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T.R.A. DOCKET ROOM

March 18, 2010

**VIA HAND DELIVERY**

Honorable Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

**RE: *In the matter of: BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee v. Sprint Spectrum, L.P., d/b/a Sprint PCS and Nextel South Corp.; Complaint to Recover Compensation under the Parties' Interconnection Agreements for InterMTA Traffic***  
**TRA Docket No. 10-00026**

Dear Chairman Kyle:

Enclosed please find the original and thirteen (13) copies of *Sprint Spectrum, L.P. d/b/a Sprint PCS and Nextel South Corp.'s Answer, Affirmative Defenses and Counterclaim to the Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee* in the above-captioned docket. One (1) additional copy of the *Answer* is enclosed to be filed-stamped for our records.

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

Very truly yours,

Melvin J. Malone

A handwritten signature in black ink, appearing to be 'M. Malone', is written over the typed name.

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Enclosures



Sprint and Nextel are wireless carriers licensed under federal law. The Federal Communications Commission (“FCC”) has established rules regarding the application of reciprocal compensation charges to certain telecommunications traffic that is exchanged between a wireless carrier and an incumbent local exchange carrier (“ILEC”) such as AT&T. The FCC’s reciprocal compensation rules apply to telecommunications traffic that originates and terminates in the *same* MTA based on the calling/called parties’ *locations* at the beginning of the call. This traffic is referred to as “intraMTA traffic” or “intraMTA calls.” Telecommunications traffic that originates and terminates in *different* MTAs based on the *locations* of the parties at the beginning of the call is referred to as “interMTA traffic” or “interMTA calls.” The FCC, however, has failed to implement any rules to address how, or even if, compensation should be paid for interMTA calls, which has resulted in wireless carriers and ILECs typically fashioning a negotiated methodology to address interMTA traffic based on business considerations, not regulations.

Regarding the classification and billing of interMTA traffic between the parties, the linchpin of AT&T’s Complaint is a provision of the parties’ ICAs that AT&T partially cites out of context. In particular, AT&T’s Complaint refers to the first sentence of the following provision from each ICA, but wholly fails to acknowledge the existence and controlling applicability of the second sentence in this matter:

Actual traffic measurement in each of the appropriate categories is the preferred method of classifying and billing traffic. ***If, however, either party cannot measure traffic in each category, then BellSouth and [Sprint Nextel] shall agree on a surrogate method*** of classifying and billing traffic, taking into consideration territory served (e.g., MTA boundaries, LATA boundaries and state boundaries) and traffic routing of [BellSouth and Sprint Nextel].<sup>1</sup> (Emphasis added.)

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<sup>1</sup> See and cf. *AT&T Complaint* ¶ 19 (citing first sentence of Complaint Exhibit A Sprint ICA, Attachment 3, p. 33 [sic] § 6.7.3 and Complaint Exhibit B, Nextel ICA, p. 5 § IV. C [sic]) (the foregoing citation to Complaint Exhibit A should read as follows: Exhibit A Sprint ICA, Attachment 3, p. 32, § 6.7.3, while the foregoing citation to Complaint Exhibit B should read Complaint Exhibit B, Nextel ICA, p. 11 / 12 of 30 § VI. C). For a review of the

AT&T cannot accurately identify, classify and bill interMTA traffic based upon “[a]ctual traffic measurement.” This was the case at the time the ICAs were entered into and continues to be the case today for three reasons. First, when an AT&T end-user originates a call to a mobile end-user (a land-to-mobile call), AT&T cannot “pre-identify” the actual terminating location of any called mobile end-user. In the case of a seven-digit dialed call, AT&T performs a Local Number Portability (“LNP”)-database dip and, based on the identified local routing number associated with the called mobile end-user number, routes the call over interconnection facilities to the mobile end-user’s provider. The mobile end-user’s provider, in turn, must locate and route the call for termination to the mobile end-user. To the extent such a call may be an interMTA call, pursuant to the ICA, AT&T would owe Sprint Nextel for termination of the call on the Sprint Nextel network.<sup>2</sup> Second, whether it is a land-to-mobile call, or a call originated by a mobile end-user to an AT&T end-user (i.e., a mobile-to-land call), the cell-site that serves the mobile end-user is not industry-standard information included in the call detail record data transmitted between the parties. Third, under the parties’ existing billing systems, neither party is capable of identifying, classifying and billing interMTA traffic on any type of real-time actual traffic measurement basis. Therefore, to the extent interMTA traffic is subject to compensation

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complete provisions relevant to AT&T’s allegations, see complete text of Exhibit A Sprint ICA, Attachment 3, p. 32, § 6.7.3, and complete text of Exhibit B Nextel ICA, p. 11 / 12 of 30, § VI. C.

<sup>2</sup> See *AT&T Complaint*, Exhibit A Sprint ICA, Attachment 3, p. 32 §§ 6.7.1 and 6.7.2 and Complaint Exhibit B, Nextel ICA, p. 11/12 of 30 § VI. A and B., which respectively provide, in pertinent part as to Non-Local interMTA traffic (emphasis added):

[6.7.1 / VI. A] The delivery of Non-Local Traffic by a party to the other party ***shall be reciprocal and compensation will be mutual***. For terminating its Non-Local Traffic on the other party’s network, ***each party will pay*** ... the access charges described in paragraph [6.7.2 / B.] hereunder ... .

[6.7.2 / VI. B] For originating and terminating intrastate or interstate interMTA Non-Local Traffic, ***each party shall pay the other*** BellSouth’s intrastate or interstate, as appropriate, switched network access service rate elements on a per minute of use basis, which are set out in BellSouth’s Intrastate Access Services Tariff or BellSouth’s Interstate Access Services Tariff as those tariffs may be amended from time to time during the term of this Agreement.

under the ICAs, each ICA requires that such traffic be classified and billed pursuant to an *agreed-to* surrogate method of classifying and billing such traffic.

Prior to 2007, AT&T classified and billed Sprint Nextel for interMTA traffic using the parties' previously agreed to and implemented surrogate methods for classifying and billing interMTA traffic ("*Agreed Billing Method*"). Despite Sprint Nextel's attempts to share information in an effort to reach a mutually acceptable change to the parties' *Agreed Billing Method* between 2005 and July, 2007, AT&T ignored Sprint Nextel's efforts. In July, 2007, based upon a new surrogate method unilaterally developed by AT&T to classify and bill terminating mobile-to-land interMTA traffic ("*New AT&T Method*") - and without any regard to any amounts AT&T would owe Sprint Nextel - AT&T not only back-billed Sprint Nextel but also commenced prospectively billing Sprint Nextel for mobile-to-land interMTA traffic charges that AT&T claims are due pursuant to the *New AT&T Method*.

The parties have never, as expressly required by the parties' ICAs, agreed upon the *New AT&T Method* for classifying and billing interMTA traffic. Despite the language in the ICAs requiring that the parties agree to any new or modified interMTA factor, AT&T unilaterally used its *New AT&T Method* for classifying and billing interMTA traffic.<sup>3</sup> AT&T's unilateral actions are undeniably contrary to the terms of the ICAs, and therefore the Authority should deny AT&T's Complaint in its entirety.

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<sup>3</sup> The Sprint ICA, General Term and Conditions – Part A, p. 19, section "18. Modification of Agreement," subsection 18.1 expressly provides "[n]o modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective unless it is made in writing and duly signed by the Parties." Similarly, the Nextel ICA (AT&T Complaint Exhibit B), p. 24/25 of 30, section "XXII. Amendment" expressly provides "[t]his Agreement may not be amended in any way except upon written consent of the parties."

## **ANSWER TO THE ALLEGATIONS OF THE COMPLAINT**

Sprint Nextel further responds to the allegations of the Complaint as follows:

### **I. Identification of Parties**

1. Based on information and belief, Sprint Nextel admits the allegations contained in paragraph 1 and acknowledges AT&T's designation of representatives. The name and contact information for Sprint Nextel's designated representatives in this matter are:

Melvin Malone  
Sarah Lodge Tally  
Miller & Martin PLLC  
Suite 1200, One Nashville Place  
150 Fourth Avenue North  
Nashville, TN 37219  
(615) 744-8572  
Fax: (615) 256-8197  
[mmalone@millermartin.com](mailto:mmalone@millermartin.com)  
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Douglas C. Nelson  
William R. Atkinson  
Sprint Nextel  
233 Peachtree Street NE, Suite 2200  
Atlanta, GA 30339-3166  
(404) 649-8983  
Fax: (404) 649-8980  
[douglas.c.nelson@sprint.com](mailto:douglas.c.nelson@sprint.com)  
[bill.atkinson@sprint.com](mailto:bill.atkinson@sprint.com)

Joseph M. Chiarelli  
6450 Sprint Parkway  
Mailstop: KSOPHN0314-3A621  
Overland Park, KS 66251  
(913) 315-9223  
Fax: (913) 523-9623  
[joe.m.chiarelli@sprint.com](mailto:joe.m.chiarelli@sprint.com)

2. Sprint Nextel admits that Sprint Spectrum, L.P. is a Delaware limited partnership that does business as Sprint PCS and provides commercial mobile radio service (“CMRS”) in Tennessee.

3. Sprint Nextel admits the allegations contained in paragraph 3.

## **II. Facts and Nature of the Dispute**

4. Sprint Nextel admits that AT&T has filed the Complaint seeking certain relief, including the payment of monetary damages, but denies the remaining allegations of paragraph 4.

5. Sprint Nextel admits the FCC has established rules regarding the application of reciprocal compensation arrangements to certain telecommunications traffic that is exchanged between a wireless carrier and an ILEC such as AT&T. The FCC’s reciprocal compensation rules apply to telecommunications traffic that originates and terminates in the same MTA based on the calling/called parties’ locations at the beginning of the call (*See* 47 C.F.R. 51.701(b)(2)). Sprint Nextel denies the remaining allegations of paragraph 5, and affirmatively states that the FCC has failed to implement any rules to address how, or even if, compensation should be paid for interMTA calls.

6. Sprint Nextel admits that AT&T, Sprint PCS and Nextel have entered into interconnection agreements but denies the remaining allegations of paragraph 6 unless expressly admitted below.

Regarding paragraph 6(a), Sprint Nextel admits that Sprint and AT&T entered into the Sprint ICA, which has an effective date of January 1, 2001; that such ICA was submitted to the Tennessee Regulatory Authority (“TRA” or “Authority”) as reflected in Docket No. 00-00691 and was subsequently extended in Docket No. 07-00132 and remains in effect today; and that

portions of such ICA are attached to the Complaint as Exhibit A; but, denies the remaining allegations contained in paragraph 6(a).

Regarding paragraph 6(b), Sprint Nextel admits that Nextel and AT&T entered into the Nextel ICA and a copy of the Nextel ICA is attached to the Complaint as Exhibit B, and that such ICA remained in force until Nextel adopted the Sprint ICA in its entirety effective May 19, 2008, as approved by the July 17, 2008 Order of the Authority in Docket 07-00161. Sprint Nextel denies the remaining allegations contained in paragraph 6(b)<sup>4</sup>.

Regarding paragraphs 6(c) and 6(d), Sprint Nextel admits that the Sprint ICA and Nextel ICA contain provisions regarding the compensation to be paid, if any, for intraMTA and interMTA traffic; that paragraphs 6(c) and 6(d) quote incomplete portions of the ICAs' compensation provisions out of context;<sup>5</sup> and that certain portions of the ICAs' compensation provisions utilize AT&T's access charge rate elements with respect to compensable interMTA traffic; but denies the remaining allegations contained in paragraphs 6(c) and 6(d).

In further response to paragraph 6 and its subparts (c) and (d), Sprint Nextel herein incorporates by reference its response to paragraph 5 above. In light of the FCC's lack of rules regarding interMTA traffic, wireless carriers and ILECs typically fashion a negotiated methodology to address interMTA traffic based on business considerations, not regulations. Regarding the classification and billing of interMTA traffic between the parties, the Sprint ICA and the Nextel ICA each expressly state:

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<sup>4</sup> It appears the exhibits included with AT&T's Complaint are the exhibits AT&T Alabama submitted with its similar complaint before the Alabama Public Service Commission. Sprint Nextel acknowledges that the Sprint ICA and Nextel ICA should be substantially the same for Tennessee and Alabama and does not find any substantive differences with the portions cited in AT&T Tennessee's Complaint, but asserts that the copies included with AT&T Tennessee's Complaint may not be true and correct copies of the documents on file at the TRA and reserves the right to dispute any inconsistencies and enter into the record true and correct copies of the agreements as filed at the TRA.

<sup>5</sup> In paragraph 6(c), AT&T cites the Nextel ICA at p. 2, § I.C. The language cited by AT&T appears in the Nextel ICA at p. 4/5 of 30, § I.D. In paragraph 6.d., AT&T cites the Nextel ICA at p. 5, §§ VI.A and B. The language cited by AT&T appears in the Nextel ICA at p. 11/12 of 30, § VI.B.

Actual traffic measurement in each of the appropriate categories is the preferred method of classifying and billing traffic. ***If, however, either party cannot measure traffic in each category, then*** BellSouth and [Sprint Nextel] ***shall agree on a surrogate method*** of classifying and billing traffic, taking into consideration territory served (e.g. MTA boundaries, LATA boundaries and state boundaries) and traffic routing of BellSouth and [Sprint Nextel].<sup>6</sup> (Emphasis added.)

AT&T cannot accurately identify, classify and bill interMTA traffic based upon “[a]ctual traffic measurements.” Therefore, to the extent interMTA traffic is subject to compensation under the ICAs, each ICA requires that such traffic be classified and billed pursuant to an *agreed-to* surrogate method of classifying and billing such traffic.

7. Sprint Nextel admits that since AT&T started billing interMTA traffic based upon the *New AT&T Method* (which is an AT&T unilaterally developed surrogate method to identify terminating mobile-to-land interMTA traffic), Sprint Nextel has disputed AT&T’s billed interMTA charges but further affirmatively states that, at the same time, Sprint Nextel has in good faith continued to pay a monthly amount to AT&T that Sprint Nextel believes approximates the interMTA charges that AT&T should have charged under the parties’ *Agreed Billing Method* for interMTA traffic. Sprint Nextel denies the remaining allegations contained in paragraph 7.

8. Sprint Nextel admits that the parties’ *Agreed Billing Method* is a surrogate method for classifying and billing interMTA traffic that includes application of an agreed-to interMTA factor which, in turn, is used to apportion the volume of billable traffic between interMTA and intraMTA traffic (or “local” traffic as referred to by AT&T), but denies the remaining allegations contained in paragraph 8.

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<sup>6</sup> See *AT& Complaint*, Exhibit A Sprint ICA, Attachment 3, p. 32, § 6.7.3, and Exhibit B Nextel ICA, p. 11 / 12 of 30, § VI. C.

9. AT&T's Complaint moves directly from paragraph 8 to paragraph 10, so no response to paragraph 9 is necessary.

10. Sprint Nextel denies the allegations contained in the first sentence of paragraph 10. Upon information and belief, Sprint Nextel affirmatively states that AT&T reached conclusions that AT&T purports are based upon AT&T's analysis of the Jurisdictional Information Parameter ("JIP") of the traffic delivered by Sprint Nextel to AT&T, but denies the remaining allegations contained in the second sentence of paragraph 10. As discussed in greater detail below, Sprint Nextel denies that AT&T's use of JIP *standing alone*<sup>7</sup> is an effective tool in determining whether traffic delivered over interconnection trunks is interMTA traffic. Sprint Nextel admits that the JIP is a data field and further affirmatively states such field may be populated by an originating carrier in the signaling information of a telecommunications call, but denies the remaining allegations contained in the third sentence of paragraph 10. Upon information and belief, Sprint Nextel states that AT&T used JIP data, standing alone, in reaching its conclusions regarding interMTA traffic delivered by Sprint Nextel to AT&T, but denies, as discussed in greater detail below, that AT&T's method of comparing stand-alone JIP data to a terminating phone number enables AT&T to accurately measure interMTA traffic. Sprint Nextel denies the remaining allegations contained in the fourth and the fifth sentences of paragraph 10.

11. Sprint Nextel denies the first sentence of paragraph 11. Sprint Nextel admits that the parties have engaged in discussions regarding interMTA traffic, and affirmatively states that no agreement has been reached between the parties regarding a change to the parties' *Agreed Billing Method* for interMTA traffic, and denies the remaining allegations contained in the second sentence of paragraph 11.

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<sup>7</sup> With respect to AT&T's JIP analysis, "standing alone" means without AT&T performing further identification of the cell-site serving the mobile-end user at the beginning of a call.

12. Sprint Nextel admits that AT&T notified Sprint Nextel that AT&T would unilaterally adjust its billing of interMTA traffic on a prospective basis and that beginning in July, 2007, AT&T not only back-billed Sprint Nextel but also commenced prospectively billing Sprint Nextel for interMTA traffic charges that AT&T claims are due pursuant to the *New AT&T Method* of billing for interMTA traffic. Sprint Nextel denies the remaining allegations contained in paragraph 12.

13. Sprint Nextel admits that it has disputed the interMTA charges that AT&T has billed based upon the *New AT&T Method* for identifying interMTA traffic, and further affirmatively states that, at the same time, Sprint Nextel has in good faith continued to pay a monthly amount to AT&T that Sprint Nextel believes approximates the interMTA charges that AT&T should have charged under the parties' *Agreed Billing Method* for interMTA traffic. Sprint Nextel admits that AT&T is seeking to recover the amounts alleged in the second, third and fourth sentences of paragraph 13 but denies that Sprint Nextel owes these amounts. Sprint Nextel further admits that the Authority does not have jurisdiction over interstate rates or tariffs as noted in footnote 7 of the AT&T Complaint, and Sprint Nextel affirmatively states that, to the extent the amounts alleged in the second, third and fourth sentences of paragraph 13 include amounts AT&T seeks to recover for interstate traffic, that the Authority does not have jurisdiction over any claimed interstate amounts due. Sprint Nextel denies the remaining allegations contained in paragraph 13, and affirmatively states that AT&T is not entitled to recover the alleged amounts due. Further, the Authority lacks jurisdiction to award the monetary damages sought by AT&T.

14. Sprint Nextel admits that it disputes the accuracy of AT&T's measurement of interMTA traffic, and further affirmatively states that the *New AT&T Method* does not constitute

the “actual traffic measurement” of interMTA traffic, but is simply a different surrogate methodology for classifying interMTA traffic, and that this different surrogate methodology has not been mutually agreed to by the parties. Sprint Nextel denies the remaining allegations of paragraph 14.

15. Sprint Nextel denies the allegations contained in the first sentence of paragraph 15 and affirmatively states that Sprint has attempted to produce traffic detail to AT&T, but AT&T has refused to cooperate in those efforts. Sprint Nextel denies the allegations contained in the second sentence of paragraph 15 and affirmatively states that Nextel has attempted to produce traffic detail to AT&T, but AT&T has refused to cooperate in those efforts. Sprint Nextel denies the allegations contained in the third sentence of paragraph 15. Sprint Nextel further affirmatively states that not only has Sprint Nextel provided AT&T traffic study information for AT&T’s consideration, but that AT&T has ignored such data and instead proceeded to unilaterally impose the *New AT&T Method* to interMTA traffic contrary to the *Agreed Billing Method* and without either the mutual agreement of the parties or a written amendment to the ICAs, both of which are required by the ICAs.

16. Sprint Nextel admits that the parties engaged in negotiations to revise the *Agreed Billing Method* for classifying and billing interMTA traffic, but that AT&T disengaged from such discussions without the parties reaching any agreement to revise the *Agreed Billing Method*. Sprint Nextel denies the remaining allegations contained in the first sentence of paragraph 16.

With respect to the second sentence of paragraph 16, Sprint Nextel admits that it has had discussions with AT&T about AT&T’s attempts to bill Sprint Nextel based upon stand alone JIP data, and that Sprint Nextel engaged in discussions concerning interMTA traffic with AT&T both prior to and after April 20, 2009. Sprint Nextel has explained to AT&T why the JIP field

data, standing alone, does not accurately identify the location of a wireless party to a call. Sprint Nextel also attempted to provide traffic study information that would accurately identify interMTA traffic, and attempted to engage AT&T to develop a mutually agreeable traffic study method to identify interMTA traffic. Despite these discussions and Sprint Nextel's insistence that the stand-alone JIP data could not be used to identify interMTA traffic, AT&T unilaterally decided to ignore the parties' *Agreed Billing Method* and "adjust" the interMTA factor based upon AT&T's unilaterally developed *New AT&T Method*, in violation of the ICAs. Sprint Nextel denies the remaining allegations contained in the second sentence of paragraph 16 to the extent that they signify that AT&T has made a good faith effort to resolve this matter informally.

Sprint Nextel admits the allegation contained in the third sentence of paragraph 16 that AT&T sent a notice to invoke the dispute resolution provisions of the ICAs, but denies the remaining allegations contained in the third and the fourth sentences for the same reasons discussed above in response to the second sentence of paragraph 16. Sprint Nextel further denies the remaining allegations contained in the third and fourth sentences of paragraph 16 to the extent that they signify that AT&T has made a good faith effort to resolve this matter informally. Sprint admits the fifth sentence of paragraph 16 to the extent that the term "impasse" means disagreement, but denies the remaining allegations of the fifth sentence to the extent that it attempts to characterize a good-faith effort by AT&T to resolve the dispute through negotiations.

17. Sprint Nextel admits that paragraph 17 purports to refer to one aspect of the parties' ICAs pertaining to dispute resolution, but denies the remaining allegations of paragraph 17. Sprint Nextel further affirmatively states that the dispute alleged in the Complaint concerns the implementation of the Sprint ICA and the Nextel ICA; that the Authority has jurisdiction over this matter to the extent the dispute pertains to the accurate implementation of the parties'

longstanding *Agreed Billing Method*; and, that the Authority does not have authority to impose either a retroactive or a prospective change to the parties' *Agreed Billing Method* that has not been mutually agreed to by the parties in writing as required by the ICA.

### III. AT&T Tennessee's First Cause of Action

18. Sprint Nextel incorporates paragraphs 1 through 17 of its Answer by reference as if fully set forth herein.

19. Sprint Nextel admits that the Sprint ICA and Nextel ICA contain provisions regarding the compensation, if any, to be paid for different categories of traffic; that paragraph 19 quotes but incorrectly cites<sup>8</sup> incomplete portions of the ICAs' provisions out of context; and that certain portions of the ICAs refer to the use of an "auditable factor;" but denies the remaining allegations contained in paragraph 19.

In further response to paragraph 19, Sprint Nextel incorporates by reference its response to paragraphs 5 and 6. Regarding the classification and billing of interMTA traffic between the parties, the Sprint ICA and the Nextel ICA each expressly state:

Actual traffic measurement in each of the appropriate categories is the preferred method of classifying and billing traffic. ***If, however, either party cannot measure traffic in each category, then BellSouth and [Sprint Nextel] shall agree on a surrogate method*** of classifying and billing traffic, taking into consideration territory served (e.g. MTA boundaries, LATA boundaries and state boundaries) and traffic routing of BellSouth and [Sprint Nextel].<sup>9</sup> (Emphasis added.)

AT&T cannot accurately identify, classify and bill interMTA traffic based upon "[a]ctual traffic measurements." Therefore, to the extent any interMTA traffic is subject to compensation under

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<sup>8</sup> AT&T cites the first sentence of Complaint Exhibit A Sprint ICA, Attachment 3, p. 33 [sic] § 6.7.3 (the citation should read Exhibit A Sprint ICA, Attachment 3, p. 32, § 6.7.3), Complaint Exhibit B, Nextel ICA, p. 5 § IV. C [sic] (the citation should read Complaint Exhibit B, Nextel ICA, p. 11/ 12 of 30 § VI. C) and Nextel ICA, p. 4 [sic] § V.E (the citation should read Complaint Exhibit B, Nextel ICA, p. 10/ 11 of 30 § V. E).

<sup>9</sup>See *AT&T Complaint*, Exhibit A Sprint ICA, Attachment 3, p. 32, § 6.7.3, and Exhibit B Nextel ICA, p. 11 / 12 of 30, § VI. C.

the ICAs, such traffic must be classified and billed pursuant to a mutually *agreed* to surrogate method of classifying and billing such traffic.

20. Sprint Nextel denies the allegations contained in paragraph 20. Sprint Nextel further affirmatively states that AT&T's allegations in paragraph 20 describe a surrogate method of classifying and billing traffic rather than any real-time ability to accurately perform "[a]ctual traffic measurement" of interMTA traffic as AT&T incorrectly maintains.

21. Sprint Nextel denies all the allegations contained in paragraph 21. Sprint Nextel further affirmatively states AT&T is in breach of the Sprint ICA and Nextel ICA by seeking to unilaterally impose a *New AT&T Method* for classifying interMTA traffic that has not been agreed to by the parties.

#### **IV. AT&T's Conclusion and Prayer for Relief**

Sprint Nextel denies the allegations in AT&T's Conclusion and Prayer for Relief and denies that AT&T is entitled to the relief requested therein in paragraphs 1, 2, 3, and 4, or to any relief in this proceeding. Sprint Nextel further affirmatively states AT&T is in breach of the Sprint ICA and Nextel ICA by seeking to unilaterally impose a *New AT&T Method* for classifying interMTA traffic that has not been agreed to by the parties.

22. Sprint Nextel denies each and every allegation of the Complaint to the extent not otherwise expressly identified and admitted herein.

#### **SPRINT NEXTEL'S AFFIRMATIVE DEFENSES**

23. To the extent that AT&T claims interstate amounts due and owing to be recovered for interstate traffic, the Authority does not have jurisdiction.

24. To the extent that AT&T seeks enforcement of the *New AT&T Method*, which method was not agreed to by the parties and was unilaterally implemented by AT&T without

Sprint Nextel's written consent, AT&T's Complaint is premature in that the any new method cannot be implemented by the filing of a complaint but rather only by agreement.

25. The Complaint fails to state a claim or a cause of action on which the Authority may grant relief. For example, and without limitation, AT&T seeks an award of damages, which is beyond the Authority's jurisdiction; and AT&T seeks modification of the parties' ICAs without Sprint Nextel's written consent, rather than interpretation or enforcement of existing agreed-to terms, which remedy is not provided by and in fact is contrary to the terms of the ICAs.

26. The Complaint is barred due to AT&T's failure to meet the condition precedent of an agreement between the parties to change the existing *Agreed Billing Method*, rendering the Complaint an attempt to impose AT&T's unilateral desires through an otherwise unenforceable "agreement to agree" clause that is beyond the Authority's jurisdiction.

27. The relief requested by AT&T is barred by the filed rate doctrine and prohibition against retroactive ratemaking.

28. Despite AT&T's contention to the contrary, AT&T is not capable of actual measurement of interMTA Traffic using JIP data. As Sprint has repeatedly informed AT&T representatives, use of the JIP field data standing alone does not accurately identify the location of the wireless party to a call or the jurisdiction of a call that occurs between the parties' end-users.

29. Despite AT&T's contention to the contrary, AT&T's analysis of interMTA traffic based upon the JIP field is flawed. Sprint has repeatedly informed AT&T and its representatives that any AT&T analysis based upon the JIP data field standing alone is flawed and leads to inaccurate conclusions.

30. AT&T has violated the Sprint ICA and the Nextel ICA by billing Sprint Nextel based upon a *New AT&T Method* that has not been agreed upon. The ICAs do not permit AT&T to unilaterally modify the parties' *Agreed Billing Method* for interMTA traffic. Rather, Sprint ICA § 6.7.3 and Nextel ICA § VI. C. require the parties' agreement as to any surrogate method for classifying and billing interMTA traffic; as set forth above, the parties have never agreed to change the existing *Agreed Billing Method*. Further, the ICA requirement that any surrogate method must be agreed to has not been amended to authorize AT&T's unilateral abandonment of the parties' *Agreed Billing Method* for interMTA traffic and unilateral implementation of its own surrogate methodology, i.e., the *New AT&T Method*. Despite the parties' failure to agree upon either a new surrogate billing method, or an amendment to change the requirement of mutual agreement with respect to the use of any given surrogate methodology, AT&T unilaterally started billing Sprint based upon a new factor developed by AT&T using an inaccurate methodology that AT&T knows is objectionable to Sprint Nextel. AT&T's unilateral actions and refusal to cooperate with Sprint Nextel in good faith are inconsistent with and violate the ICA and bar AT&T from obtaining the relief it seeks or any relief in this proceeding.

31. Sprint Nextel has provided information concerning traffic studies to AT&T in an effort to cooperatively develop mutually acceptable modifications to the *Agreed Billing Method* by which the parties would prospectively bill interMTA traffic pursuant to the ICAs. AT&T has ignored such information from Sprint Nextel and has instead continued to send Sprint Nextel bills based upon AT&T's unilaterally imposed factors using the *New AT&T Method* for identifying interMTA traffic. AT&T's unilateral actions and refusal to cooperate with Sprint Nextel in good faith are inconsistent with and violate the ICA and bar AT&T from obtaining the relief it seeks or any relief in this proceeding.

32. The Complaint is barred by waiver, laches, estoppel and unclean hands.

33. Sprint Nextel reserves the right to designate additional defenses as they become apparent throughout the course of discovery, investigation and otherwise.

### **SPRINT NEXTEL'S COUNTERCLAIM**

Sprint Nextel, in support of its Counterclaim, states as follows:

34. Sprint Nextel incorporates by reference and re-alleges each of its statements and allegations beginning with the Introduction, through and including paragraph 33 of this pleading.

35. As previously discussed, pursuant to the Sprint ICA and the Nextel ICA, each party, as the terminating party, is entitled to bill the originating party for termination of the originating party's interMTA traffic on the terminating party's network.<sup>10</sup> Throughout the term of the ICAs and continuing through and including the present time, Sprint Nextel has terminated AT&T interMTA traffic on the Sprint Nextel wireless networks. Accordingly, Sprint Nextel is entitled to a declaration that, pursuant to the parties' ICAs, Sprint Nextel is entitled to bill and AT&T is obligated to pay Sprint Nextel for AT&T-originated interMTA traffic that terminates on Sprint Nextel's wireless networks ("AT&T interMTA traffic").

36. Pursuant to the Sprint ICA and the Nextel ICA, each party is entitled to bill and collect charges for previously unbilled charges, provided that the unbilled charges are not more than one (1) year old.<sup>11</sup> Sprint Nextel has terminated AT&T interMTA traffic for which AT&T has incurred an obligation to pay Sprint Nextel during the past year but Sprint Nextel has not

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<sup>10</sup> *AT&T Complaint*, Exhibit A Sprint ICA, Attachment 3, p. 32 §§ 6.7.1 and 6.7.2, and *AT&T Complaint*, Exhibit B, Nextel ICA, p. 12 § IV. A and B.

<sup>11</sup> See Sprint ICA, Attachment 7, p. 6-7, section "2. Wireless Billing and Compensation", subsection 2.2 which expressly provides "[a]ll charges under this agreement shall be billed within one year from the time the charge was incurred, previously unbilled charges more than one year old shall not be billed by either party"; and, Complaint Exhibit B Nextel ICA, p. 8-9, section "B. Billing", subsection 5 which provides, "[a]ll charges under this Agreement shall be billed within one (1) year from the time the charge was incurred; previously unbilled charges more than one year old shall not be billed by either Party."

billed AT&T for such charges. Accordingly, Sprint Nextel is entitled to a further declaration that, pursuant to the parties' ICAs, Sprint Nextel is entitled to bill and collect charges from AT&T for previously unbilled AT&T interMTA traffic, provided such charges are billed within one (1) year from the time such charges were incurred.

37. Sprint Nextel respectfully reserves the right to designate additional counterclaims as they become apparent throughout the course of discovery, investigation and otherwise.

**PRAYER FOR RELIEF**

WHEREFORE, Sprint Nextel prays for the following relief:

- A. That the Authority deny the relief prayed for by AT&T.
- B. That the Authority deny AT&T any relief in this proceeding
- C. That the Authority grant the relief sought in Sprint Nextel's Counterclaim, and such other and further relief that the Commission deems to be just and appropriate.

Respectfully submitted this 18<sup>th</sup> day of March, 2010.



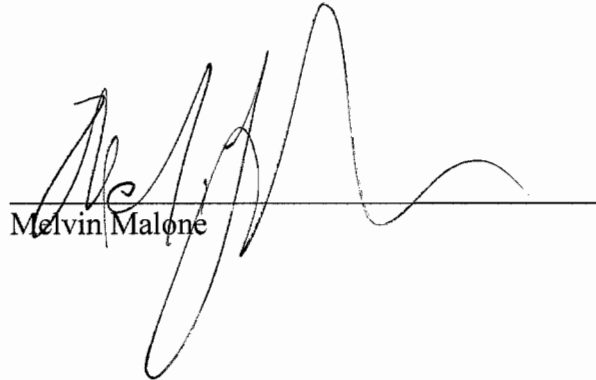
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PCS and Nextel South Corp.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email and U.S. mail on March 18<sup>th</sup> 2010 to the following parties:

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