AUG 10 2007
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter Of:

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	))))))	Case No. 2007-00180

SPRINT'S PRE-ARGUMENT BRIEF

Sprint Communications Company L.P. and Sprint Spectrum L.P. (collectively, "Sprint") hereby submit *Sprint's Pre-Argument Brief.*

I. INTRODUCTION AND SUMMARY

Pursuant to the discussions between Commission Staff, Sprint and AT&T at the August 1, 2007 Informal Conference in this case, Sprint has attached hereto the following evidentiary materials respectively filed by the parties with the North Carolina Utilities Commission ("NCUC") in the case styled: *In the Matter of 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 North Carolina D/B/A AT&T Southeast*, Docket No. P-294, Sub 31, originally filed April 17, 2007 ("NCUC P-294, Sub 31 Record"):

Exhibit A: Sprint Prefiled Direct Testimony of Mark G. Felton Filed May 1, 2007

Exhibit B: AT&T Direct Testimony of P.L. (Scot) Ferguson Filed May 25, 2007

Exhibit C: AT&T Direct Testimony of Mike Harper Filed May 25, 2007

Exhibit D: Sprint Rebuttal Testimony of Mark G. Felton Filed June 8, 2007

Exhibit E: AT&T Replacement Scot Ferguson Exhibit PLF-1 for the original Exhibit PLF-1 filed July 26, 2007

Exhibit F: AT&T Motion for Adoption of Pre-filed Testimony of Mike Harper filed July 27, 2007, whereby Mr. J. Scott McPhee was ultimately substituted for and adopted the pre-filed testimony of Mr. Harper.

The NCUC conducted an evidentiary hearing and oral argument on July 31, 2007 in NCUC P-294, Sub 31. Upon receipt, Sprint will further supplement the record by filing a copy of the July 31, 2007 hearing transcript. If, after further consideration of all available material the Commission or Staff have additional fact-related questions, Sprint can make its witness, Mark G. Felton, available to testify in person to further supplement the record as the Commission determines to be necessary.

The operative facts[1] and clear case law[2] support a finding by this Commission that Sprint is entitled to prevail on its one issue presented for arbitration in this matter, i.e., that Sprint is entitled to a 3-year extension of its current month-to-month Interconnection Agreement from a commencement date of March 20, 2007.

It is undisputable that in December, 2006, Sprint and BellSouth Telecommunications, Inc. ("BellSouth") were engaged in ongoing interconnection

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[1] Citations are to Sprint's "*Petition for Arbitration*" filed May 7, 2007 ("Petition"); AT&T's "*Motion to Dismiss and Answer*" filed June 1, 2007 ("Motion" or "Answer" as applicable); AT&T's "*Responses to First Set of Requests for Information of Sprint Communications Company L.P. and Sprint Spectrum L.P.*" filed July 5, 2007 ("Admission No. ___"); NCUC P-294, Sub 31 Record, Exhibit D Rebuttal Testimony of Mark G. Felton Filed June 8, 2007 ("Felton Rebuttal").

[2] In support of the arguments presented herein, Sprint also relies on its *Response to AT&T Kentucky's Motion to Dismiss and Answer* filed June 11, 2007 as if incorporated fully herein ("Sprint Response").

negotiations under Section 251-252 of the Telecommunications Act of 1996 ("Act") and operating under an express, month-to-month Interconnection Agreement. On December 29, 2006 the Federal Communications Commission ("FCC") approved the merger between AT&T, Inc. and BellSouth's then-parent, BellSouth Corporation, and the merger closed the same day. Upon the merger closing, BellSouth became a subsidiary of the newly merged AT&T (and is hereinafter referred to as "AT&T") that is obligated pursuant to interconnection-related Merger Commitment No. 4 to permit Sprint to:

> "extend its current interconnection agreement, regardless of whether its initial term has expired, for a period up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's 'default' provisions."[3]

Immediately after the FCC-approved Merger Commitments became public, the parties considered the Merger Commitments in their ongoing interconnection negotiations. AT&T confirmed Sprint could extend its existing agreement 3 years, but the parties disagree regarding the commencement date for the 3-year extension. The existence of the foregoing *undisputed facts*[4] eliminates any reasonable basis for AT&T to even attempt to assert its Issue 2, and the same should be summarily rejected.

The law is clear on the two controlling points necessary for the Commission to resolve this case. First, the commencement date of a 3-year extension to the parties' current month-to-month Interconnection Agreement is an essential interconnection term

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[3] *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No.* 06-74 (Adopted: December 29, 2006, Released: March 26, 2007), of which the Table of Contents and APPENDIX F are attached to the Petition as Exhibit B ("FCC Order"), APPENDIX F at page 150.

[4] Petition ¶13; Answer ¶17.

and condition that AT&T was obligated to address in the parties' ongoing negotiations pursuant to 47 U.S.C. § 251(c)(2)(D). Absent the parties' negotiated resolution of the commencement date, AT&T was obligated to arbitrate that very issue pursuant to Section 252(b)(1), as well as the change of law and dispute resolution Sections 18.4 and 14.1 of the Parties' existing agreement. The Commission has always had and has exercised its subject matter jurisdiction to resolve disputes regarding contract terms pertaining to the length of an interconnection agreement, and to implement such contract terms pursuant to Section 252(b)(4)(c), and 252(c)(1) and (3) of the Act, as well as Kentucky Revised Statutes Chapter 278.

Second, the FCC expressly recognized in its merger Order that it did not (nor could it):

> "restrict, supersede, or otherwise alter state or local jurisdiction under ... the Act ... or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments."[5]

The foregoing is also consistent with the following 5 separate, affirmative representations also made by AT&T Inc. and BellSouth Corporation to this Commission in order to obtain this Commission's approval of the merger:

- "The Merger will not affect the regulatory authority of the Kentucky Commission over the AT&T and BellSouth operating subsidiaries in Kentucky"[6];
- "Nothing in this transaction will affect the Commission's

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[5] FCC Order, APPENDIX F at page 147.

[6] *In re the Matter of: Joint Application for Approval of the Indirect Transfer of Control Relating to the Merger of AT&T Inc. and BellSouth Corporation,* Case No. 2006-00136 ("Case No. 2006-00136"), letter dated March 31, 2006 from AT&T counsel Holland N. ("Quint") McTyeire, V and BellSouth counsel Cheryl Winn to Ms. Beth O'Donnell, Executive Director, Kentucky Public Service Commission.

regulatory authority over the BellSouth operating subsidiaries and the AT&T subsidiaries in Kentucky. Moreover, the BellSouth operating subsidiaries will remain subject to the same wholesale obligations they have under interconnection agreements and Commission orders"[7];

- "The merger will not impair, compromise, or in any way alter the Commission's authority to regulate BellSouth Telecommunications, Inc. (or, for that matter, the other AT&T and BellSouth subsidiaries currently operating in Kentucky). Upon completion of the merger, the Commission will retain the same authority over the rates, services, and responsibilities of these entities, in accordance with the applicable law, that it does today"[8];

- "Simply put, the merger will not in any way affect the regulatory jurisdiction of the PSC"[9]; and,

- "The PSC's jurisdiction and authority over those operating subsidiaries will not be affected by the merger"[10].

Accordingly, just as the Commission had jurisdiction to resolve disputes regarding contract terms pertaining to the length and commencement of an interconnection agreement before the AT&T / BellSouth merger, nothing inherent in the merger process or the FCC Order altered this Commission's jurisdiction to resolve such disputes.

For the reasons summarized above, and discussed in greater detail below, Sprint respectfully requests that the Kentucky Public Service Commission (the "Commission") find that:

1) the Commission has jurisdiction to resolve the parties' open interconnection

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[7] Case No. 2006-00136, Joint Application for Approval of Indirect Transfer of Control at ¶3,

[8] *Id.* at ¶31.

[9] Case No. 2006-00136, Joint Applicants' Responses to Attorney General's Initial Request for Information, Response to Data Request No. 2.

[10] *Id.*, Response to Data Request No. 34.

dispute over the commencement date of a 3-year extension to their current month-to-month Interconnection Agreement that AT&T offered Sprint pursuant to Merger Commitment No. 4;

2) the commencement date for such 3-year extension is March 20, 2007; and,

3) AT&T's proposed Issue 2 is dismissed with prejudice.

II. FACTS

Sprint and BellSouth Telecommunications, Inc. ("BellSouth") entered into a Commission-approved Interconnection Agreement with an initial January 1, 2001 effective date, and a "true and correct copy of the Parties' *current*, 1,169 page Interconnection Agreement, as amended, can be viewed on AT&T's website at http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf."[11]

The parties' negotiations for a new agreement under Section 251-252 of the Telecommunications Act began in mid-2004.[12] During the course of the negotiations, pursuant to the express terms of the parties' Interconnection Agreement a) the fixed term of the Interconnection Agreement expired on December 31, 2004, whereupon b) there was a "conversion of [the] Agreement to a month-to-month term", and c) upon the filing of an arbitration proceeding in accord with Section 252 of the Act and no decision by the Commission prior to expiration of the fixed term, the agreement was "deemed extended on a month-to-month basis".[13] The month-to-month Interconnection Agreement has been

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[11] Petition ¶7; Answer ¶11; Admission No. 1 (Note – AT&T appears to have inadvertently mistyped the foregoing website address in its Admission, inserting "?" between "states" and "800", rather than "/". To the extent the Commission or Staff seeks to electronically view the parties' current interconnection agreement, the correct website address is as stated in this brief and Petition ¶7 and admitted in Answer ¶11.

[12] Petition ¶8; Answer ¶12; Admission No. 2.

[13] *See* Petition ¶9; Answer ¶13; Admission No. 11, Sections 2.1, 3.3 and 3.4.

kept up-to-date throughout the negotiations via 10 amendments, the last six of which occurred within the negotiations between August, 2004 and October, 2006.[14] The most extensive negotiated amendment was the March 11, 2006 amendment to implement changes resulting from the FCC's Triennial Review Remand Order.[15]

Sprint and BellSouth continued to be engaged in interconnection negotiations when the FCC approved the AT&T – BellSouth merger on December 29, 2006.[16] In order to obtain the FCC's approval, AT&T and BellSouth made promises that became "conditions" of the FCC's merger approval.[17] Among other things, the promises and resulting conditions imposed upon the "new" AT&T merger entities included four interconnection agreement-related promises directed at "Reducing Transaction Costs Associated with Interconnection Agreements".[18] Pertinent to this case, when the former BellSouth became a new AT&T merger entity on December 29, 2006 it became bound by Merger Commitment No. 4, which provides that AT&T:

> "shall permit a requesting telecommunications to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's 'default' provisions."[19]

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[14] Petition ¶7; Answer ¶11; *See* http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf at pages 836 (August, 2004 Amendment) to 1,169 (most recent October, 2006 amendment, *effective in November, 2006*).

[15] *See* http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf at pages 873 - 1,165.

[16] *See* Petition ¶13, first sentence, "Soon after the FCC-approved Merger Commitments were publicly announced on December 29, 2006, the parties considered the impact of the Merger Commitments upon their pending negotiations; Answer ¶17; Admission No. 8.

[17] Petition ¶10; FCC Order, Ordering Clause ¶ 227 at page 112, and APPENDIX F; Answer ¶14; Admission No. 3.

[18] FCC Order at pages 149 - 150, APPENDIX F.

[19] *Id.* at p. 150.

AT&T's Answer paragraph 17 admits without qualification the allegations in Paragraph 13 of the Petition, which unequivocally state:

> Soon after the FCC approved Merger Commitments were publicly announced on December 29, 2006, the Parties considered the impact of the Merger Commitments upon their pending Interconnection Agreement negotiations. AT&T Kentucky acknowledged that, pursuant to Interconnection Merger Commitment No. 4, Sprint can extend its current Interconnection Agreement for three years. The Parties disagree, however, regarding the commencement date for such three-year extension.

Sprint submits it is clear from the foregoing allegations and AT&T admission that the issue regarding a 3-year extension of the parties' current Interconnection Agreement was undeniably considered within the parties' 251-252 negotiations. Sprint was surprised by the recent Florida Public Service Commission ("FPSC") Staff recommendation in the Florida Sprint-AT&T arbitration at the pleading stage (as opposed to post-discovery), which contained no discussion of the foregoing allegations and admission, but refers to an inconsistent AT&T factual assertion "that the 'merger commitment' issue 'was not discussed in the context of the parties' negotiations of a new interconnection agreement'"[20]. Sprint believes that any misinterpretation of these allegations is being appropriately addressed by an Amended Petition filed with the FPSC on August 9, 2007 that provides the negotiation details to make clear what transpired within the parties' 251-252 negotiations regarding AT&T's Merger Commitments.

To the extent any similar question is raised in the minds of either the Kentucky Commission or Staff, Sprint respectfully requests the Commission to either consider the

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[20] *See In the Matter of Petition of Sprint Communications Company Limited Partnership and Sprint Spectrum Limited Partnership d/b/a Sprint PCS for Arbitration of Rates, Terms and Conditions of Intreconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast,*

supplemental NCUC record filed by Sprint as discussed by the parties at the Informal Conference, or set this matter for hearing before the Commission in order for the parties to present a fair, complete and full evidentiary record regarding the parties' 251-252 negotiations with respect to Interconnection Merger Commitment No. 4. Indeed, should there be any question in the mind of this Commission or Staff regarding the nature and extent of the parties' 251-252 negotiations with respect to the Merger Commitments, Sprint would point to the following, which represent further negotiation-specific facts developed in the NCUC record:

1) On January 3, 2007, the parties had a telephone call in which they immediately began discussing the impact of AT&T's interconnection-related Merger Commitments on their pending negotiations. Based on that call, it was agreed that Sprint would submit written Merger Commitment-related questions later the same day, of which the very first question requested:

> "Confirmation that Sprint may extend its 2001 ICA (which is currently on a month-to-month term) for up to three years?"[21]

2) On January 10, 2007, AT&T negotiator Lynn Allen-Flood advised Sprint in writing that it could indeed extend the 2001 Interconnection Agreement, but that more time was required to flesh out the details, stating:

> "BellSouth is working to get answers to these questions but will not have them by our scheduled meeting tomorrow, thus would prefer to cancel that meeting and reschedule once we have more information. The answer to Sprint's main question is that Sprint *can* extend the 2001 ICA, however, I do not yet have all the details to fully respond. Considering this, BellSouth proposes to extend the arbitration close by two weeks and the

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Public Service Commission Staff Memorandum, July 19, 2007 at page 4, Docket No. 070249-TP.

[21] Felton Rebuttal at page 5, lines 7 – 14.

associated letter is attached for your confirmation. Please let me know if you are agreeable to this plan".[22]

3) Thereafter, the parties extended the respective, then-existing 251-252 negotiation arbitration windows for the nine legacy-BellSouth AT&T states not once, but twice, to provide additional time to consider the Merger Commitments in the context of the parties' negotiations. The first extension was for a short period of time from early January to early February as set forth above, followed by yet a longer extension that resulted in the first arbitration window *opening* in late March (*See* Petition Exhibit A).[23]

4) On February 1, 2007, having not received responses to all of its questions, Sprint nevertheless made a good faith settlement offer that incorporated various aspects of the Merger Commitments. Between February 1 and March 7, Sprint attempted to obtain a response from AT&T to its good faith settlement offer and further discuss the Merger Commitments, but it ultimately appeared that AT&T became more interested in delay and non-compliance, proposing yet another extension (this time 60 days) to the arbitration window so that the first window would not even open until June 16. Sprint ultimately concluded it was not willing to leave it to AT&T to further delay negotiations and Sprint sent its March 20, 2007 letter to formally state and summarize the parties' disputed positions regarding the 3-year Interconnection Agreement extension commencement date.[24]

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[22] Felton Rebuttal at page 5, lines 14 – 21 (emphasis in original AT&T e-mail).

[23] Felton Rebuttal at page 6, lines 13 – 19.

[24] Felton Rebuttal at pages 6 line 8 through page 8, line 4.

Sprint's March 20, 2007 letter specifically requested an amendment to Section 2 of the Parties' current month-to-month interconnection agreement that:

a) Converts the Agreement from its current month-to-month term and extends it three years from the date of the March 20, 2007 request to March 19, 2010; and,

b) Provides that the Agreement may be terminated only via Sprint's request unless terminated pursuant to a default provision of the Agreement; and,

c) Since the Agreement has already been modified to be TRRO compliant and has an otherwise effective change of law provision, recognizes that all other provisions of the Agreement, as amended, shall remain in full force and effect.[25]

The parties' impasse regarding the 3-year amendment commencement date was confirmed in writing by AT&T's April 4, 2007 response to Sprint's March 20, 2007 letter. The ultimate effect of AT&T's response was to deny Sprint's request for a 3-year extension of the parties' Interconnection Agreement from March 21, 2007 and reiterate that AT&T will only voluntarily extend the parties' Interconnection Agreement in a manner that results in an extension only to December 31, 2007.[26]

III. LEGAL ARGUMENT

Without any acknowledgement of the subject matter of Merger Commitment No. 4, or citation to a single telecommunications-related authority, AT&T makes the sweeping assertions that:

- an issue "regarding a merger commitment, is completely outside the scope of a Section 251 arbitration"[27];

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[25] Petition ¶14 and Petition Exhibit C; Answer ¶18.

[26] Petition ¶15 and Petition Exhibit D; Answer ¶19.

[27] Motion at page 2.

- "[t]he FCC has the sole authority to interpret, clarify, or enforce *any issue involving merger conditions*"[28]; and,
- "Congress has clearly delegated to the FCC the authority to make and enforce regulatory determinations with regard to the telecommunications industry"[29]

Such assertions are analogous to legacy BellSouth arguments in prior cases before this Commission to the effect that 1) the subject of Bellsouth's Section 271 Unbundled Network Elements ("UNEs") obligations are a "matter of federal-only jurisdiction" over which this Commission had no authority under Section 251[30]; and, 2) the Kentucky Commission had no authority to require BellSouth to provide transiting in an interconnection agreement because transit is not expressly included in Section 251(b) and (c) of the Act[31]. In the first case, the Commission rejected BellSouth's argument on the basis that the Commission has never been precluded from exercising its authority over the pricing of UNEs, which is a matter that is appropriately contained in interconnection agreements and decided by the Commission.[32] In the second case, the Commission rejected BellSouth's argument on the basis the FCC has never precluded the Commission from requiring BellSouth to transit traffic and the rates for such service are appropriately

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[28] Motion at page 3 (emphasis added).

[29] Motion at page 3 - 4.

[30] *In the Matter of: Joint Petition for Arbitration of Newsouth Communications Corp., et al., with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, As Amended,* Order dated March 14, 2006, 2006 Ky. PUC LEXIS 159 at *15 - *16 ("Newsouth 2006 Order").

[31] *In the Matter of: Joint Petition for Arbitration of Newsouth Communications Corp., et al., with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, As Amended,* Order dated September 26, 2005, 2005 Ky. PUC LEXIS 810 at *21 ("Newsouth 2005 Order").

[32] Newsouth 2006 Order at *15 - *17.

contained in an interconnection agreement.[33]

AT&T's assertions also fail to consider the Commission's disposition of AT&T's similar assertion in the state merger-approval Case No. 2006-00136 "that this Commission lacks jurisdiction to enforce federal [merger] conditions in Kentucky and that providing such an avenue ... would result in 'intolerable forum shopping.'" The argument was made in the context of a Motion for reconsideration by intervening CLECs urging the Commission to include a proposed condition in its state merger approval to indicate that the Commission "intends to enforce any appropriate federal conditions that are established in conjunction with the merger". The Commission reasoned there was no need for such conditions at the time of approval because:

> "Nothing prevents the Intervenors or any other persons from petitioning the Commission to establish a docket to review whether Kentucky customers are receiving adequate protection from this Commission *or are receiving the benefits from this merger*."[34]

As further explained below, the law is clear that 1) the *subject matter* of Merger Commitment No. 4, *i.e.* a 3-year extension to the parties' current month-to-month interconnection agreement, is in fact an interconnection term and condition that falls within Section 251(c)(2)(D) of the Act and that has always been arbitrable pursuant to the Commission's jurisdiction under Section 252 Section 252(b)(4)(c), 252(c)(1) and (c)(3), as well as Kentucky Revised Statutes Chapter 278; and, 2) the FCC expressly recognized in its merger Order that it did not do anything to preclude this Commission's continued exercise of its jurisdiction to resolve disputes regarding interconnection-related terms and

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[33] Newsouth 2005 Order at *21 -*22.

[34] Joint Application Case, Order dated August 21, 2006, 2006 Ky. PUC LEXIS 697.

conditions.

A. The Length and Commencement of an Interconnection agreement are negotiable terms and conditions under Section 251 that, if unresolved, become an arbitrable issue over which this Commission has jurisdiction

Sprint has already briefed in its Response to AT&T's Motion to Dismiss and Answer, and incorporates herein by reference, the extensive authority that confirms it is perfectly appropriate and expected that this Commission take into consideration and apply "federal law" in the form of the FCC Order to resolve the parties' dispute - - this is exactly what the Commission does every time it applies the Act, FCC Orders, and FCC rules and regulations whenever it resolves an interconnection-related dispute. The Act expressly provides a jurisdictional scheme of "cooperative federalism" under which Congress and the FCC have specifically designated areas in which they anticipate that state commissions have a role, which undeniably includes matters relating to interconnection pursuant to Sections 251 and 252 of the Act.[35]

Pursuant to Section 251(c)(1) AT&T has a duty to negotiate "particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section [251] and this *subsection [(c)]*".[36] *Subsection 251(c)*(2)(D), imposes upon AT&T "the duty to provide, for … interconnection … on rates, terms and conditions … in accordance with the terms and conditions of the agreement and the requirements of this section [251] and section 252."[37] *Both the length of an interconnection agreement and its commencement date are terms and conditions that, if*

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[35] Sprint Response, Section III at p. 6 – 11.

[36] 47 U.S.C. § 251(c)(1), emphasis added.

[37] 47 U.S.C. § 251(c)(2(D).

disputed, represent the most basic, typical type of interconnection disputes that are subject to Commission resolution.[38]

Two Florida Public Service Commission Orders arising out of arbitrations between two CLECs (MCI and AT&T) and GTE, clearly demonstrate the rationale for state commission's to resolve disputes regarding the term-of-years and commencement date for an interconnection agreement. The CLECs sought five-year term interconnection agreements with GTE, while GTE insisted on a term of no more than two years. The FPSC held that under 252(b)(4)(C) and 252(c)(3) it was required to provide a schedule to implement the parties' agreements, even though the Act, FCC Orders and FCC rules did not contain any specific provisions governing the appropriate term of an agreement.[39] The FPSC then gave the parties another opportunity to negotiate a mutually acceptable term for the agreement. Although the CLECs and GTE ultimately agreed to a 3-year term, AT&T and GTE could not agree on language regarding the *date the agreement could actually commence*. The FPSC arbitrated that dispute as well, again relying upon

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[38] *See e.g., In the Matter of: The Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996,* Order, Kentucky Public Service Commission Case No. 96-478, 1997 Ky. PUC LEXIS at *36 (February 14, 1997) (Commission resolved dispute regarding 5 vs. 2 year contract term); *In the Matter of: Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, As Amended by the Telecommunications Act of 1996,* Order, Kentucky Public Service Commission Case No. 2001-224, 2001 Ky. PUC LEXIS 1418 at *20 (November 15, 2001) (Commission required Verizon to modify provisions regarding term of the agreement to reflect that either party may terminate, subject to other party's right to demand arbitration of the termination).

[39] *In Re: Petition by AT&T Communications of the Southern States, Inc. et. al. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Florida Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996,* Docket Nos. 960847-TP and 960980-TP; Order No. PSC-97-0064-FOF-TP, 1997 Fla. PUC LEXIS 71 at *270 - *271 (January 17, 1997).

252(b)(4)(c) as the basis for its jurisdiction.[40]

Similarly, the 11th Circuit has clearly explained that a state commission's broad authority under Section 252(b)(4)(C) permits it to arbitrate 251-related implementation disputes that are not expressly itemized in Section 251 of the Act.[41] In the *MCI* case, the FPSC originally found that it did not have jurisdiction to arbitrate disputes over enforcement provisions and liquidated damages because those matters were not specifically listed in Section 251 as subjects of arbitration. The 11th Circuit disagreed with this limited view of state Commission jurisdiction over interconnection arbitrations, holding that the FPSC has jurisdiction under 252(b)(4)(C) to arbitrate *any provision* that is "within the realm of 'conditions . . . required to implement' the agreement."[42]

Sprint's Petition unequivocally seeks arbitration of a dispute regarding the date the parties' current month-to-month agreement converts and commences to operate under a new fixed three-year term, clearly falls within the realm of conditions required for continuing implementation of the agreement. Not only does the Commission have jurisdiction pursuant to section 252 of the Act but, upon recognizing this dispute involves "interconnection terms and conditions", AT&T has even expressly admitted the following:

> Kentucky Revised Statutes Chapter 278 authorizes the Kentucky Public Service Commission to establish terms and conditions of interconnection, and to arbitrate any dispute regarding interpretation of interconnection

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[40] *In Re: Petition by AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Florida Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996,* Docket No. 960847-TP; Order No. PSC-97-0585-FOF-TP, 1997 Fla. PUC LEXIS 600 at *1 -*2 and *7 - *9 (May 22, 1997).

[41] *MCI v. BellSouth,* 298 F.3d 1269 (11th Cir. 2002)

[42] *Id,* 1274.

terms and conditions.[43]

In addition to the foregoing identified bases upon which the Commission has authority to act in this matter, the appropriateness of the Commission resolving a dispute arising out of any regulatory action that materially affects any material term of the parties' agreement is also addressed in the parties' Interconnection Agreement. Section 18.4 of the Interconnection Agreement contains a typical "change in law" provision that encompasses changes driven by regulatory or other legal actions and, absent a negotiated resolution of such changes, any disputes over the proposed changes become subject to the Section 14.1 dispute resolution provision.[44] Pursuant to Section 14.1, Sprint, has the option of petitioning either the FCC or the Commission to resolve such a dispute.[45] Sprint opted to pursue arbitration of the parties' dispute before the Commission, rather than the FCC.

This Commission has clearly held that it "has primary jurisdiction over issues regarding the interpretation and implementation of interconnection agreements approved by this Commission", "[m]atters over which this Commission has jurisdiction in the first instance should be addressed by this Commission", and this includes disputes regarding "applicable law" and "change of law" should be brought before the Commission.[46]

Based upon all of the foregoing reasons, it is clear that there are multiple jurisdictional bases upon which the Commission is the proper authority to resolve the

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[43] Admission No. 15.

[44] *See* http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf, Section 18.1 at page 819.

[45] *See* http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf, Section 14.1 at pages 818.

[46] *See* Newsouth 2006 Order at *6 - *7 and Newsouth 2005 Order at *10 -*12.

dispute as presented by Sprint's Issue 1.

B. The FCC's merger Order did not restrict, supercede or otherwise alter the Commission's jurisdiction over interconnection-related terms and conditions

Sprint again incorporates by reference its already extensively briefed authority in Sprint's Response to AT&T's Motion to Dismiss and Answer, establishing that the FCC has repeatedly and expressly recognized in its merger orders that: adoption of merger conditions does not limit the authority of the states to impose or enforce requirements, which can even go beyond FCC-required conditions; the FCC not only expects the states to be involved in the ongoing administration of interconnection-related merger conditions, but recognizes the states' concurrent jurisdiction to resolve interconnection-related disputes pursuant to § 252; and, the FCC itself has expressed a belief that even its complaint enforcement authority may be considered secondary to the states with respect to such disputes.[47]

Despite such history, AT&T apparently contends that in the AT&T / BellSouth merger, the FCC ignored all prior merger precedents and, instead, "explicitly reserved jurisdiction over the merger commitments" by virtue of the following language in the *Order*: "[f]or the avoidance of doubt, unless otherwise stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC." AT&T further asserts that "[n]owhere in Appendix F does the FCC provide that interpretation of merger commitment No. 4 is to occur outside the FCC."[48] As Sprint has previously pointed out, this is simply not an accurate statement with respect to Appendix F.

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[47] Sprint Response at 11 – 15.

[48] Motion at p. 4.

The FCC unequivocally recognized in Appendix F that it has no authority to alter the states' *concurrent* statutory jurisdiction under the Act over interconnection matters addressed in the Merger Commitments. The paragraph immediately preceding the language relied upon by AT&T states:

> ***It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments***, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

FCC Order at p. 147, APPENDIX F (emphasis added).

The above language was not in Mr. Quinn's December 28, 2006 proposed merger commitment letter, but was *specifically added by the FCC.* Such language serves the obvious purpose of recognizing, similar to what the FCC has done in prior merger orders, that the Act is designed with dual authority for both the states and the FCC. The FCC Order reflects absolutely no attempt by the FCC, nor could it legitimately do so, to alter the states' primary responsibility for arbitrating, finalizing and implementing a dispute between the parties over a now required 3-year interconnection extension amendment. As recognized in the Act and articulated by the Wisconsin PSC in *Ameritech ADS*, the FCC's role in this regard is secondary unless the state fails to take action or, as stated by the FCC itself in *Core Communications,* if a carrier elects to pursue a direct enforcement action with the FCC pursuant to Section 206 and 208.[49]

Considering the former SBC's post-merger action in the *Core Communications* case (*i.e.*, contending the FCC lacked enforcement jurisdiction over a merger condition

[49] *See* Sprint Response discussing *Ameritech* and *Core Communications* cases at pages 9 – 13.

complaint)[50], the language relied on by AT&T merely serves to make it clear that the FCC's enforcement authority remains an *available* means as opposed to the *exclusive* means by which to address any AT&T interconnection-related Merger Commitment violations. Appendix F does not contain, nor could it, any provision that even attempts to divest the states of their jurisdiction over interconnection-related merger commitment disputes and vest *exclusive* jurisdiction over such disputes in the FCC. Not only does the FCC Order recognize that the merger could not alter this Commission's jurisdiction under the Act, as previously identified in the Summary section of this brief, the merging AT&T and BellSouth entities affirmatively represented to this Commission no less than 5 separate times, in one form or another that "[s]imply put, the merger will not in any way affect the regulatory jurisdiction of the PSC"[51].

Accordingly, just as the Commission had jurisdiction to resolve disputes regarding contract terms pertaining to the length of an interconnection agreement before the AT&T / BellSouth merger, it still has jurisdiction to resolve such disputes.

IV. AT&T'S PROPOSED ISSUE 2

Footnote 6 of Sprint's Response to AT&T's Motion to Dismiss and Answer clearly states that "[t]o the extent that any further response than what is set forth herein may be deemed necessary to alleged facts contained in AT&T's Motion[52], Sprint denies

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[50] *Id.*

[51] *See* I. Introduction and Summary herein at page 5; Case No. 2006-00136, Joint Applicants' Responses to Atty. General Data Request No. 2.

[52] Within Sprint's Response, the term "Motion" synonymously refers to both AT&T's "Motion to Dismiss and its interrelated Answer". Sprint Response at page 2.

all such AT&T alleged facts except to the extent otherwise admitted herein." Section IV of Sprint's Response clearly raises Sprint's relevancy objection to AT&T's Issue 2 in light of the fact AT&T has already admitted without qualification that Sprint had a right to a 3-year extension and the dispute was simply over the commencement date (Petition ¶13; Answer ¶17). Further, Sprint affirmatively stated that AT&T's proposed "Standard" Attachment 3 – which AT&T attempts to impose upon Sprint via Issue 2 - was never part of any discussion between the parties. (Sprint Response at page 15 -16).

Additionally, AT&T has conducted no discovery and submitted no evidence regarding Issue 2. Thus, unless AT&T is abandoning Issue altogether, it is presumably relying upon the NCUC P-294, Sub 31 record for any "evidence" with respect to Issue 2. Even the NCUC P-294, Sub 31 record does not establish that AT&T's proposed "generic Attachment 3" is a proper issue for arbitration. *See* Felton Rebuttal at page 14, lines 4 – 16.

Based on the foregoing, AT&T's Issue 2 should be summarily dismissed.

V. POLICY CONSIDERTIONS

Aside from the obvious implications of the Commission being told one thing (5 times) in the AT&T / BellSouth state merger case regarding the Commission's unaffected authority over the merger entities and interconnection agreements, and then the *"new"* AT&T turning around and contending the exact opposite, there are three compelling policy reasons why the Commission should recognize and assert its jurisdiction in this matter, and find in favor of Sprint's proposed March 20, 2007 commencement date:

First, this Commission is in the best position to *timely implement* the Merger Commitments in a manner that is "not inconsistent with [the] commitments" and

continues to encourage competition within the State of Kentucky to the greatest extent possible. Unlike this Commission, the FCC will not be subject to the same Section 252(b)(4)(C) statutorily imposed 9-month time-frame to resolve and implement the interconnection agreement dispute in this case. No decision by this Commission will only further exacerbate the untenable position in which Sprint is placed by AT&T's refusal to voluntarily honor its promises associated with "Reducing Transaction Costs Associated with Interconnection Agreements". In the face of a non-time bound referral to the FCC, AT&T will undoubtedly contend that Sprint's related affiliate Nextel South Corporation ("Nextel") cannot, pursuant to yet another AT&T Merger Commitment promise, "adopt" the Sprint Interconnection Agreement as long as its "term" is in litigation – notwithstanding the simple fact that in the meantime the 42-month lifespan of the merger conditions continues to run.[53]

Second, if the Commission does not accept jurisdiction in this case – which represents the purest of all interconnection-type disputes – it is effectively inviting AT&T to challenge the Commission's jurisdiction and delay resolution of future disputes by attempting to push any dispute to the FCC whenever the magic words "Merger Commitment" touch the dispute. For example, the Commission's refusal to accept and exercise jurisdiction in this case could logically be raised by AT&T to thwart this Commission's exercise of jurisdiction in any future carrier, Staff or consumer dispute

[53] If the Commission is even remotely considering such action, Sprint suggests that the equitable way to ameliorate any harm to Sprint and Nextel South is to condition any referral of this matter to the FCC upon AT&T's consent, and dismissal with prejudice of any opposition, to the adoption of the Sprint Interconnection Agreement by Nextel in Docket No. P-55, Sub 1710. This is what AT&T promised in the first place and, it should have no objection to honoring that promise for however long the Sprint Interconnection Agreement remains in place.

involving: AT&T's failure to promote the accessibility of broadband services to consumers[54]; an AT&T failure to offer specified UNEs[55]; an AT&T failure to maintain the status quo regarding its transit service pricing[56]; or an AT&T failure to abide by *any* AT&T interconnection agreement approved by this Commission or within another state that another carrier seeks to adopt within or "port" into Kentucky[57], just to name a few. It is proper for the Commission to assert jurisdiction and resolve the interconnection-related dispute in this case, just as it would be proper for the Commission to assert jurisdiction in future disputes involving the examples mentioned above.

And finally, Sprint's proposed 3-year extension commencement date is consistent with the express terms of the FCC's merger Order. The Order specifically states that Sprint is entitled to extend its "current" month-to-month agreement without regard to the expiration status of any "initial term"[58]. Further, the Merger Commitments apply "for a period of forty-two months *from the Merger Closing Date*"[59]. Sprint's interpretation recognizes that the Merger Commitments were intended to encourage competition by reducing interconnection costs between a requesting carrier such as Sprint *and the new 22-state mega-billion dollar, post-merger AT&T.*[60] Indeed, there was acknowledged FCC

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[54] *See* APPENDIX F at page 148, Merger Commitment "Promoting Accessibility of Broadband Service" ¶3.

[55] *See* APPENDIX F at page 149, Merger Commitment "UNEs" ¶1.

[56] *See* APPENDIX F at page 153, Merger Commitment "Transit Service".

[57] *See* APPENDIX F at page 149, Merger Commitment "Reducing Transaction Costs Associated with Interconnection Agreements" ¶1.

[58] APPENDIX F at page 150, Merger Commitment "Reducing Transaction Costs Associated with Interconnection Agreements" ¶4.

[59] APPENDIX F at page 147, first un-numbered paragraph under "Merger Commitment ".

[60] *See* FCC Order at page 169, "Concurring Statement of Commissioner Michael J. Copps":

"... we Commissioners were initially asked to approve the merger the very next day ***without single***

concerns regarding a merger that created a "consolidated entity – one owning nearly all of the telephone network in roughly half the country – *using its market power to reverse the inroads that new entrants have made and, in fact, to squeeze them out of the market altogether*."[61]

> To mitigate this concern, ***the merged entity*** has agreed to allow the portability of interconnection agreements and to ensure that the process of reaching such agreements is streamlined. These are important steps for fostering residential telephone competition and ensuring that this merger does not in any way retard such competition.[62]

Notwithstanding the foregoing background, AT&T's proposed application of the 3-year interconnection agreement extension results in 2 ½ years being applied between Sprint and *an independent pre-merger BellSouth entity* during such 2 ½ year retroactive period – which begs the question: just how does that encourage competition by reducing interconnection-agreement related costs between Sprint and the "*new*" post-merger billion dollar AT&T? The obvious answer is: *it doesn't*, and that is why it is, on its face, contrary to the very competition that Merger Commitment No. 4 was intended to encourage for at least a post-merger 3-year period, and must be rejected.

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condition to safeguard consumers, businesses, or the freedom of the Internet. This is all the more astonishing when you consider that this $80-some odd billion dollar acquisition would result in a new company with an estimated $100 billion dollars in annual revenue, employing over 300,000 people, owning 100% of Cingular (the nation's largest wireless carrier), covering 22 states, providing service to over 11 million DSL customers, controlling the only choice most companies have for business access services, serving over 67 million access lines, and controlling nearly 23% of this country's broadband facilities."

[61] *Id.* at page 172, emphasis added.

[62] *Id., emphasis added.*

CONCLUSION

Sprint has properly invoked the Commission's jurisdiction with respect to an interconnection-related dispute regarding the term of the parties' interconnection agreement. The FCC Order is nothing more than another form of "federal" law which the Commission is required to take into consideration and apply in rendering a decision that is not inconsistent with the Act. Sprint's position is consistent with the express terms of the FCC Order and promotes competition, whereas AT&T's position is inconsistent with both the express terms of the FCC Order and long-standing, recognized arbitration procedure under the Act. If adopted, AT&T's position and will not only thwart competition but also the exercise of this Commission's jurisdiction in any future matter that involves an AT&T merger commitment.

For all of the reasons stated herein, Sprint respectfully requests that the Commission:

1) find it has jurisdiction to resolve the parties' open interconnection dispute over the commencement date of a 3-year extension to their current month-to-month Interconnection Agreement that AT&T offered Sprint pursuant to Merger Commitment No. 4;
2) find the commencement date for such 3-year extension is March 20, 2007;
3) dismiss AT&T's proposed Issue 2 with prejudice; and,
4) grant such further relief as is just and proper consistent with the above requested action.

Respectfully submitted this 10th day of August, 2007.

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I certify that a copy of this Brief was served by first class mail the 10th day of August, 2007 on:

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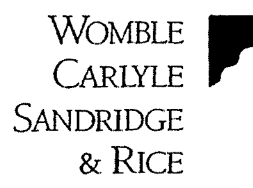
EXHIBIT A



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May 1, 2007

VIA HAND DELIVERY

Ms. Renne Vance, Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27611

FILED
MAY 0 1 2007
Clerk's Office
N.C. Utilities Commission

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MAY 0 1 .
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RE: Docket No. P-294, Sub 31 -- 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 North Carolina, d/b/a AT&T Southeast

Dear Ms. Vance:

Attached for filing in the above-referenced docket is an original and thirty-one copies of Prefiled Direct Testimony of Mark G. Felton.

Also enclosed is one additional copy to be file-stamped and returned with our courier. Thank you for your assistance, and please call me if you should have any questions regarding this matter.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company

Mary Lynne Grigg

MLG:dd

Enclosures

cc: Edward L. Rankin, III, Esq.
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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

FILED
MAY 01 2007
Clerk's Office
N.C. Utilities Commission

Docket No. P-294, Sub 31

IN THE MATTER OF 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 NORTH CAROLINA D/B/A AT&T SOUTHEAST	)	**PREFILED DIRECT TESTIMONY OF MARK G. FELTON FILED MAY 1, 2007**

1 **I. INTRODUCTION**

2 **Q. Please state your name, business address, employer and current position.**

3 A. My name is Mark G. Felton. My business address is 6330 Sprint Parkway,
4 Overland Park, KS 66251. I am employed as a Contracts Negotiator III in the
5 Access Solutions group of Sprint United Management, the management
6 subsidiary of Sprint Nextel Corporation ("Sprint Nextel").

7 **Q. On whose behalf are you testifying?**

8 A. I am testifying on behalf of Sprint Communications Company L.P. ("Sprint
9 CLP") and Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS"). Sprint CLP is
10 a competing local provider authorized to provide local telecommunications
11 services in North Carolina, and Sprint PCS is a commercial mobile radio service
12 ("CMRS") provider licensed by the Federal Communications Commission
13 ("FCC") to provide wireless services in North Carolina. I refer to Sprint CLP

1 and Sprint PCS collectively in my testimony as "Sprint".

2 **Q. Please outline your educational and business experience.**

3 A. I graduated from the University of North Carolina at Wilmington in 1988 with a
4 B.S. degree in Economics. In 1992, I received a Masters degree in Business
5 Administration from East Carolina University. I have been employed by a
6 subsidiary of Sprint Nextel (or of its legacy Sprint parent predecessor in interest)
7 since 1988.

8 I began my career in 1988 as a Management-Intern Staff Associate at
9 Carolina Telephone. Between 1988 and 1999, I held jobs with responsibility for
10 such things as Part 36 Jurisdictional Cost Studies used in monthly booking and
11 budgeting, identification of costs and developing prices for Carolina Telephone's
12 interexchange facilities lease product, Carolina Telephone's optional intraLATA
13 toll product, Saver*Service, maintenance of the General Subscriber Services
14 Tariff for South Carolina and primary contact for the South Carolina Public
15 Service Commission staff on regulatory issues, and analytical support for issues
16 such as access reform, price caps, and local competition.

17 In June, 1999, I accepted the position of Manager in the Local Market
18 Development group. In this position I initially assisted, and then ultimately
19 became the Manager responsible for, pursuing and supporting implementation of
20 Sprint CLP interconnection agreements ("ICAs") under the Communications Act
21 of 1934, as amended (the "Act"), with incumbent local exchange carriers. My
22 responsibilities included negotiation, arbitration support (including the

1 submission of testimony before various state Commissions), and resulting
2 implementation of ICAs, including the existing ICA with BellSouth
3 Telecommunications, Inc. ("legacy BellSouth"), which I understand to be the
4 party in this docket now known as BellSouth Telecommunications, Inc. d/b/a
5 AT&T North Carolina d/b/a AT&T Southeast ("AT&T North Carolina"). I also
6 have personal knowledge of, and had at the time either direct or supervisory
7 responsibility regarding, each of the ten subsequent amendments to the parties'
8 existing ICA.

9 By 2007, my responsibilities expanded to include management of all
10 Sprint Nextel interconnection agreement activity (i.e., CLP, wireless and the
11 former Sprint LTD LEC interests) including those within the legacy BellSouth
12 territory States.

13 Throughout the performance of my interconnection-related
14 responsibilities from 1999 through the present, I have been required to
15 understand and implement on a day-to-day basis Sprint's rights and obligations
16 (initially as a CLP, and then also as a CMRS provider) under the Act, the FCC
17 rules implementing the Act, and federal and state authorities regarding the Act
18 and FCC rules.

19 Q. **Before what regulatory commissions have you provided testimony?**

20 A. In addition to providing testimony before the North Carolina Utilities
21 Commission ("Commission'), I have provided testimony before the Florida
22 Public Service Commission, the Georgia Public Service Commission, the

1 Kentucky Public Service Commission, the Louisiana Public Service
2 Commission, and the South Carolina Public Service Commission. In addition, I
3 represented Sprint CLP's business interests in an FCC staff mediation in a
4 "rocket docket" complaint proceeding.

5 Q. **What is the purpose of your testimony?**

6 A. The purpose of my testimony is to provide input and background to the
7 Commission regarding Sprint's Petition for Arbitration of the single issue of
8 whether AT&T North Carolina can deny Sprint's request to extend the parties'
9 current ICA for three years from March 20, 2007 pursuant to Merger Condition
10 No. 4 as approved by the FCC in the merger of AT&T, Inc. and BellSouth
11 Corporation (collectively "AT&T/BellSouth"). Specifically, I will explain the
12 current status of the parties' existing ICA, the basis upon which Sprint requested
13 AT&T North Carolina to extend the parties' current ICA for three full years from
14 March 20, 2007 pursuant to Merger Condition No. 4, and Sprint's positions in
15 light of AT&T North Carolina's refusal to honor Sprint's request.

16 **II. STATUS OF ICA AND HISTORY OF NEGOTIATIONS**

17 Q. **Is there currently an ICA in effect between Sprint and AT&T North**
18 **Carolina?**

19 A. Yes. The current ICA was initially approved by the Commission in Docket No.
20 P-294, Sub 23. By mutual agreement, the Interconnection Agreement has been
21 amended ten times. It is my general understanding, and Sprint has relied upon,
22 the general practice of legacy BellSouth to file all ICA amendments with the

1 Commission. I believe a true and correct copy of the parties' current ICA, as
2 amended, is available for public review as a composite 1,169 page document
3 located on AT&T North Carolina's website at:
4 http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf
5 Q. **Can you please summarize for the Commission each ICA amendment,**
6 **including its execution dates, the Sections affected by each amendment, and**
7 **the location of each amendment within the composite document found on**
8 **the AT&T North Carolina website ("Composite ICA")?**
9 A. Yes. Each amendment, identified by execution dates, affected sections, can be
10 respectively located within the Composite ICA document on the AT&T North
11 Carolina website as follows:
12 • *The 1st Amendment* was executed by legacy BellSouth on May 7, 2003 and
13 Sprint on May 5, 3003 to include a new Section 2.1.1 in Attachment 2
14 regarding Unbundled Network Element ("UNE") loops, and is located at
15 Composite ICA pages 809-810.
16 • *The 2nd Amendment* was executed by legacy BellSouth on August 26, 2003
17 and Sprint on August 25, 2003 to add UNE rates and services specific to the
18 states of Georgia and North Carolina in Exhibit B of Attachment 2, and is
19 located at Composite ICA pages 811-814.
20 • *The 3rd Amendment* was executed by legacy BellSouth on December 3, 2003
21 and Sprint on December 2, 2003 to delete, replace or otherwise add to
22 Sections 2, 3, 10.11, 11.1 through 11.7, 14, 18.4 and 18.5, 29.3, 29.4, 29.5

1 and 37 in the General Terms and Conditions-Part A, Section 4.4 and Exhibit
2 C to Attachment 1 – Resale, Sections 1.4.1, 1.42, 8.6, 13.2.1, 13.2.2, 13.2.4,
3 13.2.5, 13.6, 13.7, 14.1, 14.2 in Attachment 2, 1.15 in Attachment 7, and is
4 located at Composite ICA pages 815 to 832. Pertinent to this docket, the 3rd
5 Amendment expressly provided:

6 2. Term of the Agreement
7
8 2.1 The term of this Agreement shall be from the effective date as set
9 forth above and shall expire as of June 30, 2004. Upon mutual
10 agreement of the Parties, the term of this Agreement may be
11 extended. ***If, as of the expiration of this Agreement, a Subsequent***
12 ***Agreement has not been executed by the Parties, this Agreement***
13 ***shall continue on a month-to-month basis.***
14
15 3. Renewal
16
17 3.1 The Parties agree that by no later than one hundred and eighty (180)
18 days prior to the expiration of this Agreement, they shall commence
19 negotiations for a new agreement to be effective beginning on the
20 expiration date of this Agreement (Subsequent Agreement).
21
22 3.2 If, within one hundred and thirty-five (135) days of commencing the
23 negotiation referred to in Section 3.1 above, the Parties are unable
24 to negotiate new terms, conditions and prices for a Subsequent
25 Agreement, either Party may petition the Commission to establish
26 appropriate terms, conditions and prices for the Subsequent
27 Agreement pursuant to 47 U.S.C. 252.
28
29 3.3 Notwithstanding the foregoing and except as set forth in Section 3.4
30 below, in the event that, as of the date of the expiration of this
31 Agreement and conversion of this Agreement to a month-to-month
32 term, the Parties have not entered into a Subsequent Agreement and
33 no arbitration proceeding has been filed in accordance with Section
34 252 of the Act, or the Parties have not mutually agreed where
35 permissible, to extend, then either Party may terminate this
36 Agreement upon sixty (60) days notice to the other Party . … .
37
38 3.4 ***If an arbitration proceeding has been filed in accordance with***

1 ***Section 252 of the Act and if the Commission does not issue its***
2 ***order prior to the expiration of this Agreement, this Agreement***
3 ***shall be deemed extended on a month-to-month basis until the***
4 ***Subsequent Agreement becomes effective.*** . . . .
5
6 Composite ICA at pages 815 – 816 (emphasis added).
7
8 • *The 4th Amendment* was executed by legacy BellSouth on June 3, 2004 and
9 Sprint on June 2, 2004 to replace Section 2.1 of the General Terms and
10 Conditions – Part A, and is located at Composite ICA pages 833-834. Again,
11 pertinent to this docket, the 4th Amendment expressly provided:

12 2.1 The term of this Agreement shall be from the effective date as set forth
13 above and shall expire as of December 31, 2004. Upon mutual
14 agreement of the Parties, the term of this Agreement may be extended.
15 ***If, as of the expiration of this Agreement, a Subsequent Agreement***
16 ***has not been executed by the Parties, this Agreement shall continue***
17 ***on a month-to-month basis.***
18
19 Composite ICA at page 833 (emphasis added).

20 • *The 5th Amendment* was executed by legacy BellSouth on August 23, 2004
21 and Sprint on August 19, 2004 to make changes regarding Local Number
22 Portability charges in Attachment 2, and is located at Composite ICA pages
23 835-836.

24 • *The 6th Amendment* was executed by legacy BellSouth on January 19, 2005
25 and Sprint on January 13, 2005 to make changes to Section 4.8 in Attachment
26 3 regarding Sprint PCS Network Managers, and is located at Composite ICA
27 pages 837-838.

28 • *The 7th Amendment* was executed by legacy BellSouth on February 2, 2005
29 and Sprint on January 31, 2005 to incorporate UNE 2-Wire Voice Loop /

1 Line Port Platform related rates and USOCs specific to each of the nine
2 legacy BellSouth states into Attachment 2, and is located at Composite ICA
3 pages 840 to 859.

4 • *The 8th Amendment* was executed by legacy BellSouth on February 2, 2005
5 and Sprint on January 31, 2005 to add Section 11.1.1 related to melded
6 Tandem Switching to Attachment 2, and is located at Composite ICA pages
7 860 to 871.

8 • *The 9th Amendment* was executed by legacy BellSouth on April 27, 2006 and
9 Sprint on April 26, 2006 to replace Section 17 of the General Terms and
10 Conditions, transfer Sections pertaining to certain subject matters from
11 Attachment 2 to Attachment 3, replace Attachment 2 with a new Attachment
12 2 to make the ICA compliant with the FCC March 11, 2005 effective
13 Triennial Review Remand Order ("TRRO") in WC Docket No. 04-313, add
14 SS7 rates to Attachment 3, and modify Section 1.1. of Attachment 6, and is
15 located at Composite ICA pages 873 to 1165.

16 • *The 10th Amendment* was executed by legacy BellSouth on October 16, 2006
17 and Sprint on September 29, 2006 to replace language in Section 6.2 through
18 6.4 of Attachment 3, and is located at Composite ICA pages 1166 to 1169.

19 **Q. In relation to the parties' 10 amendments to the ICA, when were**
20 **negotiations initiated for a new ICA?**

21 A. Between the 4th (June, 2004) and the 5th (August, 2004) amendments. On July 1,
22 2004, I sent legacy BellSouth a request for negotiation of a subsequent

1 interconnection agreement ("RFN") pursuant to Sections 251, 252 and 332 of the
2 Act.

3 Q. **Did the parties mutually agree to change the start date of Sprint's RFN, and**
4 **the corresponding applicable Section 252(b)(1) day 135 start and day 160**
5 **close dates regarding such "window"?**

6 A. Yes, repeatedly. Attached as Exhibit A to Sprint's Petition is a copy of the
7 parties' most recent agreement regarding the date of Sprint's RFN and the
8 corresponding applicable Section 252(b)(1) arbitration "window" day 135 start
9 and day 160 close dates for each of the nine states in the legacy BellSouth
10 territory.

11 Q. **In light of the fact the 4th Amendment to the ICA stated that "[t]he term of**
12 **this Agreement shall be from the effective date as set forth above [i.e.**
13 **January 1, 2001] and shall expire as of December 31, 2004", what is Sprint's**
14 **position regarding the continuing effectiveness of the ICA after December**
15 **31, 2004?**

16 A. It is Sprint's position that, based on the express, unequivocal language of
17 Sections 2.1 and 3.4 of the Terms and Conditions section of the parties' ICA, as
18 long as there has been a mutually agreed to "open" arbitration window with no
19 Subsequent Agreement, the only thing that happened as of December 31, 2004
20 was that the ICA automatically converted from a stated "fixed" term to a rolling
21 "month-to-month" term. Further, the ICA expressly states that under such
22 circumstances it is "deemed to be extended on a month-to-month basis". Based

1 on the foregoing, the ICA has continued as a current, effective, *unexpired* ICA
2 the same as if the original term was "month-to-month" instead of a stated "fixed"
3 term. *See* "Term" Section 2.1 at Composite ICA page 833 and "Renewal"
4 Section 3.4 at Composite ICA page 816.
5
6 **Q. Did Sprint ever seek and obtain any confirmation in writing from legacy**
7 **BellSouth regarding the continuing effectiveness of the ICA after December**
8 **31, 2004 as long as there was an "open" arbitration window?**
9 A. Yes. Attached to my testimony as MGF-1 is an e-mail from legacy BellSouth
10 attorney Rhona Reynolds to Sprint attorney Joe Cowin which, in pertinent part,
11 states:

12 ... Pursuant to our discussion yesterday morning, this letter will confirm that
13 the existing provisions of the ICA between Sprint and BellSouth that we
14 discussed *would cause the ICA to change to a month-to-month term*
15 *automatically upon expiration of the term, which is currently December 31,*
16 *2004. BellSouth considers ICAS that are on a month-to-month term to still*
17 *be effective and, therefore, permits amendment of those agreements in*
18 *accordance with the provisions of the ICA. The provision that gives*
19 *BellSouth the right to terminate the agreement upon 60 days notice would not*
20 *be invoked by BellSouth during the period when the arbitration window is*
21 *still open* (emphasis added).
22
23
24 **Q. Have the parties continued to treat the ICA as a current and effective ICA**
25 **throughout the extended negotiations?**
26 A. Yes. The parties have not only continued, without interruption, to operate
27 pursuant to the terms of the ICA but, as previously summarized in my testimony,
28 negotiated and entered into six *additional* amendments to the ICA between

1 Sprint's initial July, 2004 RFI and the third quarter of last year, 2006.

2 Q. **What prompted the multiple extensions between Sprint's initial July, 2004**
3 **RFI and the filing of Sprint's Petition?**

4 A. The short answer is – the unsettled environment that existed in the
5 telecommunications industry surrounding UNEs. By agreement, between roughly
6 late 2004 through early 2006, the parties' focused their efforts on the various
7 TRRO-related litigation that was underway in the different states, followed by
8 extensive negotiations that revised Attachment 2 in order to bring the ICA into
9 compliance with the FCC's final TRRO rules affecting UNEs. The most
10 extensive ICA amendment, i.e. the 9th Amendment executed by the parties in
11 April 27, 2006 (Composite ICA pages 873 to 1165), reflects the fruits of the
12 parties' TRRO-related negotiations. Beginning in approximately May, 2006 the
13 parties then turned their attention back to and commenced negotiations regarding
14 the non-UNE sections of the ICA.

15 Q. **As of December 29, 2006, had the parties' ever reached a meeting of the**
16 **minds as to all outstanding issues in the ongoing ICA negotiations?**

17 A. No. While the parties had reached tentative agreement on several significant
18 outstanding issues, there did remain substantive areas of dispute. It has always
19 been Sprint's understanding and business practice that, in any negotiation,
20 tentative resolutions on individual issues are subject to achieving a final
21 acceptable resolution on all issues, which never occurred between the parties.

22

1 **III. THE AT&T/BELLSOUTH MERGER AND COMMITMENTS**

2 **Q. What happened on December 29, 2006?**

3 A. On December 29, 2006, the FCC approved the merger of AT&T, Inc. and
4 BellSouth Corporation (collectively "AT&T/BellSouth") subject to certain
5 AT&T/BellSouth voluntary merger commitments ("Merger Commitments")
6 which were set forth in a letter from AT&T, Inc.'s Senior Vice President –
7 Federal Regulatory, Robert W. Quinn, Jr., that was filed with the FCC on
8 December 28, 2006. Following the FCC's approval on December 29, 2006, the
9 AT&T/BellSouth merger closed the same day, making December 29, 2006 the
10 "Merger Closing Date".

11 The Merger Commitments can also be found in the FCC's March 26,
12 2007 formal Order authorizing the AT&T/BellSouth merger, which incorporated
13 the AT&T/BellSouth offered Merger Commitments.[1] As an express condition of
14 its merger authorization, the FCC Ordered that "AT&T and BellSouth shall
15 comply with the conditions [i.e., the "Merger Conditions"] set forth in Appendix
16 F" of the FCC Order.[2] A copy of the Table of Contents and Appendix F to the
17 FCC Order is attached as Exhibit "B" to Sprint's Petition.

18 It is my understanding that AT&T North Carolina is the same pre-merger
19 legacy BellSouth entity which provides wireline communications services,

---

[1] *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control,* WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007) ("FCC Order").

[2] FCC Order, Ordering Clause ¶ 227 at page 112.

1 including local exchange, network access, intraLATA long distance services,
2 Internet services and the services to Sprint under the current ICA in North
3 Carolina, and became a post-merger AT&T/BellSouth ILEC subsidiary entity
4 that is bound by the Merger Commitments.

5 **Q. Does the FCC Order include any language regarding the commencement**
6 **date of the Merger Conditions?**

7 A. Yes. The FCC Order unequivocally states:
8
9 MERGER COMMITMENTS
10
11 For the avoidance of doubt, *unless otherwise expressly stated to the*
12 *contrary, all conditions and commitments* proposed in this letter are
13 enforceable by the FCC and would *apply in the AT&T/BellSouth in-*
14 *region territory*, as defined herein, for a period of forty-two months *from*
15 *the Merger Closing Date* and would automatically sunset thereafter.
16
17 FCC Order at p. 147, APPENDIX F (emphasis added).

18 **Q. Which Merger Commitment is Sprint concerned about in this docket?**

19 A. The Merger Commitment identified as "Reducing Transaction Costs Associated
20 with Interconnection Agreements" paragraph No. 4, which expressly provides:

21 The AT&T/BellSouth ILECs *shall permit a requesting*
22 *telecommunications carrier to extend its current interconnection*
23 *agreement*, regardless of whether its initial term has expired, *for a period*
24 *up to three years*, subject to amendment to reflect prior and future
25 changes of law. During this period, the interconnection agreement may
26 be terminated only via the carrier's request unless terminated pursuant to
27 the agreement's 'default' provisions".
28
29 FCC Order at p. 150, APPENDIX F (emphasis added).
30
31 **Q. Did the parties discuss the impact of the AT&T/BellSouth merger upon the**
32 **then-pending ICA negotiations?**

1 A. Yes. Soon after the FCC-approved Merger Commitments were publicly
2 announced on December 29, 2006, the parties discussed the impact of the Merger
3 Commitments upon their pending ICA negotiations, and AT&T North Carolina
4 acknowledged that pursuant to Interconnection Merger Commitment No. 4 Sprint
5 can extend its existing ICA for three years. The parties disagree, however,
6 regarding the commencement date for such three-year extension.

7 **Q. What did Sprint do in response to the position taken by AT&T North**
8 **Carolina regarding Merger Commitment No. 4?**

9 A. I sent a letter dated March 20, 2007 to Ms. Lynn Allen-Flood (AT&T North
10 Carolina's point of contact during the ICA negotiations), in which I explained
11 that: i) Sprint considers the Merger Commitments to constitute AT&T North
12 Carolina's latest offer for consideration within the parties' 251/252 negotiations
13 that superseded or may be viewed in addition to any prior offers AT&T North
14 Carolina had made to the contrary; ii) pursuant to the express terms of
15 Interconnection Merger Commitment No. 4, Sprint requested an amendment to
16 Section 2 of the parties' current month-to-month ICA interconnection agreement
17 that

18 a) Converts the Agreement from its current month-to-month term
19 and extends it three years from the date of the March 20, 2007
20 request to March 19, 2010; and,
21
22 b) Provides that the Agreement may be terminated only via Sprint's
23 request unless terminated pursuant to a default provision of the
24 Agreement; and,
25
26 c) Since the Agreement has already been modified to be TRRO

1 compliant and has an otherwise effective change of law provision,
2 recognizes that all other provisions of the Agreement, as amended,
3 shall remain in full force and effect
4
5 and; iii) I further provided and requested AT&T North Carolina to execute and
6 return the proposed Amendment to implement Sprint's request regarding Merger
7 Commitment No. 4. A copy of my March 20, 2007 letter and Sprint's proposed
8 Amendment are attached to Sprint's Petition as Exhibit "C".
9
10 **Q. Did AT&T North Carolina respond to your March 20, 2007 letter?**
11 A. Yes. By letter dated April 4, 2007, Mr. Eddie A. Reed, Jr., Director-Contract
12 Management at AT&T, Inc. in Dallas, Texas, responded to my March 20, 2007
13 letter. A copy of Mr. Reed's April 4, 2007 letter is attached to Sprint's Petition as
14 Exhibit "D".
15 **Q. What was the message conveyed by Mr. Reed's response?**
16 A. Mr. Reed's letter denies Sprint's request for a three-year extension of the parties'
17 Interconnection Agreement from March 21, 2007 and reiterates that AT&T will
18 only voluntarily "extend the Sprint Agreement until December 31, 2007".
19 **IV. SPRINT'S POSITIONS IN LIGHT OF AT&T NORTH CAROLINA'S**
20 **REFUSAL TO HONOR SPRINT'S REQUEST**
21
22 **Q. What is Sprint's position regarding when a 3-year extension of the parties'**
23 **existing month-to-month ICA should commence?**
24 A. The language of the Merger Commitments provides that unless otherwise
25 expressly stated to the contrary the commitments apply within AT&T/BellSouth

1 territories *"from the Merger Closing Date"*. Pursuant to Merger Commitment
2 No. 4 AT&T North Carolina *"shall permit* a requesting telecommunications
3 carrier *to extend* *its current interconnection agreement*, *regardless of whether its*
4 *initial term has expired*, *for a period up to three years."* Contrary to the AT&T
5 position, not only is there no language that suggests the commencement of any 3-
6 year period may *precede* the commencement date of the Commitments
7 themselves, the language that refers to an "initial term" makes it clear that any
8 expiration is irrelevant. Thus, the only logical conclusion is that AT&T is
9 committed to providing the 3-year extension of a parties' ICA from the time a
10 post-merger request for such a 3-year extension is made, as long as the request is
11 made within the overall 42-month window of the Commitments.
12 In Sprint's case, since the ICA is a continuing month-to-month term, the
13 benefit of the Merger Commitment to Sprint is conversion of the ICA to a fixed
14 extended 3-year term that (except for a default) can only be terminated by Sprint
15 during such period. A commencement date that corresponds to Sprint's request
16 date for such extension, i.e. March 20, 2007, recognizes the ICA is a continuing
17 agreement with an automatic rolling extension/expiration date, and results in a
18 conversion to a fixed three-year extension that expires on March 19, 2010, which
19 in and of itself is still within the time frame of the overall forty-two month
20 Merger Commitment limitation period (i.e., June 28, 2010).
21 **Q. If the 3-year extension does not commence with Sprint's post-merger**
22 **request, what is Sprint's position regarding the earliest reasonable date that**

1 **a 3-year extension should commence under the Merger Commitments?**

2 A. If the commencement date of the 3-year extension of the parties' current ICA is
3 not the same date as Sprint's request for such extension, the only other
4 reasonable possibility of the Merger Commitments is a commencement date of
5 December 29, 2006 (i.e., the expressly stated date "from" which the
6 Commitments apply), at the earliest. A commencement date of December 29,
7 2006 also recognizes the current status of the ICA as a continuing agreement
8 with an automatic rolling extension/expiration date, and results in a conversion to
9 a fixed three-year extension that expires on December 28, 2009, which is also
10 still within the time frame of the overall forty-two month Merger Commitment
11 limitation period (i.e., June 28, 2010).

12 **Q. If the 3-year extension does not commence with Sprint's post-merger**
13 **request, what is Sprint's position regarding the latest reasonable date that a**
14 **3-year extension should commence under the Merger Commitments?**

15 A. Sprint should not be penalized by AT&T's refusal to honor its Merger
16 Commitments. In light of the rolling month-to-month nature of the parties'
17 current ICA, if this docket is not resolved by year end 2007, it is Sprint's position
18 that for Sprint to realize the full benefit of a fixed term 3-year extended ICA, any
19 3-year extension should run from the end of the month-to-month term in which
20 the Commission's decision is made and implemented in this docket.

21 **Q. What is AT&T North Carolina's position regarding the date from which**
22 **any 3-year extension commences under Merger Condition No. 4?**

1 A. I understand AT&T North Carolina's position to be that Sprint may only extend
2 its Interconnection Agreement for up to three years *from* the "expiration" of a
3 specified (rather than month-to-month) term of the Sprint Interconnection
4 Agreement. Further, as I understand it, AT&T North Carolina's rationale for its
5 position is that the Parties' initial multi-year term was extended twice and,
6 therefore, initially "expired" on December 31, 2004, when the agreement
7 automatically converted to a month-to-month term. Therefore, AT&T North
8 Carolina's opinion is that any three-year extension commences *from* December
9 31, 2004, to result in a new "expiration" date of December 31, 2007. To my
10 knowledge, however, even under AT&T North Carolina's interpretation of the
11 Merger Conditions, it has never addressed the fact that under the express terms of
12 the ICA no "expiration" has occurred at all due to the "deemed extension" of the
13 ICA each and every month.

14 **Q. What would the Commission have to do in order to accept AT&T North**
15 **Carolina's position?**

16 A. On its face, AT&T North Carolina's position requires the Commission to ignore
17 two facts. First, the parties' current ICA is by its express terms "deemed
18 extended" and, therefore, is still in effect with a never-expired, rolling month-to-
19 month expiration date that automatically continues to extend and renew. And
20 second, AT&T North Carolina's interpretation requires the Commission to apply
21 the Merger Commitments in a manner inconsistent with the Commitments
22 express terms by essentially "back dating" their application to precede their

1 express stated effective date of December 29, 2006.

2 **Q. What would be the practical effect of the Commission accepting AT&T**
3 **North Carolina's position?**

4 A. It would effectively re-write Merger Commitment No. 4 in a manner that
5 obliterates the clear intended benefit to requesting carriers of a post-Merger
6 Closing Date three-year ICA extension.

7

8 **Q. Does this conclude your Direct Testimony?**

9 A. Yes, it does.

EXHIBIT MGF-1

-----Original Message-----
From: Reynolds, Rhona [mailto:Rhona.Reynolds@BELLSOUTH.COM]
Sent: Friday, November 19, 2004 9:21 AM
To: Cowin, Joe P [CC]
Cc: Felton, Mark G [SBS]
Subject: Sprint ICA

Joe:

I apologise for not getting this to you yesterday. Pursuant to our discussion yesterday morning, this letter will confirm that the existing provisions of the ICA between Sprint and BellSouth that we discussed would cause the ICA to change to a month-to-month term automatically upon expiration of the term, which is currently December 31, 2004. BellSouth considers ICAs that are on a month-to-month term to still be effective and, therefore, permits amendment of those agreements in accordance with the provisions of the ICA. The provision that gives BellSouth the right to terminate the agreement upon 60 days notice would not be invoked by BellSouth during the period when the arbitration window is still open.

BellSouth will consider Sprint's request to extend the arbitration window to February 8 but, at this time, is willing to extend the window until January 21st. At this time, BellSouth is not willing to extend the term of the ICA.

I trust this addresses adequately the issues that you asked me to cover. If not, feel free to call me and we can discuss. If I do not hear from you in the interim, I hope you both have a nice Thanksgiving.

Rhona

*****

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EXHIBIT B

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Edward L. Rankin, III
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704 417 8833
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May 25, 2007

FILED
MAY 25 2007
Clerk's Office
N.C. Utilities Commission

Ms. Renne Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket No. P-294, Sub 31

Dear Ms. Vance:

I enclose for filing in the above-referenced docket the original and 25 copies of AT&T North Carolina's Direct Testimony of Scot Ferguson and Mike Harper. Mr. Harper's Exhibit MH-1 contains proprietary information and is being filed under seal.

Please stamp the extra copy of this letter "Filed" and return it to me in the usual manner. Thank you for your assistance in this matter.

Sincerely,

Edward L. Rankin, III

Edward L. Rankin, III

ELR/sam

Enclosures

cc: Parties of record

1 AT&T

2 DIRECT TESTIMONY OF P.L. (SCOT) FERGUSON

3 BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

4 DOCKET NO. P-294, SUB 31

5 MAY 25, 2007

6

7

8 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH AT&T, AND
9 YOUR BUSINESS ADDRESS.

10

11 A. My name is Scot Ferguson. I am employed by AT&T as an Associate Director in
12 the Wholesale organization. As such, I am responsible for certain issues related
13 to wholesale policy, primarily related to interconnection agreement ("ICA")
14 general terms and conditions. My business address is 675 West Peachtree Street,
15 Atlanta, Georgia 30375.

16

17 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

18

19 A. I graduated from the University of Georgia in 1973, with a Bachelor of
20 Journalism degree. My professional career spans over 33 years with Southern
21 Bell, BellSouth Corporation, BellSouth Telecommunications, Inc., and AT&T.
22 During that time, I have held positions of increasing responsibility in sales and
23 marketing, customer system design, product management, training, public
24 relations, wholesale customer support, regulatory support, and my current position
25 as a corporate witness on wholesale policy issues.

1 Q. HAVE YOU PROVIDED TESTIMONY PRIOR TO THIS FILING?

2

3 A. Yes. I have filed testimony and appeared as a witness before the regulatory

4 bodies in all nine states of the former BellSouth Telecommunications region.

5

6 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

7

8 A. I will provide AT&T's position on the purpose of the merger commitment that

9 Sprint erroneously thinks enables it to extend, until 2010, an ICA that expired on

10 December 31, 2004. I will address how the expiration of Sprint's previous ICA

11 limits Sprint's ability to extend that ICA under the terms of the relevant

12 AT&T/BellSouth merger commitment. Because I am not an attorney, I am not

13 offering a legal opinion on these issues. AT&T will fully address the merits of its

14 legal position in post-hearing briefs.

15

16 Q. WHAT MERGER COMMITMENT IS AT ISSUE IN THIS MATTER?

17

18 A. The merger commitment at issue is found in Paragraph 4 under the commitments

19 titled "Reducing Transaction Costs Associated With Interconnection

20 Agreements." That commitment reads as follows:

21

22 The AT&T/BellSouth ILECs shall permit a requesting
23 telecommunications carrier to extend its current
24 interconnection agreement, regardless of whether its initial
25 term has expired, for a period of up to three years, subject to
26 amendments to reflect prior or future changes of law. During
27 this period, the interconnection agreement may be terminated

1 only via the carrier's request unless terminated pursuant to
2 the agreement's "default" provisions."[1]
3

4 Q. WHAT PARTY PROPOSED THE LANGUAGE FOUND IN THAT MERGER
5 COMMITMENT?

6

7 A. The language found in the commitment was proposed by Advance/Newhouse
8 Communications; Cablevision Systems Corporation, Charter Communications,
9 Cox Communications, and Insight Communications Company (collectively
10 "Cable Companies") in Comments of the Cable Companies, dated October 24,
11 2006, filed with the FCC in Docket No. 06-74 DA 06-2035 ("Comments").

12

13 Q. WHAT SPECIFIC LANGUAGE DID THE CABLE COMPANIES PROPOSE?

14

15 A. On page 11 of their comments, in paragraph 4 of a section titled "Reducing
16 Transaction Costs" the Cable Companies proposed the following commitment
17 language:
18 AT&T/BellSouth shall permit a party to extend the
19 parties' current interconnection agreement, regardless of
20 whether its initial term has expired, for a period of up to
21 three years, subject to amendment to reflect changes of
22 law after the agreement has been extended. During this
23 period, the interconnection agreement may be terminated
24 only via a competitor's request unless terminated
25 pursuant to the agreement's "default" provisions."[2]
26
27

[1] *In the Matter of AT&T, Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74 (Adopted: December 29, 2006; Released: March 26, 2007) at 149, 150, Appendix F.

[2] *See* Comments of Cable Companies attached hereto as PLF-1.

1 Q. HOW DOES THE LANGUAGE PROPOSED BY THE CABLE COMPANIES
2 COMPARE TO THE LANGUAGE CONTAINED IN THE ACTUAL MERGER
3 COMMITMENT?
4
5 A. The language contained in the actual merger commitment tracks, almost verbatim,
6 the language proposed by the cable companies and the language is substantively
7 identical. Notably, the language in the commitment, as proposed and adopted,
8 speaks of extending "agreements." Indeed, underscoring that point, in their
9 Comments, the Cable Companies explained that they were proposing "that
10 competitors be permitted to . . . extend the term of existing agreements...."[3]
11 However, Sprint incorrectly interprets the commitment to provide carriers with
12 three additional years from the date of the requested extension—irrespective of
13 when the ICA term expired. Sprint's interpretation clearly runs counter to the
14 intent and operation of the merger commitment.
15
16 Q. WHAT WAS THE PURPOSE OF THE COMMITMENT LANGUAGE
17 PROPOSED BY THE CABLE COMPANIES?
18
19 A. As discussed by the Cable Companies on page 10 of their Comments, the purpose
20 was to reduce transaction costs associated with "continually re-negotiating
21 interconnection agreements."
22
23

[3] Comments of Cable Companies at 9, 10.

1 Q. HOW DOES THE COMMITMENT EFFECTUATE THAT PURPOSE?

2

3 A. The commitment effectuates that purpose by allowing a party to extend by three

4 years the "term" of its ICA.

5

6 Q. HAS AT&T COMPLIED WITH THIS COMMITMENT?

7 A. Yes. Consistent with the commitment, AT&T has agreed to extend the term of

8 Sprint's current ICA for three years. Specifically, Sprint's ICA expired on

9 December 31, 2004 and AT&T has agreed to extend Sprint's ICA from December

10 31, 2004 through December 31, 2007—a period of three years.

11

12 Q. WHAT IS SPRINT'S INTERPRETATION OF THE COMMITMENT?

13

14 A. Sprint erroneously contends that under the commitment it should be able to

15 extend the term of its ICA by an additional six years, resulting in a nine year

16 agreement.

17

18 Q. IS SPRINT'S INTERPRETATION IN KEEPING WITH THE PURPOSE OF

19 THE MERGER COMMITMENT?

20

21 A. No. Again, the basis for the commitment is to alleviate transaction costs

22 associated with renegotiating ICAs every three years by offering a one-time,

23 three-year extension of the term of the ICA - not to extend ICAs for an additional

1 six years as Sprint seeks to do. Furthermore, for more than two years the parties
2 were involved in negotiation of a new ICA and have therefore already incurred
3 the associated transaction costs. By walking away from an all-but-completed
4 negotiation and filing for arbitration of a non-arbitrable issue, Sprint is increasing
5 transaction costs. Sprint's actions are in direct contravention of the purpose of the
6 merger commitment.

7

8 Q. WHAT IS THE EFFECT OF AN ICA EXPIRATION DATE?

9

10 A. An ICA expiration date is an agreed-upon date certain that defines the termination
11 of an ICA between two companies. To that point, the subject ICA between
12 AT&T and Sprint formally expired on December 31, 2004 – the expiration date to
13 which both AT&T and Sprint formally agreed in writing. That expiration date is
14 expressly set forth in Section 2.1 of the ICA.

15

16 Q. IF THE SUBJECT ICA EXPIRED TWO-AND-A-HALF YEARS AGO, UNDER
17 WHAT ARRANGEMENTS HAVE AT&T AND SPRINT CONTINUED TO DO
18 BUSINESS?

19

20 A. It has been the longstanding practice in AT&T's Southeast region that, in the
21 event that negotiations or arbitration for a new ICA exceed the prescribed
22 negotiation timeframes and do not conclude prior to the expiration date of the
23 existing ICA, the parties can agree to extend negotiations for a new ICA beyond
24 the expiration date. That is exactly what happened several times during the
25 subject ICA negotiations between AT&T and Sprint.

1 If the parties agree to extend negotiations beyond the expiration date, a provision
2 in Section 2.1 of the ICA's General Terms and Conditions allows the parties to
3 continue to operate under that agreement basis so that service is not disrupted
4 during the course of ongoing negotiations. Again, that is exactly what happened
5 during the subject ICA negotiations between AT&T and Sprint.
6
7 Q. IF BOTH PARTIES AGREED TO CONTINUE NEGOTIATIONS BEYOND
8 THE EXPIRATION DATE, AND TO OPERATE UNDER THE AGREEMENT
9 AFTER THE EXPIRATION DATE, AND THE AGREEMENT WAS IN
10 ACCORDANCE WITH THE PROVISIONS OF THE ICA, WHAT IS THE
11 ISSUE REGARDING THE EXPIRATION DATE?
12
13 A. Sprint maintains that the ICA did not expire on December 31, 2004, simply
14 because AT&T agreed to continue negotiations after that date in order to prevent
15 service disruption to Sprint. That interpretation misconstrues and would make a
16 mockery of the merger commitment at issue. For example, it would enable
17 carriers to obtain more than a three-year extension of their ICAs by requesting
18 and then dragging out negotiations for a new ICA and then subsequently electing
19 a three year extension. Indeed, that construction would have the perverse effect
20 of giving AT&T incentives to deny requests to continue negotiations after an
21 agreement expires, even if AT&T would otherwise be amenable to such an
22 extension.
23
24 Further, Sprint's interpretation of the commitment would inevitably lead to
25 discriminatory treatment among carriers requesting extensions of ICAs simply

1 due to timing. It permits carriers who have already been operating under an
2 agreement that has long since expired, as Sprint has, to continue to maintain that
3 agreement for a much longer period of time than would a carrier whose agreement
4 has not yet reached its expiration. The only fair interpretation of the commitment
5 is that it allows *all* carriers an opportunity to operate under an ICA with a six year
6 term (three years as specified in the ICA and an additional three years via an
7 extension request). To achieve that result, the commitment must be interpreted to
8 permit an extension for three years from the stated term set forth in the ICA.
9 Otherwise, as stated above, some carriers would be able to drag out negotiations,
10 claim to be looking for an agreement to adopt, and even file for arbitration of a
11 new agreement, all the while simply waiting for the passage of time to enable
12 them to obtain a much longer term for their existing agreement than the six years
13 contemplated by the commitment. Such behavior is not fair to other carriers who
14 refuse to waste their own resources, and the resources of AT&T and of the
15 Commission, to obtain a longer term agreement than that to which they are
16 entitled per the commitment.
17
18 Q. WHEN DID SPRINT BEGIN DISPUTING THE ISSUE REGARDING THE
19 EXPIRATION DATE?
20
21 A. Having all but reached formal execution of a mutually negotiated and agreed-
22 upon successor ICA near the end of 2006, AT&T suddenly heard from Sprint –
23 for the first time – about an issue that had not been a part of the negotiations, and,
24 as AT&T sets forth in its Motion to Dismiss and Answer, should not be part of
25 this proceeding. Owing to Sprint's desire to take advantage of one of the newly

1 announced (December 29, 2006) AT&T/BellSouth merger commitments, Sprint
2 incorrectly asserted that the expired ICA between it and AT&T was somehow no
3 longer an expired ICA. Sprint erroneously claimed that it was a current
4 agreement, ripe for a three-year extension from the date of Sprint's request to
5 extend under the AT&T/BellSouth merger commitments.
6
7 Sprint's self-serving 11th-hour request is surprising, and it is based upon Sprint's
8 incorrect interpretation that the ICA converted to a 'month-to-month' agreement.
9 As stated above, and as indicated by the parties' actions, the ICA was expired, but
10 merely being used to govern the services between the parties until a new ICA
11 could be finalized. Further, the incorrect interpretation of that ICA provision led
12 Sprint to mistakenly believe that AT&T is obligated under the merger
13 commitments to extend an expired ICA three years from Sprint's request date of
14 March 20, 2007, with a new expiration date of March 19, 2010. AT&T is
15 obligated only to extend an expired ICA for three years from the expiration date,
16 or as the comments in the FCC merger docket make clear, to extend the *term* of
17 the existing agreement for a period of up to three years.
18
19 Q. IS SPRINT'S ASSERTION THAT THE ICA HAS NOT EXPIRED CORRECT?
20
21 A. No. Sprint's assertion that the ICA has not expired is incorrect. As I explained
22 earlier, an ICA expires on the expiration date, but the parties may continue to
23 operate under that ICA as an interim measure to accommodate ongoing
24 negotiations – while avoiding disruption of service for a Competing Local
25 Provider's ("CLP") end users.

1 It has never been AT&T's intent to terminate a CLP because ICA negotiations do
2 not conclude prior to an ICA expiration date. It has generally been a viable
3 alternative to extend ICA negotiations by maintaining operations past the
4 expiration date. In such a case, however, the ICA is still an *expired* ICA.
5
6 Furthermore, Sprint was aware of AT&T's position on the expiration date from
7 the very beginning of negotiations. In the November 19, 2004 email from legacy
8 BellSouth attorney Rhona Reynolds that Mr. Felton included as MGF-1 to his
9 direct testimony, Mr. Felton, while citing what he believes supports Sprint's
10 claim, conveniently avoided citing Ms. Reynolds' statement that "At this time,
11 BellSouth is not willing to extend the term of the ICA." While Mr. Felton's
12 testimony shows Sprint's preference to equate the word *effective* in Ms. Reynolds'
13 email to *non-expired*, there is no mistaking her words expressing AT&T's intent
14 to maintain the December 31, 2004 expiration date of the ICA. AT&T never
15 agreed to any change in the December 31, 2004 ICA expiration date.
16
17 Q. IN RESPONSE TO SPRINT'S REQUEST, HAS AT&T MADE AN OFFER TO
18 EXTEND SPRINT'S ICA?
19
20 A. Yes. AT&T has offered to Sprint a three-year extension granted from the ICA
21 expiration date of December 31, 2004. That extended ICA would carry a new
22 expiration date of December 31, 2007. AT&T's offer comports with the merger
23 commitment negotiated by AT&T/BellSouth with the FCC, but Sprint refused the
24 offer.
25

1 Q. WHY IS IT A BAD IDEA TO EXTEND SPRINT'S EXPIRED ICA UNTIL
2 MARCH 19, 2010?
3
4 A. Such a result was never contemplated under the merger commitment, and runs
5 counter to good public policy. The telecommunications industry is highly
6 dynamic and undergoes rapid technological and regulatory changes. To maintain
7 efficiencies and encourage innovation, ICAs must be updated to keep pace with
8 the ever-advancing industry. Maintaining an antiquated ICA, *for over nine years*,
9 as Sprint would have the Commission do, is inconsistent with that goal.
10
11 For example, since the Sprint ICA became effective in 2001, the wireless
12 industry's traffic patterns have continued to evolve. To address the proper
13 jurisdictionalization of traffic for billing purposes, AT&T has developed a
14 methodology to accurately measure InterMTA traffic based upon CMRS carriers
15 populating a new field in call detail records. The new ICA that AT&T negotiated
16 with Sprint includes specific language addressing the correct jurisdictionalization
17 of InterMTA traffic. The ICA that Sprint seeks to extend does not address this
18 issue, because the ability to populate the relevant field in call detail records did
19 not exist at the time the parties entered into that ICA. When technological
20 advances such as this are not addressed, inefficiencies are created from the parties
21 being locked into out-dated agreements. Moreover, to the extent there is any
22 dispute regarding the extension of an ICA under the AT&T/BellSouth merger
23 commitment, that dispute should be heard and decided by the FCC – not in the
24 context of a Section 252 arbitration.
25

1 Q. DO YOU HAVE ANY FINAL COMMENTS?

2

3 A. Yes. If AT&T was compelled to extend the Sprint ICA until 2010, that would
4 mean that Sprint would have benefited from what amounts to a nine-year ICA: the
5 original three-year term, an amended one-year extension of the original term, the
6 extended negotiation period of more than two years, and the three-year extension
7 requested by Sprint. Although numerous amendments were incorporated into the
8 AT&T/Sprint ICA to bring it current with changes in law and other major items,
9 the 2001 ICA is, as a whole, drastically different from the current AT&T standard
10 agreement that reflects changes in both the telecommunications industry and
11 AT&T's operations.

12

13 Moving to a new AT&T/Sprint ICA would eliminate the amendments by
14 incorporating the amendment language into the agreement itself. Sprint's version
15 of an extension would also ignore the transactional costs associated with the
16 negotiations that have taken place over the last two-and-a-half years –
17 transactional costs that would have resulted in a new and current ICA had Sprint
18 not decided to abruptly cease negotiations and erroneously attempted to raise the
19 ICA extension issue within the scope of a Section 252 arbitration.

20

21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22

23 A. Yes.

MINTZ LEVIN

Michael H. Pryor | 202 434 7365 | mhpryor@mintz.com

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November 17, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Oral *Ex Parte* Presentation - WC Docket No. 06-74, AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control

Dear Secretary Dortch:

On November 16, 2006, Alexandra Wilson, Vice President of Public Policy for Cox Enterprises, Inc., Megan Delany, Senior Director and Legislative Counsel of Federal Government Relations for Charter Communications, Howard Symons of Mintz Levin, and the undersigned met with Commissioner Jonathan S. Adelstein and his legal advisor Scott Bergmann to discuss the issues set forth in the September 27, 2006 written *ex parte* presentation and the October 24, 2006 written comments filed by Advance/Newhouse Communications, Cablevision Systems Corp., Charter Communications, Cox Communications, and Insight Communications Company in the above-referenced docket. We also discussed the conditions proposed by AT&T and BellSouth and reiterated the need for interconnection-related merger conditions. Finally, we explained that the transiting and forbearance conditions proposed by AT&T/BellSouth were insufficient. During the meeting, the parties discussed and distributed the attached handouts.

Please contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

/s/ Michael H. Pryor

Michael H. Pryor

Attachment

cc: Commissioner Jonathan S. Adelstein
Scott Bergmann

CONDITIONS TO ENSURE FAIR AND EFFICIENT INTERCONNECTION

☑ Extend section 251/252 interconnection rights to cable voice providers, regardless of technology or regulatory classification.

☑ Establish interconnection arrangements that enable the exchange of IP voice traffic using an optical level, IP interface at technically feasible points identified by the cable provider.

☑ Reaffirm the right of competitors to choose a single, technically feasible point of interconnection in a LATA and bar AT&T from imposing additional build out or trunking requirements.

☑ Reduce the costs and delay of negotiating interconnection agreements by permitting cable telephony providers to:

--opt into any interconnection agreement approved in any in-region state, subject to state-specific pricing and performance plans.

--opt into agreements even if not yet updated to reflect changes of law, if the cable providers agrees to negotiate an amendment.

--use their existing agreement as a starting point for re-negotiation.

--extend the term of existing agreements for up to three years, subject to amendment for changes of law.

☑ Exchange non-access traffic, including VOIP, on a bill and keep basis at the cable voice providers request.

☑ Require AT&T to provide transiting service pursuant to section 251 and at cost-based rates.

APPENDIX A

Cable Companies' Proposed Merger Conditions

Single POI per LATA

AT&T/BellSouth shall permit competitive providers to choose a single, technically feasible point of interconnection on AT&T/BellSouth's network, including choosing a single point of interconnection in a LATA. AT&T/BellSouth and the competitive provider shall each bear the financial responsibility for bringing their originating traffic that is subject to section 251(b)(5) to the chosen point of interconnection. AT&T/BellSouth and the competitive provider may mutually agree to establish additional points of interconnection as justified by sound network engineering and business practices. AT&T/BellSouth cannot unilaterally require the competitive provider to establish additional POIs based on levels of traffic set solely by AT&T/BellSouth.

Reducing Transaction Costs

(1) AT&T/BellSouth shall make available any entire effective interconnection agreement, whether negotiated or arbitrated, that was entered into by AT&T/BellSouth or any affiliate, in any state in the merged entity's 22-state incumbent LEC operating territory, subject to technical feasibility and state-specific pricing and performance plans.
(2) AT&T/BellSouth shall not refuse a request to opt into an agreement on the grounds that the agreement has not been amended to reflect changes of law, provided the requesting party agrees to negotiate an amendment regarding such change of law immediately after it has opted into the agreement.
(3) AT&T/BellSouth shall allow a requesting party, at its option, to use the parties' pre-existing interconnection agreement as the starting point for negotiating a new agreement.
(4) AT&T/BellSouth shall permit a party to extend the parties' current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect changes of law after the agreement has been extended. During this period, the interconnection agreement may be terminated only via a competitor's request unless terminated pursuant to the agreement's "default" provisions.

Section 251 Rights for Cable Providers

AT&T/BellSouth shall agree to treat any cable telephony provider, regardless of the technology used or the classification of service, as a requesting telecommunications carrier under sections 251 and 252 and shall owe such provider the obligations it owes to a requesting telecommunications carrier under section 251(c). AT&T shall permit such cable telephony providers to opt into any entire interconnection agreement, including, without limitation, any opt in rights established as a condition of this merger. AT&T shall not contest the authority or jurisdiction of a state commission to approve, arbitrate or enforce any interconnection agreement negotiated with any cable telephony provider, either before the state commission (or the Commission acting in the place of a state commission) or on appeal of a state commission

determination regarding such interconnection agreement. This condition shall not expire unless superseded by statute or regulation clarifying the applicability of sections 251 and 252 to IP-enabled voice providers.

Transiting

The AT&T and BellSouth incumbent LECs will not increase the rates paid by existing customers for their existing tandem transiting service arrangements that the AT&T and BellSouth incumbent LECs provide in the AT&T/BellSouth in-region territory. As existing interconnection agreements are negotiated and as transit customers expand into new areas within this territory and request transiting arrangements in these areas, the transit rate for such arrangements will not exceed the rates paid under the customers' existing agreements with AT&T and/or BellSouth, or, if no transiting arrangements exist, the transit rate will not exceed the average transit rate available in interconnection agreements with other companies that have transiting arrangements using the same AT&T/BellSouth tandems. AT&T/BellSouth shall not refuse to negotiate the terms and conditions of transiting in the context of section 251 interconnection agreements.

Forbearance

For thirty months after the Merger Closing Date, AT&T/BellSouth will not seek a ruling, including through a forbearance petition under section 10 of the Act, 47 U.S.C. § 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act, or from any interconnection or collocation obligation under section 251 of the Act.

EXHIBIT C

BellSouth Telecommunications, Inc.
Legal Department
1521 BellSouth Plaza
P. O. Box 30188
Charlotte, NC 28230

edward.rankin@bellsouth.com

Edward L. Rankin, III
General Counsel-North Carolina

704 417 8833
Fax 704 417 9389

May 25, 2007

FILED
MAY 25 2007
Clerk's Office
N.C. Utilities Commission

Ms. Renne Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket No. P-294, Sub 31

Dear Ms. Vance:

I enclose for filing in the above-referenced docket the original and 25 copies of AT&T North Carolina's Direct Testimony of Scot Ferguson and Mike Harper. Mr. Harper's Exhibit MH-1 contains proprietary information and is being filed under seal.

Please stamp the extra copy of this letter "Filed" and return it to me in the usual manner. Thank you for your assistance in this matter.

Sincerely,

Edward L. Rankin, III

Edward L. Rankin, III

ELR/sam

Enclosures

cc: Parties of record

1 AT&T NORTH CAROLINA
2 DIRECT TESTIMONY OF MIKE HARPER
3 BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
4 DOCKET NO. P-294, SUB 31
5 MAY 25, 2007
6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH AT&T ("AT&T"),
8 AND YOUR BUSINESS ADDRESS.
9
10 A. My name is Mike Harper. I am employed by BellSouth
11 Telecommunications, Inc., d/b/a AT&T Southeast as an Associate Director
12 Regulatory—Wholesale Operations. My business address is 675 West
13 Peachtree Street, Atlanta, Georgia 30375.
14
15 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.
16
17 A. I have a Bachelor's Degree in Physics and a Master of Business
18 Administration from the University of Louisville in Louisville, Kentucky.
19
20 I have over thirty years of experience in telecommunications. I was
21 employed by South Central Bell in Louisville, Kentucky and Birmingham,
22 Alabama until December, 1983, holding positions in Outside Plant
23 Engineering, Investment and Costs Engineering, and Bell-Independent
24 Relations, among others. From January 1984 until June 1998, I was
25 employed by BellSouth in the areas of Local Exchange Company (LEC)

1 relations and Switched Access Management. Beginning in July 1998, I
2 was employed by BellSouth in Atlanta, GA in the areas of Switched
3 Access Product Management, validation of intercarrier compensation, and
4 Regulatory Policy. I assumed my current position effective with the
5 merger of BellSouth and AT&T on December 29, 2006.
6
7 Q. HAVE YOU TESTIFIED PREVIOUSLY?
8
9 A. Yes. I have testified in proceedings before the Alabama, Kentucky,
10 Louisiana, and Mississippi Public Service Commissions; the North
11 Carolina Utility Commission; and the Tennessee Regulatory Authority.
12
13 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?
14
15 A. I will provide AT&T's position on the policy issues raised in the Petition for
16 Arbitration, filed April 17, 2007, with the North Carolina Utilities
17 Commission by Sprint Communications Company, L.P. and Sprint
18 Spectrum, L.P. d/b/a Sprint PCS ("Sprint").
19
20 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?
21
22 A. Yes. There are unresolved issues in this arbitration that have underlying
23 legal arguments. Because I am not an attorney, I am not offering a legal
24 opinion on these issues. I respond to these issues purely from a policy

1 perspective. AT&T will address all legal arguments in its post-hearing
2 brief.
3
4 Q. WHAT ARE THE SPECIFIC ISSUES IDENTIFIED BY SPRINT IN ITS
5 PETITION FOR ARBITRATION?
6
7 A. In its Petition for Arbitration, Sprint identifies only one issue. The
8 issue description states: "ISSUE 1: May AT&T Southeast effectively
9 deny Sprint's request to extend its current Interconnection Agreement
10 for three full years from March 20, 2007 pursuant to Interconnection
11 Merger Commitment No. 4?"[1]
12
13 Q. IS THIS SOLE ISSUE IDENTIFIED BY SPRINT IN ITS PETITION
14 FOR ARBITRATION AN APPROPRIATE ISSUE FOR A SECTION
15 252 ARBITRATION?
16
17 A. No. Because the issue seeks to arbitrate the interpretation of a
18 merger commitment that lies within the exclusive jurisdiction of the
19 FCC, that issue is not appropriate for a Section 252 arbitration and
20 should therefore be dismissed. AT&T will fully address the legal basis
21 for the FCC's exclusive jurisdiction over the interpretation of merger
22 commitments in its briefs.
23

[1] See Petition, p. 8

1 Q. IS AT&T WILLING TO EXTEND THE INTERCONNECTION
2 AGREEMENT WITH SPRINT?
3
4 A. Certainly. Indeed, AT&T participated in lengthy good faith
5 negotiations with Sprint beginning in mid-2004 and reached
6 agreement in principle on all of the outstanding issues, with the
7 exception of Attachment 3, in December 2006. As is the practice with
8 the negotiation of agreements beyond the expiration date, and in
9 accordance with the terms of the interconnection agreement, AT&T
10 and Sprint continued operating under the existing agreement basis
11 pending execution of a new agreement. The policy rationale for
12 continuing to operate under the agreement beyond its stated term is to
13 avoid service disruption during the course of negotiations and
14 arbitration, if necessary. Following the announcement of the
15 BellSouth/AT&T merger on December 29, 2006, however, Sprint
16 abruptly suspended negotiations and elected not to complete the
17 agreement in principle that had been reached. In further efforts to
18 enter into a new ICA, AT&T communicated to Sprint its willingness to
19 continue negotiations to conclusion, with no success. AT&T does not
20 believe it is appropriate for Sprint to abandon the previous, all-but-
21 concluded negotiation in favor of its new attempt to have this
22 Commission rule on the interpretation of a merger commitment that is
23 within the sole jurisdiction of the FCC.
24
25 Q. WHAT DOES AT&T ASK THE NCUC TO DECIDE IN THIS MATTER?

1

2 A. Since Sprint broke off negotiations in December 2006, after effectively
3 reaching agreement on the outstanding issues, AT&T requests that
4 this Commission recognize and adopt the language that AT&T
5 believes to be the final agreement the parties had reached through
6 negotiations for the General Terms and Conditions and all
7 attachments except Attachment 3. With respect to Attachment 3,
8 AT&T submits its generic Attachment 3A, for wireless interconnection
9 services, and 3B for wireline interconnection services, and asks that
10 the Commission adopt Attachments 3A and 3B collectively as
11 Attachment 3.

12

13 Q. WHY SHOULD THE NCUC ADOPT THE INTERCONNECTION
14 AGREEMENT AS PROPOSED BY AT&T?

15

16 A. With the exception of Attachment 3, the parties had completed
17 negotiations and had agreed on much of the language for the
18 remainder of the agreement. Sprint broke off negotiations even after
19 stating via email that all issues had been resolved.[2] Therefore, AT&T
20 believes that the standard agreement templates for Attachment 3, in
21 concert with the proposed language that reflects the agreement that
22 the parties had reached in December 2006, should be the basis for a
23 final agreement with Sprint.

[2] The email is attached as Proprietary Exhibit MH-1.

1 Q. DOES THE PROPOSED AGREEMENT SUBMITTED BY AT&T
2 MEET THE FCC MERGER COMMITMENTS?
3
4 A. Yes. The proposed agreement is completely compliant with the
5 merger commitments AT&T made to the FCC.
6
7 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
8
9 A. Yes.
10
11
12 678586

EXHIBIT D

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Raleigh, NC 27601

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FILED
JUN 08 2007
Clerk's Office
N.C. Utilities Commission

June 8, 2007

VIA HAND DELIVERY

Ms. Renne Vance, Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27611

RE: Docket No. P-294, Sub 31 -- 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 North Carolina, d/b/a AT&T Southeast

Dear Ms. Vance:

Please find enclosed an original and 31 copies of Sprint Communications Company L.P. and Sprint Spectrum, L.P., d/b/a Sprint PCS' Rebuttal Testimony of Mark G. Felton in the above-styled docket.

Should you have any questions please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company

Mary L. Grigg

Mary Lynne Grigg

MLG:dd

Enclosures

cc: Edward L. Rankin, III, Esq.
AT&T North Carolina
1521 BellSouth Plaza
Charlotte, NC 28230

Antoinette R. Wike, Esq.
North Carolina Utilities ~~Commission Public Staff~~
Chief Counsel
4326 Mail Service Center
Raleigh, NC 37699-4326

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

Docket No. P-294, Sub 31

FILED
JUN 08 2007
Clerk's Office
N.C. Utilities Commission

IN THE MATTER OF 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 NORTH CAROLINA D/B/A AT&T SOUTHEAST	)	**REBUTTAL TESTIMONY OF MARK G. FELTON FILED JUNE 8, 2007**

1 **I. INTRODUCTION**

2 **Q. Please state your name, business address, employer and current position.**

3 A. My name is Mark G. Felton. My business address is 6330 Sprint Parkway,
4 Overland Park, KS 66251. I am employed as a Contracts Negotiator III in the
5 Access Solutions group of Sprint United Management, the management
6 subsidiary of Sprint Nextel Corporation ("Sprint Nextel").

7 **Q. On whose behalf are you testifying?**

8 A. I am testifying on behalf of Sprint Communications Company L.P. ("Sprint
9 CLP") and Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS"). I refer to
10 Sprint CLP and Sprint PCS collectively in my testimony as "Sprint".

11 **Q. Are you the same Mark G. Felton who filed Direct Testimony in this**
12 **proceeding on May 1, 2007?**

13 A. Yes, I am.

1 **Q. What is the purpose of your Rebuttal Testimony?**

2 A. The purpose of my Rebuttal Testimony is to respond to the Direct Testimony of
3 BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina d/b/a AT&T
4 Southeast ("AT&T") witnesses, P. L. (Scot) Ferguson and Mike Harper[1]. I will
5 first address the following two subjects that appear in both AT&T witness's
6 testimony: a) the parties' negotiations that preceded Sprint's March 20, 2007
7 letter exercising its right to accept AT&T's 3-year Merger Commitment offer
8 (Petition Exhibit C); and b) each AT&T witness's references to FCC jurisdiction
9 over the Merger Commitments. Then, I will separately respond to unique items in
10 each AT&T witness's testimony.

11 **II. REBUTTAL TO SUBJECTS IN BOTH AT&T WITNESSES'**
12 **TESTIMONY**
13
14 **A. Negotiations before Sprint's March 20, 2007 Exercise of Its Right to**
15 **accept AT&T's offer of a 3-year extension of the 2001 ICA.**
16
17 **Q. Have you read Mr. Ferguson's statements that: Sprint "walk[ed] away**
18 **from an *all-but-completed negotiation*" (SF page 6, lines 3-4, emphasis**
19 **added); the parties had "*all but reached formal execution* of a mutually**
20 **negotiated and agreed-upon successor ICA near the end of 2006" (SF page**
21 **8, lines 21 -22, emphasis added); and "Sprint ... decided to abruptly cease**

---

[1] References are cited to the "AT&T Direct Testimony of P.L. (Scot) Ferguson Before the North Carolina Utilities Commission, Docket No. P-294, SUB 31, May 25, 2007" as (SF page _, lines _), to the "AT&T Direct Testimony of Mike Harper Before the North Carolina Utilities Commission, Docket No. P-294, SUB 31, May 25, 2007" as (MH page _, lines _), and to my prior "Prefiled Direct Testimony of Mark G. Felton Filed May 1, 2007" as (MGF page _, lines _).

1 **negotiations and erroneously attempted to raise the ICA extension within**
2 **the scope of a Section 252 arbitration" (SF page 12, lines 17-19)?**
3 A. Yes, I have read Mr. Ferguson's characterizations of the parties' negotiations.
4 Q. **Have you read Mr. Harper's statements that: "AT&T participated in**
5 **lengthy good faith negotiations with Sprint ... beginning in mid-2004 and**
6 **reached agreement in principle *on all of the outstanding issues*, with the**
7 **exception of Attachment 3, in December 2006" (MH page 4, lines 4-7,**
8 **emphasis added); following the BellSouth/AT&T merger on December 29,**
9 **2006 "*Sprint abruptly suspended negotiations* and elected not to complete the**
10 **agreement in principle that had been reached" and "AT&T does not believe**
11 **it is appropriate for Sprint to *abandon the previous, all-but-concluded***
12 ***negotiation*" (MH page 4, lines 14-21, emphasis added); and, "the parties**
13 **had completed negotiations" and "Sprint *broke off negotiations even after***
14 ***stating via e-mail that all issues had been resolved*" (MH page 5, lines 16-19).**
15 A. Yes, I have also read Mr. Harper's characterizations of the parties' negotiations.
16 Q. **How do you respond to Messrs. Ferguson's and Harper's characterizations**
17 **of the parties' negotiations?**
18 A. First, I would point out that Messrs. Ferguson and Harper did not participate in
19 any aspect of the parties' negotiations. Therefore, it is not surprising to me that
20 their unsupported conclusions demonstrate a complete lack of understanding or
21 appreciation regarding:
22

1 1) the history of both the ICA and the negotiations as detailed in my
2 Direct Testimony, Section II, page 4 line 16 through page 11, line 21;
3
4 2) the "tentative" nature of any pre-merger settlement discussions
5 between the parties and the necessity to resolve all remaining outstanding
6 issues and language before a negotiated agreement could be executed;
7
8 3) how AT&T's positions made it very uncertain as to whether a non-
9 arbitrated final, executable subsequent agreement could in fact be reached
10 with respect to the remaining outstanding issues and language; and,
11
12 4) by its own action in seeking merger approval subject to Merger
13 Commitments, *it was AT&T that interjected a new offer of extending the*
14 *2001 ICA 3 years into the parties' negotiations before any "final"*
15 *resolution was reached, and Sprint chose to accept the 3-year extension.*
16
17 Instead, Messrs. Ferguson's and Harper's testimony is apparently
18 premised on Mr. Harper's mischaracterization of a privileged December 14, 2006
19 "tentative settlement" communication (i.e. Proprietary Exhibit MH-1). The
20 document does not state anywhere on its face that "all issues had been resolved".
21 To the contrary, it expressly refers to a "tentative settlement" that contemplates a
22 yet to be reached "final settlement", with language still to be crafted, completion
23 of Attachment 3 (which isn't even mentioned, yet Mr. Harper admits it was not
24 completed) and resolution of yet another issue discussed in the e-mail. This is
25 consistent with my May 1, 2007 Direct Testimony, at p. 11, in which I stated that
26 the parties had reached tentative agreement on several significant issues, but that
27 substantive areas of dispute still existed. As of December 29, 2006, even AT&T
28 counsel questioned whether there was any merit in further discussions regarding
29 the other specific issue mentioned in the e-mail, and that AT&T's position
30 remained the same. Against all of the foregoing background, it was AT&T's

1 merger-related actions that introduced yet a new offer into the ICA negotiations.

2 Q. **Following the AT&T/BellSouth merger, did Sprint "walk away", "suspend"**

3 **or "break off" negotiations with AT&T?**

4 A. Absolutely not. In fact, Sprint maintained on-going communication with AT&T

5 in an effort to resolve the whole matter without formal arbitration and to explore

6 further AT&T's new offer in the form of the Merger Commitments.

7 Q. **What happened after December 29, 2006?**

8 A. After the FCC approved the AT&T/BellSouth Merger on December 29, 2006

9 subject to the Merger Commitments, on Wednesday January 3, 2007, the parties

10 immediately discussed the impact of the Merger Commitments on the pending

11 negotiations. Based on that call, Sprint submitted written Merger Commitment-

12 related questions later the same day. The very first question asked for AT&T's

13 "Confirmation that Sprint may extend its 2001 ICA (which is currently on a

14 month-to-month term) for up to three years?" On January 10, 2007, AT&T

15 negotiator Lynn Allen-Flood advised Sprint by e-mail that:

16 "BellSouth is working to get answers to these questions .... The
17 answer to Sprint's main question is that Sprint <u>can</u> extend the 2001
18 ICA, however, I do not yet have all the details to fully respond.
19 Considering this, BellSouth proposes to extend the arbitration
20 close by two weeks and the associated letter is attached for your
21 confirmation." [Emphasis in original].
22
23 Ms. Allen-Flood's e-mail is consistent with Mr. Ferguson's testimony

24 that "AT&T has agreed to extend the term of Sprint's current ICA for three

25 years" (SF page 5, lines 7-8). The dispute between the parties as set forth in

1 Sprint's Issue 1 arises over the simple fact, as also stated in Mr. Ferguson's
2 testimony, that AT&T attempted to limit its 3-year ICA extension offer by only
3 offering "Sprint a three-year extension granted *from* the ICA expiration date of
4 December 31, 2004" to result in an "extended ICA [that] would carry a new
5 expiration date of *December 31, 2007*." (SF page 10, lines 20-22, emphasis
6 added). The end result of AT&T's "modified" offer is less than a 1-year post-
7 merger extension of Sprint's current month-to-month term ICA.

8 Q. **Without disclosing the substance of any privileged settlement**
9 **communications, can you summarize Sprint's efforts to pursue further**
10 **negotiations between January 10, 2007 and the sending of Sprint's March**
11 **20, 2007 letter exercising Sprint's right to accept AT&T's Merger**
12 **Commitment offer to extend the 2001 ICA three years, Petition Exhibit C?**

13 A. Yes. The parties extended the then-existing negotiation arbitration windows for
14 the 9 AT&T states not once, but twice, to provide additional time to consider the
15 Merger Commitments in the context of the parties' negotiations. The first
16 extension was a couple of weeks to early February at BellSouth's suggestion per
17 Ms. Allen-Flood's previously mentioned e-mail, followed by a longer extension
18 (Petition Exhibit A) that resulted in the first arbitration window *opening* in late
19 March.

20 As of February 1, 2007, considering AT&T's January 10, 2007 response
21 that Sprint could extend its 2001 ICA but AT&T had still not yet responded to all
22 of Sprint's Merger Commitment related questions, Sprint made a good-faith

1 settlement offer. Sprint followed up on February 5th and requested a meeting to
2 discuss Sprint's offer. On February 7th AT&T responded that such a meeting
3 would be "premature". On February 14th, Sprint again requested a meeting no
4 later than February 23rd to discuss any further AT&T response to Sprint's Merger
5 Commitment-related questions and Sprint's February 1st settlement offer.
6 On February 21st, after having Sprint's settlement offer 3 weeks, AT&T
7 advised that: it was "surprised" by Sprint's settlement offer; any substantive
8 response AT&T could provide at this time would not meet with Sprint's
9 approval; AT&T proposed an additional 60-day extension to the arbitration
10 windows so that the first window would close June 16; and, requested a call the
11 week of March 5th - but further added AT&T would not have any substantive
12 response to Sprint's February 1st settlement discussion document *until mid April.*
13 On March 7th, AT&T further clarified that its offer for a call the week of March
14 5th was to let Sprint know AT&T was glad to meet but acknowledged that there
15 was nothing more to share at that point from AT&T.
16 As far as Sprint is concerned, it was AT&T that chose to disengage from
17 negotiations altogether and pursue a course of delay and non-compliance. In
18 light of the overall 42-month Merger Commitment limitation period, Sprint had,
19 and continues to have, legitimate concerns regarding what impact such AT&T
20 delays and non-compliance may ultimately reek upon Sprint's efforts to timely
21 implement its rights to a full 3-year extension. Sprint was simply not willing to
22 leave it to AT&T to further delay negotiations, while the 42-month Merger

1 Commitment limitation period continued to run. Accordingly, Sprint sent its
2 March 20, 2007 letter accepting a 3-year extension of the parties' 2001 ICA and
3 tee-up the parties' disputed positions regarding the 3-year ICA extension
4 commencement date (Petition Exhibit C).

5 **B. AT&T Witnesses' References to FCC Jurisdiction over the Merger**
6 **Commitments.**
7
8 **Q. Have you read Mr. Ferguson's statement that: "to the extent there is any**
9 **dispute regarding the extension of an ICA under the AT&T/BellSouth**
10 **merger commitment, that dispute should be heard and decided by the FCC-**
11 **not in the context of a Section 252 arbitration" (SF page 11, lines 21-24) and**
12 **Mr. Harper's similar assertion (MH page 3, lines 17 – 22)?**

13 A. Yes, I did see both witnesses' above referenced testimony.

14 **Q. Do you have any response to Messrs. Ferguson's and Harper's references to**
15 **AT&T's position that this matter should only be heard by the FCC?**

16 A. Yes. Messrs. Ferguson and Harper each state they are not lawyers and their
17 testimony is not intended to offer legal opinions (SF page 2, lines 12-14; MH
18 page 2, lines 22 – page 3, line 2). Yet, amazingly, they both seem to offer legal
19 opinions regarding where this matter should be heard. While I will not attempt to
20 offer a legal opinion here, I do expect Sprint will file a response to AT&T's
21 Motion to Dismiss and will therein clearly articulate the legal basis for this
22 Commission's jurisdiction to address AT&T's merger-related interconnection
23 obligations.

1 III. REBUTTAL TO THE BALANCE OF MR. FERGUSON'S TESTIMONY

2 Q. **Do you have any disagreement with Mr. Ferguson regarding what Merger**
3 **Commitment is at issue in this docket, or the source and purpose of that**
4 **Merger Commitment?**

5 A. No. We agree that the Merger Commitment at issue is the one identified as
6 "Reducing Transaction Costs Associated with Interconnection Agreements"
7 paragraph 4. (Cf. MGF page 13 lines 21-29 and SF page 2 lines 22 through page
8 3, line 2). I do not dispute that the cable companies were the source of Merger
9 Commitment No. 4, or that Merger Commitment No. 4 contemplates the
10 "exten[sion of] the term of existing agreements" (SF page 3, lines 4 through page
11 4, line 10).

12 Q. **Where do you and Mr. Ferguson part ways?**

13 A. We apparently disagree over the meaning of the words "term" and "existing
14 agreements". Mr. Ferguson states "Sprint's ICA expired on December 31, 2004"
15 (SF page 5, lines 8-9) and then, in response to the question "What is the effect of
16 an ICA expiration date", asserts:

17 An ICA expiration date is an agreed-upon date certain that defines
18 the termination of an ICA between two companies. To that point,
19 the subject ICA between AT&T and Sprint formally expired on
20 December 31, 2004 – the expiration date to which both AT&T and
21 Sprint formally agreed in writing. That expiration date is expressly
22 set forth in Section 2.1 of the ICA.
23
24 (SF page 6, lines 10-14). Mr. Ferguson also suggests that the parties *only*
25 continued to operate under the 2001 ICA by virtue of AT&T's:

1 "longstanding practice ... that, *in the event that* negotiations or
2 arbitration for a new ICA exceed the prescribed negotiation
3 timeframes and do not conclude prior to the expiration date of the
4 existing ICA, *the parties can agree to extend negotiations for a*
5 *new ICA beyond the expiration date*."
6
7 (SF page 6, lines 20-24). Based on the foregoing, I believe Mr. Ferguson's
8 testimony creates two erroneous impressions: 1) that under the ICA *only* a stated
9 fixed multi-month or multi-year time period constitutes a "term" that is subject to
10 the 3-year extension, and 2) that the ICA *only* continues past a fixed term
11 expiration if the parties are in negotiations *and agree to extend such negotiations*
12 beyond the fixed term expiration date.
13 The problem with Mr. Ferguson's position is that it ignores the additional
14 2001 ICA provisions where the parties not only expressly agreed in writing that
15 the "term" *automatically* becomes a month-to-month term after a fixed term
16 "expiration", but the process by which a new month-to-month "term" is either
17 replaced or terminated. The conversion to a month-to-month term is automatic
18 under the last sentence of Section 2.1. (*See* MGF page 6, lines 6-13: "If, as of the
19 expiration of this Agreement, a Subsequent Agreement has not been executed by
20 the Parties, this Agreement shall continue on a month-to-month basis"; see also
21 legacy BellSouth counsel admission in Exhibit MGF-1). The month-to-month
22 term can literally continue without termination if neither party sends a 60-day
23 termination notice as provided in Section 3.3. (See MGF page 6, lines 29-36).
24 And, if there is any doubt that the month-to-month constitutes an "extension",
25 ICA Section 3.4 also states that when an arbitration is filed and the Commission

1 has not ruled prior to an expiration of the ICA, the ICA "is deemed extended on a
2 month-to-month basis" (MGF, page 6 line 38 to page 7 line 6).

3 Q. **What is the effect on AT&T's position once it is understood that upon**
4 **termination of the 2001 ICA's fixed term, the ICA automatically converted**
5 **to a month-to-month term?**

6 A. Pursuant to Merger Condition No. 4, AT&T is required to extend Sprint's
7 "current" ICA for a period up to 3-years. Sprint's "current" ICA is a month-to-
8 month agreement that, even absent arbitration, still continues on a month-to-
9 month basis unless terminated by either party's 60-day notice. The month-to-
10 month ICA is clearly the "current" ICA that Sprint is entitled to extend for 3-
11 years. I don't see any significance under either the ICA or Merger Condition No.
12 4 to the December, 2004 fixed term expiration relied upon by Mr. Ferguson.
13 Indeed, the ICA is a current, ongoing agreement with an active month-to-month
14 term, *that has been amended five times since December, 2004*, the most recent
15 amendment occurring in October, 2006. (See MFG page 7, line 24 through page
16 8, line 18).

17 Q. **What is your response to Mr. Ferguson's assertions that Sprint is seeking a**
18 **"six year" extension (SF page 6 line 1), and that Sprint's interpretation is**
19 **unfair and leads to discriminatory treatment based on timing (see generally,**
20 **SF page 7, line 13 through page 8, line 16).**

21 A. First, Sprint's interpretation results in the same treatment for all carriers – a post
22 December 29, 2006 3-year extension of a carrier's current ICA. This

1 interpretation is based on a straightforward application of Merger Commitment

2 No. 4 and the unequivocal language of the FCC order that states:

3 For the avoidance of doubt, unless otherwise expressly stated to the
4 contrary, all conditions and commitments proposed ... apply in the
5 AT&T/BellSouth in-region territory ... for a period of forty-two
6 months ***from the Merger Closing Date*** and would automatically
7 sunset thereafter.
8

9 (MGF page 13, line5-17, emphasis added).

10 Second, Sprint has consistently operated in good faith with respect to

11 AT&T and cannot be responsible for AT&T's "concern" that other carriers may

12 attempt to drag their feet to obtain a longer extension. The reality is that if

13 AT&T believes a given carrier is not negotiating in good faith, AT&T has always

14 had, and continues to have, the power to either initiate arbitration itself or refuse

15 an extension with a given carrier - which in and of itself places significant

16 pressure upon carriers to act in good faith in the first place.

17 Third, it is truly ironic that AT&T would point to Sprint's desire to keep

18 its ICA in place as somehow unfair because Sprint would obtain a longer benefit

19 than some other hypothetical carrier. AT&T knows full well that the parties have

20 invested an incredible amount of time in simply amending the 2001 ICA to keep

21 it current. Mr. Ferguson's assertion that Sprint's interpretation of a 3-year

22 extension ignores "the transactional costs associated with the negotiations that

23 have taken place over the last two-and-a-half years" (SF page 12, lines 16) again

24 demonstrates his lack of familiarity with the ICA and the negotiations that

1 occurred. A significant amount of such transaction costs were actually sunk into
2 the *six amendments* that the parties did enter into over the last two-and-a-half
3 years since the initiation of negotiations. (See MGF page 7, lines 20 through
4 page 8, line 18). Any "unfairness" in this case does not arise by virtue of Sprint
5 wanting to keep in place an ICA in which it has already invested years in keeping
6 up-to-date. The real unfairness here is in AT&T making an unqualified 3-year
7 extension offer to the FCC and the industry, apparently thinking twice about
8 what it did after the fact, and now searching high and low for a way to avoid
9 Sprint receiving the extension. From Sprint's perspective as a competing carrier,
10 there are indeed significant *avoidable* transaction cost opportunities that the
11 Merger Commitments represent to Sprint by continued use of the 2001 ICA, and
12 AT&T is simply seeking to prevent Sprint from realizing such benefits.
13 And finally, with respect to the example AT&T provided as to why the
14 2001 ICA is out-of-date – i.e., because AT&T has developed a purported
15 methodology to accurately measure and jurisdictionalize interMTA traffic (SF
16 page 11 at lines 11-21) – Mr. Ferguson, again, demonstrates his lack of
17 familiarity with both the negotiations and the 2001 ICA. The parties did not
18 agree on any specific "methodology" for jurisdictionalizing traffic, and Sprint
19 continues to dispute AT&T's purported ability to "accurately" identify and
20 measure interMTA traffic. What the parties contemplated was insertion of newly
21 "negotiated" interMTA factors and the need to develop a process (requiring
22 mutual agreement) for periodically updating such factors. Absent such mutual

1 agreement, interMTA factors were still subject to resolution pursuant to the
2 ICA's dispute resolution provisions – as would be any dispute under the 2001
3 ICA.

4 **IV. REBUTTAL TO THE BALANCE OF MR. HARPER'S TESTIMONY**

5 **Q. Do you have any response to Mr. Harper's request that the Commission**
6 **impose upon Sprint "the language that AT&T believes to be the final**
7 **agreement the parties had reached through negotiations for the General**
8 **Terms and Conditions and all attachments except Attachment 3" and "With**
9 **respect to Attachment 3" impose AT&T's "generic Attachment 3A for**
10 **wireless interconnection services and 3B for wireline interconnection**
11 **services" (beginning at page 4 line 25 and through page 5 line 11)?**

12 A. Yes. Mr. Harper is seeking this Commission's complicity in AT&T breaching its
13 interconnection obligations under the Merger Commitments, in addition to
14 punishing Sprint for daring to accept an offer that AT&T voluntarily proposed
15 and has since become obligated to make to all carriers in the industry. AT&T's
16 request makes about as much sense as Sprint requesting the Commission impose
17 upon AT&T "the language that *Sprint* believes to be the final agreement the
18 parties had reached through negotiations for the General Terms and Conditions
19 and all attachments except Attachment 3" and "With respect to Attachment 3"
20 *impose Attachment 3 from the parties 2001 ICA.* Neither suggestion is warranted
21 and, in any event, Sprint has already accepted the 3-year extension of the 2001
22 ICA which AT&T acknowledged in writing Sprint was entitled to do.

1 **Q. Why should the Commission rule in Sprint's favor on Issue 1 and**
2 **simultaneously reject AT&T's proposed "Issue 2"?**

3 A. First, it is truly absurd that Mr. Harper asserts AT&T's proposed resolution is
4 "completely compliant with the merger commitments AT&T made to the FCC".
5 Nothing could be further from reality. Among other things, the Merger
6 Commitments now require AT&T to negotiate from the parties' existing ICA –
7 which is precisely what Sprint repeatedly requested of AT&T throughout
8 negotiations and AT&T repeatedly refused. More to the point in this case, the
9 Merger Commitments require a 3-year extension of the parties' "current" ICA,
10 which a "proposed agreement" is, by definition, ***not***.

11 Second, AT&T even admits it "has agreed to extend the term of Sprint's
12 current ICA for three years" (SF p. 5, lines 7-8). The only dispute with respect to
13 such an extension is over the commencement date: AT&T sought to limit
14 Sprint's 3-year extension by construing any commencement date to be "*from* the
15 ICA expiration date of December 31, 2004", and Sprint contends it is entitled to
16 a post-merger, full 3-year extension *from* no earlier than the December 29, 2006
17 approval date. It is the current month-to-month term nature of the Sprint ICA
18 that supports the actual extension occurring *from* the date of Sprint's request,
19 because the month in which the request is made constitutes the "current' ICA
20 time-frame that is being extended for the full, post-merger 3-year period.

21 Third, Sprint's interpretation is supported by the language of the Merger
22 Commitments, is reasonable, and accomplishes the intent of the Merger

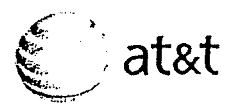
1 Commitments.

2 Fourth, as previously explained in my Direct Testimony, on its face,
3 AT&T's position would require the Commission to ignore two simple facts.
4 First, the parties' current ICA is by its express terms "deemed extended" and,
5 therefore, is still in effect with a never-expired, rolling month-to-month
6 expiration date that automatically continues to extend and renew. And second,
7 AT&T's interpretation requires the Commission to apply the Merger
8 Commitments in a manner inconsistent with their express terms in order to
9 essentially "back date" their application to precede their express stated effective
10 date of December 29, 2006. The practical effect of accepting AT&T's position is
11 that the Commission must essentially re-write Merger Commitment No. 4 and
12 the FCC's Order in a manner that obliterates the clear intended benefit to
13 requesting carriers of a post-Merger Closing Date three-year ICA extension,
14 which will only serve to reward and encourage further AT&T breaches of its
15 legal obligations.

16 **Q. Does this conclude your Rebuttal Testimony?**

17 A. Yes, it does.

EXHIBIT E



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July 26, 2007

Ms. Renne Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket No. P-294, Sub 31

Dear Ms. Vance:

I enclose for filing in the above-captioned docket the original and 25 copies of a replacement Exhibit PLF-1 for the original Exhibit PLF-1 that accompanied the Direct Testimony of P.L. (Scot) Ferguson that was pre-filed with the Commission on May 25, 2007. As a result of a production error at the time Mr. Ferguson's Direct Testimony was filed, AT&T North Carolina inadvertently attached the wrong version of his Exhibit PLF-1 to his testimony and just recently discovered its error. AT&T North Carolina regrets the error.

Please stamp the extra copy of this letter "Filed" and return it to me in the usual manner. Thank you for your assistance in this matter.

Sincerely,

Edward L. Rankin, III

Edward L. Rankin, III

ELR

Enclosures

cc: Parties of record

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control	)	WC Docket No. 06-74 DA 06-2035
	)	

COMMENTS ON AT&T'S PROPOSED CONDITIONS

ADVANCE/NEWHOUSE COMMUNICATIONS
CABLEVISION SYSTEMS CORPORATION
CHARTER COMMUNICATIONS
COX COMMUNICATIONS, AND
INSIGHT COMMUNICATIONS COMPANY

Dated: October 24, 2006

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application for Consent to Transfer of Control Filed by AT&T Inc. and BellSouth Corporation	)))	WC Docket No. 06-74 DA 06-2035
	)	

COMMENTS OF ADVANCE/NEWHOUSE COMMUNICATIONS, CABLEVISION SYSTEMS CORPORATION, CHARTER COMMUNICATIONS, COX COMMUNICATIONS, AND INSIGHT COMMUNICATIONS COMPANY ON AT&T'S PROPOSED CONDITIONS

Pursuant to the October 13, 2006 Public Notice[1/] issued by the Federal Communications Commission ("Commission") in the above-captioned proceeding, Advance/Newhouse Communications, Cablevision Systems Corporation, Charter Communications, Cox Communications, and Insight Communications Company ("the Cable Companies"), by and through their counsel, hereby submit these comments on the merger conditions proffered by AT&T and BellSouth. These comments also respond to AT&T's *ex parte* letter dated October 3, 2006 that addressed conditions proposed by the Cable Companies on September 27, 2006.[2/]

AT&T's failure to include the interconnection-related conditions proposed by the Cable Companies, with the exception of a limited condition on transiting, renders its proposal

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1/ *Application for Consent to Transfer of Control Filed by AT&T Inc. and BellSouth Corporation, Commission Seeks Comment on Proposals Submitted by AT&T Inc. and BellSouth Corporation*, WC Docket No. 06-74, Public Notice, DA 06-2035 (rel. Oct. 13, 2006). The Wireline Competition Bureau released an erratum to the public notice on October 16, 2006. *See Application for Consent to Transfer of Control Filed by AT&T Inc. and BellSouth Corporation, Commission Seeks Comment on Proposals Submitted by AT&T Inc. and BellSouth Corporation*, WC Docket No. 06-74, Erratum (rel. Oct. 16, 2006) ("*Erratum*").

2/ Letter from Gary L. Phillips, AT&T Inc., and Bennett L. Ross, BellSouth Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (Oct. 3, 2006) ("*AT&T Letter*").

inadequate. Even with respect to those matters for which AT&T has proffered conditions, including transiting and forbearance, the proposed conditions must be strengthened to provide even minimum protection against anticompetitive practices. These issues are discussed in greater detail below.

I. AT&T'S PROPOSED CONDITIONS ARE INADEQUATE BECAUSE THEY DO NOT ADDRESS INTERCONNECTION

AT&T's proposal fails to address the critical interconnection-related conditions required to ensure that the promise of robust competition between cable providers and AT&T is achieved. As explained in the Cable Companies' September 27, 2006 *ex parte* letter,[3/] the merger will greatly enhance the incentives and ability of AT&T to wield its market power over interconnection to undermine cable-provided voice services. These services, particularly as provided using voice over Internet protocol ("VoIP") technology, offer the only significant hope for widespread and sustainable facilities-based residential competition in the near future. To ensure that consumers reap the benefit of this competition, the Cable Companies proposed a narrow, targeted set of conditions that directly address the ability of AT&T to use its bottleneck control over interconnection to undermine cable-provided voice services.[4/]

AT&T's primary response to these conditions, filed on October 3, is to suggest that the cable providers "wait in line with the rest of the industry" to see if the Commission will address interconnection issues in its pending intercarrier compensation and IP-enabled services proceedings -- proceedings that have been pending before the Commission for years with no

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[3/] Letter from Cody J. Harrison, Advance/Newhouse Communications, *et. al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (Sept. 27, 2006) ("*Cable Letter*").

[4/] *Cable Letter* at 9-13 (asking the Commission to adopt measures that foster efficient interconnection and adopt conditions to reduce the cost and delay of interconnection negotiations).

definite deadline for conclusion.[5] AT&T argues that there is no reason to single out cable companies for "special treatment" and acts as though the merger has nothing to do with cable competition.[6] But it is AT&T that has singled out cable companies. AT&T identifies cable-provided voice services, particularly as provided as part of a bundle of voice, video, and broadband Internet services, as its most potent threat in the mass market.[7] It touts as the primary benefit of the merger the significantly enhanced ability to compete against cable, particularly in the BellSouth region, that will result from the integration of the companies' wireline and wireless networks.[8] To suggest that these facts will not increase AT&T's incentives to use the power it retains over interconnection to undermine its prime competitors is to ignore the entire history of telecommunications regulation.

AT&T is also wrong to suggest that the existence of pending rulemaking proceedings somehow precludes adoption of conditions addressing similar issues in merger proceedings.[9] Its own actions in this proceeding and in SBC's acquisition of AT&T belie that argument. SBC's proposed conditions in its merger with legacy AT&T and the conditions proposed by AT&T here

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5/ *See Developing a Unified Intercarrier Compensation Regime,* Notice of Proposed Rulemaking, 16 FCC Rcd. 9610 (2001). In 2005 the Commission, seeking to refresh the record concerning the adoption of a uniform intercarrier compensation regime system, issued a further notice of proposed rulemaking. *See Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd. 4685 (2005); *see also IP-Enabled Services,* Notice of Proposed Rulemaking, 19 FCC Rcd. 4863 (2004).

6/ *AT&T Letter* at 1.

7/ *See, e.g., SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd. 18290, ¶ 87 (2005) ("*SBC/AT&T Merger Order*"); *BellSouth Corporation and AT&T Inc. Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission's Rules for Consent to the Transfer of Control of BellSouth Corporation to AT&T Inc.*, WC Docket No. 06-74, Application for Transfer of Control, Description of Transaction, Public Interest Showing and Related Demonstration, at 88 (filed Mar. 31, 2006) ("*Public Interest Statement*").

8/ *See, e.g., Public Interest Statement* at 24.

directly relate to issues in pending rulemakings. For example, AT&T proposes conditions relating to special access pricing and performance metrics even though there are pending rulemakings addressing those very same issues.[10] It also proposed conditions in both mergers relating to pricing for unbundled network elements ("UNEs") even though the Commission has a pending proceeding to review the UNE pricing methodology.[11] Rather than the hard and fast rule against conditions that overlap issues in pending rulemakings that AT&T suggests, AT&T is really arguing that it should have the right to pick-and-choose which overlapping issues it will address in its mergers. The Commission certainly need not concede to such a self-serving policy.

Below, the Cable Companies respond to AT&T's specific objections regarding the Cable Companies' proposed conditions regarding the single point of interconnection, mitigating the costs of interconnection negotiation, and the applicability of sections 251 and 252 to cable VoIP providers as set forth in the Cable Companies' September 27 *ex parte* filing.

A. The Cable Companies' Proposed Single Point of Interconnection Condition Is Necessary to Ensure AT&T Complies with its Obligations

AT&T objects to a condition that would ensure that new entrants can choose technically feasible points of interconnection, including a single point of interconnection in a LATA, even though such a condition would merely ensure that it complies with existing rules and

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9/ *AT&T Letter* at 1-2.

10/ *See e.g., Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 1994 (2005); *see also Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, Notice of Proposed Rulemaking, 16 FCC Rcd. 20641 (2001).

regulations.[12] AT&T argues that it allows entrants to choose technically feasible interconnection arrangements and that the real dispute concerns who should bear the cost of delivering traffic to the point of interconnection ("POI").[13]

In fact, AT&T's policy prevents competitors from choosing a single point of interconnection as a practical matter. Cox, for example, recently had to arbitrate this issue in Arkansas, Kansas, and Oklahoma because AT&T would have required Cox to establish further interconnection points in a LATA once traffic exceeded an arbitrary limit set by AT&T.[14] Cox (and the CLEC Coalition, of which it was part) prevailed in these arbitrations, but it had to expend significant resources to confirm established Commission policy.

Charter similarly has experienced AT&T's refusal to comply with the single POI policy. In Illinois, for example, AT&T is demanding that Charter obtain interconnection trunks to every tandem in the LATA even though Charter is serving only two rate centers in the LATA.

11/ *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, 18 FCC Rcd. 18945 (2003).

12/ *See e.g., Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, Memorandum Opinion and Order, 17 FCC Rcd. 27039, ¶ 52 (2002) ("*Virginia Arbitration Order*") ("Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes that right to request a single point of interconnection....").

13/ *AT&T Letter* at 2, n.3.

14/ Docket No. 05-081-U, *Petition of Southwestern Bell Telephone, L.P. D/B/A SBC Arkansas for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Arkansas 271 Agreement ("A2A")*, Memorandum Opinion and Order (APSC Oct. 31, 2005) ("*Cox Arkansas Arbitration Order*"); *see also* Docket No. 05-BTKT-365-ARB, *In the Matter of the Petition of the CLEC Coalition for Arbitration against Southwestern Bell Telephone, L.P. d/b/a SBC Kansas under Section 252(b) of the Telecommunications Act of 1996*, Arbitrator's Determination (KCC June 6, 2005) ("*Cox Kansas Arbitration Order*"); Cause No. PUD 200400497, *Petition of CLEC Coalition for Arbitration against Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma under Section 252(b) of the Telecommunications Act of 1996*, Order No. 52219 (OCC March 24, 2006) ("*Cox Oklahoma Arbitration Order*").

Moreover, AT&T wants Charter to order two-way trunks despite the fact that the traffic will be one-way - from AT&T to Charter - and Charter would never utilize those trunks for its originating traffic. Likewise, in Wisconsin, AT&T is demanding that Charter obtain two-way trunks directly to each access tandem in the LATA. These types of requests add cost and inefficiency to Charter's network while making it easier and cheaper for AT&T to move its traffic on AT&T's side of the network. Further, AT&T is able to delay significantly Charter's entry as it insists on this type of interconnection even when there is no such requirement in law or in the applicable interconnection agreement.

AT&T's other objection to the Cable Companies' proposed condition on the point of interconnection -- that the "real" dispute is about who should pay to deliver traffic to the POI -- reveals the very problem that the Cable Companies' conditions are designed to redress. The Commission's rules clearly require each provider to bear the financial burden of delivering their originating traffic to the point of interconnection.[15/] By persistently disputing requirements that are clearly set forth in the Communications Act of 1934, as amended ("Act"), and the Commission's rules, AT&T unnecessarily raises its rivals' costs and delays market entry.

The Cable Companies therefore propose the following condition to confirm the single POI rule and to confirm that each party bears the financial responsibility to bring their originating traffic to the POI:

> <u>Single POI per LATA</u>
>
> AT&T/BellSouth shall permit competitive providers to choose a single, technically feasible point of interconnection ("POI") on AT&T/BellSouth's network, including choosing a single point of

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[15/] *Virginia Arbitration Order* ¶ 52 ("[U]nder [the Commission's] rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.").

> interconnection in a LATA. AT&T/BellSouth and the competitive provider shall each bear the financial responsibility for bringing their originating traffic that is subject to section 251(b)(5) of the Act to the chosen point of interconnection. AT&T/BellSouth and the competitive provider may mutually agree to establish additional points of interconnection as justified by sound network engineering and business practices. AT&T/BellSouth cannot unilaterally require the competitive provider to establish additional POIs based on levels of traffic set solely by AT&T/BellSouth.

Adoption of this condition will preclude AT&T from raising its rivals' costs by continually asserting its anticompetitive, multi-POI policy.

B. The Cable Companies' Proposed Conditions Mitigate Unnecessary Transaction Costs Imposed by AT&T

The location of points of interconnection is not the only issue on which AT&T acts to impose unnecessary arbitration costs on its competitors. AT&T uses many different stall tactics for the sole purpose of increasing negotiation costs. For example, AT&T often forces cable providers to arbitrate interconnection terms that the state commission has already concluded AT&T must provide. AT&T's affiliate in Connecticut, Southern New England Telephone ("SNET"), for example, forced Cablevision to arbitrate its request that the carriers exchange traffic on a bill and keep basis, even though SNET previously agreed to a bill and keep arrangement with Cablevision and offered bill and keep to legacy AT&T.[16/] When Cablevision's agreement was due for renewal, it requested that the parties maintain their existing agreement, including the bill and keep arrangement. SNET refused, even though during the negotiations it entered into a voluntarily negotiated agreement with AT&T that included a bill and keep arrangement. Moreover, at a time when carriers could pick-and-choose portions of an

agreement, SNET also refused to allow Cablevision to adopt portions of the AT&T/SNET agreement despite allowing AT&T's affiliate, TCG, to opt into the same agreement. Cablevision was forced to file a petition for arbitration simply to exercise its legal rights to obtain the same arrangements SNET voluntarily provided to other similarly situated carriers and which it previously provided to Cablevision.[17]

It is because of the types of practices discussed above[18] that the Cable Companies proposed several conditions designed to mitigate AT&T's ability to impose on them the costs of protracted negotiations and arbitrations.[19] These conditions will streamline the negotiation process, a goal that AT&T, which also must expend time and resources negotiating and arbitrating agreements, should readily embrace. The Cable Companies, for example, proposed that competitors be permitted: (1) to opt into any negotiated or arbitrated interconnection agreement approved and effective in any AT&T/BellSouth in-region state, subject to state

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[16] The Cable Companies proposed a condition that would permit bill and keep, a very efficient method of exchanging VoIP traffic, at the request of the cable provider. Such a condition would preclude the type of stalling tactics engaged in by SNET.

[17] Docket No. 02-07-05, *Petition of Cablevision Lightpath - CT, Inc. for Arbitration Pursuant to Sections 252(b) and 252(i) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with The Southern New England Telephone Company ("SBC SNET")*, Cablevision Lightpath - CT, Inc. Petition for Arbitration (filed July 12, 2002). After reviewing the issue, the Connecticut Department of Public Utility Control determined that denying Cablevision access to the same arrangements other carriers were permitted to obtain would be discriminatory and unacceptable. SNET appealed the decision to federal district court, but later withdrew its appeal. *See* Docket No. 02-07-05, *Petition of Cablevision Lightpath – CT, Inc. for Arbitration Pursuant to Sections 252(b) and 252(i) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with The Southern New England Telephone Company*, Decision (CTDPUC Jan. 15, 2003) ("Arbitration Decision").

[18] The examples of interconnection-related abuses by AT&T's various operating companies set out in these comments thoroughly address AT&T's comment that the Cable Companies have failed to identify a single incident of discrimination. *AT&T Letter* at 4.

[19] *Cable Letter* at 9-12.

specific pricing or performance plans;[20] (2) to extend the term of existing agreements; and (3) to use an expiring agreement as the baseline for a new agreement.

AT&T has said nothing about these conditions, which, to the best of the Cable Companies' knowledge, are not the subject of any pending rulemaking proceeding. Because competitors cannot begin providing service until interconnection terms have been resolved, AT&T has the ability, simply through the negotiation and arbitration process, to delay market entry. Similarly, AT&T/BellSouth (whose negotiating and arbitration resources dwarf those of its cable competitors)[21] has the ability to increase cable's relative costs of providing competitive phone service to consumers far above the relative costs that AT&T/BellSouth incurs for such activities by forcing its competitors to arbitrate (and re-arbitrate) issues unnecessarily, by refusing to extend existing business arrangement, and by insisting on continually re-negotiating interconnection agreements (thereby forcing the Cable Companies to re-negotiate hundreds of terms not otherwise affected by intervening changes in the law and to expend far more resources than necessary). Accordingly, the Cable Companies propose the following conditions:

> Reducing Transaction Costs
>
> (1) AT&T/BellSouth shall make available any entire effective interconnection agreement, whether negotiated or arbitrated, that was or is entered into by AT&T/BellSouth or any affiliate, in any state in the merged entity's 22-state incumbent LEC operating territory, subject to technical feasibility and state-specific pricing and performance plans.
>
> (2) AT&T/BellSouth shall not refuse a request to opt into an agreement on the grounds that the agreement has not been

[20] The Commission has adopted a similar condition in previous BOC mergers. *See e.g., Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd. 14712, ¶ 388 (1999) ("*SBC/Ameritech Merger Order*").

[21] *See infra* n.32.

> amended to reflect changes of law, provided the requesting party agrees to negotiate an amendment regarding such change of law immediately after it has opted into the agreement.
>
> (3) AT&T/BellSouth shall allow a requesting party, at its option, to use the parties' pre-existing interconnection agreement as the starting point for negotiating a new agreement.
>
> (4) AT&T/BellSouth shall permit a party to extend the parties' current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect changes of law after the agreement has been extended. During this period, the interconnection agreement may be terminated only via a competitor's request unless terminated pursuant to the agreement's "default" provisions.

The Cable Companies' proposed interconnection agreement-related conditions directly address AT&T's ability to engage in this form of anticompetitive behavior.

C. The Applicability of Section 251 and 252 to Cable VoIP Providers Should Be Addressed

The conditions proffered by the Cable Companies designed to solidify and make reasonably accessible the Act's interconnection obligations will be of little use if AT&T takes the position that section 251 protections and section 252 procedures are not available to cable VoIP providers. The Commission has recognized that the obligations imposed on ILECs by section 251 are required to check the market power of Bell Operating Companies ("BOCs") over interconnection, and this power is not diminished when cable companies offer competitive phone service using packet-switched, rather than circuit-switched, technology.[22/] The Cable Companies have thus proposed that AT&T may not refuse to abide by its section 251 and 252 obligations when requested by a cable voice provider, regardless of the technology or regulatory classification of the service.

22/ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd. 19415, ¶ 84 (2005) ("*Qwest Forbearance Order*").

The importance of this requirement is highlighted by the fact that a similar obligation is included in the draft telecommunications legislation in both the House and the Senate.[23/] Notably, the Congressional Budget Office has confirmed that "based on government and industry sources, the incremental cost of making interconnection available to IP-enabled carriers would be minimal."[24/] Ensuring the applicability of sections 251 and 252 to requests for interconnection and network elements by cable VoIP providers, which AT&T has identified as its most potent competitive threat in the mass market, will in turn ensure that residential consumers will reap the benefits of competition.[25/]

AT&T has reportedly objected to this condition on several grounds, stating that cable companies "want to be treated as telecommunications providers but [it] can't confer that jurisdiction on [Cable VoIP providers]," and that AT&T "can't tell state regulatory commissions they have to start arbitrating [negotiations between VoIP providers and AT&T]."[26/] These arguments are distractions that elevate form over substance. As an initial matter, the Commission has historically predicated its approval of BOC mergers on the existence of broad

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[23/] An Act to Promote the Deployment of Broadband Networks and Services, H.R. 5252 (House version), 109th Cong. § 301 (providing that "[a] facilities-based VOIP service provider shall have the same rights, duties, and obligations as a requesting telecommunications carrier under sections 251 and 252, if the provider elects to assert such rights"); H.R. 5252 (Senate version), 109th Cong. § 213 (same).

[24/] Report of the Senate Committee on Commerce, Science, and Transportation on H.R. 5252 Together With Additional Views, S. REP. NO. 109-355, at 20 (2006).

[25/] *See e.g., Implementation of the Local Competition Provisions in the Telecommunications Act 1996: Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd. 15499, ¶ 179 ("*Local Competition Order*") (finding that national rules implementing section 251(c)(2) "are necessary to further Congress's goal of creating conditions that will facilitate the development of competition in the telephone exchange market.")

[26/] Edie Herman, *AT&T Not Inclined to Offer More Merger Conditions, Quinn Says*, COMM. DAILY, Oct. 23, 2006, at 2. AT&T did not make this argument in its October 3, 2006 response to the Cable Companies' proposed conditions.

conditions designed to ameliorate the public interest harms of the merger.[27] AT&T's proposed acquisition of BellSouth will harm the public interest if cable VoIP providers are unable to obtain from AT&T the same interconnection rights and protections that competitive local exchange carriers ("LECs") receive. There is nothing to suggest that the Commission is precluded from accepting a condition that AT&T effectively treat cable VoIP service providers as competitive carriers for interconnection purposes. Nor is there any doubt that the Commission has authority to make sections 251 and 252 available to cable VoIP providers.[28] And, as discussed below, once the parties agree to negotiate and cannot reach agreement, the state commission has jurisdiction to arbitrate the issue.

More specifically, section 252 charges states with the obligation to mediate and arbitrate "any open issues" that arise in interconnection negotiations between incumbent LECs and requesting carriers.[29] If, as a condition of this merger, the Commission determines that a cable VoIP provider should be treated as a requesting carrier for purposes of section 251, then a state commission would have the authority and the duty to participate in the arbitration between such a provider and AT&T and to approve and enforce any negotiated agreement by operation of section 252. The Commission, not AT&T, would be defining the scope of the section 252 process, as it has the authority to do under the Act. AT&T's claims to the contrary should be dismissed.

27/ *See, e.g., Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd. 14032, ¶ 253 (2000); *SBC/Ameritech Merger Order* ¶ 52.

28/ *See AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 266, 378 (1999) ("The FCC has rulemaking authority to carry out the 'provisions of the Act' which include sections 251 and 252, added by the Telecommunications Act of 1996.").

29/ 47 U.S.C. § 252(b).

It is no reason to reject *a priori* the Cable Companies' proffered condition on the grounds that a state commission might take the position that it has no jurisdiction to approve, arbitrate, or enforce an interconnection agreement between AT&T and a cable VoIP provider (although AT&T should, as part of the condition, be precluded from itself raising that issue either before the state commission in the first instance (or the Commission acting in the place of a state commission) or as the basis of an appeal of a state commission action). If a state commission raises such an objection, a cable VoIP provider can contest it in the context of the specific circumstances in which it is raised. If a state commission refuses to discharge its responsibility, the Commission could step in pursuant to section 252(e)(5) of the Act.

Finally, even if a state were to refuse to approve, arbitrate, or enforce an interconnection agreement between AT&T and a cable VoIP provider, the proposed condition has substantial pro-competitive value. At a minimum, it would permit a cable VoIP provider to opt into an existing interconnection agreement pursuant to section 252(i) of the Act. Regardless of whether the resulting agreement between AT&T and the cable VoIP provider is deemed by the state to be a section 252 agreement, it nevertheless is a contractual obligation binding AT&T to provide the agreement's interconnection services to the cable VoIP provider. Such an agreement is enforceable as a matter of contract law. Furthermore, any failure on the part of AT&T to make section 251 interconnection available to cable VoIP providers would be enforceable as a merger condition.[30/]

AT&T should therefore be required to comply with the following condition:

[30/] *SBC Communications v. FCC*, 373 F.3d 140 (D.C. Cir. 2004) (upholding the Commission's forfeiture for violation of the shared-transport merger condition attached to the SBC/Ameritech merger).

> Section 251 Rights for Cable Providers
>
> AT&T/BellSouth shall agree to treat any cable telephony provider, regardless of the technology used or the classification of service, as a requesting telecommunications carrier under sections 251 and 252 and shall owe such provider the obligations it owes to a requesting telecommunications carrier under section 251(c). AT&T shall permit such cable telephony providers to opt into any entire interconnection agreement, including, without limitation, any opt in rights established as a condition of this merger. AT&T shall not contest the authority or jurisdiction of a state commission to approve, arbitrate or enforce any interconnection agreement negotiated with any cable telephony provider, either before the state commission (or the Commission acting in the place of a state commission) or on appeal of a state commission determination regarding such interconnection agreement. This condition shall not expire unless superseded by statute or regulation clarifying the applicability of sections 251 and 252 to IP-enabled voice providers.

D. The Cable Companies' Proposed Conditions are Merger-Related

Contrary to AT&T's protestation, the conditions proposed by the Cable Companies are directly related to the merger. As fully explained in the Cable Companies' September 27 *ex parte* filing, this merger is primarily about enhancing AT&T's dominant position in the mass market so as to better meet burgeoning cable-based voice competition. It is thus remarkable for AT&T to assert that this merger "will have no impact on the merged company's dealings with cable companies."[31] Indeed AT&T expresses outrage that it should be singled out for any "special treatment," as if it had not initiated one of the largest telecommunications mergers in history and would not, as a result, become the biggest telecommunications company in the world. Post-merger AT&T will dwarf even the largest cable companies, let alone the smaller, second tier companies requesting these conditions.[32] AT&T is no position to cry foul when

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[31] *AT&T Letter* at 1.

[32] After the merger, AT&T/BellSouth is estimated to generate $117 billion in revenue and will "become the largest domestic phone company with more than 70 million local-access lines...." *See* Lara

confronted with narrowly-targeted conditions designed to ameliorate the increased incentives and ability to harm competition that will surely result from this merger.

II. IN ADDITION TO IGNORING THE CABLE COMPANIES' PROPOSED INTERCONNECTION CONDITIONS, THE CONDITIONS PROPOSED BY AT&T ARE INSUFFICIENT

AT&T's proffered conditions on transiting and forbearance are not adequate to mitigate the public interest harms the merger likely will cause in the residential market. Accordingly, the Cable Companies offer the following revisions to the conditions proposed by AT&T.

A. AT&T's Proposed Transiting Condition is Deficient

AT&T has proposed a modest condition addressing transiting. It proposes a ceiling for thirty (30) months on "rates paid by existing customers for their existing tandem transit service arrangements that AT&T and BellSouth incumbent LECs provide in the AT&T/BellSouth in-region territory."[33/] This provision is helpful, but insufficient. For one thing, as cable providers enter new markets, the condition could be interpreted as precluding them from receiving the benefit of this rate ceiling. It must be made clear that the condition applies to new as well as existing transiting arrangements to ensure that, as voice competition is extended to additional areas, AT&T may not target new competition with excessive transiting fees. Similarly, as the terms of existing interconnection agreements expire, AT&T may not use the re-negotiation to

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Jakes Jordan, *Justice Department Approves AT&T-BellSouth Merger Plan*, ASSOCIATED PRESS (Oct. 11, 2006); *see also* Ted Hearn, *DOJ Approves AT&T-BellSouth Merger*, COMM. DAILY (Oct. 11, 2006). In contrast, measured by revenue, AT&T/BellSouth will be five times larger than the largest cable company. Comcast currently has 21.7 million subscribers and its 2005 annual revenue was $22.3 billion. *See* Comcast 2005 Annual Report, Shareholder Letter, *available at*: http://www.comcast.com/2005ar/letter2.html (last viewed Oct. 24, 2006). AT&T/BellSouth's position is even more unequal with respect to the second and third largest cable providers, Time Warner has 11 million subscribers and Charter Communications has 3.8 million subscribers. *See* "Top 25 MSOs - As of June 2006," *available at*: http://www.ncta.com/ContentView.aspx?contentId=73 (last viewed Oct. 24, 2006).

ignore this rate ceiling. Transiting rates for new arrangements should be no higher that existing rates for providers in the same or similar area.

AT&T should also be required to continue to address transiting provisions in the context of section 251 obligations and interconnection agreements, as proposed in the Cable Companies' condition on transiting, and by others.[34/] In its October 3, 2006 response to the Cable Companies' transiting conditions, AT&T incorrectly claims that the companies seek "expansive new transiting obligations."[35/] Instead, the Cable Companies are simply asking AT&T to continue providing transiting services that it and other incumbent LECs have routinely included in their interconnection agreements.[36/]

AT&T's intransigence on this issue is already in evidence. In negotiating for replacement section 251/252 interconnection agreements with AT&T in Arkansas,[37/] Kansas,[38/] and Oklahoma,[39/] AT&T flatly refused the inclusion of *any* transiting services in its proposed interconnection agreement. Cox (a member of the CLEC Coalition) was forced to arbitrate the

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33/ *Erratum* at 5 (letter from Robert W. Quinn, Jr., AT&T Inc., to Kevin Martin, Chairman, FCC, dated Oct. 13, 2006, notifying the Chairman of its updated list of proposed conditions).

34/ *See, e.g.*, Sprint Nextel Corporation Comments at 11 (requesting that the Commission "require the newly merged company to offer transit service at cost based rates and not the so-called 'market based' rates AT&T and BellSouth have sought in the states"); *see also* letter from Karen Reidy, Comptel, to Marlene H. Dortch, Secretary, FCC, attachment at 2 (Sept. 22, 2006) ("*Comptel Conditions Letter*") ("The merged entity will provide transit service for traffic between any two parties that are interconnected with the merged entity pursuant to an interconnection agreement. The transit service will be subject to sections 251 and 252 of the Act and will be subject to prices at UNE switching rates. The merged entity will not assert that transit service is not subject to sections 251 and 252 of the Act.").

35/ *AT&T Letter* at 2.

36/ *Cox Arkansas Arbitration Order* at 17 (stating that "[t]ransit traffic has always been a part of the ICAs....").

37/ *Id.*

38/ *See Cox Kansas Arbitration Order.*

39/ *See Cox Oklahoma Arbitration Order.*

inclusion of transit terms in the contract. Although the CLEC Coalition prevailed on this issue in each arbitration, the CLEC Coalition members were required to spend considerable time and money simply to have AT&T continue a well-accepted practice.

Requiring as a merger condition the continued provision of transiting services pursuant section 251 is necessary in light of AT&T's continuing market power over such services, especially given AT&T's track record regarding its unwillingness to negotiate such terms. The Commission, in the *Qwest Forbearance Order*, specifically found that BOCs have market power over transiting services and refused to lift section 251(c)(2) interconnection obligations as a result.[40/] Indeed, by addressing the question in the context of section 251(c)(2) forbearance, the Commission implicitly found that transiting is within the scope of section 251(c)(2).

Moreover, AT&T's proposal does nothing to redress the exorbitant transiting rates that exist in some places. In Connecticut, for example, AT&T's standard transit rate is 3.5 cents per minute. After prolonged litigation, Cox was able to reduce this somewhat, to 2.3 cents per minute. Even that rate is ten times higher than the rates Cox pays in other AT&T states and eight times higher than it pays in BellSouth states. Imposing egregiously high transit rates is a classic example of an entity utilizing control over bottleneck facilities to raise rivals costs and this issue should be addressed in a more robust manner than proposed by AT&T. The Cable Companies thus propose that the transiting condition be modified as follows:

> <u>Transiting</u>
> The AT&T and BellSouth incumbent LECs will not increase the rates paid by existing customers for their existing tandem transiting service arrangements that the AT&T and BellSouth incumbent

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40/ *Qwest Forbearance Order*, ¶ 86, n.215 ("Competitive carriers that do not directly connect to one another then rely on the incumbent LEC to provide a transit service to carry traffic between their points of connection with the incumbent LEC, which often are collocated.").

> LECs provide in the AT&T/BellSouth in-region territory. As existing interconnection agreements are negotiated and as transit customers expand into new areas within this territory and request transiting arrangements in these areas, the transit rate for such arrangements will not exceed the rates paid under the customers' existing agreements with AT&T and/or BellSouth, or, if no transiting arrangements exist, the transit rate will not exceed the average transit rate available in interconnection agreements with other companies that have transiting arrangements using the same AT&T/BellSouth tandems. AT&T/BellSouth shall not refuse to negotiate the terms and conditions of transiting in the context of section 251 interconnection agreements.[41/]

B. AT&T's Proposed Forbearance Condition Is Too Limited

AT&T states that it will not seek forbearance from its section 251(c)(3) unbundled loop and transport obligations. This commitment is too limited. AT&T should also refrain from seeking forbearance from section 251 interconnection and collocation obligations, which are critical to the Cable Companies' ability to provide facilities-based voice competition in the local market. The Commission acknowledged this point by refusing to exercise its forbearance power with respect to those obligations in the *Qwest Forbearance Order*.[42/] AT&T's explicit restriction of this condition to UNEs suggests that AT&T may seek forbearance from critical interconnection and collocation provisions, even though these are precisely the provisions that

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41/ Maintaining transiting rates in section 251 interconnection negotiations in no way expands the jurisdiction of the states beyond that contemplated by the Act. The Act contemplates that parties may negotiate and arbitrate any issue in the context of section 251 negotiations. During the negotiation process the parties "are free to make any agreement they want without regard to the requirements of section 251(b) and (c)." *Coserv Ltd. Liability Corp. v. Southwestern Bell*, 350 F.3d 482, 487 (5th Cir. 2003). Once part of the negotiation process, "*any* open issue" may be brought before the state commission for arbitration. *See id.* (emphasis added). The Act thus contemplates extraordinarily broad state jurisdiction over issues raised and negotiated in the context of interconnection negotiations. As *Coserv* recognized, the incumbent local exchange carrier can refuse to negotiate issues not specifically listed in sections 251(b) and (c). *See id.* The condition proposed by the Cable Companies removes AT&T's ability to refuse to negotiate transiting provisions, but this requirement does not expand state jurisdiction.

42/ *Qwest Forbearance Order* ¶ 85.

the Commission found remain necessary to ensure robust facilities-based competition in the voice market. The forbearance condition should thus be modified as follows:

> Forbearance
>
> For thirty months after the Merger Closing Date, AT&T/BellSouth will not seek a ruling, including through a forbearance petition under section 10 of the Act, 47 U.S.C. § 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act, or from any interconnection or collocation obligation under section 251 of the Act.

CONCLUSION

For the foregoing reasons, the Cable Companies urge the Commission to adopt the interconnection-related conditions set forth herein and in their prior filings so as to ensure robust voice competition for residential consumers.

Respectfully submitted,

ADVANCE/NEWHOUSE COMMUNICATIONS
CABLEVISION SYSTEMS CORPORATION
CHARTER COMMUNICATIONS
COX COMMUNICATIONS, AND
INSIGHT COMMUNICATIONS COMPANY

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Their Attorneys

Dated: October 24, 2006

APPENDIX A

Cable Companies' Proposed Merger Conditions

Single POI per LATA

AT&T/BellSouth shall permit competitive providers to choose a single, technically feasible point of interconnection on AT&T/BellSouth's network, including choosing a single point of interconnection in a LATA. AT&T/BellSouth and the competitive provider shall each bear the financial responsibility for bringing their originating traffic that is subject to section 251(b)(5) to the chosen point of interconnection. AT&T/BellSouth and the competitive provider may mutually agree to establish additional points of interconnection as justified by sound network engineering and business practices. AT&T/BellSouth cannot unilaterally require the competitive provider to establish additional POIs based on levels of traffic set solely by AT&T/BellSouth.

Reducing Transaction Costs

(1) AT&T/BellSouth shall make available any entire effective interconnection agreement, whether negotiated or arbitrated, that was entered into by AT&T/BellSouth or any affiliate, in any state in the merged entity's 22-state incumbent LEC operating territory, subject to technical feasibility and state-specific pricing and performance plans.
(2) AT&T/BellSouth shall not refuse a request to opt into an agreement on the grounds that the agreement has not been amended to reflect changes of law, provided the requesting party agrees to negotiate an amendment regarding such change of law immediately after it has opted into the agreement.
(3) AT&T/BellSouth shall allow a requesting party, at its option, to use the parties' pre-existing interconnection agreement as the starting point for negotiating a new agreement.
(4) AT&T/BellSouth shall permit a party to extend the parties' current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect changes of law after the agreement has been extended. During this period, the interconnection agreement may be terminated only via a competitor's request unless terminated pursuant to the agreement's "default" provisions.

Section 251 Rights for Cable Providers

AT&T/BellSouth shall agree to treat any cable telephony provider, regardless of the technology used or the classification of service, as a requesting telecommunications carrier under sections 251 and 252 and shall owe such provider the obligations it owes to a requesting telecommunications carrier under section 251(c). AT&T shall permit such cable telephony providers to opt into any entire interconnection agreement, including, without limitation, any opt in rights established as a condition of this merger. AT&T shall not contest the authority or jurisdiction of a state commission to approve, arbitrate or enforce any interconnection agreement negotiated with any cable telephony provider, either before the state commission (or the Commission acting in the place of a state commission) or on appeal of a state commission

determination regarding such interconnection agreement. This condition shall not expire unless superseded by statute or regulation clarifying the applicability of sections 251 and 252 to IP-enabled voice providers.

Transiting

The AT&T and BellSouth incumbent LECs will not increase the rates paid by existing customers for their existing tandem transiting service arrangements that the AT&T and BellSouth incumbent LECs provide in the AT&T/BellSouth in-region territory. As existing interconnection agreements are negotiated and as transit customers expand into new areas within this territory and request transiting arrangements in these areas, the transit rate for such arrangements will not exceed the rates paid under the customers' existing agreements with AT&T and/or BellSouth, or, if no transiting arrangements exist, the transit rate will not exceed the average transit rate available in interconnection agreements with other companies that have transiting arrangements using the same AT&T/BellSouth tandems. AT&T/BellSouth shall not refuse to negotiate the terms and conditions of transiting in the context of section 251 interconnection agreements.

Forbearance

For thirty months after the Merger Closing Date, AT&T/BellSouth will not seek a ruling, including through a forbearance petition under section 10 of the Act, 47 U.S.C. § 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act, or from any interconnection or collocation obligation under section 251 of the Act.

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EXHIBIT F

July 27, 2007

Ms. Renne Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket No. P-294, Sub 31

Dear Ms. Vance:

I enclose for filing in the above-referenced docket the original and 25 copies of AT&T North Carolina's Motion for Adoption of Pre-Filed Testimony of Mike Harper.

Please stamp the extra copy of this letter "Filed" and return it to me in the usual manner. Thank you for your assistance in this matter.

Sincerely,

Edward L. Rankin III

Edward L. Rankin, III /SA

ELR/sam

Enclosures

cc: Parties of record

BEFORE THE

NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Sprint Communications Company, L.P. and Sprint Spectrum, L.P., d/b/a Sprint PCS for Arbitration with BellSouth Telecommunications, Inc., d/b/a AT&T North Carolina, d/b/a AT&T Southeast	))))))	Docket No. P-294, Sub 31

MOTION FOR ADOPTION OF PRE-FILED TESTIMONY OF MIKE HARPER

AT&T North Carolina (AT&T), by and through undersigned counsel, respectfully requests that J. Scott McPhee be allowed to adopt the pre-filed testimony of Mike Harper in the above-captioned matter, and in support of this request, states as follows:

1. On May 25, 2007, AT&T pre-filed the direct testimony (and exhibits) of Mr. Mike Harper in this matter.

2. A business need has arisen for AT&T to replace Mr. Harper with Mr. J. Scott McPhee. Mr. McPhee would adopt the same pre-filed testimony, including exhibits, that Mr. Harper was prepared to sponsor at the hearing next Tuesday, July 31.

3. AT&T's counsel has conferred with counsel for Sprint about this matter, and Sprint is not opposed to the proposed adoption of Mr. Harper's testimony by Mr. McPhee.

4. Mr. McPhee is an Associate Director – Wholesale Regulatory Policy & Support for Pacific Bell Telephone Company d/b/a AT&T California. He works in the Wholesale Customer Care organization on behalf of the AT&T incumbent local exchange carriers throughout AT&T's 22-state Regional Bell Operating Company region, including AT&T North Carolina. He is responsible for researching, supporting, and

communicating AT&T's product policy positions in regulatory proceedings across the twenty-two incumbent AT&T states, including North Carolina.

WHEREFORE, AT&T respectfully asks that the Commission allow Mr. McPhee to adopt the pre-filed testimony (and exhibits) of Mr. Mike Harper.

This the 27th day of July, 2007

AT&T NORTH CAROLINA

Edward L. Rankin III /SR

By: Edward L. Rankin, III
General Counsel—North Carolina
P.O. Box 30188, Suite 1521 AT&T Plaza
Charlotte, North Carolina 28230
(704) 417-8833

ITS ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all parties of record via U.S. mail, first class postage prepaid, and/or electronic mail this 27th day of July, 2007.

Edward L. Rankin III /s/

PC Docs: 685638