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April 4, 2008

VIA HAND DELIVERY

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

filed electronically in docket office on 04/04/08

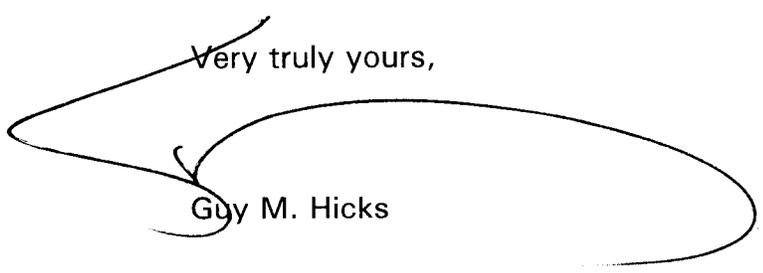
Re: *Petition Regarding Notice of Election of Interconnection Agreement By
Nextel South Corporation*
Docket No. 07-00161

Dear Chairman Roberson:

Enclosed are the original and four copies of *AT&T Tennessee's Brief in
Opposition to Nextel South Corp.'s Motion for Summary Judgment.*

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

Very truly yours,


Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition Regarding Notice of Election of Interconnection Agreement By Nextel South Corporation*
Docket No. 07-00161

AT&T TENNESSEE'S BRIEF IN OPPOSITION
TO NEXTEL SOUTH CORP.'S MOTION FOR SUMMARY JUDGMENT

COMES NOW BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T Tennessee") and files this Brief in Opposition to Nextel South Corp.'s Motion for Summary Judgment.¹ In accordance with the Tennessee Regulatory Authority's ("Authority") Notice of Briefing Schedule And Oral Arguments Concerning Motion For Summary Judgment, dated March 25, 2008, this submission also contains AT&T Tennessee's analysis of the operation of the forty-two month time period contained within the Federal Communications Commission's ("FCC") Order in docket FCC 06-74.

Overview of Argument

Nextel's Motion would deny AT&T Tennessee the opportunity to demonstrate important facts relevant to this case to the Authority. In addition, Nextel seeks to adopt an agreement that would purport to give Nextel – a company

¹ This Docket is a consolidation of *Nextel South Corp.'s Notice of Election of the Existing Interconnection Agreement By and Between BellSouth Telecommunications, Inc. And Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P.* Docket No. 07-00161; and *NPCR, Inc. d/b/a Nextel Partners' Notice of Election of the Existing Interconnection Agreement By and Between BellSouth Telecommunications, Inc. And Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P.* Docket No. 07-00162. The Nextel entities that are parties to this now consolidated Docket are referred to collectively herein as "Nextel."

that is not a certificated CLEC in Tennessee – rights that are only legally available to certificated CLECs. The facts in this case will show that Nextel’s attempt to adopt the agreement is not consistent with the FCC’s rules for adopting such agreements. By denying the Motion, the TRA will afford AT&T Tennessee its due process right to prove the facts that the parties now dispute.

Background

On June 22, 2007, notwithstanding the fact that Nextel and AT&T Tennessee had not resolved a bona fide dispute regarding Nextel’s attempted adoptions,² Nextel unilaterally and improperly filed its Petitions Regarding Notice of Election of Interconnection Agreement (“Petitions”) with the Authority.

These Petitions purportedly notified the Authority that, pursuant to FCC Merger Commitment “Nos. 1 and 2,” [sic] and 47 U.S.C. § 252(i), Nextel had adopted the three-party interconnection agreement between BellSouth Telecommunications, Inc. on the one hand, and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., and Sprint Spectrum L.P. (“BellSouth/Sprint ICA”), on the other hand.³ On July 17, 2007, AT&T Tennessee filed Motions to Dismiss Nextel’s improperly attempted unilateral adoptions.

On February 6, 2008, notwithstanding the fact that no procedural schedule had been set, and the fact that AT&T Tennessee’s Motions to Dismiss had not

² See Nextel Petition Regarding Election of Interconnection Agreement at 4, and Exhibit C attached thereto (wherein AT&T Tennessee notified Nextel that Nextel’s attempted adoptions were improper under both the Merger Commitments and 252(i)).

³ Petitions at 1.

been resolved, Nextel filed its Motion for Summary Judgment. As demonstrated below, Nextel's pleading is insufficient as matter of law and should be denied.

On March 24, 2008, the Authority dismissed AT&T Tennessee's Motion to Dismiss, and during a status conference held that same day the parties were directed to submit pleadings regarding Nextel's Motion for Summary Judgment ("Motion"). As set forth below, because genuine issues of material fact regarding Nextel's attempted adoptions remain in dispute, the Authority should deny Nextel's Motion.

The Summary Judgment Standard

The summary judgment standard is particularly stringent, and summary judgment is only appropriate when 1) the record before the Authority as a whole shows that ***no genuine issues with regard to any material facts remain*** to be tried and 2) the moving party is entitled to a judgment as a matter of law on the undisputed facts.⁴ Accordingly, summary judgment is only appropriately granted "when both the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion."⁵

Therefore, Nextel possesses the considerable burden of showing "the absence of a genuine issue as to any material fact and that movant is entitled to judgment as a matter of law."⁶ Furthermore, ***all pleadings and evidence are to be considered in the light most favorable to the nonmoving party, and therefore any***

⁴ Tenn. R. Civ. P. 56.04. See also *Penley v. Honda Motor Co., Ltd.*, 31 S.W.3d 181, 183 (Tenn. 2000); *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn. 1991).

⁵ *Penley v. Honda*, 31 S.W.3d at 183, quoting *Staples v. CLB & Associates, Inc.*, 15 S.W.3d 83, 88 (Tenn. 2000) (emphasis added).

⁶ *Jones v. Home Indemnity Ins. Co.*, 651 S.W.2d 213, 214 (Tenn. 1983).

doubt as to the existence of disputed material facts is to be resolved in favor of the nonmovant, in this case AT&T Tennessee.⁷

The policy underlying the stringent summary judgment standard is the need to ensure that the non-moving party receives its due-process right to a day in court. Since granting such a motion effectively forecloses a nonmovant's opportunity to bring forward for resolution its case-in-chief, such motions are not readily granted.⁸ The standard serves to prevent legitimate disputes from being wrongly dismissed. It is designed to ensure that triers of fact err on the side of caution in allowing matters to be fully heard and resolved on the merits and not prematurely resolved at a preliminary stage. "[T]he procedure is clearly not designed to serve as a substitute for the trial of genuine and material factual matters."⁹

As is further demonstrated below, resolution of Nextel's Motion for Summary Judgment does not present a difficult case or a close call for the Authority to resolve. Instead, it is abundantly clear from a review of the facts that genuine issues of material fact remain in dispute and therefore Nextel's Motion should be dismissed.

⁷ *Biscan v. Brown*, 160 S.W.3d 462, 476-477 (Tenn. 2005) ("examine the evidence and all reasonable inferences from the evidence in a light most favorable to the nonmoving party").

⁸ *Baker v. Lederle Laboratories, et. al.*, 696 S.W.2d 890 at 893 (Tenn.App., 1985)(noting that the federal summary judgment rule is the basis for the Tennessee rule and quoting from Wright and Miller: "The movant is held to a stringent standard. Before summary judgment will be granted it must be clear what the truth is and any doubt as to the existence of a genuine issue of material fact will be resolved against the movant").

⁹ *Byrd v. Hall, et. al.*, 847 S.W.2d 208, 210 (Tenn. 1993) (citations omitted).

Genuine Issues Of Material Facts Remain In Dispute

In its Motion, Nextel asserts that in seeking the adoptions it is relying upon Merger Commitments and Section 252(i) of the Telecommunications Act of 1996.¹⁰ However, AT&T Tennessee asserts that Nextel's reliance is misplaced, and the attempted adoptions are not proper under federal law and allowing them would be inconsistent with the FCC's jurisdiction over merger commitments. Whether the attempted adoptions are analyzed in terms of Merger Commitments or Section 252(i), in each instance the parties disagree, and genuine issues of material fact remain in dispute.

I. Nextel's Attempted Adoption Does Not Comply With Section 252(i).

Section 252(i) of the Act 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.

In its Motion, Nextel correctly notes that 47 C.F.R. § 51.809 is a Rule implementing §252(i), and that Rule contains two requirements effectively limiting carriers' adoption rights.¹¹ Specifically, Section 51.809 provides:

- (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

¹⁰ Motion at 2.

¹¹ Motion at 15,16.

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.

(b) The obligations of paragraph (a) of this section ***shall not apply where the incumbent LEC proves to the state commission that:***

(1) ***The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or***

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

Then, citing the above rule but without any supporting evidence, Nextel makes the baseless sweeping statement that “Nextel clearly satisfies the adoption requirements set forth in the current rule, and clearly does not fall into either of the two (2) exceptions.”¹² It certainly is not clear that Nextel satisfies the exceptions, which are based upon factual issues (the costs, as applied to the specific requesting carrier, and the technical feasibility as applied to the specific requesting carrier). The extremely casual approach that Nextel has taken to the facts in this case only highlights the paucity of support for its position. Nextel’s presumption that resolution of the case involves no analysis of competing – and disputed – evidence regarding the facts relevant to the exceptions is both inconsistent with the plain language of the federal rule (“The obligations ... shall not apply where the

¹² Motion at 16.

incumbent LEC proves to the state commission that ...” the exceptions apply.) and completely at odds with the standard for summary judgment.

For example, Nextel takes a strange and unsubstantiated view of what constitutes “costs” for purposes of 47 C.F.R. § 51.809.¹³ Indeed, the parties are diametrically opposed on this issue. Because AT&T Tennessee can present evidence demonstrating the relevant difference in costs, AT&T Tennessee should be afforded its due process right to prove the facts to the Authority. The parties clearly dispute what the facts are regarding whether the price or rate of bill and keep is zero and whether the costs of providing the adoption are greater than the costs of providing it to the telecommunications carriers that originally negotiated the BellSouth/Sprint ICA. Such clearly material and disputed facts render summary judgment legally impermissible.

It is difficult to think of more unmistakable examples of the existence of genuine issues of material fact. Clearly, the facts relevant to the cost are the central issues relating to adoptions under Section 252(i), and they are therefore genuine issues regarding material facts. Nextel’s Motion must be denied so that the TRA can determine the facts relevant to Nextel’s claims.

Furthermore, Section 252(i) does not support Nextel’s attempted adoptions because Nextel is not seeking to adopt the Sprint interconnection agreement “upon the same terms and conditions as provided in the agreement.” That is so because

¹³ Nextel argues that AT&T Tennessee has equated “costs” with “lost revenues.” See Sprint Nextel Enforcement of the AT&T Merger Conditions Interconnection Agreements document dated 3/25/2008, filed at the FCC by Sprint Nextel in FCC WC Docket No. 08-23, at 2,3,6,7. These assertions are disputed by AT&T.

the BellSouth/Sprint ICA addresses a unique mix of wireline and wireless items, and the facts of this case will show that Nextel is a solely wireless carrier to whom the same terms and conditions cannot be applied consistent with the original agreement. Allowing Nextel to adopt the BellSouth/Sprint ICA would result in an agreement that would be contrary to FCC rulings and internally inconsistent.

First, the facts will show that Nextel cannot avail itself of all of the interconnection services and network elements provided within the BellSouth/Sprint ICA. The BellSouth/Sprint ICA contains negotiated terms and conditions between AT&T Tennessee and the following Sprint entities: wireline providers Sprint Communications Company Limited Partnership and Sprint Communications Company L.P. (collectively referred to as "Sprint CLEC"); and wireless providers Sprint Spectrum L.P. and SprintCom, Inc. (collectively "Sprint PCS"). The BellSouth/Sprint ICA, therefore, addresses a unique mix of wireline and wireless items (such as traffic volume, traffic types, and facility types), and it reflects the outcome of negotiated gives and takes that would not have been made if the agreement addressed only wireline services or only wireless services.

The facts will demonstrate that the BellSouth/Sprint ICA Nextel seeks to adopt allows AT&T Tennessee, at its option, to renegotiate or terminate the bill and keep arrangement with the remaining party if either Sprint entity opts into another interconnection agreement with AT&T Tennessee pursuant to Section 252(i) of the Act. All of this is memorialized in the BellSouth/Sprint ICA:

Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic *is the*

result of negotiation and compromise between BellSouth, 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.)

When viewed with the facts relating to Nextel's solely wireless business, it is clear that Nextel's adoption of the agreement would not be "upon the same terms and conditions provided in the agreement."

The terms and conditions of the Sprint interconnection agreement clearly can be applied only when the non-ILEC parties to the agreement are providing both wireline and wireless services. The facts in this case demonstrate that Nextel, however, does not provide both services in Tennessee.

In fact, Nextel is not a certificated CLEC in Tennessee, and therefore it cannot legally provide the services addressed in the agreement in the State. If the TRA were to permit the adoption, it would be permitting (and officially approving) a ***non-certificated*** company engaging in activities that are proper only for a ***certificated*** CLEC to perform. AT&T frequently files interconnection agreements with other parties at the Authority for review and approval. AT&T has understood that it was not to file such agreements unless the other party was duly certified by the Authority to provide service in the State of Tennessee. In addition, AT&T

works informally with the Staff to address their questions, such as whether a certain party to an interconnection agreement is certified to offer services contemplated in the agreement. Also, the Staff is very diligent to ensure that the name of a party to an interconnection agreement matches the name under which the TRA granted its certification and the name under which it is registered with the Secretary of State. In a few cases, AT&T has promptly withdrawn agreements once it was informed that the other party was not certified by the Authority or properly registered with the Secretary of State. Had AT&T routinely filed the BellSouth/Sprint ICA as an adopted agreement with Nextel, it is doubtful that it would have passed the Staff's review, as AT&T understands the review criteria.

When viewed in light of the facts about Nextel's business, it is clear that allowing Nextel to adopt the Sprint interconnection agreement would disrupt the dynamics of the terms and conditions negotiated between AT&T Tennessee and the parties to the Sprint interconnection agreement and; in this case, AT&T Tennessee would lose the benefits of the bargain negotiated with those parties. For example, AT&T Tennessee would be denied the benefit of the bargain it negotiated regarding interconnection compensation. Specifically, Attachment 3, Section 6.1.1 of the BellSouth/Sprint ICA establishes a "bill-and-keep" arrangement for usage on CLEC local traffic, ISP-bound traffic, and wireless local traffic, collectively. AT&T Tennessee would not enter into a "bill-and-keep" arrangement with a strictly wireless carrier such as Nextel. Another example of how AT&T Tennessee would be denied the benefit of its bargain if forced to allow Nextel to

adopt the multi-party Sprint agreement concerns the cost of interconnection facilities. Section 2.3.2 establishes a 50/50 split for the cost of interconnection facilities for wireless traffic, or as the agreement states, “[t]he cost of the interconnection facilities ... shall be shared on an equal basis.” In a vacuum, with a sole wireless carrier such as Nextel, AT&T Tennessee would never enter into this particular split for wireless traffic. Similarly, Section 2.9.5.1 establishes a 50/50 split for the cost of interconnection facilities for handling transit traffic, ISP-bound traffic and intraLATA toll traffic for the Sprint CLEC. This particular split is highly unusual for CLEC traffic, and AT&T Tennessee would not agree to such an arrangement with a stand-alone CLEC provider.

Nextel goes to great lengths attempting to rebut a “similarly situated” argument that it erroneously supposes AT&T Tennessee is making.¹⁴ Nextel’s *factual* and legal suppositions and interpretations are incorrect. AT&T Tennessee is not objecting to the adoptions under a “similarly situated” analysis. AT&T Tennessee objects to the adoptions because, among other things, granting them would violate FCC rules.

As explained above, both wireless and wireline carriers are parties to the BellSouth/Sprint ICA. If Nextel were allowed to adopt the Agreement, such adoption would erroneously permit Nextel to avail itself of provisions in the Agreement that can be applied legally only to certificated CLECs. For example, Attachment 2 of the BellSouth/Sprint ICA allows the Sprint CLEC entities to

¹⁴ Motion 16-20.

purchase unbundled network elements (“UNEs”) from AT&T Tennessee, but as a non-certificated entity, it would not be legal for Nextel to purchase UNEs from AT&T Tennessee. Nextel only provides wireless services in Tennessee, and is not certificated to provide any CLEC services in the State. In its *Triennial Review Remand Order*, the FCC ruled that:

Consistent with [the D.C. Circuit Court of Appeal’s opinion in] USTA II, we deny access to UNEs in cases where the requesting carrier seeks to provide service exclusively in a market that is sufficiently competitive without the use of unbundling. *In particular, we deny access to UNEs for the exclusive provision of mobile wireless services*¹⁵

Nextel cannot purchase UNEs from AT&T Tennessee, and therefore granting the adoption would violate the FCC rules. There are various other terms and conditions within the agreement that cannot be applied to Nextel as a stand-alone wireless carrier. Specifically, Section 1.5 of the TRRO Amendment states that Sprint CLEC shall not obtain a Network Element for the exclusive provision of mobile wireless services or interexchange services.¹⁶

Furthermore, the agreement cannot be revised to address this issue because the FCC has ruled that a carrier is no longer permitted to “pick and choose” the provisions in an approved agreement that it wants to adopt. Instead, the FCC has adopted an “all-or-nothing rule” that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement *in its*

¹⁵ See Order On Remand, In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 F.C.C.R. 2533 at ¶ 34 (February 4, 2005) (emphasis added).

¹⁶ The interconnection agreement Nextel seeks to adopt contains over 1,000 pages: an AT&T Tennessee standalone CMRS agreement contains, on average, 30 pages. See Exhibit A which is a matrix showing the sections of the BellSouth/Sprint ICA not available to wireless carriers.

entirety, taking *all* rates, terms, and conditions from the adopted agreement.¹⁷ Allowing Nextel to “adopt” the Sprint interconnection agreement after revising the agreement to clarify which provisions Nextel can and cannot use would be contrary to this FCC ruling.

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

Creating adoption papers that have the practical effect of substituting the Nextel entity names throughout the ICA whenever the Sprint PCS name occurs would mean that the Sprint CLEC name would remain throughout the adopted agreement, which apparently is what Nextel intends because it states that “Sprint CLEC, a corporate affiliate of Nextel Partners, has always been offered [sic], and stood ready, to execute the Sprint ICA as adopted by Nextel Partners.”¹⁸ However, if that were done, Sprint CLEC would be a party to three interconnection

¹⁷ See Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 F.C.C.R. 13494 at ¶ 1 (July 13, 2004) (emphasis added).

¹⁸ Motion at 6.

agreements with AT&T Tennessee in the same state at the same time. That is not appropriate (even if all three agreements contain the same language) because Sprint CLEC has a finite amount of local traffic, all of which is to be exchanged with AT&T Tennessee under a single interconnection agreement. AT&T Tennessee is unaware of any Section 252(i) jurisprudence that suggests that a single ILEC can be required to execute multiple interconnection agreements with a single CLEC within a single state. Nothing in Section 252(i) supports, much less requires, this relief that Nextel seeks.

Resolution of this issue is necessarily fact-intensive. The question of whether granting the adoptions would violate the FCC's all-or-nothing rule is another clear example of a genuine issue of material fact that cannot be summarily dismissed, and therefore Nextel's Motion must be denied.

II. Nextel's Attempted Adoption Does Not Comply With The Merger Commitments.¹⁹

Nextel claims to rely on the following FCC merger commitments:

1. The AT&T/BellSouth ILEC shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and

¹⁹ Although the Authority expressly found jurisdiction over this Docket to be vested "under Section 252(i) based upon the language of 47 C.F.R. Section 51.809" (Motion of Chairman Roberson at conclusion of Oral Argument on AT&T Tennessee's Motion To Dismiss, February 24, 2008), AT&T Tennessee nonetheless provides additional evidence evincing genuine issues of material fact regarding why the adoptions are also improper under the Merger Commitments.

OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

Neither of these Merger Commitments supports the adoptions requested by Nextel.

The first Merger Commitment applies only when a carrier wants to take an interconnection agreement from one state and operate under that agreement in a different state (which often is referred to as “porting” an agreement from one state into another state). That is precisely why the commitment contains language such as “subject to state-specific pricing and performance plans and technical feasibility,” and “consistent with the laws and regulatory requirements of the state for which the request is made.” That language is necessary only when an agreement that was approved in one state is ported into another state.

Notably, prior to this Merger Commitment, carriers did not have the right to port an agreement from one state to another – they only had the right to adopt approved agreements within a given state consistent with the provisions of 47 U.S.C. § 252(i) and the FCC’s rules implementing those provisions. That fact further demonstrates that this Merger Commitment does not address the in-state adoption rights carriers *already had*. Instead, this Merger Commitment provides carriers certain state-to-state porting rights that they previously did not have.

In the instant case, Nextel is not seeking to port an agreement from another state into Tennessee; it is attempting to use the Merger Commitment to adopt the Tennessee BellSouth/Sprint interconnection agreement.²⁰ Such an adoption was not contemplated under the Merger Commitment and is improper.²¹

Likewise, the second Merger Commitment does not support Nextel's attempted adoption. Although the second Merger Commitment (unlike the first) applies to in-state adoption requests, it has absolutely no bearing on Nextel's request. This Merger Commitment simply states that under specified conditions, AT&T Tennessee "shall not refuse a request ... to opt into an [interconnection] agreement on the ground that the agreement has not been amended to reflect changes of law." AT&T Tennessee does not dispute that the BellSouth/Sprint ICA has been amended to reflect changes of law, and AT&T Tennessee's objection to Nextel's request is not based on any "change of law" issues. This Merger Commitment is entirely inapplicable to this dispute.

If Nextel agrees that its reliance on the Merger Commitments for the attempted adoptions is misplaced and that it is attempting to rely solely upon 47 U.S.C. § 252(i), then the dispute regarding the interpretation and application of the

²⁰ AT&T understands that ultimately Nextel will attempt to "port" the BellSouth/Sprint ICA to other states in order to allow its wireless affiliates to take advantage of the "bill and keep" zero rate for the termination of its out of balance traffic, an improper attempt at regulatory arbitrage.

²¹ In support of its contention that the adoption is consistent with the Merger Commitment, on page 14 of its Motion, Nextel erroneously states that "the Ohio Public Utilities Commission ("Ohio PUC") issued a Finding and Order that allows one wireline Sprint entity and three (3) wireless Sprint entities...to port the Kentucky Sprint-AT&T interconnection agreement into Ohio." On the contrary, the Ohio PUC clarified that the entities can "seek to port" the ICA and specifically left the issue of which entities can or cannot actually port the ICA for resolution at a later phase of the proceeding. See, *In the Matter of Carrier-to-Carrier Complaint and Request for Expedited Ruling of Sprint Communications Company L.P., Sprint Spectrum, L.P., Nextel West Corp., and NPCR, Inc.*, Entry on Rehearing, Ohio PUC Case No.07-1136-TP-CSS (Apr. 2, 2008) at 8,9.

Merger Commitments is no longer material.²² If Nextel does not agree, then interpretation and application of the Merger Commitments constitute disputed genuine issues of material facts.

Again, the standard for summary judgment is essentially that upon review of the record--even after providing the nonmovant, in this case AT&T Tennessee, the benefit of the doubt--not one single important fact remains requiring resolution and over which reasonable minds could differ. That simply is not the case here. As was demonstrated above, a review of the record developed to date clearly indicates the existence of several disputed genuine issues of material facts. Therefore, Nextel's motion is insufficient as a matter of law and should be dismissed.

**AT&T Tennessee's Position On "The 42-month
Clock On The Merger Commitments"**²³

AT&T Tennessee asserts that, in accordance with the FCC's order in docket 06-74, the forty-two month period during which Merger Commitments apply began on December 29, 2006, is currently proceeding and has not been tolled. However, despite Nextel's histrionic contention that the 42-month time period is of some effect and importance in this docket, Nextel is wrong. The 42-month time period during which Merger Commitments apply is of no effect whatsoever in this Docket. In its apparent confusion, Nextel is mixing apples and oranges.

²² However, the remaining disagreement regarding availability of adoption under 47 U.S.C. § 252(i), and the impact of 47 C.F.R. § 51.809, limiting such adoptions, would remain and constitute a dispute regarding genuine issues of material facts.

²³ This discussion is included in accordance with the Authority's directive contained in the Notice of Briefing Schedule And Oral Arguments Concerning Motion For Summary Judgment, dated March 25, 2008.

The forty-two month period is found in the portion of the FCC order wherein the FCC also made clear that it would enforce the Merger Commitments. It reads as follows:

For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.²⁴

As that paragraph plainly states, the forty-two month time-table applies to FCC-enforceable merger conditions and commitments in WC Docket No. 06-74.

Conversely, in the case of adoptions pursuant to 252 (i), upon which Nextel also attempts to rely and whereby the Authority stated it was exercising jurisdiction over this docket, the life of an adopted interconnection agreement is governed by the express terms of that agreement.

Specifically, Section 252(i) of the Act 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.***

(emphasis added). Unquestionably, the express expiration date of an ICA contained within the document is a “term” of the agreement as contemplated under Section 252(i), and that term would be controlling in such an adoption. That is, the expiration date contained in an adopted interconnection agreement controls

²⁴ Merger Order (Appendix F.) p. 147.

when an adopted agreement expires. This has absolutely nothing to do with the forty-two month time period contained within the FCC's Merger Order.

The fact that the 42-month time period is currently proceeding is of no consequence in this proceeding, and is completely irrelevant and should be of no import to the Authority in denying Nextel's Motion for Summary Judgment. As explained above, under well-established law, Nextel's Motion should be denied.

CONCLUSION

Nextel's Motion for Summary Judgment is insufficient as a matter of law. Accordingly, and for all the reasons stated above, the Authority should deny Nextel's Motion for Summary Judgment.

Respectfully submitted,

AT&T TENNESSEE

A large, stylized handwritten signature in black ink, appearing to read "GUY M. HICKS". The signature is written over a horizontal line and extends to the left and right of the line.

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EXHIBIT A

**SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN**

SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P.

**AND
AT&T TENNESSEE
DATED JANUARY 1, 2001**

Prepared 2/20/08

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
General Terms and Conditions – Part A	4. Ordering Procedures	8	Reference to ordering procedures in Attachment 6 for Sprint CLEC
	5. Parity 5.1 and 5.2	8	Resale services at parity with that provided to AT&T's own affiliates, subsidiaries, and end users. Quality of Network Element and access to same shall be at least equal to that which AT&T provides itself or such access as would provide efficient carrier meaningful opportunity to compete.
	6. White Pages Listings 6.1 – 6.10	9	White pages listings
	7. Bona Fide Request/New Business Request for Further Unbundling Subsection of 7.1	10	Products and services made available to other CLECs shall be made available to Sprint on same rates, terms and conditions through an amendment.
	24. Network Security 24.2.1 24.2.2 24.2.2.1 24.2.3	28	Fraud protection available for resold AT&T services and AT&T's ports used by Sprint will be available to Sprint. Parties will cooperatively work together in fraud situations. Liability for provisioning, maintenance, signal network routing errors, accidental or malicious alternation of software underlying Network Elements or subtyping operational support systems causing financial loss. AT&T responsibility from unauthorized attachment to loop facilities from Main Distribution Frame to Network Interface Device.

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SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P

**AND
AT&T TENNESSEE
DATED JANUARY 1, 2001**

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
Resale – Attachment 1	Entire Resale Document	46 - 77	Provides rates, terms and conditions for the resale of AT&T telecommunications services provided at a discount off the retail rates and associated services.
Network Elements and Other Services – Attachment 2	Entire Document - Network Elements and Other Services	78 - 502	Provides rates, terms an conditions for offered Network Elements used in the provision of telecommunications services
Network Interconnection – Attachment 3	1. Definitions CLEC Local Traffic Transit Traffic Virtual Point of Interconnection 2. Network Interconnection	506, 507	Definition of terms used in Network Interconnection
	2.2.1	508	Interconnection of respective Sprint CLEC and AT&T networks
	2.6 Interconnection via Leased Dedicated Transport Facilities 2.6.1, 2.6.1.1, 2.6.1.2	510	-Call transport and termination facilities and threshold to utilize dedicated transport facilities; determination of facilities utilized for Local Traffic determined based upon Percent Local Facility Factor.
	2.7 Fiber Meet Interconnection 2.7.1, 2.7.2	510	-Occurs at mutually agreeable, economically and technically feasible point between Sprint CLEC premise and AT&T Tandem or End Office within LATA. -Joint engineering and Synchronous Optical Network transmission system.
	2.7.3 2.7.3.1, 2.7.3.2	511	-Two Fiber Meet design options.

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MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	2.9.6 One-way and Two-way Trunking 2.9.6.1, 2.9.6.1.1, 2.9.6.1.2, 2.9.6.1.3, 2.9.6.1.4 2.9.6.2, 2.9.6.2.1, 2.9.6.2.1.1, 2.9.6.2.1.1.1, 2.9.6.2.1.1.2, 2.9.6.2.1.1.3, 2.9.6.2.1.2, 2.9.6.2.1.2.1, 2.9.6.2.1.2.2, 2.9.6.2.1.2.3, 2.9.6.2.2, 2.9.6.2.3, 2.9.6.2.4, 2.9.6.2.4.1, 2.9.6.3	514 515	IntraLATA Toll Traffic, excluding Transit Traffic and for two-way SuperGroup carrying Local and IntraLATA Toll Traffic and Sprint CLEC Transit Traffic, compensation for trunks and facilities will be 50%. -One-way trunking -Two-way
	2.9.7 Transit Trunk Groups 2.9.7.1, 2.9.7.2	516	-Transit Trunk Groups
	2.9.7.3 Toll Free Traffic 2.9.7.3.1, 2.9.7.3.2, 2.9.7.3.3, 2.9.7.3.4	517	-Toll Free Traffic
	2.9.8 Access Tandem Interconnection Trunking 2.9.8.1	518	-Access Tandem interconnection Trunking
	2.9.8.2 SuperGroup Interconnection Trunking 2.9.8.2.1, 2.9.8.2.2, 2.9.8.2.2.1, 2.9.8.2.2.2, 2.9.8.2.2.3, 2.9.8.2.3, 2.9.8.2.3.1, 2.9.8.2.3.2, 2.9.8.2.3.3, 2.9.8.2.4, 2.9.8.2.5, 2.9.8.2.6, 2.9.8.2.7	519	-SuperGroup Interconnection Trunking

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MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	2.9.8.3 2.9.8.3.1 2.9.8.4		-Terminations of interconnection trunking at single point in LATA -Switched Access traffic delivery to and by IXCs
	2.9.10 AT&T Local Tandem Interconnection Trunking 2.9.10.1, 2.9.10.2, 2.9.10.3		-Local Tandem Interconnection Trunking
	2.9.11 Direct End Office Interconnection Trunking 2.9.11.1, 2.9.11.2, 2.9.11.3, 2.9.11.4, 2.9.11.5, 2.9.11.6, 2.9.11.6.1, 2.9.11.6.2, 2.9.11.6.3, 2.9.11.6.4	520 521	-Direct End Office Interconnection Trunking
	2.9.12 Other Interconnection Trunk Groups 2.9.12.1, 2.9.12.1.1, 2.9.12.1.2, 2.9.12.1.3 2.9.12.2.3, 2.9.12.2.4, 2.9.12.2.5	522 523	-Other Interconnection Trunk Groups -E911 Trunking -Acquisition of HVCI/Mass Calling customers
	2.9.12.3 2.9.12.3.1, 2.9.12.3.2, 2.9.12.3.3, 2.9.12.3.3.1, 2.9.12.3.4, 2.9.12.3.4.1 2.9.12.3.5, 2.9.12.3.5.1, 2.9.12.3.6, 2.9.12.3.6.1, 2.9.12.3.7, 2.9.12.3.7.1	524	-Operator Services/Directory Assistance Trunk Groups
	2.9.13 Trunk Servicing 2.9.13.1, 2.9.13.2, 2.9.13.3, 2.9.13.4	525	-Trunk Servicing
	3. Network Design and Management for CLEC Interconnection	526	Network Design and Management for CLEC Interconnection

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MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	3.1 Network Management and Changes		-Network Management and Changes
	3.2 Interconnection Technical Standards		-Interconnection Technical Standards
	3.3 Quality of Interconnection		-Quality of Interconnection
	3.4 Network Management Controls 3.4.1, 3.4.1.1, 3.4.2, 3.4.2.1, 3.4.3, 3.4.3.1	527	-Network Management Controls
	3.5 Common Channel Signaling 3.5.1, 3.5.2		-Common channel Signaling
	3.6 Forecasting Requirements 3.6.1, 3.6.2, 3.6.3	528	-Forecasting Requirements
	6.1.3 Interconnection Compensation	531	-Transport charges
	6.1.5		-Jurisdiction of call determined by originating terminating points
	6.1.5.1	532	-Percent Local Use factor determines amount of local minutes to be billed other Party
	6.2 Percent Local Use		-Percent Local Facility factor determines Portion of switched transport to be billed per local jurisdiction rates
	6.3 Percent Local Facility		-Percent Interstate Usage determines interstate and intrastate traffic
	6.4 Percentage Interstate Usage		-Criteria for trueing up interim prices
	6.6 Rate True-up 6.6.1, 6.6.2, 6.6.3, 6.6.4	533 534	

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MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	6.8 Compensation for CLEC IntraLATA Toll Traffic 6.8.1, 6.8.2, 6.8.3, 6.8.4, 6.8.5	535	-Compensation for CLEC IntraLATA Toll Traffic
	6.9 Mutual Provision of Switched Access Service for Sprint CLEC and AT&T 6.9.1, 6.9.1.1, 6.9.2, 6.9.3, 6.9.4, 6.9.5, 6.9.6, 6.9.7	536 537	-Mutual Provision of Switched Access Service for Sprint CLEC and AT&T
	6.10 Transit Traffic Service 6.10.1		-Transit Traffic Service
	6.12 OO- Local Traffic	539	-00- Local Traffic
	7. Operational Support Systems (OSS) Rates	539	Operational Support systems (OSS) Rates
	Local Interconnection Rates	540 - 552	Local Interconnection Rate Exhibits by State
Collocation Rates – Attachment 4 – Exhibit D	Collocation Rates - Exhibit D	640 - 675	Collocation Rates
Access to Numbers and Number Portability – Attachment 5	8. True-up 8.1, 8.2, 8.3	686 687	True up of Rates
Ordering and Provisioning – Attachment 6	1. Quality of Ordering and Provisioning 1.1, 1.2, 1.3, 1.4, 1.4.1, 1.5	697 699	Quality of Ordering and Provisioning
	2. Access to Operational Support Systems (OSS) 2.1, 2.1.1 2.2 Pre-Ordering 2.3 Service Ordering and Provisioning	700 701	Access to Operational Support Systems (OSS)

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MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	2.4 Service Trouble Reporting and Repair 2.5 Migration of Sprint to New AT&T Software Releases for National Standard Machine-to-Machine Electronic Interfaces 2.6 Change Management 2.7 Testing 2.7.1, 2.7.1.1, 2.7.1.2, 2.7.1.3, 2.7.1.4 2.8 OSS Documentation 2.9 OSS Servers with Redundancy 2.10 Rates	702	
	3. Miscellaneous Ordering and Provisioning Guidelines 3.1, 3.2, 3.3, 3.3.1, 3.3.1.1, 3.3.1.2, 3.3.1.3, 3.4 Contact Numbers 3.5 Subscription Functions 3.6 Cancellation Charges 3.7 Acknowledgement 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18, 3.19 Operational Support Systems	703 704	Miscellaneous Ordering and Provisioning Guidelines
Billing and Billing Accuracy Certification – Attachment 7	1. CLEC Payment and Billing Arrangements 1.1 Billing 1.1.1, 1.1.2 1.2, 1.3, 1.4 Payment Responsibility 1.5, 1.6, 1.7, 1.8, 1.9 1.10 Payment Due	707 709 710	CLEC Payment and Billing Arrangements

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MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	1.11 Tax Exemption 1.13 Late Payment 1.14 Discontinuing Service to Sprint 1.14.1, 1.14.2, 1.14.3, 1.14.4, 1.14.5 1.15 Deposit Policy 1.15.1, 1.15.2, 1.15.3, 1.15.4, 1.15.5, 1.15.6 1.16 Rates for ODUF/EODUF ADUF	712	
	9. Optional Daily Usage File 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7 9.7.1, 9.7.1.1, 9.7.1.2, 9.7.1.3, 9.7.1.4 9.7.2, 9.7.2.1, 9.7.2.2 9.7.3, 9.7.3.1, 9.7.3.2 9.7.4, 9.7.4.1 9.7.5, 9.7.6, 9.7.6.1	718	Optional Daily Usage Files
	10. Access Daily Usage File 10.1, 10.2, 10.3, 10.4, 10.5 10.6, 10.6.1, 10.6.2, 10.6.3, 10.6.4, 10.6.5, 10.6.5.1, 10.6.5.2, 10.6.6, 10.6.6.1, 10.6.6.2, 10.6.7, 10.6.7.1, 10.6.8, 10.6.9, 10.6.9.1	721	Access Daily Usage Files
	11. Enhanced Optional Daily Usage File 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.6.1.1, 11.6.1.2, 11.6.1.3, 11.6.2, 11.6.2.1, 11.6.2.2, 11.6.3, 11.6.3.1, 11.6.3.2	723	Enhanced Optional Daily Usage Files
	12. Rate True-up 12.1, 12.2, 12.3, 12.4	725	Rate True-up
	Exhibit A – ODUF/EODUF/CMDS Rates	727	ODUF/ADUF/EODUF/CMDS Rates

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Performance Measurements – Attachment 9	Performance Measurements Information	782	Performance Measurements Information
Agreement Implementation Template – Attachment 10	Template to catalog implementation activities	784	Implementation Activities Template
AT&T Disaster Recovery Plan – Attachment 11	<ol style="list-style-type: none"> 1. Purpose 2. Single Point of Contact 3. Identifying the Problem 3.1 Site Control 3.2 Environmental Concerns 4. The Emergency control Center 5. Recovery Procedures 5.1 CLEC Outage 5.2 AT&T Outage 5.2.1, 5.2.2, 5.2.3, 5.2.4 5.3 Combined Outage 6. Identification Procedures 7. Acronyms Hurricane Information AT&T Disaster Management Plan 2.1.1, 2.1.1.1, 2.1.1.2, 2.1.1.3, 2.1.1.4	799	Disaster Recovery Plans
Amendment Effective May 7, 2003 Affecting Network Elements and Other Services – Attachment 2		810	Provides for AT&T to provide new UNE loops without local usage restrictions under certain conditions
Amendment Effective September 1, 2003 Adding Network Elements and Other Services Rates – Attachment 2, Exhibit B	GA and NC Network Elements Rates	812	Added port and combination rates in GA and NC
Amendment Effective December 3, 2003 adding and replacing language/exhibits In Resale, Attachment 1, Network Elements and Other Services,	Resale - Attachment 1 4.4 Service Jointly Provisioned with an Independent Company or Competitive Local Exchange Company Areas	816	Service jointly provisioned

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MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
<p>FCC TRRO Released February 4, 2005 and Effective March 11, 2005 and Incorporating Other Provisions Affecting General Terms and Conditions and Network Elements and Other Services, Attachment 2</p>	<p>Move 20 and 21 and associated rates from Network Elements and Other Services, Attachment 2, to Become New Sections 8 and 9 and new rates in Local Interconnection, Attachment 3</p>		<p>-Move SS7 Network Interconnection language and rates from Network Elements and Other Services, Attachment 2, to Local Interconnection, Attachment 3 -Move Basic 911 and E911 language and rates from Network Elements and Other Services, Attachment 2, to Local Interconnection, Attachment 3</p>
<p>Amendment Effective November 15, 2006 Modifying Factors in Local Interconnection, Attachment 3</p>	<p>Replace Network Elements and Other Services Ordering, Attachment 6 Replace First Sentence of 1.1 Local Interconnection Modifies 6.2, 6.3, 6.4</p>	<p>1166</p>	<p>-Replace Network Elements and Other Services, Attachment 2 -Nondiscriminatory access to AT&T's OSS Modifies PIU/PLU/PLF language in Local Interconnection, Attachment 3</p>

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2008, a copy of the foregoing document was served on the following, via the method indicated:

- Hand
- Mail
- Facsimile
- Overnight
- Electronic

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A handwritten signature in black ink, appearing to read 'Gary Hotvedt', with a large, sweeping loop at the end.