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April 30, 2008

FOR HAND DELIVERY

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

filed electronically in docket office on 04/30/08

RE: In Re: Petition Regarding Notice of Election of Interconnection Agreement by Nextel South Corp, TRA Docket No. 07-00161 (consolidated with TRA Docket No. 07-00162)

Dear Chairman Roberson:

Enclosed for filing please find an original and thirteen (13) copies of *Nextel South Corp.'s and Nextel Partners' Additional Brief in Support of Nextel South Corp.'s and Nextel Partners' Motions for Summary Judgment.* An additional copy of this filing is enclosed to be "file-stamped" for our records.

If you have any questions or require additional information, please let me know.

Respectfully submitted,

Melvin J. Malone

c: Parties of Record

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

IN RE: PETITION REGARDING NOTICE OF ELECTION OF INTERCONNECTION AGREEMENT BY NEXTEL SOUTH CORP.	)	**DOCKET NO. 07-00161 (consolidated with Docket No. 07-00162)**

NEXTEL SOUTH CORP.'s AND NEXTEL PARTNERS' ADDITIONAL BRIEF IN SUPPORT OF NEXTEL SOUTH CORP.'s AND NEXTEL PARTNERS' MOTIONS FOR SUMMARY JUDGMENT

Pursuant to the Tennessee Regulatory Authority's ("Authority" or "TRA") April 22, 2008, *Notice of Additional Briefing Schedule Concerning Motion for Summary Judgment* in the above-captioned consolidated Dockets,[1] Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners (collectively "Nextel"), by and through their undersigned counsel, hereby submit this additional brief in support of their pending *Motion for Summary Judgment*.[2]

Federal Communication Commission ("FCC") Orders, and the second sentence of FCC Rule 47 CFR 51.809(a), make it abundantly clear that the federal

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[1] *Notice of Additional Briefing Schedule Concerning Motion for Summary Judgment*, TRA Consolidated Docket Nos. 07-00161 and 07-00162 (April 22, 2008) ("*Notice of Additional Briefing Schedule*"). In its March 20, 2008, *Order Consolidating Dockets and Appointing a Hearing Officer*, the Authority consolidated Docket No. 07-00161 and Docket No. 07-00162.

[2] *Nextel South Corp.'s Motion for Summary Judgment*, TRA Docket No. 07-00161 (February 6, 2008) and *Nextel Partners' Motion for Summary Judgment,* TRA Docket No. 07-00162 (February 6, 2008) (collectively "*Motion for Summary Judgment*" or "*Nextel Motion for Summary Judgment*").

telecommunications policy against ILEC discrimination amongst its competitors *compels* an interpretation of the "entire" agreement language in Rule 51.809(a) and Merger Commitment No. 1[3] that approves Nextel's adoption of the Sprint ICA, *regardless of whether Nextel brings the "same number and type of parties" to the adoption table or provides the "same wireless and wireline service" as the original Sprint parties to the Sprint ICA.*

Based upon the preliminary findings of the Authority at its April 21, 2008, Conference, and the federal law further discussed herein, as a matter of law, Nextel is entitled to adopt in its entirety the existing interconnection agreement between BellSouth Telecommunications, Inc., d/b/a AT&T Tennessee ("AT&T")[4] and Sprint[5] (the "Sprint ICA") under both 47 U.S.C. § 252(i) of the Act[6] and AT&T Inc.'s Merger Commitment No. 1.[7]

I. SUMMARY OF NEXTEL'S ARGUMENTS

- Interpretation of the "entire agreement" language in either 47 CFR § 51.809(a) or Merger Commitment No. 1 to impose a non-cost based "same number and type of parties" or "same wireless and wireline service" restriction upon Nextel's 252(i) adoption would be contrary to the well-established FCC authority and express language of 51.809(a), and interject discriminatory "poison pill"[8] terms and conditions into the Sprint ICA that do not otherwise exist.

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[3] *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control,* Memorandum Opinion and Order, at Appendix F, p. 149, "Reducing Transaction Costs Associated with Interconnection Agreements" ¶ 1, WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007) ("*FCC BellSouth Merger Order*"). A copy of the Table of Contents and Appendix F to the *FCC BellSouth Merger Order* is attached to *AT&T's Motion to Dismiss* (July 17, 2007) as Exhibit B.

[4] BellSouth Telecommunications, Inc. ("BellSouth") does business in Tennessee as "AT&T Tennessee" and "AT&T Southeast."

[5] Sprint Communications Company Limited Partnership and Sprint Communications Company L.P. (collectively "Sprint CLEC") and Sprint Spectrum L.P. ("Sprint PCS") (all such Sprint entities are collectively referred to herein as "Sprint").

[6] The Communications Act of 1934, as amended, 47 U.S.C. *et. seq.* (the "Act").

[7] For ease of reference, and for consistency with the *Petition*, AT&T, Inc.'s Merger Commitment 7.1 is referred to herein as Merger Commitment No. 1.

[8] "'Poison pills' are onerous provisions that could be included in an interconnection agreement, which would not negatively affect the original requesting carrier, but which would discourage other carriers from subsequently adopting the agreement[.]" *In the Matter of Review of the Section 251 Unbundling*

- The FCC expressly held in the *Local Competition Order* that non-cost based discriminatory treatment is prohibited under the Act, and the only exceptions to a timely 252(i) adoption are found in the increased cost and technical feasibility provisions of Section 51.809(b).

- When it replaced the "pick-and-choose" rule with the "all-or-nothing" rule in the *Second Report and Order*, the FCC:

    - Recognized that "adoption" of an interconnection agreement in its entirety is not synonymous with "use" of an interconnection agreement in its entirety;

    - Reiterated its reliance upon state commissions to detect and prevent discrimination both during the initial approval process of interconnection agreements under Section 252(e) and the subsequent adoption process of such agreements under Section 252(i); and,

    - Reaffirmed that it is discriminatory to include the use of non-cost based "poison pill" provisions in an interconnection agreement that may hamper a Section 252(i) adoption of that agreement by a subsequent requesting carrier.

- The Sprint ICA does not even contain the "poison pill" provisions that AT&T apparently wishes it had negotiated (i.e., non-cost based "same number and type of parties" or "same wireless and wireline service" restrictions). To the contrary:

    - The Sprint ICA affirmatively contemplates a wireless-only party not needing to use 100% of the terms and conditions that are contained in the agreement.

    - The Sprint ICA affirmatively contemplates the ability of a wireless-only carrier to operate under its terms and conditions.

    - The Sprint ICA does not contain any terms or conditions that require the original Sprint parties, either individually or collectively, to maintain any particular balance of traffic or to satisfy any minimum service purchase or revenue requirements.

Obligations of Incumbent Local Exchange Carriers, CC Docket No.01-338, Second Report and Order, 19 FCC Rcd, 13494 at n. 17 (2004) (*"Second Report and Order"*).

- Regarding the 9-state regional, wireless and wireline interconnection agreement between Alltel Communications, Inc. ("ALLTEL") and AT&T that the Authority approved in TRA Docket No. 04-00311 (the "ALLTEL ICA"):

    - AT&T had actual knowledge by no later than July 17, 2007, that ALLTEL was no longer operating as a certificated wireline CLEC in Tennessee.

    - Information contained in the national telecommunications industry Local Exchange Routing Guide ("LERG") database indicates that ALLTEL currently continues to have wireless carrier NPA-NXX numbering resources and a mobile switch to provide wireless service associated with such resources within AT&T territory in Tennessee.

    - Although the ALLTEL ICA was amended on November 30, 2007, to extend it for three (3) additional years to August 29, 2010, Nextel is not aware of the existence of any amendment to the ALLTEL ICA by which AT&T and ALLTEL have agreed to forego the continued application of bill-and-keep because ALLTEL had become a wireless-only carrier.

    - The apparent continuing ability for ALLTEL to use the bill-and-keep provisions of the ALLTEL ICA as a wireless-only carrier merely serves to further demonstrate the discriminatory nature of AT&T's position in this case to oppose Nextel's adoption of the Sprint ICA because Nextel is only providing wireless service.

II. RELEVANT BACKGROUND[9]

On June 22, 2007, Nextel filed with the Authority its *Petition Regarding Notice of Election of Interconnection Agreement* ("*Petition*").[10] In its *Petition*, Nextel stated that pursuant to Merger Commitment Nos. 1 and 2, and 47 U.S.C. § 252(i), Nextel has adopted in its entirety, effective immediately, the Sprint ICA, as amended, which has

[9] A more detailed summary of this matter is set forth in *Nextel's Motion for Summary Judgment, Nextel South Corp.'s and Nextel Partners' Reply to AT&T Tennessee's Brief in Opposition to Nextel South Corp.'s*, TRA Docket Nos. 07-00161 and 07-00162 (April 10, 2008) ("*Nextel's Reply Brief*"), and *Nextel South Corp.'s and Nextel Partners' Motion to Strike AT&T Tennessee, Inc's Affidavit of P.L. (Scott) Ferguson in the Entirety,* TRA Consolidated Docket Nos. 07-00161 and 07-00162 (April 17, 2008) ("*Motion to Strike*").

[10] *Petition Regarding Notice of Election of Interconnection Agreement by Nextel South Corp.*, TRA Docket No. 07-00161 (June 22, 2007) and *Petition Regarding Notice of Election of Interconnection Agreement by Nextel Partners*, TRA Docket No. 07-00162 (June 22, 2007).

been filed and approved in each of the legacy-BellSouth states, including Tennessee. Nextel also asserted that the Sprint ICA is current and effective, but acknowledged that Sprint and AT&T had a dispute regarding the term of the agreement, specifically referring to the pending Sprint-AT&T arbitration in TRA Docket No. 07-00132.[11]

On December 7, 2007, Sprint and AT&T filed a *Joint Motion* in the Sprint arbitration case, TRA Docket No. 07-00132, to approve an amendment to the Sprint ICA that "provides the relief requested by Sprint in its Petition, i.e., to extend the terms of the Parties' existing Interconnection Agreement for a period of three (3) years from the date of Sprint's March 20, 2007 request for such extension."[12] At its January 14, 2008, Authority Conference, the TRA approved the amendment to the Sprint ICA, which thereby extended the terms of the Sprint ICA to March 19, 2010.[13]

On February 6, 2008, Nextel filed its *Motion for Summary Judgment.* At its March 24, 2008 Authority Conference, the Presiding Panel voted to hear Nextel's *Motion for Summary Judgment* at the April 21, 2008, Authority Conference.[14] A Status Conference was held immediately after the March 24, 2008, Authority Conference to establish a briefing schedule regarding Nextel's pending *Motion for Summary Judgment.*[15] Consistent with the established briefing schedule, AT&T filed its brief in

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[11] *Petition.*
[12] *See Joint Motion to Approve Amendment*, TRA Docket No. 07-00132, ¶ 2 (Dec. 7, 2007) ("*Joint Motion*").
[13] Order Approving Amendment to the Interconnection Agreement, *In Re: Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee d/b/a AT&T Southeast*, TRA Docket No. 07-00132 (Jan. 25, 2008).
[14] *Notice of Briefing Schedule and Oral Arguments Concerning Motion for Summary Judgment*, TRA Consolidated Docket Nos. 07-00161 and 07-00162 (Mar. 25, 2008).
[15] *Id.*

opposition to Nextel's *Motion for Summary Judgment* on April 4, 2007,[16] and *Nextel's Reply Brief* was filed on April 10, 2008.[17]

At the Authority's April 21, 2008, Conference, the Presiding Panel heard oral arguments and made certain preliminary findings regarding Nextel's *Motion for Summary Judgment.*[18] The Authority specifically found that Nextel had met its burden of showing that there are no remaining genuine issues of material fact and that AT&T had failed to meet its burden to establish the falsity of the undisputed relevant facts.[19] The Authority further found that Merger Commitment No. 1 is not limited to a requesting carrier's adoption of out-of-state agreements.[20]

Notwithstanding the foregoing, the Presiding Panel directed the parties to submit additional legal briefs on the following legal issues:

a) interpret the language in Rule 51.809 regarding adoption of the "entire" agreement as it relates to the parties and this agreement;

b) interpret the language in Merger Commitment No. 1 regarding adoption of the "entire" agreement as it relates to the parties and this agreement; and,

c) address or distinguish the agreement in TRA Docket No. 04-00311 (ALLTEL).[21]

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[16] *AT&T Tennessee's Brief in Opposition to Nextel South Corp.'s Motion for Summary Judgment,* TRA Consolidated Docket Nos. 07-00161 and 07-00162 (April 4, 2008) ("*AT&T's Brief in Opposition*").
[17] *Reply to AT&T Tennessee's Brief in Opposition to Nextel South Corp.'s and Nextel Partners' Motion for Summary Judgment,* TRA Consolidated Docket Nos. 07-00161 and 07-00162 (April 10, 2008) ("*Nextel's Reply Brief*"). AT&T's Affidavit of P. L. (Scot) Ferguson, filed on April 15, 2008, was stricken from the record by the Presiding Panel for failure to comply with the Notice of the Hearing Officer, TRA Rules and Tenn. Code Ann. § 4-5-313. *See Transcript of Proceedings, Tennessee Regulatory Authority Conference,* TRA Docket No. 07-00161, pp. 2-25 (April 21, 2008) (excerpted version) ("*April 21, 2008, Transcript*").
[18] *Id.* at 25-57.
[19] *Id.* at 58-61.
[20] *Id.* at 59-61.
[21] *Notice of Additional Briefing Schedule.*

III. DISCUSSION AND ARGUMENTS

AT&T claims that Nextel cannot adopt the Sprint ICA under Section 252(i) because Nextel is not seeking to adopt the same terms and conditions set forth in the Sprint ICA.[22] The premise of AT&T's position is that since the Sprint ICA addresses a unique mix of wireline (Sprint CLEC) and wireless (Sprint PCS) items, the terms and conditions of the Sprint ICA cannot be "applied" to Nextel, a wireless carrier.[23] Further, AT&T asserts that the Sprint ICA "reflects the outcome of negotiated gives and takes that would not have been made if the agreement addressed only wireline services or only wireless services."[24]

Regarding the Merger Commitments, the general thrust of AT&T's argument in opposition to Nextel's adoption of the Sprint ICA has been that the Merger Commitments are inapplicable[25] – which the Authority has rejected.[26]

In the context of the Authority's request for additional briefing, AT&T's positions amount to a contention that the Authority should interpret the "entire" agreement language in Rule 51.809 and Merger Commitment No. 1 to preclude Nextel's adoption of the Sprint ICA because, as a stand-alone wireless carrier Nextel has not brought either the *"same number and type of parties"* to the adoption table, nor provides the *"same wireless and wireline service"* as the original Sprint parties to the Sprint ICA and, therefore, is not adopting the Sprint ICA in its entirety. As further explained below, however, the FCC's Orders, and the second sentence of Rule 51.809(a), make it expressly clear that the federal telecommunications policy that prohibits ILEC discrimination

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[22] *AT&T's Brief in Opposition* at 7.
[23] *Id.* at 8.
[24] *Id.*
[25] *Id.* at 14-17.
[26] *April 21, 2008, Transcript* at 59-61.

amongst its competitors compels an interpretation of the "entire" agreement language in both Rule 51.809(a) and Merger Commitment No. 1 that approves Nextel's adoption of the Sprint ICA, *regardless of whether Nextel brings the "same number and type of parties" to the adoption table or provides the same "wireless and wireline service" as the original Sprint parties to the Sprint ICA.*

Federal law provides that adoption of a given ICA is at the option of the requesting carrier. A timely Section 252(i) adoption request can *only* be denied based upon the recognized cost-based or technical feasibility exceptions contained in 51.809(b), which the Authority has already determined do not exist in this case.[27] And, a Merger Commitment adoption is limited only by any state-specific modifications that may be necessary when the adoption occurs. Whether Nextel is either capable of using, or in fact actually uses, any given provision of an adopted ICA at any given point in time throughout the term of any given ICA that it may choose to adopt depends on the legally permissible terms and conditions as stated in the adopted ICA – as opposed to any illegal, non-existent, wish-list "poison pill" limitations that an ILEC may seek to create and impose after-the-fact. Despite AT&T's claims to the contrary, as plainly demonstrated by the adoption agreement executed and filed by Nextel and AT&T in Kentucky, the actual adoption process is straightforward and simple.[28] As long as Nextel is willing to *accept as written* all of the terms and conditions of the Sprint ICA – as it did in Kentucky

[27] *See id.* at 58 ("Nextel has met the burden in making a showing that there are no remaining genuine issues of material fact. AT&T has failed to meet the burden to establish the falsity of the undisputed relevant facts set out by Nextel").

[28] A copy of the Nextel – AT&T Kentucky agreement regarding Nextel's adoption of the Sprint ICA in its entirety was distributed at the April 21, 2008, Authority Conference and has been filed in Docket No. 07-00161. *See April 21, Transcript* at 41.

- any AT&T contention that Nextel is attempting to "pick-and-choose" portions of the Sprint ICA turns the concepts of "pick-and-choose" and "all-or-nothing" on their heads.

A. INTERPRETATION OF THE LANGUAGE IN RULE 51.809(a) REGARDING ADOPTION OF THE "ENTIRE" AGREEMENT AS IT RELATES TO THE PARTIES AND THIS AGREEMENT.

FCC Orders, the express language of Rule 47 CFR § 51.809 and applicable case law, *compel* an interpretation of the "entire" agreement language in Rule 51.809(a) that approves Nextel's adoption of the Sprint ICA and rejects recognition of any implied, "poison-pill," non-cost-based "same number and type of parties" or "same wireless and wireline service" restrictions to prevent Nextel's adoption of the Sprint ICA.

1. FCC Orders, Rule 51.809 and applicable case law.

47 U.S.C. § 252(i) 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.

The FCC considers Section 252(i) to be "a primary tool of the 1996 Act for preventing discrimination under section 251[,]"[29] and recognizes that "the primary purpose of section 252(i) [is] preventing discrimination [.]"[30] In paragraph 1317 of the *Local Competition Order*, the FCC clearly and unequivocally established that the *only grounds* upon which an ILEC can prevent a requesting carrier from timely adopting an existing ILEC agreement under Section 252(i) are if the request increases the ILECs cost or is not technically feasible:

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[29] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd, 15499 at ¶ 1296 (1996) ("*Local Competition Order*").

[30] *Id.* at ¶ 1315.

> 1317. We find that section 252(i) permits differential treatment based on the LEC's cost of serving a carrier. We further observe that section 252(d)(1) requires that unbundled rates be cost-based, and sections 251(c)(2) and (c)(3) require incumbent LECs to provide only technically-feasible forms of interconnection and access to unbundled elements, while section 252(i) mandates the availability of publicly-filed agreements be limited to carriers willing to accept the same terms and conditions as the carrier who negotiated the original agreement with the incumbent LEC. We conclude that these provisions, read together, require that publicly-filed agreements be made available only to carriers who cause the incumbent LEC to incur no greater costs than the carrier who originally negotiated the agreement, so as to result in an interconnection agreement that is both cost-based and technically feasible. *However, as discussed in Section VII regarding discrimination, where an incumbent LEC proposes to treat one carrier differently than another, the incumbent LEC must prove to the state commission that that differential treatment is justified based on the cost to the LEC of providing that element to the carrier.* [Emphasis added].

The FCC's cross-reference in paragraph 1317 to the Section VII discrimination discussion within the *Local Competition Order* is also pertinent in this case. "[P]rice differences, such as volume and term discounts, when based upon legitimate variations in costs are permissible under the 1996 Act, if justified."[31] However, "price differences based not on cost differences but on such considerations as competitive relationships, the technology used by the requesting carrier, the nature of the service the requesting carrier provides, or other factors not reflecting costs would be discriminatory and *not permissible* under the new [discrimination] standard [within the 1996 Act amendments]."[32] [Emphasis added].

The two, and only two, exceptions that the FCC recognized in the *Local Competition Order* that an ILEC can raise to defeat a carrier's timely request to adopt an existing ILEC interconnection agreement pursuant to 252(i) – *i.e.* increased costs or

[31] *Id.* at ¶ 860.
[32] *Id.* at ¶ 861.

technical feasibility – are codified in FCC Rule 47 CFR § 51.809(b).[33] The Authority has already found, however, that AT&T has failed to demonstrate the existence of any facts that would appropriately establish either of the two (2) FCC recognized exceptions.[34]

In paragraph 1318 of the *Local Competition Order*, the FCC also expressly prohibited an interpretation of 252(i) that would limit an adoption based upon the "type of service" provided by the requesting carrier:

> 1318. We conclude, however, that section 252(i) *does not* permit LECs to limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement. In our view, the class of customers, or the type of service provided by a carrier, *does not* necessarily bear a direct relationship with the costs incurred by the LEC to interconnect with that carrier or on whether interconnection is technically feasible. *Accordingly, we conclude that an interpretation of section 252(i) that attempts to limit availability by class of customer served or type of service provided would be at odds with the language and structure of the statute, which contains no such limitation.* [Emphasis added].

The FCC's unambiguous and plainly stated prohibition in paragraph 1318 of the *Local Competition Order* ***against interpreting 252(i) in a manner that would limit Nextel's 252(i) adoption of the Sprint ICA based on any consideration of the type of service Nextel provides***, is codified in the second sentence of Section 51.809(a). Section 51.809(a), in its entirety, states:

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[33] 47 CFR 51.809(b) states "[t]he obligations of paragraph [51.809](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, or

(2) The provision of a particular agreement to the requesting carrier is not technically feasible."

[34] *See April 21, 2008, Transcript.* at 58 ("AT&T fail[ed] to provide factual evidence that it would incur greater costs in providing the Sprint interconnection agreement to Nextel than it does in providing the agreement to the original parties.").

> **(a)** An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. ***An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.*** [Emphasis added].

The "any agreement in its entirety" clause that is contained within Section 51.809(a) came into existence as the result of the FCC's *Second Report and Order*.[35] In July of 2004, the FCC revisited its interpretation of 252(i) to reconsider and eliminate what was originally known as its "pick-and-choose" rule, which permitted requesting carriers to select only the related terms that they desired from one (or more) of an incumbent LEC's existing filed interconnection agreement(s) and create a new cut and paste agreement, rather than take an entire interconnection agreement intact. The FCC eliminated the "pick-and-choose" rule and replaced it with the "all-or-nothing" rule, which is reflected in the current version of Rule 51.809(a) above. The FCC's adoption of the "all-or-nothing" rule did not change the fact that the only two (2) express, limited narrow exceptions that an ILEC could prospectively rely upon to preclude a timely adoption under 51.809(b) continued to be increased costs or technical feasibility; and, the express prohibition also remained in the second sentence of 51.809(a) against limiting an adoption based upon the type of service provided by a requesting carrier.

The FCC specifically cited to a portion of the record developed for its consideration in the *Second Report and Order* NPRM that makes it clear the FCC

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[35] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No.01-338, Second Report and Order, 19 FCC Rcd, 13494 (2004) (*"Second Report and Order"*).

recognized that carriers not only can, but in fact do, adopt an entire (i.e., intact) existing agreement pursuant to Section 252(i) without any intent of *using* the entire agreement. The FCC stated that "[t]he current record ... demonstrates that in practice competitive LECs frequently adopt agreements in their entirety" and cited to the "PAETEC Comments at 2."[36] The referenced PAETEC Comments state:

> For those carriers who are willing to adopt an existing agreement whole, or accept the model terms that the ILEC proposes, the process of negotiating an interconnection agreement has become virtually a ministerial process that can be conducted with an exchange of emails over a period of a few days or weeks. Consequently, carriers that are anxious to enter a market are typically satisfied with a model agreement or an adoption. Moreover, since the duty of performance in a typical interconnection agreement falls almost exclusively on the ILEC, it is the rare competitor that is concerned about its overall obligations under the agreement. *It is not uncommon to see a carrier adopt a 600 page agreement with the intention of using only a few provisions.* Alternative negotiated terms based on a pick-and-choose right are the exception rather than the rule.[37]

Obviously, as long as Nextel is willing to *adopt* the Sprint ICA in its entirety, i.e. intact without modification, it is free to use less than all of it. And, as further explained in Subsection 2 below, the Sprint ICA already expressly identifies which provisions are currently *available* for use by a wireless-only carrier and what steps the wireless carrier must take if it wants to use the additional provisions that, as a practical matter, are currently of no typical concern to a wireless carrier.

As it did in the *Local Competition Order*, the FCC also recognized in the *Second Report and Order* the need for state commissions to detect and prevent the occurrence of

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[36] *Second Report and Order* at ¶ 18 and n. 64.

[37] *Comments of PAETEC Communications, Inc.*, at p. 2, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No.01-338 (Oct. 16, 2003) (emphasis added).

discrimination not only when an interconnection agreement is initially approved under Section 252(e), but when deciding the appropriateness of a 252(i) adoption. In particular, absent the applicability of a 51.809(b) exception, an ILEC must make an agreement available in its entirety at the election of the requesting carrier, and the ILEC cannot insist upon specific provisions in an agreement as a means to prevent subsequent carriers from requesting an existing ILEC interconnection agreement.

> To the extent that carriers attempt to engage in discrimination, such as including *poison pills* in agreements, we expect state commissions, in the first instance, will detect such discriminatory practices in the review and approval process under section 252(e)(1). Discrimination provisions include, but are not limited to, such things as inserting an onerous provision into an agreement when the provision has no reasonable relationship to the requesting carrier's operation. ***We would also deem an incumbent LEC's conduct to be discriminatory if it denied a requesting carrier's request to adopt an agreement to which it is entitled under section 252(i) and our all-or-nothing rule***.[38] [Emphasis added].
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> ***
>
> "Poison pills" are onerous provisions that could be included in an interconnection agreement, which would not negatively affect the original requesting carrier, but would discourage other carriers from subsequently adopting the agreement.[39]
>
> ***
>
> We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent

[38] *Id.* at ¶ 29.

[39] *Id.* at n. 17 (citing *Local Competition Order* at ¶ 1312) ("We also find that practical concerns support our interpretation. As observed by AT&T and others, failure to make provisions available on an unbundled basis could encourage an incumbent LEC to insert into its agreement onerous terms for a service or element that the original carrier *does not need*, in order to discourage subsequent carriers from making a request under that agreement.") (emphasis added).

> LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.[40]

As previously discussed in Nextel's *Motion for Summary Judgment,* AT&T's pre-merger parent, BellSouth Corporation, specifically contended before the FCC that ILECs should be permitted to restrict 252(i) adoptions to "similarly situated" carriers.[41] To support that position, BellSouth used an example of an interconnection agreement with bill-and-keep compensation terms that it argued should only be available to similarly-situated carriers. BellSouth informed the FCC that it sought to "construct contract language specific to this situation, [but] there is still risk that CLECs who are not similarly situated will argue they should be allowed to adopt the language[.]"[42] The situation involved a CLEC with a very specific business plan, customer base and bill and keep provisions that BellSouth contended in "other circumstances ... would be extremely costly to BellSouth."[43] Notwithstanding such assertions, based upon the prohibition codified in 51.809(a), the FCC expressly held:

> We also reject the contention of at least one commentator that incumbent LECS should be permitted to restrict adoptions to "similarly situated" carriers. We conclude that section 252(i) does not permit incumbent LECs to limit the availability of an agreement in its entirety only to those requesting carriers serving a comparable class of subscribers or providing the same service as the original party to the agreement. Subject to the limitations in our rules, ***the requesting carrier may choose to initiate negotiations or to adopt an agreement in its entirety that the requesting carrier deems appropriate for its business needs***.[44]

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[40] *Id.*at ¶ 19.
[41] *Id* at ¶ 30 and n. 101.
[42] *Id.* BellSouth Affidavit of Jerry D. Hendrix at ¶ 6 (May 11, 2004) (attached to *Nextel's Motion for Summary Judgment* as Exhibit E).
[43] *Id.*
[44] *Id.* at ¶ 30 (emphasis added).

AT&T's other predecessor, SBC, has also attempted to skirt the application of 252(i) by trying to withhold the complete terms of an agreement from being filed, and then contend that such terms are not available for adoption because, as a practical matter, SBC could not make the undisclosed terms available to other carriers. In *Sage*,[45] SBC and Sage Telecom entered into a "Local Wholesale Complete Agreement" ("LWC") that included not only products and services subject to the requirements of the Act, but also certain products and services that were not governed by either §§ 251 or 252. Following the parties' press release and filing of only that portion of the LWC that SBC and Sage considered to be specifically required under Section 251 of the Act, other CLECs filed a petition requiring the filing of the entire LWC. The Texas Commission found the LWC was an integrated agreement resulting in the entire agreement being an interconnection agreement subject to filing and thereby being made available for adoption by other CLECs pursuant to 252(i). On appeal, SBC argued that "requiring it to make the terms of the entire LWC agreement with Sage available to all CLECs is problematic because there are certain terms contained in it, which for practical reasons, it could not possibly make available to all CLECs."[46] In rejecting this argument, the federal district court stated:

> [SBC's] argument proves too much. The obligation to make all the terms and conditions of an interconnection agreement to any requesting CLEC follows plainly from § 252(i) and the FCC's all-or-nothing rule interpreting it. The statute imposes the obligation for the very reason that its goal is to discourage ILECs from offering more favorable terms only to certain preferred CLECs. SBC's and Sage's appeal to the need to encourage creative deal-making in the telecommunications industry simply does not show why specialized treatment for a particular CLEC such as Sage is either necessary or appropriate in light of the Act's policy favoring nondiscrimination.[47]

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[45] *Sage Telecom, L.P. v. Public Utility Commission of Texas,* 2004 U.S. Dist. LEXIS 28357 (W.D. Tex.) (*"Sage"*) (attached to *Nextel's Motion for Summary Judgment* as Exhibit F).
[46] *Id.* at *23.
[47] *Id.* at *23-24.

Based upon all of the foregoing federal authorities, any interpretation of Rule 51.809(a) to impose any implied "same number and type of parties" or "same service" limitations upon Nextel's 252(i) adoption of the Sprint ICA would be contrary to federal law and constitute the creation and imposition of discriminatory, poison pill provisions.

2. Not even the express terms of the Sprint ICA include the poison pill "same number and type of parties" or "same wireless and wireline service" restrictions that AT&T would presumably have the Authority interpret into the "entire" agreement language of Rule 51.809(a).

The Sprint ICA is divided into the following sections:

- General Terms and Conditions – Part A
- Attachment 1 Resale
- Attachment 2 Network Elements and Other Services
- Attachment 3 Network Interconnection
- Attachment 4 Physical Collocation
- Attachment 5 Access to Numbers and Number Portability
- Attachment 6 Ordering and Provisioning
- Attachment 7 Billing and Billing Accuracy Certification
- Attachment 8 License for Rights of Way (ROW), Conduits, And Pole Attachments
- Attachment 9 Performance Measurements
- Attachment 10 Agreement Implementation Template (Residence) and (Business)
- Attachment 11 BellSouth Disaster Recovery Plan

By its express terms, all of the Sprint ICA Attachments are available to the Sprint CLEC wireline entity and, pursuant to General Term and Condition ("GTC") § 35 Application of Attachments, the Sprint PCS wireless entity initially elected the Attachments that it wanted to use and retained the express right to elect to use any remaining Attachments at a later date. Specifically, GTC § 35 states:

> Application of Attachments
>
> This Agreement was negotiated between BellSouth, Sprint CLEC and Sprint PCS for the purpose of creating a single interconnection arrangement between BellSouth and Sprint. At the date of signing this Agreement, Sprint PCS has elected not to opt into the terms and conditions of the following Attachments: 1 Resale, 5 Access to Numbers, 6 Ordering and Provisioning, 9 Performance Measurements and 11 Disaster Recovery. Should Sprint PCS desire to operate under the terms and conditions of those Attachments, prior to the expiration of the term of this Agreement, Sprint PCS and BellSouth shall negotiate an amendment to this Agreement.[48]

As AT&T well knows, any person knowledgeable about wireless service would recognize that the Attachments which Sprint PCS "elected not to opt into" are Attachments that Sprint PCS did not (nor does Nextel) consider being particularly necessary or applicable to its interconnection arrangements with AT&T. *Thus, even within the four corners of the Sprint ICA itself, there are provisions that the Sprint PCS wireless carrier, for whatever reason, affirmatively identified at the inception of the Sprint ICA that it would not be using on a going-forward basis.* Obviously, if an original party to an interconnection agreement can enter into an agreement that, in one provision affirmatively acknowledges that other provisions will not be used by one of the parties, Nextel can certainly adopt the exact same agreement, notwithstanding the fact that Nextel also does not anticipate needing to use 100% of the agreement. Indeed, for AT&T to expressly contract with Sprint to permit Sprint PCS to select only that part of the Sprint

[48] A copy of the Sprint ICA GTC § 35 is attached hereto as **EXHIBIT A.**

ICA that Sprint PCS apparently believed it has a need to use, yet attempt to preclude Nextel's adoption of the exact same contract that would permit Nextel to make the exact same selection that was made by Sprint PCS because Nextel also does not intend to *use* 100% of the Sprint ICA, is *per se* discrimination.

Further, with regard to *all* of the remaining provisions of the Sprint ICA that are unquestionably subject to Sprint PCS's use, *all* of those provisions have obviously already been written in a way that restricts a wireless carrier from improperly using such terms and conditions that, as a matter of law, may only be appropriate for use by a wireline CLEC (e.g., the express UNE restriction in amended Attachment 2 – *an Attachment that Sprint PCS did elect to use* - that states "Sprint shall not obtain a Network Element for the exclusive provision of mobile wireless services or interexchange services").[49]

With the foregoing established overview of the Sprint ICA, Nextel reiterates that, to date, AT&T has not cited a single provision in the Sprint ICA that mandates the presence of both a wireless and a wireline party. The reason for the failure of such a citation is because no such requirement exists in the Sprint ICA. Not only does no such requirement exist, but the Sprint ICA expressly recognizes AT&T's obligation to permit a Sprint entity to opt-out of the Sprint ICA. Pursuant to the 9th Amendment GTC § 17, entitled "Adoption of Agreements[,]" the Sprint ICA provides that "BellSouth shall make agreements available to Sprint in accordance with 47 USC § 252(i) and 47 C.F.R. 51.809." Further, the Sprint ICA specifically contemplates and would allow *only* the Sprint PCS wireless entity to operate under the Sprint ICA. The recognition that Sprint

[49] A copy of amended Attachment 2 is attached to *Nextel's Reply Brief* as Exhibit D.

PCS could operate on a stand-alone basis under the Sprint ICA is contained in Attachment 3 Network Interconnection § 6.1, which, in its entirety, states:

> Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Traffic is the result of negotiation and compromise between Bell South, 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 BellSouth 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 BellSouth pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between BellSouth and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by BellSouth.*** [Emphasis added].

Under the plain and ordinary terms of Section 6.1, either Sprint CLEC or Sprint PCS may opt out of the Sprint ICA and into another AT&T agreement under Section 252(i), and the Sprint ICA will continue in effect with respect to the remaining Sprint entity. The scenario under which such a departure may require termination or renegotiation only occurs if the departing Sprint entity "opts into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act *which calls for reciprocal compensation*[.]" In sum, if one of the Sprint entities opts out of the Sprint ICA, the Sprint ICA, including the bill and keep provisions, remains effective as to the remaining Sprint entity, unless the foregoing triggering event occurs. Contrary to AT&T's claims, the triggering event for "termination or renegotiation" of the bill and keep arrangement (as opposed to the entire agreement), by the plain and ordinary terms of Section 6.1 of the Sprint ICA, is not the departure of either Sprint CLEC or Sprint PCS; rather, it is the departing entity's opting into another ICA that *requires the payment of reciprocal*

compensation by AT&T to that Sprint entity. Simply put, the Sprint ICA does not require that both Sprint entities remain as parties for it to remain effective.

In addition, it is important that the Authority realize that there simply are no terms or conditions in the Sprint ICA that require the original Sprint parties, either individually or collectively, to maintain any particular balance of traffic or to satisfy any minimum service purchase or revenue requirements. AT&T agreed to bill-and-keep without including either a balance of traffic definition or a provision to institute billing at any point in time *because the parties never negotiated and included any requirement that any of the traffic exchanged between any of the parties ever meet or maintain any given traffic balance ratio.*[50] In other words, there is nothing in the Sprint ICA that would even be akin to a permissible cost-based "volume and term" provision.

In summary, Nextel submits that if there even were a provision that *required both of the* Sprint entities to remain parties to the Sprint ICA notwithstanding the fact there is no traffic balance ratio requirement, such a provision would (in the absence of any traffic balance ratio requirement) be a non-cost based poison pill. The fact of the matter, however, is that since there is no requirement in the Sprint ICA that both a wireline and a wireless Sprint entity remain joint parties to the Sprint ICA during the entirety of the agreement, there is no "same number and type of parties" or same "wireless and wireline service" limitation in the Sprint ICA (whether viewed as an impermissible "poison pill" or not).

[50] If the balance of traffic was critical, the Sprint ICA would certainly expressly outline and define with some specificity what constitutes being in-balance and would contain a provision under which the parties would revert to the billing and payment of reciprocal compensation if the traffic becomes out-of-balance. *See Opposition of Sprint Nextel Corporation*, FCC WC Docket No. 08-23, pp. 15-16 (Feb. 25, 2008) (attached to Sprint's February 26, 2008, Letter to the Authority in TRA Docket No. 07-00161).

B. INTERPRETATION OF THE LANGUAGE IN MERGER COMMITMENT NO. 1 REGARDING ADOPTION OF THE "ENTIRE" AGREEMENT AS IT RELATES TO THE PARTIES AND THIS AGREEMENT.

There is nothing in the plain language of AT&T Inc.'s interconnection-related Merger Commitment No. 1 language to suggest the "entire effective agreement" clause may be interpreted in any manner that prohibits any carrier from adopting any agreement within AT&T's 22-state territory. To the contrary, Merger Commitment No. 1 expressly contemplates the occurrence of any adoption by any carrier - as does section 252(i) – but the limitations upon AT&T's obligations with respect to the adopted agreement are slightly different. Under the plain language of Merger Commitment No. 1, the adopted agreement is "subject to" certain specified modification, as applicable. Further, Merger Commitment No. 1 expressly incorporates only a technical feasibility concept (and even then, not as an absolute "exception") and contains absolutely no "increased cost" exception; and, there is a general requirement that an adoption be "consistent with the laws and regulatory requirements" of the state in which the adoption occurs.

AT&T Inc.'s interconnection-related Merger Commitment No. 1 provides as follows:

> The AT&T/BellSouth ILECs 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.

The stated purpose of the interconnection-related Merger Commitments was to alleviate FCC concerns regarding the new 22-state mega-billion dollar, post-merger AT&T[51] "owning nearly all of the telephone network in roughly half the country – *using its market power to reverse the inroads that new entrants have made and, in fact, to squeeze them out of the market altogether.*"[52] As shown directly below, it was this well-documented concern that led to the interconnection-related Merger Commitments:

> To mitigate this concern, the merged entity has agreed ... ***to ensure that the process of reaching such agreements is streamlined***. These are important steps for fostering residential telephone competition and ensuring that this merger does not in any way retard such competition.[53]

With the foregoing purpose of Merger Commitment No. 1 firmly in mind, distilling and applying the essential operative terms of Merger Commitment No. 1 to this case would result in the following:

> AT&T ... shall make available to [Nextel] any entire effective interconnection agreement [i.e., the Sprint ICA] ... subject to [pricing and feasibility limitations that do not apply in this case], and provided, further, that ... AT&T ... shall not be obligated to provide ... any interconnection arrangement ... given ... [again, feasibility and consistent with the law of the state of adoption limitations that do not apply in this case].

---

[51] *See FCC BellSouth Merger Order*, p. 169 (Commissioner Michael J. Copps, concurring):

> "... we Commissioners were initially asked to approve the merger the very next day ***without a single condition*** to safeguard consumers, businesses, or the freedom of the Internet. This is all the more astonishing when you consider that this $80-some odd billion dollar acquisition would result in a new company with an estimated $100 billion dollars in annual revenue, employing over 300,000 people, owning 100% of Cingular (the nation's largest wireless carrier), covering 22 states, providing service to over 11 million DSL customers, controlling the only choice most companies have for business access services, serving over 67 million access lines, and controlling nearly 23% of this country's broadband facilities."

[52] *Id.* at 172 (emphasis added).
[53] *Id.* (emphasis added).

As indicated in Section A. 1 of this brief, the existing federal anti-discrimination policy restricts the limitations that can be imposed upon Nextel's 252(i) adoption of the Sprint ICA to the cost-based and technical feasibility limitations found in Rule 51.809(b), thereby prohibiting any interpretation of 51.809(a) that would deny Nextel's 252(i) adoption based upon any additional non cost-based restrictions. Application of the same federal anti-discrimination policy to Merger Commitment No. 1 prohibits any interpretation of Merger Commitment No. 1 that would deny Nextel's right to adopt the Sprint ICA based upon any restriction other than those expressly identified in the Commitment. As for the expressly identified restrictions in Merger Commitment No. 1, it is evident on their face that they are inapplicable, and AT&T has not even attempted to make any credible showing to the contrary.

C. AT&T APPEARS TO TAKE DIAMETRICALLY OPPOSED POSITIONS REGARDING A NEXTEL "WIRELESS-ONLY" ADOPTION OF THE SPRINT ICA VERSUS AN ALLTEL "WIRELESS-ONLY" USE OF THE ALLTEL ICA APPROVED IN TRA DOCKET NO. 04-00311

In response to the Authority's request that the parties' address or distinguish the agreement in TRA Docket No. 04-00311 (ALLTEL), Nextel has gleaned the following facts from the public record:

- TRA Docket No. 04-0031 and the ALLTEL ICA filed therein:
    - September 22, 2004: AT&T submitted to the TRA for approval in Tennessee a 9-state wireless and wireline interconnection agreement between ALLTEL and AT&T that the Authority approved in TRA Docket No. 04-00311, the ALLTEL ICA.
        - Differences of note, between the Sprint ICA and ALLTEL ICA:
            1. ALLTEL executed the ALLTEL ICA as a single entity that provided both wireless and wireline service at the time of execution; and, also entered into the agreement on behalf of

sixteen (16) additional wireless affiliates identified in Attachment 3 Exhibit F of the Agreement.

2. The separate, respective Sprint PCS wireless and Sprint CLEC wireline entities each executed the Sprint ICA.

3. The ALLTEL ICA provides that the agreement would not be submitted for approval by the appropriate state regulatory agency "unless and until such time as CLEC carrier is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission." (ALLTEL ICA GTC § 22).

4. The Sprint ICA provides that the Sprint ICA would be filed with the appropriate state regulatory agency upon execution. (Sprint ICA, GTC § 34).

- Similarities of note, between the Sprint ICA and ALLTEL ICA:

1. Both are regional agreements that apply to AT&T's territories in the states of Alabama, Florida, Georgia, Kentucky, Louisiana Mississippi, North Carolina, South Carolina, and Tennessee.

2. Both agreements recognize AT&T's continuing obligation to make other agreements available for adoption pursuant to 47 USC § 252(i) (ALLTEL ICA GTC § 9.1; Sprint ICA GTC ¶ 17).

3. Both agreements recognize the use of bill and keep for both CMRS and CLEC traffic. Further, the only contingency imposed upon the use of bill and keep is that a contracting party cannot opt-into a different AT&T agreement pursuant to § 252(i) would require AT&T to pay reciprocal compensation under the opt-in agreement. Thus, both agreements contemplate the continuation of the agreement on a wireless-only basis as long as a contracting party did not attempt to obtain reciprocal compensation payments from AT&T for wireline traffic. (ALLTEL ICA GTC § 3.1; Sprint ICA GTC ¶ 6.1).

- November 24, 2004: The TRA entered its Order approving the ALLTEL ICA.

- TRA Docket Nos. 99-000149 and 07-00123:

    - May15, 2007: AT&T submitted to the TRA for filing and approval in Docket 07-00123 a Right of Way Agreement that is "Dated December 13, 2001" and reflects an undated ALLTEL signature, and a BellSouth signature dated December 13, 2001.

    - May 17, 2007: The TRA received an ALLTEL written request dated May 14, 2007 in Docket No. 99-00149 to terminate ALLTEL's CLEC and IXC certificate. The notice included the statement that ALLTEL "has no CLEC & IXC customers or operations in the state and therefore, no customers will be affected by this voluntary cancellation."

    - May 21, 2007: The TRA sent AT&T notice in Docket No. 99-00149 regarding ALLTEL's request to cancel its CCN and its lack of CLEC or IXC customers in Tennessee, and requested AT&T to verify by May 30, 2007 that AT&T "is not providing any facilities, UNEs or resold lines to Alltel Communications, Inc. at this time."

    - July 16, 2007: The TRA entered its Order in Docket No. 99-00149 granting cancellation of ALLTEL's CCN.

    - July 17, 2007: AT&T submitted to the TRA for filing in Docket 07-00123 a *Motion for Withdrawal of Right of Way Agreement* which affirmatively states, "[i]t has been brought to BellSouth's attention that Alltel's Certificate of Convenience and Necessity has been cancelled and that Alltel is no longer operating in the State of Tennessee."

- The LERG: Attached hereto as **EXHIBIT B** is information compiled by Nextel directly from the LERG that indicates:

    - ALLTEL currently has the Tennessee specific OCN 6468 that is associated to ALLTEL as a "wireless" carrier;

    - The ALLTEL OCN 6468 is currently assigned various Tennessee NPA-NXX codes, including the NPA-NXX code 423-523 which is associated with the Tennessee exchange of Bulls Gap and serviced by a mobile switch apparently located in Knoxville Tennessee.

- Attached hereto as **EXHIBIT C** is a page from AT&T's Tennessee Basic Local Exchange Service tariff that identifies "Bulls Gap" as an exchange within AT&T's Tennessee service territory.

- Attached hereto as **COLLECTIVE EXHIBIT D** are the following documents filed in the Alabama Public Service Commission ("PSC") Docket U-4155:

- February 7, 2008 file-stamped: February 5, 2008 cover letter from AT&T Alabama General Counsel Francis B. Semmes and enclosed two-page Amendment to the ALLTEL ICA executed by the parties on November 30, 2007 to extend the term of the ALLTEL ICA three (3) years to August 29, 2010.

- March 4, 2008: *Further Order on Joint Motion* approving the February 7, 2008 received Amendment to the ALLTEL ICA.

- The November 30, 2007 Amendment to the ALLTEL ICA clearly reflects on its face that the Amendment is intended to be applicable in all nine of AT&T's legacy-BellSouth states, and "shall be filed with and is subject to approval by the respective State Commissions in which the Agreement [i.e. the ALLTEL ICA] has been filed and approved." Thus, in addition to the filing requirement of the Act, by its express terms, the Amendment calls for it to also be filed in Tennessee.

- Nextel is not aware of any amendment to the ALLTEL ICA that pre-dates the November 30, 2007 extension Amendment *and* reflects any agreement by which AT&T and ALLTEL have affirmatively agreed to forego the continued application of bill-and-keep because ALLTEL had become a wireless-only carrier.

The foregoing facts indicate that, with actual knowledge obtained no later than July 17, 2007 that ALLTEL had ceased its CLEC operations in Tennessee, AT&T proceeded in November, 2007 to extend the ALLTEL ICA an additional three (3) years to August, 2010, for the benefit of ALLTEL as a wireless-only carrier.

Any ALLTEL use of the bill-and-keep provisions of the ALLTEL ICA after it became a wireless only carrier would merely serve to further demonstrate the discriminatory nature of AT&T's position in this case to oppose Nextel's adoption of the Sprint ICA because Nextel is only providing wireless service.

IV. CONCLUSION

For the reasons set forth above, in Nextel's *Motion for Summary Judgment*, and in *Nextel's Reply Brief*, there is no legitimate basis for AT&T to continue to avoid its legal

obligations under Section 252(i) and Merger Commitment No. 1 to "make available" the entire Sprint ICA to Nextel.

Accordingly, the Authority should issue a final Order that acknowledges Nextel's adoption of the Sprint ICA under both 47 U.S.C. § 252(i) and AT&T Inc.'s Merger Commitments No. 1 as a matter of law and requires AT&T to execute an Adoption Agreement that is either in the form attached as Exhibit A to Nextel's *Motion for Summary Judgment* or the form similar to that used by the parties in Kentucky, but in either event, with an effective date the same day as Nextel's adoption request of May 18, 2007.

Respectfully submitted this 30th day of April, 2008.

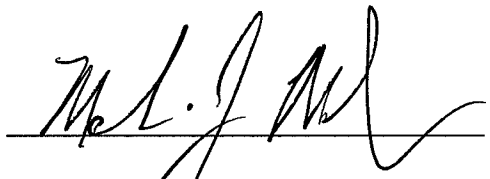

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EXHIBIT A

33.3.16 procedures for coordination of local PIC changes and processing;

33.3.17 physical and network security concerns; and

33.3.18 such other matters specifically referenced in this Agreement that are to be agreed upon by the Implementation Team and/or contained in the Implementation Plan.

33.4 The Implementation Plan may be modified from time to time as deemed appropriate by both parties.

34. Filing of Agreement

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. BellSouth and Sprint shall use their best efforts to obtain approval of this Agreement by any regulatory body having jurisdiction over this Agreement and to make any required tariff modifications in their respective tariffs, if any. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith make such revisions as may reasonably be required to achieve approval. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, Sprint shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by Sprint.

For electronic filling purposes in the State of Louisiana, the CLEC Louisiana Certification Number is required and must be provided by Sprint prior to filing of the Agreement. The CLEC Louisiana Certification Number for Sprint CLEC is TSP 00078.

35. Application of Attachments

This Agreement was negotiated between BellSouth, Sprint CLEC and Sprint PCS for the purpose of creating a single interconnection arrangement between BellSouth and Sprint. At the date of the signing of this Agreement, Sprint PCS has elected not to opt into the terms and conditions of the following Attachments: 1 Resale, 5 Access to Numbers, 6 Ordering and Provisioning, 9 Performance Measurements, and 11 Disaster Recovery. Should Sprint PCS desire to operate under the terms and conditions of those Attachments, prior to the expirations of the term of this Agreement, Sprint PCS and BellSouth shall negotiate an amendment to this Agreement.

36. Entire Agreement

This Agreement and its Attachments, incorporated herein by reference, sets forth the entire Agreement and supersedes prior agreements between the Parties relating

EXHIBIT B

Local Exchange Routing Guide # 1 - ALLTEL wireless TN OCN information (April 30, 2008)

OCN	OCN NAME	Abbrev OCN NAME	OCN State	Category	Overall OCN	Co Name	Address 1	City	State	Zip	Phone
6468	ALLTEL COMMUNICATIONS, INC. - TN	ALLTEL COMM - TN	TN	WIRELESS	6293	ALLTEL COMMUNICATIONS INC.	ONE ALLIED DRIVE	LITTLE ROCK	AR	72203	501-905-5510

Local Exchange Routing Guide # 6 - ALLTEL wireless TN NPA/NXX in AT&T service territory information (April 30, 2008)

NPA	NXX	Block ID	RC Lata	Portable	1k BLK Pooling	OCN	AOCN	RC Abbre	LName	LState	Line From	Line To	Switch	Switch Lata	Switch Lata Name	Creation Date	Last Modification Date
423	523	A	474	Y	Y	6468	G070	BULLS GAP	BULLS GAP	TN	0	9999	MRTWTNBECM0	474	KNOXVILLE TENNESSEE	5/10/2002	3/10/2005
423	523	0	474	Y	Y	6468	G070	BULLS GAP	BULLS GAP	TN	0	999	MRTWTNBECM0	474	KNOXVILLE TENNESSEE	11/8/2002	2/12/2004
423	523	1	474	Y	Y	6468	G070	BULLS GAP	BULLS GAP	TN	1000	1999	MRTWTNBECM0	474	KNOXVILLE TENNESSEE	11/8/2002	2/12/2004
423	523	3	474	Y	Y	6468	G070	BULLS GAP	BULLS GAP	TN	3000	3999	MRTWTNBECM0	474	KNOXVILLE TENNESSEE	11/8/2002	2/12/2004
423	523	5	474	Y	Y	6468	G070	BULLS GAP	BULLS GAP	TN	5000	5999	MRTWTNBECM0	474	KNOXVILLE TENNESSEE	2/17/2003	3/11/2003
423	523	7	474	Y	Y	6468	G070	BULLS GAP	BULLS GAP	TN	7000	7999	MRTWTNBECM0	474	KNOXVILLE TENNESSEE	2/17/2003	3/11/2003
423	523	6	474	Y	Y	6468	G070	BULLS GAP	BULLS GAP	TN	6000	6999	MRTWTNBECM0	474	KNOXVILLE TENNESSEE	2/17/2003	3/11/2003
423	523	4	474	Y	Y	6468	G070	BULLS GAP	BULLS GAP	TN	4000	4999	MRTWTNBECM0	474	KNOXVILLE TENNESSEE	11/8/2002	2/12/2004
423	523	2	474	Y	Y	6468	G070	BULLS GAP	BULLS GAP	TN	2000	2999	MRTWTNBECM0	474	KNOXVILLE TENNESSEE	11/8/2002	2/12/2004

EXHIBIT C

A3. BASIC LOCAL EXCHANGE SERVICE

A3.6 Local Calling Areas (Cont'd)

A3.6.3 List of Exchanges by Local Access and Transport Area (LATA)

Chattanooga LATA

Apison	Dayton	McCaysville, *GA*	Spring City	(T)
Benton	Decatur	Nine Mile	Stevenson, AL	
Bridgeport, GA	Dunlap	Noble, GA	Tennga, *GA*	(T)
Charleston	Fall Creek Falls	Ooltewah	Trenton, GA	
Chattanooga	Georgetown	Pikeville	Villanow, GA	
Chickamauga, GA	High Point, GA	Ringgold, GA	West Brow, GA	
Cleveland	Jasper	Rising Fawn, GA	Whitwell	
College Station	Kensington, GA	Rossville, *GA*		(T)
Collegedale	Lafayette, GA	Soddy Daisy		
Copper, Basin	Liberty	South Pittsburg		

Knoxville LATA

Athens	Halls Cross Roads	New Tazewell	Sharps Chapel	
Ball Play	Harriman	Newport	Sneedville	
Bean Station	Huntsville	Niota	Solway	
Bent Creek	Jefferson City	Norris	Sunbright	
Bulls Gap	Jellico	Oak Ridge	Surgoinsville	
Chestnut Hill	Kingston	Oakdale	Sweetwater	
Claxton	Knoxville	Oliver Springs	Tate Springs	
Clinton	La Follette	Oneida	Tellico Plains	
Coker Creek	Lake City	Petros	Vonore	
Concord	Lenoir City	Powell	Wartburg	
Dandridge	Loudon	Riceville	Washburn	
Deer Lodge	Madisonville	Robbins	Waterville	
Englewood	Maryville	Rockwood	West Sweetwater	
Etowah	Mascot-*Strawberry Plains*	Rogersville	White Pine	(T)
Gatlinburg	Maynardville	Rutledge		
Greenback	Morristown	Sevierville		

COLLECTIVE EXHIBIT D

at&t

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February 5, 2008

U-4155

Mr. Walter L. Thomas, Jr. Secretary
Alabama Public Service Commission
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100 N. Union Street
Montgomery, AL 36104

Re: Approval of an AMENDMENT to the Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc., d/b/a AT&T Alabama ("AT&T Alabama") and ALLTEL Communications, Inc. ("ALLTEL") Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act")

Agreement Effective Date:	**August 29, 2004**
Amendment Effective Date:	***Upon Commission Approval***
Expiration Date of Agreement:	**August 29, 2010**
CLEC Certification No.:	**26937**

Dear Mr. Thomas:

Pursuant to Section 252(e) of the Act, AT&T Alabama and **ALLTEL** are submitting to the Alabama Public Service Commission ("Commission"), an amendment to the agreement for the interconnection of their networks and the unbundling of specific network elements offered by AT&T Alabama. The agreement was negotiated pursuant to Sections 251 and 252 of the Act.

Pursuant to Section 252(e) of the Act, the Commission is charged with approving or rejecting the negotiated agreement between AT&T Alabama and **ALLTEL** within 90 days of its submission. The Commission may only reject such an agreement if it finds that the agreement or any portion of the agreement discriminates against a telecommunications carrier not a party to the agreement or the implementation of the agreement or any portion of the agreement is not consistent with the public interest, convenience and necessity. Both parties represent that neither of these reasons exists as to the agreement they have negotiated and that the Commission should approve their agreement.

Sincerely yours,

Francis B. Semmes

FILED
FEB 2008
SECRETARY
APSC

FBS/mhs
cc: APSC Telecommunications Service List

Internet e-mail

TRA#11985

Amendment to the Agreement
Between
ALLTEL Communications, Inc.
and
BellSouth Telecommunications, Inc.,
d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky,
AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina
and AT&T Tennessee
Effective August 29, 2004

Pursuant to this Amendment, (the "Amendment"), ALLTEL Communications, Inc. ("ALLTEL") and BellSouth Telecommunications, Inc., now d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee (collectively, "AT&T"), hereinafter referred to collectively as the "Parties", hereby agree to amend that certain Interconnection Agreement between the Parties effective August 29, 2004 (the "Agreement").

WHEREAS, AT&T and ALLTEL entered into the Agreement effective August 29, 2004, and;

WHEREAS, the Parties desire to amend the Agreement in order to extend the term of the Agreement;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The term of the Agreement shall be extended three (3) years from the initial expiration date of August 29, 2007 to August 29, 2010.

2. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

3. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties may have not yet incorporated into the Agreement or which may be the subject of further review.

4. This Amendment shall be filed with and is subject to approval by the respective State Commissions in which the Agreement has been filed and approved; this Amendment shall be effective upon approval by the respective State Commissions (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.,
by AT&T Operations, Inc., its authorized agent.

By: Kathy Wilson-Chu

Name: Kathy Wilson-Chu

Title: Director

Date: 11/30/07

ALLTEL Communications, Inc.

By: Charles B Clary

Name: Charles B. Clary

Title: Staff - Manager, Interconnect

Date: 11/1/2007

STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130-4260

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
SUSAN D. PARKER, PHD, ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

IN THE MATTER OF:

Amendment to the Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T-Alabama ("AT&T-Alabama") and ALLTEL Communications, Inc. pursuant to §252(e) of the Telecommunications Act of 1996.

DOCKET U-4155

FURTHER ORDER ON JOINT MOTION

BY THE COMMISSION:

By filing received February 7, 2008, Joint Petitioners BellSouth Telecommunications, Inc. d/b/a AT&T-Alabama ("AT&T-Alabama") and ALLTEL Communications, Inc. filed for approval of an Amendment to the Interconnection Agreement Pursuant to §252(e) of the Telecommunications Act of 1996. Both parties represent that to the best of their knowledge this agreement does not discriminate against any other telecommunications carriers and that this agreement is consistent with the public interest. Since this agreement has been reached through negotiation and no other parties would be adversely affected, the parties assert that this agreement can be approved without the need for a hearing.

Pursuant to §252(e) of the Telecommunications Act of 1996, this Commission is charged with approving or rejecting the negotiated interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T-Alabama ("AT&T-Alabama") and ALLTEL Communications, Inc. within 90 days of its submission. The Act provides that the Commission may only reject such an agreement if it finds that the agreement or any portion thereof discriminates against a telecommunications carrier not a party to the agreement, or the implementation of such agreement or portion thereof is not consistent with the public interest, convenience, and necessity. Having reviewed the negotiated interconnection agreement in the manner prescribed by the Telecommunications Act of

08-0270

1996, we find that the agreement is consistent with the public interest, convenience, and necessity. We further find that the agreement does not discriminate in any manner against any telecommunications carriers who are not parties to the agreement. Accordingly, it appears that the Commission can approve the agreement without the necessity of a hearing.

IT IS THEREFORE ORDERED BY THE COMMISSION, That the Amendment to the Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T-Alabama ("AT&T-Alabama") and ALLTEL Communications, Inc. is hereby approved.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DATED at Montgomery, Alabama, this 4th day of March, 2008.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

Susan D. Parker, Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2008, a true and correct copy of the foregoing has been served on the parties set forth below, via the method(s) indicated below:

Guy M. Hicks
Joelle Phillips
BellSouth Telecommunications, Inc.
d/b/a AT&T Tennessee
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
gh1402@att.com
jp3881@att.com

US Mail and Electronically

E. Earl Edenfield, Jr.
John T. Tyler
675 West Peachtree Street, N.E., #4300
Atlanta, GA 30375

U.S. Mail

Melvin J. Malone