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January 24, 2008

VIA EMAIL AND
FEDERAL EXPRESS

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Adoption by Nextel West Corp. ("Nextel") of the Existing Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001
PSC 2007-00255

Dear Ms. O'Donnell:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of AT&T Kentucky's Brief in Support of Request for Procedural Schedule and Hearing.

Thank you for your attention to this matter.

Sincerely,

Mary K. Keyer
General Counsel-KY

Enclosures

cc: Parties of record

702404

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Adoption by Nextel West Corp. ("Nextel")	)	
Of the Existing Interconnection Agreement	)	
By and Between BellSouth	)	CASE NO.
Telecommunications, Inc. and Sprint	)	2007-00255
Communications Company Limited Partnership,	)	
Sprint Communications Company L.P.,	)	
Sprint Spectrum L.P." dated January 1, 2001	)	

AT&T KENTUCKY'S BRIEF IN SUPPORT OF REQUEST FOR PROCEDURAL SCHEDULE AND HEARING

Comes now BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky ("AT&T Kentucky"), and respectfully submits its Brief In Support of Request For Procedural Schedule And Hearing.

On December 18, 2007, the Kentucky Public Service Commission ("Commission") granted the request of Nextel to adopt the interconnection agreement between AT&T Kentucky and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P. (collectively "Sprint"). On December 21, 2007, AT&T Kentucky filed a Motion for Reconsideration of the Commission's Order. Nextel filed a response to AT&T Kentucky's Motion on January 3, 2008. In an Order dated January 10, 2008, the Commission granted AT&T Kentucky's Motion for Reconsideration. Accordingly, AT&T Kentucky hereby provides the Commission with the following argument demonstrating that Nextel's attempted adoption should be denied and, should the Commission continue exercising jurisdiction, the matter should be set for a hearing on the merits.

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

In its Petition, Nextel claims to rely on "the interconnection-related Merger Commitments Nos. 1 and 2 ordered by the Federal Communications Commission ("FCC") in the AT&T Inc. and BellSouth Corp. merger proceeding, and Section 252(i) of the Telecommunications Act of 1996 ("Act") ...." The merger commitments Nextel refers to are as follows:

> 1. The AT&T/BellSouth ILEC shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.
>
> 2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

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

The first Merger Commitment applies only when a carrier wants to take an interconnection agreement from one state and operate under that agreement in a different state (which often is referred to as "porting" an agreement from one state into another state). That is precisely why the commitment contains language such as "subject to state-specific pricing and performance plans and technical feasibility," and

"consistent with the laws and regulatory requirements of the state for which the request is made." That language is necessary only when an agreement that was approved in one state is ported into another state.

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

In the instant case, Nextel is not seeking to port an agreement from another state into Kentucky; it is attempting to use the Merger Commitment to adopt the Kentucky AT&T/Sprint interconnection agreement. *See* Notice of Adoption at 1. Such an adoption was not contemplated under the Merger Commitment and is improper. Therefore, the Commission should deny the adoption request.

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

AT&T Kentucky's objection to Nextel's request is not based on any "change of law" issue

Therefore, this Merger Commitment is entirely inapplicable to this dispute. Nextel's reliance on this Merger Commitment for the attempted adoption is misplaced and should, therefore, be reconsidered and denied by the Commission.

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

Nextel also based its attempted adoption on Section 252(i) of the Act. *See* Notice of Adoption at 1. Section 252(i) provides:

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

This provision does not support Nextel's attempted adoption because Nextel is not seeking to adopt the Sprint interconnection agreement "upon the same terms and conditions as provided in the agreement." That is so because the Sprint agreement addresses a unique mix of wireline and wireless items, and Nextel is a solely wireless carrier. Allowing Nextel to adopt the Sprint interconnection agreement would result in an agreement that would be contrary to FCC rulings and internally inconsistent.

First, Nextel cannot avail itself of all of the interconnection services and network elements provided within the Sprint agreement. The Sprint agreement contains negotiated terms and conditions between AT&T Kentucky and the following Sprint entities: wireline providers Sprint Communications Company Limited Partnership and Sprint Communications Company L.P. (collectively referred to as "Sprint CLEC"); and wireless providers Sprint Spectrum L.P. and SprintCom, Inc. (collectively "Sprint PCS").

The Sprint interconnection agreement, therefore, addresses a unique mix of wireline and wireless items (such as traffic volume, traffic types, and facility types), and it reflects the outcome of negotiated gives and takes that would not have been made if the agreement addressed only wireline services or only wireless services.

Nextel is not seeking to adopt the Sprint agreement "upon the same terms and conditions as provided in the agreement." The terms and conditions of the Sprint interconnection agreement clearly apply only when the non-ILEC parties to the agreement are providing both facilities-based wireline and wireless services. Nextel, however, does not provide both services in Kentucky. Nextel is not certificated to provide wireline services in Kentucky.

AT&T rarely enters into a single interconnection agreement addressing both wireline and wireless services and as noted above, the Sprint interconnection agreement reflects the outcome of negotiated gives and takes that would not have been made if the agreement addressed only wireline services or only wireless services. Attachment 3, Section 6.1 of the Sprint interconnection agreement, for instance, expressly states that "The Parties' agreement to establish a bill-and-keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic."[1] To allow Nextel to adopt the Sprint interconnection agreement, would disrupt the dynamics of the terms and conditions negotiated between AT&T Kentucky and the parties to the Sprint interconnection agreement and in this case, AT&T Kentucky would lose the benefits of the bargain negotiated with those parties.

[1] Attachment 3, Section 6.1 of the agreement is attached hereto as Exhibit A.

For example, AT&T Kentucky would be denied the benefit of the bargain it negotiated regarding interconnection compensation. Specifically, Attachment 3, Section 6.1.1 of the Sprint Agreement establishes a "bill-and-keep" arrangement for usage on CLEC local traffic, ISP-bound traffic, and wireless local traffic. AT&T Kentucky would not enter into a "bill-and-keep" arrangement in a vacuum with a strictly wireless carrier such as Nextel.

Furthermore, in accordance with Attachment 3, Section 6.1, if the balance of parties to the agreement changes (as would be the case if Nextel as a standalone CMRS provider were allowed to adopt the Sprint Agreement), such disruption triggers termination or renegotiation of reciprocal compensation.[2]

Another example of how AT&T Kentucky would be denied the benefit of its bargain if forced to allow Nextel to adopt the multi-party Sprint agreement concerns the cost of interconnection facilities. Section 2.3.2 establishes a 50/50 split for the cost of interconnection facilities for wireless traffic, or as the agreement states, "[t]he cost of the interconnection facilities ... shall be shared on an equal basis." In a vacuum, with a sole wireless carrier such as Nextel, AT&T Kentucky would not likely enter into this particular split for wireless traffic.

Similarly, Section 2.9.5.1 establishes a 50/50 split for the cost of interconnection facilities for handling transit traffic, ISP-bound traffic and intraLATA toll traffic for the Sprint CLEC. This particular split is unusual for CLEC traffic, and AT&T Kentucky would not likely agree to such an arrangement with a stand-alone CLEC provider. This

[2] Such a result, sending the parties right back into contract negotiation, would clearly frustrate the stated goal of "reducing transaction costs" set forth in the Merger Order (see *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, at page 149, Appendix F), as well as the intended application of Section 252(i) itself.

reinforces the fact that AT&T Kentucky evaluated the Sprint agreement in totality and entered into the agreement with full consideration of interconnection requirements of all parties to the agreement, just as the FCC requires in its rules implementing § 252(i) as discussed further below.

III. Granting The Adoption Would Violate FCC Rules.

As explained above, both wireless and wireline carriers are parties to the Sprint interconnection agreement. If Nextel were allowed to adopt the Agreement, such adoption would erroneously suggest that Nextel could avail itself of provisions in the Agreement that apply only to CLECs. For example, Attachment 2 of the Sprint agreement allows the Sprint CLEC entities to purchase unbundled network elements ("UNEs") from AT&T Kentucky. Allowing Nextel to adopt the agreement would result in erroneously suggesting that Nextel can purchase UNEs from AT&T Kentucky. Nextel only provides wireless services in Kentucky, and in its *Triennial Review Remand Order*, the FCC ruled that:

> Consistent with [the D.C. Circuit Court of Appeal's opinion in] USTA II, we deny access to UNEs in cases where the requesting carrier seeks to provide service exclusively in a market that is sufficiently competitive without the use of unbundling. *In particular, we deny access to UNEs for the exclusive provision of mobile wireless services ....*[3]

Nextel, therefore, cannot purchase UNEs from AT&T Kentucky.

That is but one example of why granting the adoption would violate the FCC rules. There are various other terms and conditions within the agreement that cannot be applied to Nextel as a stand-alone wireless carrier. However, without waiving

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

argument regarding those additional impediments to the adoption, AT&T Kentucky will refrain from discussing each at length within this pleading.[4]

Furthermore, the agreement cannot be revised to address this issue because the FCC has ruled that a carrier is no longer permitted to "pick and choose" the provisions in an approved agreement that it wants to adopt. Instead, the FCC has adopted an "all-or-nothing rule" that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement *in its entirety*, taking *all* rates, terms, and conditions from the adopted agreement.[5]

Allowing Nextel to "adopt" the Sprint interconnection agreement after revising the agreement to clarify which provisions Nextel can and cannot use would be contrary to this FCC ruling. Stated conversely, allowing Nextel to take an agreement where CLEC-only provisions cannot apply is tantamount to allowing Nextel to "pick and choose" only the wireless terms and conditions from the Sprint Agreement—and this cannot legally be done.

In addition, 47 C.F.R. § 51.809(b), makes clear that AT&T Kentucky is not required to make agreements available for adoption if the incumbent LEC proves to the Commission that:

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

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[4] AT&T Kentucky believes such a discussion in full of these issues is more appropriate through witness testimony proffered at hearing.

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

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

If, for example, AT&T Kentucky's costs regarding the shared facility factor or bill-and-keep provisions increase as a result of Nextel's adoption, the adoption would violate the FCC's rules. The applicable federal regulations clearly contemplate AT&T Kentucky having an opportunity to "prove" the above-listed matters; accordingly, a hearing is required in this matter if this Commission denies AT&T Kentucky's Motion to Dismiss.

CONCLUSION

There are numerous substantive issues of material fact that remain unresolved in this docket. The Commission should adopt a procedural and scheduling order allowing the submission of evidence and for the parties to be fully heard on the substantive issues. Interpretation of the Merger Commitments should be left to the FCC. The Merger Commitments upon which Nextel relies for its attempted adoption are inapplicable. Nextel's reliance on Section 252(i) is also misplaced, since the agreement cannot be made available to Nextel "upon the same terms and conditions as those provided in the agreement," nor can it be provided to Nextel if it increases AT&T Kentucky's costs as compared to the carriers "that originally negotiated the agreement." Finally, given that Nextel cannot take the entire agreement, allowing the adoption would violate the FCC's "all-or-nothing rule."

AT&T Kentucky respectfully requests the Commission to deny Nextel's attempted adoption or, in the alternative, the Commission enter a procedural schedule, schedule a hearing on the underlying merits of this matter, and enter a final order based upon evidence to be adduced at hearing.

Respectfully submitted, this 24th day of January, 2008.

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EXHIBIT A

necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly.

4.8 Nothing in this Agreement shall prohibit Sprint PCS from enlarging its CMRS network through management contracts with third parties for the construction and operation of a CMRS system under the SPCS brand name and license. Traffic originating on such extended networks shall be treated as Sprint PCS traffic under the terms and conditions of this Agreement. All billing for such traffic will be in the name of Sprint PCS, and subject to the terms and conditions of this Agreement.

5. Local Dialing Parity

Each Party shall provide local dialing parity, meaning that each Party's customers will not have to dial any greater number of digits than the other Party's customers to complete the same call.

6. Interconnection Compensation

6.1 Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic is the result of negotiation and compromise between BellSouth, Sprint CLEC and Sprint PCS. The Parties' agreement to establish a bill and keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic. Specifically, Sprint PCS provided BellSouth a substantial cost study supporting its costs. As such the bill and keep arrangement is contingent upon the agreement by all three Parties to adhere to bill and keep. Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between BellSouth and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by BellSouth.

6.1.1 The Parties hereby agree to a bill-and-keep arrangement for usage on CLEC Local Traffic, ISP-bound traffic, and Wireless Local Traffic. Such bill-and-keep arrangement includes any per minute of use rate elements associated with the transport and termination of CLEC Local Traffic, ISP-bound Traffic, and Wireless Local Traffic. Such bill-and-keep arrangement does not include trunks and associated dedicated transport, transit and intermediary traffic, or interMajor Trading Area traffic.

6.1.2 Sprint CLEC charges for dedicated transport and associated facilities of calls on Sprint CLEC's or BellSouth's respective networks are as set forth in Exhibit A to this Attachment. If Sprint CLEC, pursuant to 47 CFR §51.711(b), demonstrates that its costs support different rates for the transport mileage described in this Section, upon approval by the appropriate state commission, such other rates shall

be included within this Agreement to be applied prospectively from the effective date of the Commission approval.

6.1.3 If Sprint CLEC chooses to provide local switching of BellSouth-originated calls through use of a switch located outside the LATA in which the calls originate, any transport charges that BellSouth may owe Sprint CLEC as reciprocal compensation for transporting such calls shall be governed by this Section. BellSouth shall compensate Sprint CLEC at the dedicated transport rates specified in Exhibit A, as is appropriate to the specific circumstances of the individual call. To the extent that BellSouth is required to pay such transport on a distance-sensitive basis, the distance the call is considered transported, for purposes of determining any reciprocal compensation owed, shall not exceed the shortest distance in airline miles between the point BellSouth hands the call off to Sprint CLEC (the appropriate Point of Interconnection where the two networks join in the LATA) and the LATA boundary. If Sprint CLEC, pursuant to 47 CFR §51.711(b), demonstrates that its costs support different rates for the transport mileage described in this Section, upon approval by the appropriate state commission, such other rates shall be included within this Agreement to be applied prospectively from the effective date of the Commission approval.

6.1.4 Neither Party shall represent switched access services traffic (e.g. FGA, FGB, FGD) as Local Traffic for purposes of payment of reciprocal compensation.

6.1.5 For BellSouth and Sprint CLEC traffic, the jurisdiction of a call is determined by its originating and terminating (end-to-end) points, not the telephone number dialed.

6.1.5.1 Further, if Sprint CLEC assigns NPA/NXXs to specific BellSouth rate centers within a BellSouth originating end user's local calling area, and then assigns numbers from those NPA/NXXs to Sprint CLEC end users physically located outside of the BellSouth originating end user's local calling area, Sprint CLEC agrees to identify such traffic to BellSouth and to compensate BellSouth for originating and transporting such traffic to Sprint CLEC at BellSouth's intrastate switched access tariff rates. If Sprint CLEC does not identify such traffic to BellSouth, to the best of BellSouth's ability BellSouth shall determine which whole Sprint CLEC NPA/NXXs on which to charge the applicable rates for originating intrastate switched access service as reflected in BellSouth's Intrastate Access Service Tariff. BellSouth shall make appropriate billing adjustments if Sprint CLEC can provide sufficient information for BellSouth to determine whether said traffic is Local Traffic.

6.1.5.2 Notwithstanding the foregoing, neither Party waives its position on how to determine the end point of ISP traffic and the associated compensation.

6.1.6 Fiber Meet, Design One. Each party will compensate the other for the Local Channels, from the POI to the other Party's switch location within the LATA, ordered on the other Party's portion of the Fiber Meet.

6.2 CLEC Percent Local Use. BellSouth and Sprint CLEC will report to the other a Percentage Local Usage ("PLU"). The application of the PLU will determine the amount of Local minutes to be billed to the other Party. For purposes of developing the PLU, BellSouth and Sprint CLEC shall consider every local call and every long distance call, excluding Transit Traffic. By the first of January, April, July and October of each year, BellSouth and Sprint CLEC shall provide a positive report updating the PLU. Detailed requirements associated with PLU reporting shall be as set forth in BellSouth's Percent Local Use Reporting Guidebook for Interconnection Purchasers, as it is amended from time to time during this Agreement, or as mutually agreed to by the Parties. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PLU factor, shall at the terminating Party's option be utilized to determine the appropriate Local usage compensation to be paid.

6.3 CLEC Percent Local Facility. BellSouth and Sprint CLEC will report to the other a Percentage Local Facility (PLF). The application of PLF will determine the portion of switched transport to be billed per the local jurisdiction rates. The PLF will be applied to Local Channels, multiplexing and Interoffice Channel dedicated transport utilized in the provision of local interconnection trunking. By the first of January, April, July and October of each year, BellSouth and Sprint CLEC shall provide a positive report updating the PLU and PLF. Detailed requirements associated with PLU and PLF reporting shall be as set forth in BellSouth's Percent Local Use/Percent Local Facility Reporting Guidebook for Interconnection Purchasers, as it is amended from time to time during this Agreement, or as mutually agreed to by the Parties.

6.4 CLEC Percentage Interstate Usage. In the case where Sprint CLEC desires to terminate its local traffic over or co-mingled on its Switched Access Feature Group D trunks, Sprint CLEC will be required to provide a projected Percentage Interstate Usage ("PIU") to BellSouth. Detailed requirements associated with PIU reporting shall be as set forth in BellSouth's Percent Interstate Use Reporting Guidebook for Interconnection Purchasers. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU and PLF factors will be used for application and billing of local interconnection. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PIU and PLU factor, shall at the terminating Party's option be utilized to determine the appropriate local usage compensation to be paid.

CERTIFICATE OF SERVICE KPSC 2007-00255

It is hereby certified that a true and correct copy of the foregoing was served on the following individual by mailing a copy thereof, this 24th day of January, 2008.

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