Section 252(i), it does not become a co-party to the original agreement. Instead, it becomes a party to a second and distinct agreement.

Nextel has suggested that what it really wants to do is simply add Nextel as a wireless party to the Sprint-AT&T ICA. That, however, is not an adoption of the Sprint ICA. Instead, that is an *amendment* of the Sprint ICA to inject an additional party into the existing agreement, and nothing in Section 252(i) supports, much less requires, such an amendment.

Furthermore, Nextel is not seeking to adopt the Sprint ICA upon the same terms and conditions as those provided in the agreement as required by Section

⁵ 47 U.S.C. §252(i).

252(i). Section 252(i) provides that a carrier adopting an existing interconnection agreement must do so "upon the same terms and conditions as those provided in the agreement." The FCC has explained that "the 'same terms and conditions' that an incumbent LEC may insist upon shall relate solely to the individual interconnection, service, or element being requested under section 252(i)," ⁶ and it requires "incumbent LECs seeking to require a third party to agree to certain terms and conditions to exercise its rights under section 252(i) to prove to the state commission that the terms and conditions were legitimately related to the purchase of the individual element being sought."

In these dockets, Nextel is seeking to adopt an interconnection agreement that would allow it to: purchase transport and termination services from AT&T Tennessee on a "bill and keep" basis; and purchase interconnection facilities from AT&T Tennessee on the basis of a 50/50 split. As explained below, Sprint PCS was able to purchase these services at these prices solely because it brought a wireline carrier (Sprint CLEC) to the table as a co-party to the negotiated agreement.

The Sprint ICA contains negotiated terms and conditions between three parties: AT&T Tennessee on the one hand, and Sprint CLEC and Sprint PCS collectively on the other hand. Sprint CLEC is a provider of wireline local exchange services, and Sprint PCS is a provider of wireless telecommunications services. Thus, the Sprint ICA addresses a unique mix of wireline and wireless items (such as traffic volume, traffic types, and facility types), and it reflects the outcome of gives and takes that would not have been made if the agreement addressed only wireline services or only wireless services.

If Nextel wishes to rely on Section 252(i) to receive the benefits of the wireless provisions of this agreement "upon the same terms and conditions as those provided in the agreement," it must bring wireline interests to the table like the original wireless party to the agreement (Sprint PCS) did.

Nextel indisputably is not doing so. Nextel is not providing wireline services in Tennessee. Beyond that, Nextel cannot lawfully provide wireline services in Tennessee because it is not certificated to provide such services in this State. Nextel, therefore, is seeking to adopt the Sprint ICA as a stand-alone wireless

⁶ Local Competition Order, ¶1315.

provider, which is not an adoption “upon the same terms and conditions as those provided in the agreement.”

The “bill and keep” arrangement in the Sprint ICA was specifically contingent upon the agreement by *all three parties* (AT&T Tennessee, wireline provider Sprint CLEC, and wireless provider Sprint PCS) to adhere to bill and keep. In fact, the Sprint ICA allows AT&T Tennessee, at its option, to renegotiate or terminate the “bill and keep” arrangement with the remaining party if either Sprint CLEC or Sprint PCS opts into another interconnection arrangement with AT&T Tennessee pursuant to 252(i) of the Act which calls for reciprocal compensation. All of this is memorialized in the Sprint ICA:

Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic is ***the result of negotiation and compromise*** between [AT&T Tennessee], Sprint CLEC and Sprint PCS. The Parties’ agreement to establish a bill and keep compensation arrangement was ***based upon extensive evaluation of costs incurred by each party for the termination of traffic***. Specifically, ***Sprint PCS provided [AT&T Tennessee] a substantial cost study supporting its costs***. As such the bill and keep arrangement is ***contingent upon the agreement by all three Parties to adhere to bill and keep***. ***Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement*** with [AT&T Tennessee] pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between [AT&T Tennessee] and the remaining Sprint entity shall be ***subject to termination or renegotiation as deemed appropriate by [AT&T Tennessee]***.⁷

Moreover, Nextel’s desired adoption would violate the FCC’s “all-or-nothing” adoption rule. If Nextel’s name were substituted for both Sprint CLEC and Sprint PCS, portions of the adopted agreement could appear to erroneously suggest that Nextel could avail itself of provisions that apply only to CLECs. To cite but one example, Attachment 2 of the Sprint ICA allows Sprint CLEC to purchase unbundled network elements (“UNEs”) from AT&T Tennessee. Substituting Nextel for Sprint CLEC would result in language that could appear to erroneously suggest that Nextel can purchase UNEs from AT&T Tennessee. Nextel, however, only

⁷ Sprint ICA, Attachment 3, Section 6.1 (emphasis added).

provides mobile wireless services in Tennessee, and 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***
....⁸

Nextel, therefore, cannot purchase UNEs from AT&T Tennessee, and it would be improper for the adopted agreement to suggest otherwise.

Nextel might suggest that this problem could be solved by substituting Nextel for Sprint PCS while leaving all references to Sprint CLEC unchanged in the adopted agreement. This purported "solution," of course, merely highlights the fact that Nextel is attempting to use the traffic its sister corporation Sprint CLEC already is exchanging with AT&T Tennessee to satisfy the "same terms and conditions" requirement of Section 251(i) which it cannot do. Additionally, this purported solution would effectively require a single ILEC to execute multiple interconnection agreements with a single CLEC within a single state which, again, cannot be required.

Finally, Nextel might suggest that this problem could be solved by allowing Nextel to adopt only the same wireless-applicable provisions of the Sprint-AT&T ICA that are utilized by Sprint PCS. The problem with this approach, of course, is that the FCC has ruled that a carrier is no longer permitted to "pick and choose" the provisions in an approved agreement that it wants to adopt. Instead, the FCC has adopted an "all-or-nothing rule" that 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."⁹ Allowing Nextel to "adopt" the Sprint interconnection agreement after revising the

⁸ 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).

⁹ 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)(emphasis added).

Hon. Eddie Roberson, Chairman
February 20, 2008
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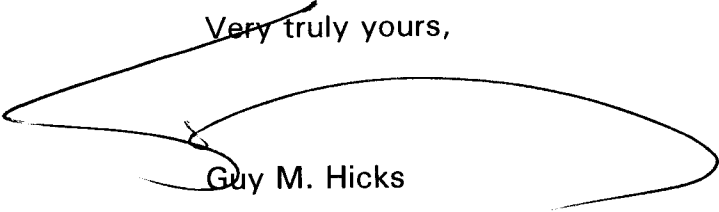
agreement to clarify which provisions Nextel can and cannot use clearly is contrary to this FCC ruling.

In conclusion, AT&T Tennessee requests that the Authority dismiss Nextel's request to the extent that it is based on FCC merger commitments because the FCC has exclusive jurisdiction over those commitments. Alternatively, the Authority should hold these proceedings in abeyance until the FCC rules on AT&T's Petition for a Declaratory Ruling regarding the application of the merger commitments. Finally, in any event, it is clear that neither the commitments upon which Nextel relies nor Section 252(i) supports the relief Nextel seeks.

In the event the Authority decides to exercise jurisdiction, AT&T Tennessee respectfully requests that it appoint a hearing officer to convene a status conference to allow the parties to discuss the current procedural posture of this case. AT&T Tennessee requests the opportunity to discuss, for example, a procedural schedule, the status of AT&T Tennessee's pending motions to dismiss and whether an evidentiary hearing is needed. AT&T Tennessee reserves the right to respond to Nextel's motions for summary judgment at a later date.

Copies have been provided to counsel of record.

Very truly yours,



Guy M. Hicks

GH:cc

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

In the Matter of)	
)	
Ameritech Operating Companies)	Transmittal No. 1666
Tariff F.C.C. No. 2)	
)	
BellSouth Telecommunications, Inc.)	Transmittal No. 1121
Tariff F.C.C. No. 1)	
)	
Nevada Bell Telephone Company)	Transmittal No. 176
Tariff F.C.C. No. 1)	
)	
Pacific Bell Telephone Company)	Transmittal No. 385
Tariff F.C.C. No. 1)	
)	
Southern New England Telephone Company)	Transmittal No. 965
Tariff F.C.C. No. 39)	
)	
Southwestern Bell Telephone Company)	Transmittal No. 3251
Tariff F.C.C. No. 73)	
)	
)	

ORDER

Adopted: February 7, 2008

Released: February 7, 2008

By the Commission:

I. INTRODUCTION

1. On January 24, 2008, AT&T Inc. (AT&T) filed the above-referenced tariff transmittals on behalf of its six operating subsidiaries: Ameritech Operating Companies; BellSouth Telecommunications, Inc.; Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Company, and Southwestern Bell Telephone Company (Broadband Tariffs). In its tariff revisions, AT&T is proposing to withdraw certain broadband transmission services from its operating subsidiaries' access tariffs pursuant to the relief granted by the Commission in the *AT&T Enterprise Broadband Forbearance Order*.¹ Specifically, AT&T's proposed revisions seek to withdraw a number of broadband services from its tariff, 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.

2. We note that Time Warner Telecom Inc., COMPTTEL, and Sprint Nextel Corporation (collectively the "Petitioners") filed petitions to reject or suspend and investigate previous tariff revisions

¹ *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) (*AT&T Enterprise Broadband Forbearance Order*).

that AT&T had filed on January 7, 2008.² Those petitions claimed that AT&T may not withdraw any broadband tariffs until the expiration of the conditions established in the *AT&T/BellSouth Merger Order*.³ Petitioners argued that the terms of a number of the merger commitments, such as special access merger commitments number 4 and 5 require that AT&T maintain tariffs.⁴ Moreover, Petitioners argued that other commitments, such as merger commitment number 7, which requires mediation or accelerated docket treatment of disputes concerning tariffed services, would be rendered meaningless without publicly available tariffs.⁵ On January 18, 2008, AT&T withdrew its tariff filing.

3. As previously noted, on January 24, 2008, AT&T filed revised tariff transmittals, which propose to withdraw many of the same broadband services from its operating subsidiaries' access tariffs, as it had in its earlier tariff transmittals.⁶ In its January 24 filing, AT&T included new language expressly recognizing its obligation to comply with the commitments of the *AT&T/BellSouth Merger Order*. Section 2 in all of the above-referenced tariffs includes the following language:

Pursuant to the detariffing authority granted by the Commission in Memorandum Opinion and Order, FCC 07-180 (released October 12, 2007), certain broadband services have been withdrawn from this tariff. When offering these services through non-tariffed arrangements, the Telephone Company will abide by all of the special access merger commitments set forth in Memorandum Opinion and Order, FCC 06-189 at Appendix F (released March 26, 2007), including but not limited to commitments that contain references to "tariffs," such as those addressing pricing, dispute resolution, and access service ratio terms. The detariffing of these services does not diminish or supersede any of those special access merger commitments.

4. On January 31, 2008, Petitioners filed petitions to reject or alternatively suspend and investigate the Broadband Tariffs.⁷ Petitioners repeat their previous claims that, for example, AT&T may not withdraw any broadband tariffs until the expiration of the conditions established in the *AT&T/BellSouth Merger Order* and that other merger conditions would be rendered meaningless without publicly available tariffs.⁸ In addition, Petitioners claim that detariffing these services will remove them from a customer's Managed Value Plan (MVP) and cause AT&T to violate its merger commitment not to raise rates.⁹ The Petitioners also contend that customers who subscribe to an MVP can only meet their Minimum Annual Revenue Commitment (MARC) "based solely on services set forth in the tariff" or

² Petition of Time Warner Telecom Inc. and COMPTTEL to Reject or, in the Alternative, Suspend and Investigate Tariff Filings, Transmittal Nos. 1664, 1119, 174, 383, 963, and 3249 (filed Jan. 11, 2008) (TWT/COMPTTEL Petition); Petition of Sprint Nextel Corporation to Reject or Alternatively Suspend and Investigate, Transmittal Nos. 1664, 1119, 174, 383, 963, and 3249 (filed Jan. 14, 2008) (Sprint/Nextel Petition).

³ See TWT/COMPTTEL Petition at 2-4; Sprint/Nextel Petition at 3-6 (citing *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) (*AT&T/BellSouth Merger Order*); Order on Reconsideration, 22 FCC Rcd 6285 (2007)).

⁴ See, e.g., TWT/COMPTTEL Petition at 2.

⁵ *Id.* at 2-3.

⁶ On February 5, 2008, AT&T filed a correction to its tariff transmittals reinstating tariff material that inadvertently was removed from its tariff filing of January 24, 2008. See, e.g., Southwestern Bell Telephone Company, Transmittal No. 3252 (filed Feb. 5, 2008).

⁷ Petition of Time Warner Telecom Inc. and COMPTTEL to Reject or, in the Alternative, Suspend and Investigate Tariff Filings, Transmittal Nos. 1666, 1121, 176, 385, 965, and 3251 (filed Jan. 31, 2008) (TWT/COMPTTEL Petition II); Petition of Sprint Nextel Corporation to Reject or Alternatively Suspend and Investigate, Transmittal Nos. 1666, 1121, 176, 385, 965, and 3251 (filed Jan. 31, 2008) (Sprint/Nextel Petition II).

⁸ Sprint/Nextel Petition II at 3-6; TWT/COMPTTEL Petition II at 3-7.

⁹ Sprint/Nextel Petition II at 6; TWT/COMPTTEL Petition II at 8-9.

AT&T will be in violation of section 61.54(j) of the Commission's rules.¹⁰ Finally, Sprint also argues that AT&T's detariffing of its Dedicated SONET Ring Service included the DS1 and DS3 port connections that were offered as part of that service, which exceeds the scope of forbearance granted in the *AT&T Enterprise Broadband Forbearance Order*.¹¹

5. On February 6, 2008, AT&T filed an opposition to the TWT/COMPTEL and Sprint/Nextel petitions.¹² AT&T argues that "[d]etariffing is completely consistent with [the AT&T/BellSouth] special access merger commitments, all of which AT&T can and will fully implement."¹³ In addition, AT&T makes clear that it "fully intends to enable existing MVP customers to continue receiving all of the credits on eligible MVP services to which they are entitled for the duration of their MVP terms, even when those services are detariffed pursuant to the [AT&T Enterprise] Broadband Forbearance Order."¹⁴ Finally, AT&T responds that the DS1 and DS3 port connections "are not 'traditional TDM-based DS1 and DS3 services,'" but rather "are optical-electronic 'interfaces' on AT&T's SONET rings, to which a customer may connect a *separately purchased* service, such as a traditional TDM-based DS1 or DS3 service."¹⁵

II. DISCUSSION

6. Because AT&T has withdrawn its January 7, 2008, tariff transmittals, the petitions opposing AT&T's January 7 tariff revisions are moot and are therefore dismissed. The claims made by TWT/COMPTEL and Sprint/Nextel in their latest petitions opposing the Broadband Tariffs do not meet the standards for rejection or suspension of a tariff, as discussed below, and they are denied.¹⁶

7. The Commission may only reject a tariff filed by a carrier if the filing is "so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket."¹⁷ Under this standard, we find that Petitioners have made no showing that the Broadband Tariffs are "patently a nullity as a matter of substantive law" or that they are otherwise unlawful on their face. To the contrary, these tariffs expressly provide that AT&T will comply fully with its obligations under the *AT&T/BellSouth Merger Order*.¹⁸ In addition, under applicable Commission rules, tariffs filed by a price cap LEC pursuant to the requirements of section 61.42(d)(4)(ii) are considered *prima facie* lawful and will not be suspended by the Commission unless the petition requesting suspension shows each of the following: (1) that there is a high probability the tariff would be found unlawful after investigation; (2) that any unreasonable rate

¹⁰ Sprint/Nextel Petition II at 6 (citing 47 C.F.R. § 61.54(j)); TWT/COMPTEL Petition II at 9 (same).

¹¹ Sprint/Nextel Petition II at 7-8.

¹² AT&T Inc.'s Motion to Strike Joint Petition of COMPTEL and Time Warner Telecom Inc. and AT&T Inc.'s Opposition to Petition of Sprint Nextel and Joint Petition of COMPTEL and Time Warner Telecom Inc., Transmittal Nos. 1666, 1121, 176, 385, 965, and 3251 (filed Feb. 6, 2008) (AT&T Motion and Opposition). AT&T's filing also included a motion to strike the TWT/COMPTEL petition alleging that it had not been properly served. *See id.* at 1-3.

¹³ *Id.* at 3-8.

¹⁴ *Id.* at 7. With respect to the alleged violation of section 61.54 of the Commission's rules, AT&T asserts that its actions are consistent with Commission precedent. *See id.* at 8 n.26.

¹⁵ *Id.* at 9-10 (emphasis in original).

¹⁶ Because we deny the TWT/COMPTEL Petition II, the AT&T motion to strike is moot and is dismissed.

¹⁷ *Municipal Light Bds. v. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971); *cert denied*, 405 U.S. 989 (1972); *see also Capital Network Sys., Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994); *American Broadcasting Cos. V. FCC*, 663 F.2d 133, 138 (D.C. Cir. 1980).

¹⁸ *See supra* para. 3.

would not be corrected in a subsequent filing; (3) that irreparable injury will result if the tariff filing is not suspended; and (4) that the suspension would not otherwise be contrary to the public interest.¹⁹ Thus, if any one of these prongs is not met, the Commission will not suspend a proposed tariff. For example, there is no showing here of irreparable injury. In its filing, AT&T confirms that all of the services being withdrawn from the tariff will still be available on the same rates, terms and conditions, and that AT&T will continue to abide by all of the special access merger commitments set forth in Appendix F of the *AT&T/BellSouth Merger Order*.²⁰ Moreover, we find that AT&T's tariff revisions to its MVP discount plan do not alter any customer's ability to claim discounts under that plan as it existed prior to those revisions.²¹ Thus, Petitioners have not show that irreparable injury will result if the tariff is not suspended.²²

8. Moreover, Petitioners remain free to file a complaint if they believe that AT&T has not complied with the commitments it made in the *AT&T/BellSouth Merger Order*. Indeed, the Commission stands ready to enforce such commitments should it receive complaints that AT&T is not complying with its commitments.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), the January 11 and January 14, 2008, petitions of Time Warner Telecom, Inc., COMTEL and Sprint/Nextel Corporation ARE DISMISSED AS MOOT.

10. IT IS FURTHER ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), the January 31, 2008, petitions of Time Warner Telecom, Inc., COMTEL and Sprint/Nextel Corporation ARE DENIED.

11. IT IS FURTHER ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), the February 6, 2008, motion to strike of AT&T Inc. IS DISMISSED AS MOOT.

¹⁹ 47 C.F.R. § 1.773(a)(v).

²⁰ See Ameritech Operating Companies Tariff F.C.C. No. 2, section 2.1.13; BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1, section 2.1.14; Nevada Bell Telephone Company Tariff F.C.C. No. 1, section 2.1.14; Pacific Bell Telephone Company, Tariff F.C.C. No. 1, section 2.1.14; The Southern New England Telephone Company, Tariff F.C.C. No. 39; section 2.1.H; Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, section 2.1.10. See also AT&T Motion and Opposition at 4, 7-8.

²¹ In fact, AT&T filed a correction to help make clear that the tariff revisions do not alter customers' rights to discounts under the MVP plan. See *supra* note 6. And AT&T affirms that existing MVP customers and the discounts that they receive will be unaffected for the duration of their MVP terms, even when those services are detariffed pursuant to the *AT&T Enterprise Broadband Forbearance Order*. See *supra* para. 5. For these reasons, we find that the Petitioners have not demonstrated irreparable harm with respect to their claims regarding whether the tariff revisions violate section 61.54 of the Commission's rules. We note that the MVP plan already relied on rate elements not included in the interstate tariff for purposes of the access ratio calculation. See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, section 38.3. Thus, we find that the Petitioners likewise have not demonstrated that the Broadband Tariffs are "patently a nullity as a matter of substantive law" or that they are otherwise unlawful on their face.

²² We likewise find that Sprint/Nextel has not demonstrated irreparable harm with regard to the detariffing of AT&T's Dedicated SONET Ring Service. Moreover, the DS1 and DS3 port connections appear simply to be a type of interface offered as part of the Dedicated SONET Ring Service, not DS1 and DS3 services in and of themselves, such that the detariffing of Dedicated SONET Ring Service would be consistent with the *AT&T Enterprise Broadband Forbearance Order*. See AT&T Motion and Opposition at 9-10.

12. IT IS FURTHER ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), this Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
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DA 08-391
Released: February 14, 2008

PLEADING CYCLE ESTABLISHED FOR AT&T ILECS PETITION FOR DECLARATORY RULING

WC Docket No. 08-23

COMMENTS DUE: February 25, 2008
REPLY COMMENTS DUE: March 3, 2008

By this Public Notice, we seek comment on a petition for declaratory ruling, filed February 5, 2008 by the AT&T ILECs, seeking a declaratory ruling regarding a condition in the *AT&T/BellSouth Merger Order*.¹ Specifically, the AT&T ILECs request that the Commission clarify the merger condition that allows “carriers to ‘port’ an interconnection agreement from one AT&T/BellSouth state to another without the need for a new negotiation and arbitration.”²

Interested parties may file comments on the AT&T Petition on or before **February 25, 2008** and reply comments on or before **March 3, 2008** pursuant to sections 1.415 and 1.419 of the Commission’s rules.³ Filings in this proceeding should be captioned “In the Matter of AT&T ILECs Petition for Declaratory Ruling” and filed in WC Docket No. 08-23.

All filings must be addressed to the Commission’s Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325, Washington, DC 20554. Two courtesy copies must be delivered to Lynne Hewitt Engledow, Federal Communications Commission, Wireline Competition Bureau, Pricing Policy Division, 445 12th Street, SW, Room 5-A361, Washington, DC 20554. One copy must also be sent to Best Copy and Printing, Inc., Portals II, 445 12th Street SW, Suite CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail at fcc@bcpiweb.com.

Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies.

¹ Petition of the AT&T ILECs for a Declaratory Ruling, WC Docket No. 08-23 (filed Feb. 5, 2008) (AT&T Petition); see *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) (*AT&T/BellSouth Merger Order*); Order on Reconsideration, 22 FCC Rcd 6285 (2007)).

² AT&T Petition at 10.

³ 47 C.F.R. §§ 1.415, 1.419.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message: get form <your email address>. A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. **Parties are strongly encouraged to file comments electronically using the Commission's ECFS.**

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail at fcc@bcpiweb.com.

This Public Notice establishes certain procedural requirements relating to consideration of the TWTC petition for declaratory ruling. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴ Persons making oral *ex parte* presentations are

⁴ See 47 C.F.R. §§ 1.1200, 1.1206.

reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.⁵ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.⁶

For further information regarding this proceeding, contact Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, 202-418-1520, or via e-mail at lynne.engledow@fcc.gov.

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⁵ See 47 C.F.R. § 1.1206(b).

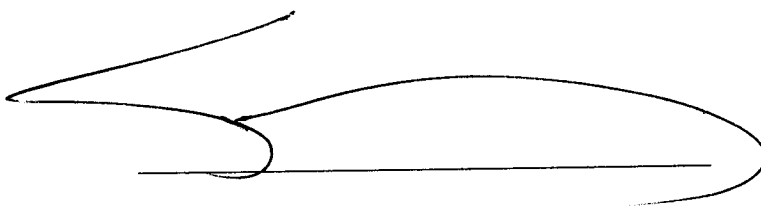
⁶ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2008, a copy of the foregoing document was served on the following, via the method indicated:

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

Melvin Malone, Esquire
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A handwritten signature in black ink, appearing to read 'Melvin Malone', with a long horizontal line extending to the right.