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VIA HAND DELIVERY

Hon. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

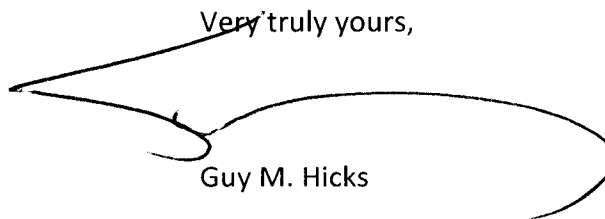
Re: *BellSouth Telecommunications, Inc. dba AT&T Tennessee v. Sprint Spectrum,
L.P. dba Sprint PCS, and Nextel South Corp.*
Docket No. 10-00026

Dear Chairman Kyle:

Enclosed for filing in the referenced docket are the original and four copies of AT&T's *Answer and Affirmative Defenses to Sprint Nextel's Counterclaim* in the referenced matter.

Copies have been provided to counsel of record.

Very truly yours,



Guy M. Hicks

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, TN

In re: *BellSouth Telecommunications, Inc. dba AT&T Tennessee vs. Sprint Spectrum, L.P. dba Sprint PCS, and Nextel South Corp.*

Docket No. 10-00026

**ANSWER AND AFFIRMATIVE DEFENSES OF BELL SOUTH
TELECOMMUNICATIONS, INC. DBA AT&T TENNESSEE
TO SPRINT NEXTEL'S COUNTERCLAIM**

BellSouth Telecommunications, Inc. dba AT&T Tennessee ("AT&T Tennessee") hereby files its Answer and Affirmative Defenses to the Counterclaim of Sprint Spectrum, L.P. dba Sprint PCS ("Sprint") and Nextel South Corp. ("Nextel").

Introduction

As set forth in AT&T Tennessee's Complaint, Sprint and Nextel (collectively "Sprint Nextel") have violated their respective interconnection agreements ("ICAs") with AT&T Tennessee by failing to appropriately compensate AT&T Tennessee for its termination of interMTA traffic. In response, Sprint Nextel suggests that AT&T Tennessee did not identify and bill interMTA traffic based on an actual traffic measurement and that as a result, the ICAs permit AT&T Tennessee to bill only whatever "surrogate" Sprint Nextel agrees to pay. That suggestion is baseless. AT&T Tennessee billed interMTA traffic charges to Sprint Nextel using AT&T Tennessee's measurement of interMTA traffic, based on data supplied by Sprint Nextel. And even if AT&T Tennessee's analyses did not constitute a measurement of interMTA traffic, the ICAs do not permit Sprint Nextel to avoid paying access charges for interMTA traffic by unilaterally refusing to negotiate an appropriate methodology for identifying such traffic.

In addition to answering AT&T Tennessee's Complaint, Sprint Nextel has asserted a Counterclaim, seeking a "declaration" that Sprint Nextel is entitled to bill and collect previously unbilled charges. Sprint Nextel's Counterclaim fails to state a claim. If Sprint Nextel believes it is entitled to bill AT&T Tennessee for charges it has not previously billed, nothing prevents it from billing those charges. Once AT&T Tennessee learns what specific charges Sprint Nextel seeks to collect (a matter on which AT&T Tennessee currently is in the dark given that Sprint Nextel has not billed the charges), AT&T Tennessee will have to decide whether to pay the charges or contest them. Only after Sprint Nextel actually submits a bill for the charges, and if AT&T Tennessee contests the billed charges and the parties do not resolve the issue will there be a dispute ripe for the Authority to decide.

Answer to Sprint Nextel's Counterclaim

AT&T Tennessee further responds to the allegations of Sprint Nextel's Counterclaim as follows:

34. AT&T Tennessee incorporates by reference and re-alleges each of the statements and allegations in its Complaint.

AT&T Tennessee denies the additional matter set forth in Sprint Nextel's Introduction and Answer, and incorporated by reference into its Counterclaim. Sprint Nextel alleges that AT&T Tennessee cannot "unilaterally" use a new factor to bill interMTA traffic, without Sprint Nextel's prior agreement to the factor, because the ICAs provide that "[i]f ... either party cannot measure traffic in each category, then BellSouth and [Sprint Nextel] shall agree on a surrogate method."¹ Sprint Nextel is simply wrong.

¹ See Sprint Nextel Answer at p. 2 (citing Sprint ICA, Att. 3, § 6.7.3; Nextel ICA, § VI.C).

Contrary to Sprint Nextel's suggestion, AT&T Tennessee "measure[d] traffic in each category" to develop the factor that it used beginning in 2007 to classify and bill interMTA traffic. As set forth in AT&T Tennessee's Complaint, AT&T Tennessee used information populated by Sprint Nextel and passed in the signaling stream of the traffic, in particular the Jurisdictional Information Parameter (the "JIP"), to measure the traffic. The new interMTA factor that AT&T Tennessee used is thus an "[a]ctual traffic measurement," which under the ICAs "is the preferred method of classifying and billing traffic."²

While Sprint Nextel takes issue with the *accuracy* of using JIP data to measure traffic, an analysis of that data plainly is an actual "measure" of traffic, even if (as Sprint Nextel contends) it is not 100% accurate. Indeed, Sprint Communications Company L.P. recently submitted testimony to the Kentucky Public Service Commission stating that while "no jurisdiction methodology is 100% accurate," "Sprint uses the industry standard method of identifying the originating location of wireless calls, which is the NPA-NXX assigned to the wireless switch (which is the functional equivalent of Jurisdictional Information Parameter *i.e.* JIP)."³ Based on Sprint's testimony that "use of the JIP field is the most appropriate method for verifying the jurisdiction of a wireless call," the Kentucky Commission ordered the parties to use JIP data for their interMTA billing.⁴

Moreover, even if AT&T Tennessee's analyses of JIP data were not an actual measurement of traffic (though it clearly is), Sprint Nextel's suggestion that neither AT&T Tennessee nor the Authority could require a new interMTA billing methodology or factor

² Sprint ICA, Att. 3, § 6.7.3; Nextel ICA, § VI.C.

³ Rebuttal Testimony of Sprint witness Julie A. Walker, *In the Matter of Complaint of Sprint Communications Company L.P. Against Brandenburg Telephone Company for the Unlawful Imposition of Access Charges*, Case No. 2008-00135 (Ky. Pub. Serv. Comm'n Aug. 6, 2009), at pp. 7-8.

⁴ *Order*, Case No. 2008-00135 (Nov. 6, 2009), at pp. 9, 11.

without Sprint Nextel's express agreement is baseless. While the ICAs contemplate that the parties "shall agree on a surrogate method" where no traffic measurement is possible, if the parties are unable to reach agreement on a surrogate method, nothing in the ICAs prevents the Authority from resolving that dispute.

In addition, nothing in the ICAs permits Sprint Nextel to unreasonably withhold consent to the adoption of a surrogate method. To the contrary, a duty of good faith and fair dealing is implied in every contract.⁵ While AT&T Tennessee long attempted to work with Sprint Nextel in a good faith effort to modify the factor used to bill interMTA traffic, based upon AT&T Tennessee's measurement of the traffic using the JIP data delivered by Sprint Nextel, the parties to date have been unable to do so, ***notwithstanding that Sprint and/or its affiliates were using their JIP data to develop interMTA traffic billing factors with other carriers.***⁶

35. The first sentence of paragraph 35 purports to characterize provisions of the parties' ICAs; AT&T Tennessee responds that the ICAs speak for themselves, admits that the ICAs contain provisions regarding the compensation to be paid, if any, for interMTA traffic; and denies that Sprint Nextel's characterization of those provisions is full or complete. AT&T Tennessee lacks sufficient information at this time to admit or deny the allegations in the second sentence of paragraph 35, and therefore denies same. AT&T Tennessee denies the third sentence of paragraph 35.

⁵ See, e.g., *Vance v. Goodyear Tire and Rubber Co.*, 527 F.3d 539 (recognizing the general rule of implied-in-law duty of good faith and fair dealings).

⁶ Sprint Nextel also asserts that it provided AT&T Tennessee with traffic study information for AT&T Tennessee's consideration, but AT&T Tennessee "ignored" that data. See, e.g., Answer ¶ 15. In fact, Sprint refused to provide data to AT&T Tennessee, and while Nextel provided some data, it did not provide enough information for AT&T Tennessee to reconcile that data with AT&T Tennessee's measurement of interMTA traffic based on Nextel's JIP data.

36. As to the first sentence of paragraph 36, AT&T Tennessee admits that the ICAs contain provisions regarding the billing of previously unbilled charges, but denies that Sprint Nextel's characterization of these provisions is full or complete. AT&T Tennessee lacks sufficient information at this time to admit or deny the allegations in the second sentence of paragraph 36, and therefore denies same. AT&T Tennessee denies the third sentence of paragraph 36.

37. AT&T Tennessee denies paragraph 37.

All allegations of Sprint Nextel's Counterclaim not expressly admitted are denied.

Affirmative Defenses

1. Sprint Nextel's Counterclaim fails to state a claim or a cause of action on which the Authority may grant relief. For example, and without limitation, Sprint Nextel has failed to allege facts showing there exists any ripe dispute between the parties over which the Authority may exercise jurisdiction and enter the declaration sought by Sprint Nextel. Sprint Nextel alleges that it 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 billed AT&T for such charges."⁷ Even assuming for the sake of argument that these allegations were true, Sprint Nextel is not entitled to collect charges that it has never billed to AT&T Tennessee. Moreover, there is no ripe dispute between the parties for the Authority to resolve because there are no charges that AT&T Tennessee has refused to pay. If and when Sprint Nextel bills the charges it claims to be entitled to collect, setting forth the type, bases and amount of charges, AT&T Tennessee may or may not contest those charges. Only after Sprint Nextel bills the charges,

⁷ See Sprint Nextel Answer at pp 17-18, paragraph 36.

AT&T Tennessee refuses to pay them, and the parties cannot resolve the issue, might there be any ripe dispute for the Authority to resolve.

2. Sprint Nextel's Counterclaim is barred by its failure to meet the conditions precedent of the agreements between the parties. Among other things, under the agreements Sprint Nextel must bill the charges it seeks to collect, and comply with the agreements' dispute resolution provisions should AT&T Tennessee dispute the billed charges.

3. Sprint Nextel's Counterclaim is barred by waiver, laches, estoppel and unclean hands.

4. AT&T Tennessee reserves the right to designate additional defenses as they become apparent throughout the course of discovery, investigation and otherwise.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
dba AT&T Tennessee

By: 

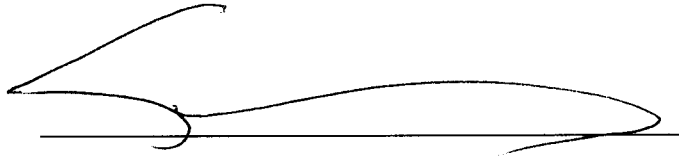
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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2010, a copy of the foregoing document was served on the following, via the method indicated:

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

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A handwritten signature in black ink, appearing to read 'Melvin Malone', is written over a horizontal line.