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April 15, 2008

VIA HAND DELIVERY

filed electronically in docket office 4/15/2008

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:

On Friday, April 10, 2008, Nextel filed its Reply to AT&T's response to Nextel's Motion for Summary Judgment. In its Reply, Nextel repeatedly argued that its Motion should be granted because AT&T had failed to submit an affidavit demonstrating the existence of material facts in dispute. (*See* Nextel Reply at pp. 6, 16, 17 and 18.) AT&T vigorously disagrees with Nextel's characterization of the proper standard for evaluating motions for summary judgment. However, to lay Nextel's procedural claim to rest, AT&T is submitting a sworn affidavit, as described below.

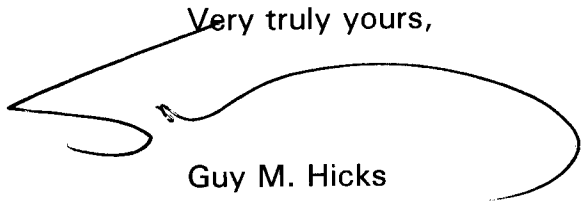
Enclosed are the original and four copies of the Affidavit of Scot Ferguson, demonstrating the existence of material facts in dispute, including the dollar costs, based on 2007 Tennessee traffic studies, that will result in Tennessee if the adoption requests are approved. Among other things, the Affidavit demonstrates as a factual matter that AT&T Tennessee has Tennessee-specific evidence supporting its arguments under FCC Rule 47 C.F.R. § 51.809, the same rule cited by the Authority in denying AT&T's Motion to Dismiss. This FCC Rule provides an exception to an ILEC's adoption obligation where the costs of providing a particular agreement to the requesting carrier are greater than the costs of providing it to the original carrier that negotiated the agreement. For example, the Affidavit demonstrates that if Nextel and Nextel Partners are allowed to adopt the interconnection agreement in question, the cost to AT&T will be more than four (4)

times greater than the cost of providing the same agreement to the original signatories.

These dollar numbers themselves are proprietary and have been redacted from the enclosed Affidavit. The numbers will be provided immediately to the Authority upon entry of a Protective Order. A proposed Protective Order is also enclosed. AT&T Tennessee is prepared to execute the Protective Order and provide an unredacted version of Mr. Ferguson's Affidavit to the Authority and Staff as soon as the Hearing Officer enters the Protective Order.

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

Very truly yours,



Guy M. Hicks

GMH:ch

cc: Hon. Gary Hotvedt, Hearing Officer
Melvin Malone, Esquire

NON-PROPRIETARY VERSION

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 P. L. (SCOT) FERGUSON
ON BEHALF OF AT&T TENNESSEE, INC.

STATE OF GEORGIA
COUNTY OF FULTON

COMES NOW Scot Ferguson and states as follows:

1. My name is Scot Ferguson. I am an Associate Director in AT&T Operations' Wholesale organization. As such, I am responsible for certain issues related to wholesale policy, primarily related to the general terms and conditions of Interconnection Agreements throughout AT&T's operating regions, including Tennessee. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

2. I graduated from the University of Georgia in 1973, with a Bachelor of Journalism degree. My career spans 34 years with Southern Bell, BellSouth Corporation, BellSouth Telecommunications, Inc., and AT&T. During that time, I have held positions in sales and marketing, customer system design, product

management, training, public relations, wholesale customer support, regulatory support, and my current position as a corporate witness on wholesale policy issues.

Overview

3. Nextel[1] 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.

4. AT&T Tennessee's position is that Nextel is not entitled to the relief it seeks. The facts I will provide show, among other things, that Nextel's attempt to adopt the agreement is not consistent with FCC Rule 47 C.F.R. § 51.809, which implements Section 252(i). This FCC Rule provides an exception to an ILEC's adoption obligation where the costs of providing a particular agreement to the requesting carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement. The parties dispute what the facts are regarding whether the price or rate of bill-and-keep is zero and whether the costs of providing the requested Tennessee adoptions are greater than the cost of providing it to the telecommunications carriers that originally negotiated the agreement. Specifically, I will provide facts, based on Tennessee-specific traffic studies from 2007, demonstrating that:[2]

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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.

[2] The dollar figures are proprietary, are redacted in this version of my affidavit, and will be provided to the Authority upon entry of a Protective Order.

- If Nextel and Nextel Partners are allowed to adopt the Sprint Interconnection Agreement in Tennessee, AT&T would lose ***Begin Proprietary End Proprietary*** per year as a result of Nextel being allowed to exchange local traffic under bill-and-keep and to only have to pay for 50% of the interconnection facilities used to exchange traffic with AT&T.

- That cost is more than four (4) times greater than the cost of providing this same Interconnection Agreement to the original signatories – Sprint CLEC and Sprint PCS; it would cost AT&T ***Begin Proprietary End Proprietary*** per year more to provide the Sprint Interconnection Agreement to Nextel and Nextel Partners than it does to provide to Sprint CLEC and Sprint PCS.

5. My affidavit is organized into four sections. First, I will address the status of the AT&T-Sprint Interconnection Agreement that Nextel seeks to adopt. Second, I will discuss facts that support AT&T's legal position regarding the AT&T/BellSouth Merger Commitments upon which Nextel erroneously relies. Third, I will discuss facts that support AT&T's legal position that Section 252(i) of the federal Telecommunications Act of 1996 ("the 1996 Act") does not allow Nextel to adopt the AT&T-Sprint Interconnection Agreement. Fourth, I will provide facts demonstrating the detrimental cost impact caused to AT&T if Nextel's adoption were to occur.

6. 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.

I. STATUS OF THE AT&T-SPRINT INTERCONNECTION AGREEMENT

7. The current status of the AT&T-Sprint Interconnection Agreement is that AT&T Tennessee and Sprint recently signed an amendment extending the

parties' Tennessee Interconnection Agreement for three (3) years until March 2010. The Interconnection Agreement is effective, and, under applicable qualifying conditions, is portable by a carrier to another state in AT&T's ILEC service region under the terms of the Merger Commitments, or adoptable by a carrier within Tennessee under Section 252(i) of the 1996 Act. However, for reasons that I will provide later in my affidavit, Nextel's request for adoption in this docket should not be granted.

II. THE MERGER COMMITMENTS

8. I will summarize the Merger Commitments. The FCC's Order approving the merger of AT&T Inc. and BellSouth Corporation contains, as Appendix F, a number of commitments the FCC considered in approving the merger.[3]

9. In a letter to AT&T Tennessee dated May 18, 2007, and in its Petition, Nextel claims to rely on two of these Merger Commitments as the basis for its request to adopt the AT&T-Sprint Interconnection Agreement.

10. Nextel relies on the first two Merger Commitments under the heading "Reducing Transaction Costs Associated with Interconnection Agreements."[4] These commitments provide that:

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[3] *See* Memorandum Opinion and Order, *In the Matter of AT&T, Inc. and BellSouth Corporation Application for Transfer of Control*, 22 F.C.C.R. 5662 at ¶222, Appendix F (March 26, 2007)("Merger Order").

[4] AT&T Tennessee does not believe it is appropriate for Nextel to raise these merger commitments in this docket. As explained in AT&T Tennessee's Motion to Dismiss and supplemental filings with the Authority, AT&T Tennessee believes that the FCC can best address the meaning of these Merger Commitments.

> 1. The AT&T/BellSouth ILEC shall make available to any requesting telecommunications carrier any entire effective Interconnection Agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.
>
> 2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

11. The first Merger Commitment does not support the relief requested by Nextel. The first Merger Commitment applies only when a carrier wants to take an Interconnection Agreement from one state and operate under that agreement in a different state (which often is referred to as "porting" an agreement from one state into another state). That is why the commitment contains language such as "subject to state-specific pricing and performance plans and technical feasibility," and "consistent with the laws and regulatory requirements of the state for which the request is made." This language is necessary only when an agreement that was approved in one state is ported into another state.

12. Prior to this Merger Commitment carriers did not have the right to port an agreement from another state into Tennessee. Rather, carriers had the right to adopt agreements that had been approved in Tennessee consistent with the

provisions of 47 U.S.C. § 252(i) and the FCC's rules implementing that provision. This is significant because purely from a layman's perspective, it further demonstrates that this Merger Commitment does not address the in-state adoption rights carriers already had. Instead, this Merger Commitment provides carriers certain state-to-state porting rights that they previously did not have.

13. Nextel is not seeking at this time to port an agreement from another state into Tennessee. Instead, Nextel is seeking to adopt the AT&T-Sprint Interconnection Agreement approved by this Authority on January 25, 2008 in Docket No. 07-00132.

14. The second Merger Commitment does not support the relief requested by Nextel. While the second Merger Commitment (unlike the first) applies to in-state adoption requests, it has no bearing on Nextel's request. This Merger Commitment simply states that under specified conditions, AT&T Tennessee "shall not refuse a request . . . to opt into an [interconnection] agreement on the ground that the agreement has not been amended to reflect changes of law." AT&T does not dispute that the AT&T-Sprint agreement has been amended to reflect changes of law, and as explained below, AT&T's denial of Nextel's opt-in request is not based on any "change of law" issues.[5]

III. SECTION 252(i)

[5] The Merger Commitments that Nextel relies on are inextricably intertwined with arguments pending in FCC Docket 08-23 regarding the interplay between such Merger Commitments and Section 252 (i) and Federal Rule 809 (b).

15. Nextel does not base its request for relief solely on the two Merger Commitments just addressed. Nextel also bases its request on Section 252(i) of the 1996 Act, which 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.

16. This provision does not support Nextel's request for relief for several reasons. First, Nextel is not seeking to adopt the AT&T-Sprint Interconnection Agreement "upon the same terms and conditions as provided in the agreement" because the AT&T-Sprint agreement addresses a unique mix of wireline and wireless items. Nextel, however, provides only wireless service and, in fact, is not even certificated to provide wireline services in Tennessee. Second, allowing Nextel to adopt the AT&T-Sprint Interconnection Agreement would result in an agreement that would appear to be contrary to FCC policy and internally inconsistent. Third, as I will explain in detail, adoption of the AT&T-Sprint Interconnection Agreement by Nextel (or any other wireline-only or wireless-only telecommunications provider) in all likelihood will result in increased costs to AT&T under FCC Rule 47 C.F.R. § 51.809.

17. Next, I will address the types of interconnection service, or network elements that are provided under the AT&T-Sprint Agreement. The AT&T-Sprint Interconnection Agreement contains negotiated 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 AT&T-Sprint Interconnection Agreement, therefore, 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 between those specific parties that would not have been made if the agreement addressed only wireline services or only wireless services.

18. Nextel is not seeking to adopt the AT&T-Sprint Interconnection Agreement "upon the same terms and conditions as provided in the Agreement". The terms and conditions of the AT&T-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.

19. Nextel provides wireless service in Tennessee.

20. Nextel does not provide wireline service in Tennessee and is not even certificated to provide wireline service in Tennessee.

21. AT&T Tennessee's Interconnection Agreements typically do not address both wireline and wireless services. It is rare for a single AT&T Tennessee Interconnection Agreement to address both wireline and wireless services and, as noted above, the AT&T-Sprint Interconnection Agreement reflects the outcome of gives and takes between those specific parties that would not have been made if

the agreement addressed only wireline services or only wireless services. Attachment 3, Section 6.1 of the AT&T-Sprint Interconnection Agreement, for instance, expressly states that "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."

22. To allow Nextel to adopt the AT&T-Sprint Interconnection Agreement, therefore, would disrupt the dynamics of the terms and conditions negotiated between AT&T Tennessee and the Sprint parties to the AT&T-Sprint Interconnection Agreement and, in this case, AT&T would lose the benefits of the bargain negotiated with those parties.

23. The AT&T-Sprint Interconnection Agreement addresses circumstances whereby one of the Parties may opt out of the Agreement. Additional language in Attachment 3, Section 6.1 states that:

> ...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] pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill-and-keep arrangement between [AT&T] and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by [AT&T].

24. From that negotiated language, it is apparent that the express combination of the three parties to the agreement drove the establishment of bill-and-keep between the three parties. Clearly, it was AT&T's concern that the balance of traffic would be skewed unfavorably in the event that one of the Sprint

entities elected to pull out of the Interconnection Agreement, and that AT&T would no longer gain any benefits of the original bargain as a result.

25. There are examples of the benefits of the bargain that AT&T would lose if Nextel were allowed to adopt the AT&T-Sprint Interconnection Agreement. The examples I will provide generally pertain to Interconnection Attachment 3 (entitled "Network Interconnection: Call Transport and Termination") of the AT&T-Sprint Interconnection Agreement with respect to Interconnection Compensation.

(a) Section 6.1.1 establishes a "bill-and-keep" arrangement for usage on CLEC local traffic, ISP-bound traffic, and wireless local traffic. Bill-and-keep arrangements are unusual for wireless traffic. Bill-and-keep means the rate for terminating certain traffic is zero. In fact, I am not aware of any AT&T agreements with stand-alone wireless providers like Nextel that contain a bill-and-keep arrangement.

(b) Section 2.3.2 establishes a 50/50 split for the cost of interconnection facilities for wireless traffic, or as the agreement states, "[t]he cost of the interconnection facilities...shall be shared on an equal basis." This particular split is unusual for wireless traffic. In fact, I am not aware of any AT&T agreements with stand-alone wireless providers like Nextel that contain this particular split.

(c) Similarly, Section 2.9.5.1 establishes a 50/50 split for the cost of interconnection facilities for handling transit traffic, ISP-bound traffic and intraLATA toll traffic for the Sprint CLEC. This particular split is unusual for

CLEC traffic. In fact, I am not aware of any AT&T agreements with stand-alone CLEC providers that contain this particular split.

26. As a practical matter, when AT&T Tennessee implements a carrier's adoption of an approved Interconnection Agreement, typically, AT&T Tennessee creates "adoption papers" that have the practical effect of substituting the adopting carrier's name for the original carrier's name throughout the agreement including any amendments, thereby binding the adopting carrier to all the rates, terms and conditions contained in the original agreement. The parties then execute the adoption papers.

27. Substituting Nextel for Sprint results in an agreement that would appear to be contrary to FCC policy. As explained above, both wireless and wireline carriers are parties to the AT&T-Sprint Interconnection Agreement. If the wireless company Nextel alone were substituted for the original parties to the agreement (Sprint CLEC and Sprint PCS), portions of the adopted agreement would appear to erroneously suggest that Nextel could avail itself of provisions in the agreement that apply only to CLECs. To cite but one example, Attachment 2 of the AT&T-Sprint Agreement allows the Sprint CLEC entities to purchase unbundled network elements ("UNEs") from AT&T Tennessee. Substituting Nextel for the parties to the AT&T-Sprint agreement would result in language that would appear to erroneously suggest that Nextel can purchase UNEs from AT&T Tennessee.

28. Nextel, however, only 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***....[6]

Nextel, therefore, cannot purchase UNEs from AT&T Tennessee.

29. Substituting Nextel for Sprint would also result in an agreement that would appear to be internally inconsistent. To cite but one example, the AT&T-Sprint agreement was amended to bring it into compliance with the FCC's Triennial Review Order and Triennial Review Remand Order. That amendment provides that, as of March 11, 2006, "Sprint shall not obtain a Network Element for the exclusive provision of mobile wireless services or interexchange services." If Nextel were allowed to adopt the AT&T-Sprint agreement, some portions of the adopted agreement would erroneously appear to allow Nextel to purchase UNEs from AT&T Tennessee, while this amendment provision prohibits it from doing so. The Interconnection Agreement, therefore, would be internally inconsistent.

30. The adopted Interconnection Agreement could not be revised to address these issues – not in this context, in which Nextel is seeking to adopt the AT&T-Sprint Interconnection Agreement. As our attorneys can explain in more detail, the FCC has ruled that a carrier is no longer permitted to "pick and choose" the provisions in an approved Interconnection Agreement that it wants to adopt. Instead, the FCC has adopted an "all-or-nothing rule" that requires a requesting

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[6] *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).

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.[7]

31. Allowing Nextel to "adopt" the AT&T-Sprint Interconnection Agreement after revising the agreement to clarify which provisions Nextel can and cannot use is contrary to this FCC ruling, and confusing.

32. There are twenty-nine pages in the nine-state AT&T-Nextel Wireless Interconnection Agreement. In contrast, there are approximately 1,170 pages in the AT&T-Sprint Interconnection Agreement that Nextel seeks to adopt – generally, about the same number of pages that comprise a number of the older Interconnection Agreements between AT&T and stand-alone CLECs in AT&T's Southeast service region.[8]

33. The significance of the huge difference between the sizes of the two agreements is clear: an Interconnection Agreement between AT&T and a CLEC (in this case, an agreement with a CLEC that also includes one of the CLEC's wireless entities) contains a vast number of provisions that pertain strictly to the relationship between AT&T and a CLEC. An overwhelming majority of those provisions do not and cannot apply to a wireless provider, and, therefore, are not included in the Interconnection Agreement between AT&T and a wireless-only

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[7] *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).

[8] More recently, general language and change-of-law revisions have reduced standard interconnection agreements to fewer than 500 pages.

provider. Stated another way, Nextel could not possibly comply with the terms of the AT&T-Sprint Interconnection Agreement because Nextel is not a CLEC.

IV. COSTS TO AT&T IF NEXTEL IS ALLOWED TO ADOPT

34. Following are facts demonstrating that Nextel's attempt to adopt the agreement is not consistent with FCC Rule 47 C.F.R. § 51.809 which sets forth conditions under which the ILEC's adoption obligation does ***not*** apply:

> (b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:
>
> (1) ***The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement*** ... (emphasis added.)

35. AT&T's traffic records show that neither Nextel nor Nextel Partners (nor any other stand-alone wireless provider) would be able to match the balance of traffic as contemplated, intended and agreed upon by the three parties to the AT&T-Sprint Interconnection Agreement. Thus, no wireless-only provider should be able to gain the benefits provided by the AT&T-Sprint Interconnection Agreement.

36. These AT&T cost disadvantages relate to the difference in costs for interconnection between AT&T and Sprint versus costs for interconnection between AT&T and Nextel. The differences in balance of traffic cause significant cost differences. Obviously, if traffic is balanced, then a bill-and-keep arrangement or a 50/50 split of facilities costs may be appropriate, in some fashion. When

there is an imbalance of traffic, then one company's cost will generally be greater than the other company's cost. In that event, the difference in cost can be handled by each party picking up its share of the costs based on its share of the balance of traffic.

37. Nextel currently pays reciprocal compensation to, and for facilities with, AT&T based on usage under the terms and conditions of the individual Interconnection Agreements that each of the Nextel companies has with AT&T in Tennessee. Unlike the bill-and-keep and 50/50 facilities usage provisions of the AT&T-Sprint Interconnection Agreement, under which the parties do not pay each other for usage and facilities, AT&T and Nextel pay each other based upon actual minutes of use (MOUs) and a percentage of actual facilities usage.

38. As shown below, if Nextel is allowed to adopt the AT&T-Sprint Interconnection Agreement in Tennessee and, therefore, convert from paying reciprocal compensation to AT&T for actual MOUs and percentage of actual facilities usage, Nextel effectively would receive free transport and termination of their traffic over AT&T's network with no offsetting benefit derived by AT&T as part of the 'bargain' (if such an adoption could truly be called a bargain for AT&T).

39. AT&T incurs a cost to transport and terminate Nextel's traffic, but under the proposed adoption, Nextel will not compensate AT&T for that cost. While Nextel may argue that this is simply forgone revenue and not costs, they are incorrect. As wholesale pricing is generally set to recover the costs a provider incurs, foregone revenue is foregone cost recovery. To use an example, if a person

goes to a service station to get their car's tires rotated, has the service performed, and then leaves with out paying, that service station has not just experienced foregone revenue. Rather, that service station has not recovered the expenses it incurred to have its employee rotate those tires, as well as other costs incurred to provide the service.

40. To calculate the cost to AT&T of providing the Sprint Interconnection Agreement, AT&T compared what it would have received had each of the parties in the agreement paid their fair share based on their balance of traffic as compared to using Bill & Keep or the 50/50 shared facility factor.

41. If Nextel and Nextel Partners are allowed to adopt the Sprint Interconnection Agreement in Tennessee, AT&T would lose ***Begin Proprietary End Proprietary*** per year as a result of Nextel being allowed to exchange local traffic under Bill & Keep and to only have to pay for 50% of the interconnection facilities used to exchange traffic with AT&T.

42. Under Rule 51.809(b), AT&T must show that that cost is greater than the cost of providing this same Interconnection Agreement to the original signatories – Sprint CLEC and Sprint PCS. That cost is greater. It would cost AT&T ***Begin Proprietary End Proprietary*** per year more to provide the Sprint Interconnection Agreement to Nextel and Nextel Partners than it does to provide to Sprint CLEC and Sprint PCS. That is over four (4) times as much.

43. This is not the only extent to which AT&T would be harmed if Nextel is allowed to adopt the AT&T-Sprint Interconnection Agreement. In fact, the figures for Tennessee represent just the tip of a financial iceberg.

44. The potential harmful financial impacts extend beyond Tennessee and AT&T's Southeastern region. The potential damage is exponential with respect to the states outside of AT&T's Southeastern region. In addition to their filings in the Southeast, Sprint and Nextel are also attempting to port the Southeast AT&T-Sprint agreement outside of AT&T's Southeastern region.

45. The impacts are significantly increased by the fact that neither Sprint, Sprint PCS, nor the Nextel entities currently have benefit of bill-and-keep and/or the 50/50 facilities pricing in any of the 13 states. Moreover, each has a separate Interconnection Agreement with AT&T in all 13 states – unlike their combined Southeast agreement. If Sprint and Nextel succeed in porting the Southeast agreement to any or all of the 13 states across all of their subsidiaries – and, therefore, the bill-and-keep and 50/50 facilities pricing provisions – all of the Sprint/Nextel subsidiaries will unfairly benefit from a bargain developed through negotiation of the unique mix of considerations represented by only AT&T, Sprint and Sprint PCS in the Southeast.

46. Another major issue with respect to the potential harm caused AT&T should Nextel be allowed to adopt the AT&T-Sprint Interconnection Agreement is the issue of adoptability itself. If a wireless-only entity such as Nextel is allowed to adopt an Interconnection Agreement like the one between AT&T, Sprint and Sprint

PCS, with Nextel neither being certificated as a CLEC nor being combined with a wireline provider, then such a ruling may set a precedent for other wireless-only entities to likewise adopt the AT&T-Sprint Interconnection Agreement with, potentially, similar financial detriment to AT&T. Assuming that other major unaffiliated wireless carriers were to adopt the Sprint/Nextel agreement, then the potential costs to AT&T are magnified even further.

47. Finally, while the data I presented above provides ample justification for denying the adoptions, there are additional reasons why allowing the adoptions would have a negative impact on the industry. For example, the data above accurately reflects information collected during 2007, but does not reveal how the balance of traffic is likely to change over time.

48. As carriers' businesses change, so too may the means by which they deliver their traffic. Already, Nextel Partners has shifted traffic from its trunks so that its traffic is delivered via Nextel South's trunks, and that traffic is counted with Nextel South's minutes of use. It is also possible for a carrier to use a third party to aggregate and deliver traffic on its behalf. Thus, even if it were determined that a bill-and-keep arrangement is suitable today between specific carriers because the traffic they exchange is roughly in balance, such a traffic pattern may change and may change drastically. If carriers are allowed to maintain bill-and-keep compensation arrangements in instances where traffic is not in balance, it would afford them another mechanism for arbitrage.

49. Unscrupulous carriers may "game the system" in order to avoid paying their fair share of the costs associated with carrying and terminating their end users' traffic. Such a result runs counter to good public policy. Therefore, it is important that procedures remain available to ensure that carriers appropriately compensate each other for the facilities and services they utilize, and that enforcement of bill-and-keep arrangements is limited to instances in which traffic remains in balance.

CONCLUSION

50. I respectfully request the opportunity to present the facts summarized in this affidavit to the Authority. These facts will demonstrate that the adoptions requested by Nextel should not be granted.

FURTHER AFFIANT SAITH NOT.

Signed this 14th day of April, 2008

P L (Scot) Ferguson

P. L. (Scot) Ferguson

STATE OF GEORGIA

COUNTY OF Fulton

Sworn to and subscribed before me, this 14th day of April 2008.

Michaele F Bixler

Notary Public

My Commission Expires:

MICHEALE F. BIXLER
Notary Public, Douglas County, Georgia
My Commission Expires November 3, 2009

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

PROTECTIVE ORDER

To expedite the flow of filings, exhibits and other materials, and to facilitate the prompt resolution of disputes as to the confidentiality of such material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled; the Tennessee Regulatory Authority ("TRA") hereby orders that:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" shall mean documents and information in whatever form which the producing party in good faith deems to contain or constitute trade secrets, confidential research, development, financial statements or other commercially sensitive information, and which has been so designated by the producing party. A "producing party" is defined as the party creating the confidential information as well as the party having actual physical possession of information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order, and shall be stored, protected and maintained at the law offices of parties' counsel of

record until such time that said material shall be returned, as provided for in paragraph 16. Documents containing CONFIDENTIAL INFORMATION shall be specifically marked as confidential on the cover. Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under Paragraph 11 of this Order.

2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include parties which are allowed by the TRA to intervene subsequent to the date of entry of this Protective Order.

3. CONFIDENTIAL INFORMATION shall be used only for purposes of this proceeding and shall be disclosed only to the following persons:

(a) counsel of record for the parties in this case and associates, secretaries, and paralegals actively engaged in assisting counsel of record in this and the designated related proceedings;

(b) TRA Directors and members of the staff of the TRA;

Under no circumstances shall any CONFIDENTIAL INFORMATION or copies therefore be disclosed to or discussed with anyone associated with the marketing of services in competition with the products, goods or services of the producing party. Counsel for the parties are expressly prohibited from disclosing CONFIDENTIAL INFORMATION produced by another party to their respective clients, or to any other person or entity that does not have a need to know for purpose of preparing for or

participating in this proceeding. Whenever an individual, other than counsel, is designated to have access, then notice (by sending a copy of the executed affidavit) must be given to adversary counsel prior to the access being given to that individual and that individual, prior to seeing the material, must execute an affidavit that the information will not be disclosed and will not be used other than in this proceeding.

4. Prior to disclosure of CONFIDENTIAL INFORMATION to any employee or associate counsel for a party, officer or director of the parties, including any counsel representing the party who is to receive the CONFIDENTIAL INFORMATION, shall provide a copy of this Order to the recipient employee or associate counsel who shall be bound by the terms of this Order.

5. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents, such failure shall not constitute a waiver of confidentiality; provided the party or non-party who has produced the document shall notify the recipient of the document in writing within five (5) days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as CONFIDENTIAL. An inadvertent failure to designate a document as CONFIDENTIAL shall not, in any way, affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL status.

6. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this

Order when producing such documents and such failure is not discovered in time to provide five (5) day notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-Hearing Conference called for the purpose or at the Hearing on the merits may request designation of such documents as CONFIDENTIAL, and if the motion is granted by the Pre-Hearing Officer, Administrative Law Judge, or the Authority, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The Tennessee Regulatory Authority, the Pre-Hearing Officer or Administrative Law Judge may also, at his or her discretion, either before or during the Pre-Hearing Conference or hearing on the merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed and maintained in the TRA Docket Room in sealed envelopes marked CONFIDENTIAL and labeled to reflect the style of this proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter, and this Protective Order. Such envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA, Pre-Hearing Officer, or Administrative Law Judge after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the Staff of the TRA may review any paper filed as CONFIDENTIAL

without obtaining an order of the TRA, Pre-Hearing Officer or Administrative Law Judge, provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the hearing of this proceeding and offered into evidence used in any hearing related to this action, subject to the Tennessee Rules of Evidence and to such future orders as the TRA, the Pre-Hearing Officer, or the Administrative Law Judge may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL shall inform the producing party and the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, prior to the hearing on the merits of the case in the manner designated previously in this Order, of the proposed use; and shall advise the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and the producing party before use of such information during cross-examination so that appropriate measures can be taken by the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and/or requested by the producing party in order to protect the confidential nature of the information.

9. Except for documents filed in the TRA Docket Room, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained separately in files marked CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting party's counsel of record and returned to the producing party pursuant to Paragraph 16 of this Order.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of such party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or used by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose such information.

11. Any party may contest the designation of any document or information as CONFIDENTIAL by applying to the TRA, Pre-Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the documents information, or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL, however, shall be maintained as such until the TRA, the Pre-Hearing Officer, the Administrative Law Judge, or a court orders otherwise. A Motion to contest must be filed not later than ten (10) days prior to the Hearing on the Merits. Any Reply from the Company seeking to protect the status of their CONFIDENTIAL INFORMATION must be received not later than five (5)days prior to the Hearing on the Merits and shall be presented to the Authority at the Hearing on the merits for a ruling.

12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality.

13. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL in which event the provisions of this Order shall govern the disclosure of information or documents provided by the non-party witness. A non-party witness' designation of information as confidential may be challenged under Paragraph 11 of this Order.

14. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in paragraph 4 of this Order.

15. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

16. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all the filings, exhibits and other materials and information designated CONFIDENTIAL and all copies thereof shall be returned to counsel for the party who produced (or originally created) the filings, exhibits and other materials, within fifteen (15) days. Counsel in possession of such documents shall certify to counsel for the producing party that all the filings, exhibits and other materials, plus all copies or extracts from the filings, exhibits and other materials, and all copies of the extracts from the filing, exhibits and other materials thereof have been delivered to counsel for the producing party or destroyed.

17. After termination of this proceeding, the provisions of this Order relating to the secrecy and confidential nature of CONFIDENTIAL DOCUMENTS, information and testimony shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified.

18. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

_____

Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 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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[ ] Hand
[ ] Mail
[ ] Facsimile
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