COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION BY NEXTEL WEST CORP. 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.	)))))))	CASE NO. 2007-00255

O R D E R

On December 21, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky")[1] filed a motion to reconsider the Commission's final Order entered on December 18, 2007. As grounds for its motion, AT&T Kentucky states that because the Commission's Order "not only denied the Motion to Dismiss filed by AT&T Kentucky. . .but also granted the adoption by Nextel West Corp. ["Nextel"][2] of the interconnection agreement. . .,"[3] the Order is procedurally flawed. AT&T Kentucky asserts that "[r]esolution of AT&T Kentucky's Motion to Dismiss was a threshold matter in this Docket, and did not address the underlying substantive issues."[4] AT&T argues

[1] AT&T Kentucky is an incumbent local exchange carrier ("ILEC") and provides local exchange service in large portions of Kentucky.

[2] Nextel is a commercial mobile radio service ("CMRS") and is licensed to provide wireless service in Kentucky

[3] AT&T Kentucky's Motion for Reconsideration at 1.

[4] Id.

that should the Commission not dismiss the case for lack of jurisdiction, "proper resolution requires a hearing on the merits and AT&T [sic] should not be precluded from bringing its case-in-chief to the Commission for final resolution."[5] On January 10, 2008, the Commission issued an Order stating that AT&T Kentucky's motion for reconsideration is granted for the purpose of allowing the Commission additional time in which to address the parties' arguments. As discussed below, the Commission finds that AT&T Kentucky's motion for reconsideration and its motion for a procedural schedule should be denied.

PROCEDURAL BACKGROUND

On June 21, 2007, Nextel filed with the Commission a notice of adoption of the interconnection agreement ("Sprint ICA") between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P. ("Sprint"). In the notice of adoption, Nextel asserted that it was exercising its right pursuant to Merger Commitments 1 and 2 of the Federal Communications Commission's ("FCC") merger proceeding[6] between AT&T and BellSouth as well as under 47 U.S.C. § 251(i). At the time Nextel filed its notice with the Commission, Sprint and AT&T Kentucky were in the middle of a dispute

[5] Id. at 2.

[6] In the Matter of AT&T Inc. and BellSouth Corporation Application to Transfer of Control, FCC WC Docket No. 06-74, Appendix F, Order dated March 26, 2007 ("Merger").

regarding the effective date of the Sprint ICA and the effect of the merger commitments on the effective date.[7]

On July 3, 2007, AT&T Kentucky filed with the Commission an objection to the notice of adoption of the interconnection agreement and moved the Commission to dismiss the complaint. As grounds for its motion to dismiss, AT&T Kentucky argued that: (1) the Commission did not have the authority to interpret and enforce the AT&T merger commitments; (2) Nextel was attempting to adopt an expired agreement and, therefore, did not satisfy the timing requirements of 47 C.F.R. § 59.801; and (3) the notice of adoption was premature because Nextel had failed to abide by the dispute resolutions provisions of its then existing interconnection agreement with AT&T Kentucky.

On September 18, 2007, while this case was still pending, the Commission entered an Order in Case No. 2007-00180. The primary issues in Case No. 2007-00180 were whether or not the Commission had the authority to interpret and apply merger commitments from the FCC's merger proceeding to disputes involving interconnection agreements in Kentucky and, if so, what was the effective date of the Sprint ICA. AT&T Kentucky argued that the Commission lacked the jurisdiction to enforce merger commitments (just as it does in the case at bar). The Commission found that it had the authority to resolve post-merger or merger-related disputes and then found that the Sprint ICA had an effective date of December 29, 2006.

[7] Case No. 2007-00180, Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast (Ky. PSC Sep. 18, 2007).

On December 18, 2007, the Commission issued an Order in the case at bar. In the Order, the Commission, citing its rationale in Case No. 2007-00180, found that "[f]or reasons set forth in the Commission's September 18, 2007 Order in Case No. 2007-00180, the Commission finds that AT&T's motion must be denied."[8] The Commission found that, because of its decision in Case No 2007-00180, the Sprint ICA extended to December 29, 2009 and a reasonable time remained for Nextel to adopt the agreement. The Commission granted Nextel's request to adopt the Sprint ICA, denied AT&T Kentucky's motion to dismiss, and ordered the parties, within 20 days of the date of the Order, to submit their executed adoption of the Sprint ICA.

On December 21, 2007, AT&T Kentucky filed its motion for reconsideration. Nextel filed its response to AT&T Kentucky's motion for reconsideration on January 3, 2008. On January 10, 2008, the Commission entered an Order granting AT&T Kentucky's motion for reconsideration "for the purpose of allowing the Commission additional time in which to address the parties' arguments."[9] On January 24, 2008, AT&T Kentucky submitted a filing titled "AT&T Kentucky's Brief in Support of Request for Procedural Schedule and Hearing." This filing contains arguments virtually identical to those AT&T Kentucky raised in its motion for reconsideration except that, for the first time, AT&T Kentucky raised the argument that the adoption might result in higher costs in its provision of the agreement.

AT&T Kentucky, in both of its motions, argues that Nextel's attempted adoption does not comply with the merger commitments and, accordingly, the adoption should be

[8] December 18, 2007 Order at 2 (footnote omitted).

[9] January 10, 2008 Order at 2.

denied. AT&T Kentucky asserts that Merger Commitment 1 applies only "when a carrier wants to take an interconnection agreement from one state and operate under that agreement in a different state. . . ."[10] AT&T Kentucky argues that because Nextel is not seeking to adopt an interconnection agreement from a state outside of Kentucky, such an adoption was not contemplated under the merger commitment and, therefore, the Commission should deny the adoption request. AT&T Kentucky, additionally, argues that Merger Commitment 2 merely requires AT&T Kentucky, under certain conditions, not to refuse an adoption request on the ground that the interconnection agreement had not been amended to reflect changes of law. AT&T Kentucky asserts that because its objection to Nextel's adoption is not based on any change of law issues, Merger Commitment 2 is not applicable to this dispute. Therefore, AT&T Kentucky argues, because neither of the merger commitments relied upon by Nextel for adoption of the Sprint ICA is applicable, the Commission should reconsider the adoption and deny it.

Nextel first argues that its adoption of the Sprint ICA is consistent with the merger commitments. Nextel argues that it was properly "porting" the Sprint ICA from other states when it invoked Merger Commitment 1 as one of the grounds for its adoption of the Sprint ICA. Nextel asserts that, plainly put, Merger Commitment 1 gives a requesting telecommunications carrier, such as Nextel, the right to adopt any interconnection agreement in AT&T Kentucky's 22-state service area.

Nextel asserts that Merger Commitments 1 and 2 apply because: (1) Nextel is a "requesting telecommunications carrier"; (2) Nextel has requested the Sprint ICA; (3) the Sprint ICA is an interconnection agreement entered into in "any state in the

[10] Id. at 4.

AT&T/BellSouth ILEC operating territory," and Sprint and AT&T Kentucky have entered into the same agreement in BellSouth's 9 "legacy" states; (4) the Sprint ICA already has state-specific pricing and performance plans incorporated into it; (5) there are no issues of technical feasibility; and (6) the Sprint ICA has already been amended to reflect changes in law. Nextel argues that it could just as easily have adopted a similar agreement from North Carolina and "ported" it over as it could have adopted the Sprint ICA in Kentucky.

AT&T Kentucky also argues that the adoption does not comply with 47 U.S.C. § 252(i). In support of this argument, AT&T Kentucky asserts that the Sprint ICA addresses a "unique mix of wireline and wireless items, and Nextel is a solely wireless carrier"[11] and that allowing Nextel to adopt the Sprint ICA would be contrary to FCC rulings and be "internally inconsistent."[12]

AT&T Kentucky first argues that Nextel, because it is only a wireless carrier, could not avail itself of the network elements provided within the Sprint ICA because when AT&T Kentucky negotiated the Sprint ICA, it was with both Sprint's wireless and local exchange entities. AT&T Kentucky asserts that because of this "unique" mix, the Sprint ICA "reflects the outcome of negotiated gives and takes that would not have been made if the agreement addressed only wireline service or wireless service."[13] AT&T Kentucky asserts that the terms and agreements of the Sprint ICA clearly apply only to an entity that provides both wireless and wireline service. AT&T Kentucky also asserts

[11] Id. at 5.

[12] Id.

[13] Id. at 7.

that it rarely enters into an interconnection agreement addressing both wireline and wireless services.

AT&T Kentucky asserts that to allow Nextel to adopt the Sprint ICA would "disrupt the dynamics of the terms and conditions negotiated between AT&T Kentucky and the parties to the Sprint interconnection agreement and, in this case, AT&T Kentucky would lose the benefits of the bargain negotiated with those parties."[14] AT&T Kentucky, as an example, points to Attachment 3, Section 6.1.1 of the Sprint ICA, providing for "bill and keep" arrangements. AT&T Kentucky states that it never would enter a bill-and-keep arrangement "with a strictly wireless carrier such as Nextel."[15]

AT&T Kentucky also argues that granting the adoption would violate FCC rules. AT&T Kentucky lists one instance where it alleges the adoption would erroneously allow Nextel to avail itself of unbundled network elements ("UNEs"), something prohibited by the FCC to wireless carriers. AT&T Kentucky then states that this is "but one example of why granting the adoption would violate the FCC rules."[16] AT&T Kentucky asserts that there are various terms and conditions in the Sprint ICA that cannot be applied to Nextel, but it "will refrain from discussing each at length within this pleading."[17]

AT&T Kentucky argues that the agreement cannot be revised to address these issues because the FCC has prohibited the "pick and choose" adoptions of provisions of

[14] Id. at 7-8.

[15] Id.

[16] Id. at 9.

[17] Id.

an agreement and requires a carrier to adopt "all or nothing" of the agreement.[18] AT&T Kentucky argues that allowing Nextel to adopt the Sprint ICA after revising the agreement to clarify what is applicable to Nextel would be contrary to the FCC's ruling.

In its Brief in Support of Request for Procedural Schedule and Hearing, AT&T Kentucky advances the arguments discussed above and advances one new argument. AT&T Kentucky now argues that if certain of its costs increase as a result of Nextel's adoption, the adoption would violate the FCC's rules.[19] AT&T Kentucky further asserts that the applicable regulation, 47 C.F.R. § 51.809(b), requires AT&T Kentucky to have "an opportunity to 'prove'"[20] that the adoption would result in higher costs to it and, therefore, the Commission should schedule a hearing to do just that.

Nextel claims that AT&T Kentucky's attempt to prevent the adoption of the Sprint ICA is a discriminatory practice that was expressly rejected by the FCC. Nextel argues that AT&T Kentucky cannot "avoid making an ICA available for adoption under the 'all-or-nothing' rule based on the inclusion of what the ILEC considers additional negotiated terms that cannot be 'used' by a subsequent adopting carrier."[21] Nextel argues that both 47 U.S.C. § 251(i) and 47 C.F.R. § 51.809 prohibit AT&T Kentucky from refusing to make available interconnection agreements that are in effect. Nextel argues that

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[18] See Second Report and Order, In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 19 F.C.C.R. 13494 at Section 1 (July 13, 2004) ("Second Report and Order").

[19] AT&T Kentucky's Brief in Support of Request for Procedural Schedule and Hearing at 8-9.

[20] Id. at 9.

[21] Nextel's Response to AT&T Kentucky's Motion for Reconsideration at 11.

47 C.F.R. § 51.809 specifically prohibits an ILEC from limiting the availability of the agreement "only to those requesting carriers serving a comparable class of subscribers or providing the same service. . . ."[22]

Nextel also asserts that adoption of the Sprint ICA is not barred by either 47 C.F.R. § 51.809(b)(1) or (2) because AT&T Kentucky did not initially argue that the costs of providing the services in the Sprint ICA to Nextel are higher than the cost of providing the same services to Sprint and still does not argue that the interconnection is technically infeasible.

Nextel argues that the FCC, in adopting the "all-or-nothing" rule, was attempting to protect carriers such as Nextel. Moreover, Nextel argues that the "all-or-nothing" rule specifically prohibits AT&T Kentucky's refusal to allow the agreement to be adopted. Additionally, under the "all-or-nothing" rule, it is Nextel, not AT&T Kentucky, that gets to decide what portions of the Sprint ICA are applicable.

Nextel notes that the Sprint ICA allows either Sprint entity to opt out of the agreement, while the other entity can still operate under the Sprint ICA. Nextel also notes that, referencing AT&T Kentucky's concern that Nextel could obtain UNEs under the Sprint ICA, the Sprint ICA specifically provides that Sprint "shall not obtain a Network Element for the exclusive provision of mobile wireless services. . . ."[23]

Nextel also argues that the Commission should strike AT&T Kentucky's brief in support of its hearing request because no procedure allows for the filing of such a document. Nextel argues that the brief is merely a rehash of AT&T Kentucky's previous

[22] Id. at 12, quoting 47 C.F.R. § 51.809.

[23] Id. at 19, quoting 9th Amendment, Attachment 2, Section 1.5 of the Sprint ICA.

arguments and the only purpose for the filing is to interject "confusion and delay"[24] into this proceeding. Nextel also objects to AT&T Kentucky's filing of Additional Supplemental Authority, claiming that it is merely devised to create further delay.

DISCUSSION

The adoption of an existing interconnection agreement, under most circumstances, is a straightforward and quick proceeding. At the time Nextel filed its notice of adoption of the Sprint ICA, the status and effective date of the Sprint ICA were not known, and that impeded the typically automatic adoption of an interconnection. However, as discussed below and in the Commission's December 18, 2007 Order, upon resolution of the status of the Sprint ICA, any existing obstacles to its adoption were removed.

JURISDICTION OVER MERGER COMMITMENTS

The Commission found in its December 18, 2007 Order that by the reasoning in its previous decision in Case No. 2007-00180, the Commission had jurisdiction to interpret and apply merger commitments and adjudicate disputes arising out of the commitments. We find the reasoning in Case No. 2007-00180 still persuasive and incorporate by reference our reasoning in that case regarding our jurisdiction over disputes arising from the merger and merger commitments. Although Nextel can adopt the Sprint ICA pursuant to the merger commitments, as discussed below, Nextel can adopt the Sprint ICA pursuant to 47 U.S.C. § 252(i), independently of the merger commitments, and, therefore, any objections pertaining to adoption under the merger

[24] Nextel's Response and Motion to Strike AT&T Kentucky's Brief in Support of Request for Procedural Schedule and Hearing at 1.

commitments is moot. Moreover, because, as discussed below, we find that Nextel may adopt the agreement pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, and need not invoke the merger commitments, we find no reason to suspend this proceeding pending resolution of AT&T Kentucky's recent petition to the FCC requesting clarification regarding the merger commitments.[25]

THE SPRINT ICA IS ADOPTABLE UNDER 47 U.S.C. § 252(i) AND 47 C.F.R. § 51.809.

The Commission, as noted in its December 18, 2007 Order, had found in Case No. 2007-00180 that the Sprint ICA was extended by 3 years from December 29, 2006. When Nextel originally filed its petition for adoption on June 21, 2007, it relied, in part, on its rights "pursuant to the Federal Communications Commission approved Merger Commitments Nos. 1 and 2. . .and 47 U.S.C. § 252(i)."[26] At the time of the filing of the notice of adoption, however, the status of the Sprint ICA was unclear, as the Commission had not ruled on that matter in Case No. 2007-00180. The Commission has since resolved these issues, and the Sprint ICA is effective and adoptable under 47 U.S.C. § 252(i).

[25] AT&T ILECs' Petition for Declaratory Ruling That Sprint Nextel Corporation, Its Affiliates, and Other Requesting Carriers May Not Impose a Bill-and-Keep Arrangement of a Facility Pricing Arrangement Under the Commitments Approved By the Commission in Approving the AT&T-BellSouth Merger. WC Docket No. _____. (Filed February 5, 2008.) Similarly, we find AT&T Kentucky's February 13, 2008 letter to the Commission's Executive Director to be equally unpersuasive. In the letter, AT&T Kentucky urges the Commission to hold this proceeding in abeyance pending the outcome of its petition to the FCC. As discussed herein, 47 U.S.C. § 251(i) provides an independent basis for the adoption of the Agreement, and the FCC's ruling will not affect our decision.

[26] Nextel's Notice of Adoption of Interconnection Agreement at 1.

47 U.S.C. § 252(i) and 47 C.F.R. § 51.809 govern a telecommunications carrier's adoption of an existing interconnection agreement between an ILEC and a non-ILEC.

47 U.S.C. § 252(i) provides:

> A local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

47 C.F.R. § 51.809 provides that:

> (a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e. local, access, or interexchange) as the original party to the agreement.
>
> (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.
>
> (c) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.

The method for adopting an existing interconnection agreement is simple and expedient. 47 C.F.R. § 51.809 contains the only prohibitions by which an ILEC could refuse adoption of an interconnection agreement. Here, AT&T Kentucky did not allege (until its brief in support of request for a procedural schedule) that providing the Sprint ICA to Nextel would cost it more than offering the same ICA to Sprint, nor did AT&T Kentucky allege that providing the Sprint ICA to Nextel is technically infeasible. AT&T Kentucky argues that providing the Sprint ICA to Nextel results in AT&T Kentucky not being able to negotiate possible higher prices for services than it charges to Sprint Wireless. However, this argument is a far cry from alleging that providing the Sprint ICA to Nextel would cost it more than providing it to Sprint Wireless. In fact, AT&T Kentucky's argument is antithetical to the very purpose of 47 U.S.C. § 252(i), which is to allow telecommunications providers to enter into interconnection agreements on the same footing as each other. The FCC, in promulgating the "all-or-nothing" rule, clearly recognized that it would prohibit this type of discrimination:

> We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain benefit of the incumbent LEC's discriminatory bargain. Because the agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.[27]

[27] Second Report and Order at ¶ 19.

By allowing this sort of adoption, the FCC and the 1996 Telecommunications Act ensure that an ILEC, such as AT&T Kentucky, cannot play favorites in a market and determine which businesses succeed and which fail by offering more advantageous terms to one party and lesser terms to another. If AT&T Kentucky can prevent Nextel, or any requesting carrier, from adopting the Sprint ICA or any other interconnection agreement by simply asserting that some of the provisions of the interconnection agreement cannot apply to the requesting carrier, then the very purpose of the all-or-nothing rule is thwarted. Most requesting carriers' business plans or structures differ from one another, and, therefore, it would be difficult to comprehend a situation in which any requesting carrier could adopt an interconnection agreement and have all the provisions apply to it. If AT&T Kentucky's argument is to be believed, then it would result in changing almost every adoption proceeding into an arbitration.

Because the Sprint ICA is effective, Nextel's rights under 47 U.S.C. § 251(i) and 47 C.F.R § 51.809 are sufficient, by themselves, to allow it to adopt the Sprint ICA. If Nextel had not filed its notice of adoption on June 21, 2007, and were to file it today, it would only have to invoke its rights under 47 U.S.C. § 252(i) to adopt the agreement and need not rely on any merger commitments.

AT&T Kentucky states that it has been denied its opportunity to present its substantive case, but does not give a very detailed discussion of what evidence it would present at hearing, nor how the evidence would prove to the Commission that the Sprint ICA would not have to be made available to Nextel for adoption. However, as discussed above, it can only refuse to make available an interconnection agreement if it can convince the Commission that one of two situations exists. Prior to its January 24,

2008 filing, AT&T Kentucky did not allege that it intended to attempt to prove that either of those two situations exist and, therefore, no evidence it presented, or even offered to present prior to January 24, 2008, could have lead the Commission to deny the adoption.

47 C.F.R. § 51.809(a) requires that an incumbent LEC shall make available "without unreasonable delay" any agreement to a requesting carrier. Although no law is directly on point regarding what constitutes an "unreasonable delay" in this context, we find that raising an objection pursuant to 47 C.F.R. § 51.809 to a petition for adoption of an interconnection agreement over 7 months after the petition was filed is unreasonable delay. AT&T Kentucky raised numerous objections to the petition for adoption in both its original objection to the petition, filed on July 3, 2007, and in its petition for reconsideration filed on December 24, 2007. As discussed above, however, an ILEC can only deny adoption of an interconnection agreement if an ILEC can prove one of two situations exists. AT&T Kentucky, until the eleventh hour, did not even raise the specter of any such objections, objecting only on grounds not contemplated in 47 C.F.R. § 51.809(b).

47 C.F.R. § 51.809(b)(1) does provide that an ILEC can refuse the adoption of an interconnection agreement if it can prove to the state commission that the cost of providing the interconnection to the requesting carrier exceeds that of providing it to the original negotiating carrier. This right of refusal cannot be limitless; otherwise, an ILEC could seek to get out from under any interconnection agreement at any time a cost allegedly rises, even after the agreement has been adopted. Here, AT&T Kentucky not only files an untimely request arguing about potential raised costs, but its supposition

that entering into the interconnection agreement would produce higher costs is merely hypothetical. AT&T Kentucky has raised no colorable argument or proof for the existence of different costs.

To the Commission's knowledge, since the enactment of the 1996 Telecommunications Act, no ILEC has objected to the adoption in Kentucky of an interconnection agreement based on the exception found in 47 C.F.R. § 51.809(b)(1). Therefore, AT&T Kentucky's objection is a matter of first impression to the Commission and is a matter of uncharted procedural territory. However, we find that the objection is raised untimely, and moreover, even if it were timely raised, it is not specific enough to establish a colorable claim, much less warrant a hearing. If the Commission were to grant AT&T Kentucky's request for a hearing,[28] at the minimum this proceeding would drag out for another 3 months, which would result in an application for an adoption of an interconnection agreement taking over 10 months to resolve. This would be an unreasonable result. In the future, AT&T Kentucky, or any carrier raising an objection under 47 C.F.R. § 51.809(b) or (c) should raise such objections ex ante, upon the filing of the notice of adoption, and not 7 months after the initial filing. Conceivably, if this is not done, a carrier could continue to raise objections at any time during an adoption

[28] Requests for a hearing made pursuant to 807 KAR 5:001, Section 4(1)(b) are not granted automatically. 807 KAR 5:001, Section 4(1) provides that "[e]xcept as otherwise determined in specific cases," the Commission shall grant a hearing upon application for a hearing or in the event that a defendant has not satisfied a complaint. AT&T Kentucky's request for a hearing is one of the "specific cases" in which the Commission has determined that a hearing should not be held.

proceeding, delaying the adoption until the adoption could be denied pursuant to 47 C.F.R. § 51.809(c).[29]

CONCLUSION

The adoption of an interconnection agreement pursuant to 47 U.S.C. § 252(i) generally is a straightforward procedure and should occur without much delay unless adoption of the agreement falls under the exceptions in 47 C.F.R. § 51.809. These exceptions must be raised as early as practicably possible in a contested proceeding. The practical effect of AT&T Kentucky's untimely and incomplete objections is to attempt to turn a simple adoption proceeding into an arbitration proceeding, possibly exceeding over a year in length, a result that could have been avoided had AT&T Kentucky raised its objections when the petition was filed. Such a result is not only unfair, but it is also prohibited, as it is provided for in neither law nor regulation. Had AT&T Kentucky raised its objections under 47 C.F.R. § 51.809 when the petition was filed, the Commission could have addressed all objections to the petition at the same time and this proceeding would already be complete.

IT IS THEREFORE ORDERED that:

1. AT&T Kentucky's Motion for Reconsideration is denied.

2. AT&T Kentucky's Request for Procedural Schedule and Hearing is denied.

[29] We do not agree with Nextel's assertion in its response to AT&T Kentucky's supplemental submission that AT&T Kentucky's petition with the FCC is made in bad faith or to cause intentional delay in resolution of this proceeding. However, such a filing is a clear example of how an ILEC could continually raise objections to an adoption, stringing the proceeding out for months, if not years. Any objections must be raised ex ante, not post hoc.

3. Within 20 days of the date of this Order, Nextel and AT&T Kentucky shall submit their executed adoption of the Sprint ICA.

4. This is a final and appealable Order.

Done at Frankfort, Kentucky, this 18th day of February, 2008.

By the Commission

ATTEST:

Executive Director