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**JAN 28 2008**

**PUBLIC SERVICE  
COMMISSION**

**BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of 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 )

Case No. 2007-00255

**NEXTEL'S RESPONSE AND MOTION TO STRIKE  
AT&T KENTUCKY'S BRIEF IN SUPPORT  
OF REQUEST FOR PROCEDURAL SCHEDULE AND HEARING**

Nextel West Corp. ("Nextel"), by counsel, files its Response and Motion to Strike the pleading filed on January 24, 2007 by BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T"), styled as "AT&T Kentucky's Brief in Support of Request for Procedural Schedule and Hearing" ("AT&T Brief"). AT&T's Brief is no more than a restatement of its pending Motion for Reconsideration, and serves no purpose other than to interject confusion and delay by attempting to distract the Commission from issuing a ruling on the merits of the fully briefed AT&T Motion for Reconsideration. For the reasons stated below, Nextel requests the Commission to strike AT&T's Brief.

**POSTURE OF THIS PROCEEDING**

On December 18, 2007, the Commission entered its Order rejecting the only objection and legal arguments AT&T raised in this matter up to that point, and found that a reasonable period of time was left to the Sprint-AT&T Interconnection Agreement

(“ICA”)<sup>1</sup> to thereby render Nextel Partner’s adoption of the Sprint ICA lawful. On December 21, 2007 AT&T filed its Motion for Reconsideration which raised for the first time three new objections to Nextel’s adoption of the Sprint ICA. On January 3, 2008, Nextel filed its response demonstrating the deficiencies in AT&T’s new objections as a matter of law.

On January 10, 2008, the Commission issued an Order stating that it “needs additional time to consider and address the parties’ arguments” and ordering “that AT&T Kentucky’s motion for reconsideration is granted *for the purpose of allowing the Commission additional time in which to address the parties’ arguments*” (emphasis added). The Commission further noted that “[a]n Order on the merits will be issued in the near future.” To date, no Order on the merits of AT&T’s Motion for Reconsideration has been issued and, therefore, the Commission has made no decision on whether rehearing will be granted in this case. Until that decision is made, there is no basis for AT&T to request the setting of either a procedural schedule and/or hearing, and the Commission quite logically has not done so.

**AT&T’s BRIEF IS MERELY AN UNAUTHORIZED REFILE  
OF ITS ALREADY PENDING MOTION FOR RECONSIDERATION**

Notwithstanding the Commission’s clear and unequivocal language explaining its need for additional time and, therefore, the limited scope of its grant of AT&T’s Motion for Reconsideration, on January 24, 2008 AT&T filed the arguments from its Motion for Reconsideration re-styled as “AT&T Kentucky’s Brief in Support of Request for

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<sup>1</sup> The “Sprint ICA” is the interconnection agreement between AT&T and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P. (collectively, “Sprint”) which the Commission found to be subject to a new 3-year fixed term commencing December 29, 2006 in the Sprint-AT&T arbitration Case No. 2007-00180.

Procedural Schedule and Hearing.” Both pleadings assert AT&T’s contention that it is entitled to a hearing on the merits, and make the exact same substantive arguments that Nextel’s adoption of the Sprint ICA: 1) does not comply with the Merger Commitments<sup>2</sup>; 2) does not comply with Section 252(i)<sup>3</sup>; and, 3) would violate FCC rules regarding the use of UNEs by wireless carriers<sup>4</sup>. A simple side-by-side comparison of the two documents confirms that the vast majority of the AT&T Brief is, literally, a cut and paste of its Motion for Reconsideration. The utter lack of merit in AT&T’s re-filing is further highlighted by AT&T’s failure to even acknowledge (much less attempt to address) Nextel’s authorities and arguments that demonstrate why AT&T’s new objections are deficient as a matter of law.<sup>5</sup>

The procedural statute for rehearing, KRS Section 278.400, contains no provision for additional pleadings by the petitioning party other than the motion for reconsideration which was filed by AT&T Kentucky on December 21, 2007. Further, AT&T’s Brief is contrary to the Commission’s stated purpose in its January 10, 2008 Order to grant rehearing only to allow additional time in which to address the parties’ arguments concerning AT&T Kentucky’s Motion for Reconsideration.

Nextel is confident the Commission can recognize AT&T’s Brief for exactly what it is: an unauthorized pleading that attempts to divert the Commission’s limited resources and attention from addressing and issuing a decision on the merits of AT&T’s Motion for Reconsideration. The devotion of any more of the Commission’s time to AT&T’s Brief

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<sup>2</sup> Cf. Motion for Reconsideration at p. 3-6 and AT&T Brief at p. 2-4.

<sup>3</sup> Cf. Motion for Reconsideration at p. 6-8; and AT&T Brief at p. 4-7.

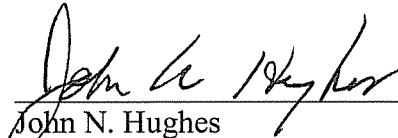
<sup>4</sup> Cf. Motion for Reconsideration at p. 8-10; and AT&T Brief at p. 7-9.

<sup>5</sup> See Nextel’s Response to AT&T Kentucky’s Motion For Reconsideration at pages 10 -20.

will only serve to create unnecessary procedural confusion and cause unreasonable delay in resolution of this proceeding.

For the reasons stated above, the Commission should grant this Motion to Strike and delete AT&T's Brief from the record.

Submitted this 28th day of January, 2008.

  
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John N. Hughes  
124 West Todd Street  
Frankfort, Kentucky 40601

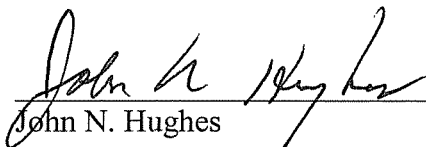
*Counsel for Nextel*

I certify that a copy of this Response was served by first class mail the 28<sup>th</sup> day of January, 2008 on:

:

Mary K. Keyer  
General Counsel - Kentucky  
AT&T Kentucky  
601 W. Chestnut St., Room 407  
Louisville, KY 40202

John T. Tyler  
AT&T Midtown Center # 4300  
675 Peachtree St.  
Atlanta, GA 30375-0002

  
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John N. Hughes