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August 22, 2007

RECEIVED

AUG 22 2007

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

RE: Case No. 2007-00180 – Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast

Dear Beth:

During the August 1, 2007 Informal Conference in the above-referenced matter, the parties agreed to provide the Commission with supplemental information bearing on the issues in this matter. Contemporaneous with the filing of Sprint's Pre-Argument Brief on August 10, 2007, Sprint provided the parties' respective pre-filed testimony and exhibits from the substantively identical matter before the North Carolina Utilities Commission ("NCUC") in Docket No. P-294, Sub 31. At that time, however, the transcript of the hearing and oral argument held in P-294, Sub 31 was not yet available. Ten (10) copies of the final transcript in P-294, Sub 31, which Sprint received on August 21, 2007, are enclosed for filing in this matter.

Sprint understands that pursuant to AT&T's letter to the Commission dated August 16, 2007, AT&T has similarly supplemented the record with a Motion to Hold Proceedings in Abeyance filed by the Louisiana Public Staff in the Louisiana Docket No. U-30179, and a two-page Florida Public Service Commission Vote Sheet dated July 31, 2007 from the Florida Docket No. 070249-TP.

Regarding the currently *pending* Staff Motion for Abeyance filed in the Louisiana Docket No. U-30179, Sprint filed its Response in Docket U-30179 on August 17, 2007,

and is not aware that any ruling has been issued with respect to Staff's Motion. Sprint's response fully explains why no "clarification" is necessary from the Federal Communications Commission in these matters, particularly in light of the concurring Statements of FCC Commission Michael J. Copps in which he makes clear that an essential purpose of the interconnection Merger Commitments was to encourage competition with *the merged entity*. It is undisputed that the merged entities did not come into existence as the new AT&T until December 29, 2006. Accordingly, Sprint will be prepared to address during the scheduled August 23, 2007 Oral Argument in this case any questions the Commission and its Staff may have regarding any proposed referral of the Kentucky Case No. 2007-00180 to the FCC.

In order to place the Florida Public Service Commission Vote Sheet in Docket No. 070249-TP in its proper context, Sprint notes that in the underlying July 19, 2007 Florida Staff Recommendation (which was previously filed by AT&T in this matter on July 1, 2007), the Commission Staff stated:

"In rejecting Sprint's attempt to arbitrate the Merger Commitments as pled staff does not suggest that interpreting and enforcing the Merger Commitments are off limits to the Commission in all circumstances. There may be situations in which such interpretation and enforcement are inextricably intertwined with open issues being arbitrated under either Section 252 or Section 364.162, Florida Statutes, or both."

(Florida Staff Memorandum, July 19, 2007 at p. 6, emphasis added).

Also enclosed for supplementation of the record in this case are ten (10) copies of Sprint's Motion for Leave to File Amended Petition as filed in the Florida Docket No. 070249-TP on August 9, 2007, and remains pending. The Amended Petition provides the negotiation details to make clear what transpired between the parties within their 251-252 negotiations regarding the AT&T Merger Commitments.

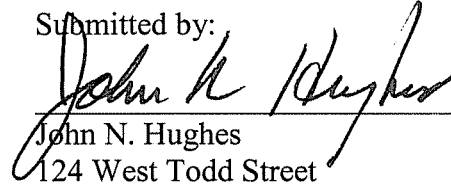
Finally, Sprint notifies the Commission that on August 14, 2007, in the South Carolina Docket No. 2007-215-C, which is substantively identical to the matter before this Commission, the South Carolina Public Service Commission issued Order No. 2007-579 to hold AT&T's Motion to Dismiss for lack of jurisdiction in abeyance. In doing so, the South Carolina Commission stated:

"... this dispute deserves a complete airing by all the parties in the matter. As such, the Commission holds AT&T's Motion to Dismiss in abeyance in order to make a fully reasoned determination in this case. Therefore, we will proceed with the hearing on the merits of the case scheduled for August 20, 2007."

The South Carolina hearing on the merits proceeded as scheduled on August 20, 2007. A final transcript is to be filed August 30, 2007, followed by the parties' post-hearing filings on September 14, 2007 and the Commission's final decision is expected by October 2, 2007.

Based on the foregoing, as well as all of the reasons contained in Sprint's previously filed pleadings in this matter, Sprint requests the Oral Argument to proceed on August 23, 2007 as scheduled.

Submitted by:

A handwritten signature in black ink, appearing to read "John N. Hughes", is written over a horizontal line.

John N. Hughes
124 West Todd Street
Frankfort, KY 4061

Counsel for Sprint Nextel

Attachments

cc: John Tyler
Mary Keyer

NORTH CAROLINA UTILITIES COMMISSION

TRANSCRIPT OF TESTIMONY

DOCKET NO.

P-294 Sub 31

DATE

July 31, 2007

1 PLACE: Dobbs Building, Raleigh, North Carolina

2 DATE: Tuesday, July 31, 2007

3 DOCKET NO.: P-294, Sub 31

4 TIME IN SESSION: 9:30 a.m. - 12:23 p.m.

5 BEFORE: Commissioner William T. Culpepper, III, Presiding
6 Commissioner Sam J. Ervin, IV
7 Commissioner Lorinzo L. Joyner

7 IN THE MATTER OF

8 Sprint Communications Company, L.P. Petition of Sprint
9 Communications for Arbitration with BellSouth
10 Telecommunications, d/b/a AT&T North Carolina, d/b/a AT&T
11 Southeast.

10 A P P E A R A N C E S:

11 SPRINT

12 Mary Lynne Grigg
13 Bill Atkinson
14 Womble, Carlyle, Sandridge & Rice
15 150 Fayetteville Street, Suite 2100
16 Raleigh, North Carolina 27602

15 AT&T NORTH CAROLINA

16 Edward L. Rankin, III
17 P.O. Box 30188
18 Charlotte, North Carolina 28230

18 John Tyler, Senior Regulatory Counsel
19 675 W. Peachtree Street
20 Atlanta, Ga. 30375

21 USING AND CONSUMING PUBLIC

22 Kendrick Fentress
23 4326 Mail Service Center
24 Raleigh, North Carolina 27699-4326

1 COMMISSIONER CULPEPPER: Good morning. Let's
2 come to Order, please, and go on the record. I am
3 Commisisoner Bill Culpepper, and with me are Commissioners
4 Sam J. Ervin, IV and Lorinzo L. Joyner. The Commission
5 now calls for evidentiary hearing an oral argument at this
6 time, Docket No. P-294, Sub 31, in the matter of, Petition
7 of Sprint Communications Company, L.P. and Sprint Spectrum
8 L.P. d/b/a Sprint PCS for Arbitration of Rates, Terms and
9 Condtions of Interconnection with BellSouth
10 Telecommunications, Inc., d/b/a AT&T North Carolina,,
11 d/b/a AT&T Southeast.

12 Sprint Communications Company L.P. is a
13 competitive local exchange carrier under the
14 Telecommunications Act of 1996, and is certified by this
15 Commission to provide telecommunications service in North
16 Carolina. Sprint Spectrum L.P., as agent and General
17 Partner for WirelessCo, L.P. and SprintCom, Inc., is a
18 commercial mobile radio service provider licensed by the
19 Federal Communications Commission to provide wireless
20 services in North Carolina. The aforementioned companies
21 are hereafter collectively referred to as Sprint. AT&T
22 North Carolina is an incumbent local exchange company as
23 defined under Section 251(H) of the Act, and is certified
24 to provide telecommunications services in the State of

1 North Carolina.

2 Pursuant to Section 251 of the Act, each
3 telecommunications carrier has a duty to provide for the
4 interconnection of its facilities and equipment with the
5 facilities and equipment of other telecommunications
6 carriers upon request, and duty to negotiate, in
7 accordance with Section 252, the particular terms and
8 conditions of interconnection agreements.

9 The docket was commenced on April 17, 2007, by
10 Sprint's filing of a pleading captioned as "Petition for
11 Arbitration of Sprint Communications Company, L.P. and
12 Sprint Spectrum, L.P. In this pleading Sprint alleges,
13 among other things, that Sprint and AT&T North Carolina
14 previously entered into an Interconnection Agreement that
15 was initially approved by the Commission in Docket No.
16 P-294, Sub 23; that pursuant to Interconnection Merger
17 Commitment No. 4 of the AT&T, Inc.,/BellSouth Corporation
18 merger commitments, Sprint has requested an amendment to
19 the parties' current Interconnection Agreement that will
20 convert the Agreement from its current month-to-month term
21 and extend it three years from Sprint's March 20, 2007,
22 request to March 10, 2110; and that AT&T has denied
23 Sprint's request and has only voluntarily offered to
24 extend the Agreement until December 31, 2007. In its

1 prayer for relief, sprint requests the Commission to issue
2 an Order requiring AT&T to comply with Merger Commitment
3 No. 4 and extend the parties' current Interconnection
4 Agreement for a period of three years from either Sprint's
5 March 20, 2007, request for such extension or the December
6 29, 2006, effective date of the AT&T/BellSouth merger
7 commitments.

8 On April 18, 2007, the Commission issued an
9 Order scheduling the prefiling of Direct and Rebuttal
10 Testimony. On May 1, 2007, Sprint prefiled the Direct
11 Testimony of Mark G. Felton and one exhibit identified as
12 MGF-1.

13 On May 25, 1007, AT&T North Carolina filed a
14 pleading captioned as "AT&T North Carolina's Motion to
15 Dismiss and Answer," together with the prefiled Direct
16 Testimony of Scot Ferguson and Mike Harper, and exhibits
17 identified as Exhibits A,B,and C, and Confidential Exhibit
18 MH-1. Among other contentions, it is AT&T's position that
19 the issue that Sprint has raised in this docket regarding
20 a merger commitment is outside the scope of a Section 251
21 arbitration; that, furthermore, this Commission lacks
22 subject matter jurisdiction over Sprint's claim in that
23 jurisdiction to interpret the AT&T/BellSouth merger
24 commitments rests exclusively with the FCC; and that,

1 therefore, Sprint's Petition should be dismissed.

2 On May 31, 2007, the Commission, by Order,
3 extended the time to file Rebuttal Testimony to June 8,
4 2007. On June 8, 2007, Sprint prefiled the Rebuttal
5 Testimony of Mark G. Felton. On June 12, 2007, Sprint
6 filed a Response to AT&T North Carolina's Motion to
7 Dismiss and Answer.

8 On June 20, 2007, the Commission issued an Order
9 scheduling an evidentiary hearing for Monday, July 2,
10 2007, at this place to be immediately followed by an oral
11 argument on the issues set out in said Order. Pursuant to
12 that Order, the Public Staff has been requested to
13 participate in this docket. By Order dated June 22, 2007,
14 the evidentiary hearing and oral argument were rescheduled
15 for this date and time.

16 Orders have been entered by the Commission
17 admitting out-of-state attorneys William R. Atkinson and
18 Joseph M. Chiarelli to practice before the Commission in
19 this proceeding on behalf of Sprint and admitting attorney
20 John T. Tyler for the purpose of appearing on behalf of
21 AT&T.

22 On July 26, 2007, AT&T filed replacement Exhibit
23 PLF-1 for the original Exhibit PFL-1 that accompanied the
24 Direct Testimony of its witness Scot Ferguson.

1 On July 27, 2007, AT&T filed a Motion requesting
2 that J. Scott McPhee be allowed to adopt the prefiled
3 testimony of Mike Harper in this matter.

4 Pursuant to G.S. 138A-15(c), I remind members of
5 the Commission of their duty to avoid conflicts of
6 interest and appearances of conflict and inquire as to
7 whether any Commissioner has a known or apparent conflict
8 with respect to this docket.

9 (No response.)

10 I now call upon the attorneys for the parties to
11 announce their appearances for the record beginning with
12 the Petitioners, Sprint.

13 MS. GRIGG: Good morning, Commissioner
14 Culpepper, Ervin and Joyner. I'm Mary Lynne Grigg with
15 the law firm of Womble, Carlyle, Sandridge and Rice
16 appearing on behalf of the Petitioners, Sprint. Also
17 appearing on behalf of Sprint is Mr. Bill Atkinson, who is
18 Director and attorney of State Regulatory Affairs.

19 COMMISSIONER CULPEPPER: Thank you. Good
20 morning.

21 MR. RANKIN: Good morning, Commissioners. Ed
22 Rankin and John Tyler. As you know, John Tyler has been
23 admitted for purposes of this case. He is Senior
24 Regulatory Counsel at AT&T Southeast in Atlanta.

1 COMMISSIONER CULPEPPER: Thank you. Good
2 morning.

3 MS. FENTRESS: Good morning. Kendrick Fentress
4 with the Public Staff, appearing on behalf of the Using
5 and Consuming Public.

6 COMMISSIONER CULPEPPER: Thank you, Ms.
7 Fentress. Prior to commencement of the hearing, we
8 handled a couple of preliminary matters here at the bench
9 regarding the adoption of prefiled testimony of one of the
10 AT&T witnesses and Replacement Exhibit PLF-1, that was
11 filed, I believe on July 26. Are there any other
12 preliminary matters we need to take up before we commence?

13 MS. GRIGG: No, sir.

14 COMMISSIONER CULPEPPER: All right. I believe
15 the parties would like an opportunity to make an opening
16 statement. So we will be glad to hear from Sprint.

17 MR. ATKINSON: Thank you, Commissioners. Good
18 morning. Bill Atkinson on behalf of Sprint. We very much
19 appreciate the opportunity to present these important
20 issues to your attention this morning.

21 I'd like to start off this morning by trying to
22 make something clear: As you know, there will be an oral
23 argument that follows this evidentiary hearing. And Ms.
24 Grigg, on behalf of Sprint, will fully address the

1 jurisdictional issues raised in AT&T's motion To Dismiss
2 our Arbitration Petition; including a discussion of
3 exactly why this Commission has concurrent jurisdiction
4 with the FCC to hear this 251 open issue concerning the
5 term of the parties' agreement.

6 What I would like to do this morning for you,
7 very briefly, is to put the jurisdictional issue aside for
8 a second and talk about the one substantive issue that we
9 raised in our arbitration petition and in the testimony of
10 Mr. Felton, which you will hear shortly.

11 Sprint's issue dealing with a term of the
12 parties' agreement is given that AT&T has agreed to extend
13 the party's agreement for three years pursuant to Merger
14 Condition No. 4, which was part of the FCC's Merger
15 Adoption Order. When does this three year extension
16 contemplated under Merger Condition No. 4 commence? You
17 will hear testimony this morning from Sprint's witness,
18 Mr. Felton, that based on a common sense, plain language
19 reading of the merger commitment in question, AT&T offered
20 during the course of the parties' negotiations to extend
21 the Sprint agreement for a full three years from Sprint's
22 formal acceptance of the offer in March or at the very
23 least from the merger closing on December 29, 2006,
24 regardless of whether the initial term of the agreement

1 has expired. And that is a key phrase. You will be
2 hearing that probably several times this morning. That
3 phrase is actually in Merger Commitment No. 4, regardless
4 of whether the initial term has expired.

5 Now, Mr. Felton will further testify that the
6 parties were in the midst of interconnection negotiations
7 when AT&T offered this merger commitment along with all
8 the other merger commitments; the transiting merger
9 commitment, the \$10 broad-band merger commitment. They
10 were all offered in a package on December 28th. You've
11 probably seen the letter from Mr. Robert Quinn of AT&T
12 Regulatory. And the FCC approved the merger the very next
13 day, December 29.

14 So AT&T offered these merger commitments in the
15 midst of our interconnection negotiations, and we feel
16 that this first commitment constituted a superseding offer
17 in the context of our negotiations. And we could not
18 treat it but anything else as a superseding offer. And it
19 is an offer that Sprint accepted.

20 Now AT&T has filed testimony in this docket and
21 AT&T's testimony will speak for itself. But among other
22 things, they go into some detail about why from a policy
23 perspective it's not fair for Sprint to be able to extend
24 its agreement for three years from March 2007, with our

1 request date or the December 29, 2006, merger approval
2 date.

3 This morning, you will hear Mr. Felton testify
4 as to why, absolutely, it's the fair and right outcome for
5 Sprint to get the full three-year extension from either
6 our request date of March 2007 or December 29.

7 The first and maybe most fundamentally, why is
8 it fair? Because that is precisely what AT&T agreed to
9 do, based on the plain meaning, plain language of the
10 Merger Commitment No. 4, which you will hear a lot about
11 this morning. Moreover, there was -- You can say there
12 was a quid pro quo of sorts between the FCC and AT&T for
13 return for this package of merger commitments.

14 AT&T filed its list of commitments on December
15 28th, the FCC approved the merger the very next day,
16 December 29th. As you will look through this list of
17 merger commitments, we mentioned the transiting
18 commitment, the \$10 broad-band commitment, the three-year
19 extension of agreements commitment, that is the subject of
20 this proceeding this morning. Yes, they are substantial
21 promises to the industry. They are, that AT&T has
22 committed to carrying out. But in return, presumably
23 being returned for the substantial commitments. AT&T,
24 BellSouth received their hotly sought after merger

1 approval the very next day.

2 Now that AT&T has received the prize, the
3 tremendous benefit of the merger approval, we don't want
4 any appearance that AT&T is trying to rewrite these
5 commitments so that the promises end up meaning less, and
6 in our case, two years less than the plain language of the
7 commitments that would otherwise seem to indicate. As Mr.
8 Felton will show, that would be the real inequity in this
9 case. Sprint's testimony will also show that it's fair
10 for Sprint, along with all other carriers who request it,
11 to get a full three-year extension of their current
12 interconnection agreements. This result, contrary to
13 AT&T's testimony in this proceeding, doesn't treat Sprint
14 differently as AT&T would have you believe. Instead, it
15 treats Sprint the same as all other requesting carriers.
16 That's what we want. We want to be on an even footing
17 with all other requesting carriers. This is a blanket
18 extension; the way we read this merger commitment, based
19 on its plain language. We want to be included just like
20 everybody else.

21 Again, it was AT&T that voluntarily committed
22 to give everybody this three-year extension of their
23 commitment -- agreement, excuse me -- regardless of
24 whether the initial term has expired. No, in this

1 business it just does not get a lot plainer than that.

2 I would like to close this morning by telling
3 you why this matter is so very important to us, very
4 important to Sprint and our cable partners in North
5 Carolina: We were trying to offer retail local exchange
6 service in a competitive local exchange market. As the
7 Commission will recall, Sprint transferred its UNE-P
8 customer base to another carrier in early 2006 when this
9 Commission issued an Approval Order for that transaction.
10 In the Order granting authority for this transaction, the
11 Commission included an excellent summary of Sprint's
12 future plans in local exchange market in North Carolina.

13 As many of you know Sprint has extensive
14 wholesale relationships with its cable CLP partners in
15 North Carolina and in many other states. And through
16 these arrangements, Sprint facilitates its cable partners
17 provisions of local exchange service in many areas of this
18 state, including BellSouth's local exchange territory.
19 Therefore, the agreement between Sprint and AT&T that is
20 the subject of these proceedings this morning is not some
21 theoretical or hypothetical issue that we are arguing.
22 Instead it's a very real tangible issue for Sprint and its
23 cable partners that Sprint maintain its current
24 Interconnection Agreement with AT&T in order to facilitate

1 its cable partners provision of local exchange service to
2 retail customers in the North Carolina market.

3 With that, Commissioners, we thank you for your
4 time and attention, and that concludes our opening
5 statement this morning. Thank you.

6 COMMISSIONER CULPEPPER: Thank you very much.
7 We will be glad to hear from Mr. Tyler.

8 MR. TYLER: Good morning, Mr. Chairman,
9 Commissioners. John Tyler on behalf of AT&T. We
10 appreciate the opportunity to come before you and provide
11 you with a brief outline of what the evidence in this
12 docket will show. We will reserve our argument until the
13 appropriate time.

14 What I do want to do is just tell you what the
15 evidence will show. In essence what this case boils down
16 to is Sprint's attempt to arbitrate a non-arbitrable
17 issue. Now that non-arbitrable issue involves the
18 interpretation of a merger commitment that is contained
19 within an FCC Merger Order. That merger commitment is not
20 a Section 251 Obligation under the Telecommunications Act
21 of 1996. Because it is not a 251 Obligation, it is not
22 the proper subject for an arbitration. The FCC has
23 jurisdiction over the merger commitment. And Sprint needs
24 some clarification in terms of what that language, and

1 what the intent was at the FCC, Sprint can go directly to
2 the FCC and seek that clarification.

3 Finally, AT&T in response to the sole issue that
4 Sprint raised responded in accordance with Section 252, of
5 course, the non-petitioning party can respond and raise
6 its own issues. So the only really issue before the
7 Commission today is Attachment 3, and you will hear more
8 about that. Essentially, the parties had agreed to
9 everything with the exception of Attachment 3. There was
10 some discussion about that, there had been an agreement
11 and principle. So in response to this non-arbitrable
12 issue, AT&T raised its own arbitrable issue, and that was
13 whether or not this generic Attachment 3A for CMRS or
14 wireless interconnection, 3B for wireline interconnection
15 should be collectively inserted into a new Interconnection
16 Agreement collectively as Attachment 3, close out the
17 negotiations and the parties move forward into that new
18 Interconnection Agreement. So because, again, because the
19 sole issue that's before you today under Section 251 is
20 this issue of Attachment 3, AT&T would respectfully
21 request that the Commission dismiss Sprint's
22 non-arbitrable issue and adopt AT&T's position on the sole
23 arbitrable issue before the Commission. Thank you for
24 your time.

1 COMMISSIONER CULPEPPER: Ms. Fentress, did you
2 care to make --

3 MS. FENTRESS: We have no opening.

4 COMMISSIONER CULPEPPER: All right. Thank you
5 very much. We will begin the hearing now beginning with
6 Sprint.

7 MR. ATKINSON: Commissioners, Sprint calls, Mr.
8 Mark G. Felton to the stand.

9 MARK FELTON; Being first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION BY MR. ATKINSON:

12 Q Mr. Felton, I will give you a moment to get
13 settled.

14 A I'm settled.

15 Q State your name and business address for the
16 record.

17 A My name is Mark G. Felton. My business address is
18 6330 Sprint Parkway, Overland Park, Kansas, 66251.

19 Q Are you the same Mark G. Felton who caused to be
20 prefiled in this matter on May 1 question and answer
21 Direct Testimony consisting of 19 pages in length?

22 A Yes.

23 Q Did you also cause to be prefiled on June 8th in
24 this docket question and answer Rebuttal Testimony

1 consisting of 16 pages in length?

2 A Yes.

3 Q Do you have any corrections or amendments that you
4 would like to make to your prefiled testimony at this
5 time?

6 A No.

7 Q If I asked you the same questions today that are
8 contained in your prefiled testimony, would your answers
9 be the same?

10 A Yes, they would.

11 MR. ATKINSON: Commissioner Culpepper, at this
12 time Sprint would move the admission of Mr. Felton's
13 prefiled testimony into the record as if read from the
14 witness stand, subject to cross-examination.

15 COMMISSIONER CULPEPPER: Let it be received as
16 if given word for word orally from the stand:

17 (Whereupon, Mr. Felton's Direct Testimony
18 was copied into the record as if given
19 orally from the stand.)

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

Docket No. P-294, Sub 31

FILED
MAY 01 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)

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*

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Section 252 of the Act and if the Commission does not issue its order prior to the expiration of this Agreement, this Agreement shall be deemed extended on a month-to-month basis until the Subsequent Agreement becomes effective. . . .

Composite ICA at pages 815 – 816 (emphasis added).

- *The 4th Amendment* was executed by legacy BellSouth on June 3, 2004 and Sprint on June 2, 2004 to replace Section 2.1 of the General Terms and Conditions – Part A, and is located at Composite ICA pages 833-834. Again, pertinent to this docket, the 4th Amendment expressly provided:

2.1 The term of this Agreement shall be from the effective date as set forth above and shall expire as of December 31, 2004. Upon mutual agreement of the Parties, the term of this Agreement may be extended. *If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall continue on a month-to-month basis.*

Composite ICA at page 833 (emphasis added).

- *The 5th Amendment* was executed by legacy BellSouth on August 23, 2004 and Sprint on August 19, 2004 to make changes regarding Local Number Portability charges in Attachment 2, and is located at Composite ICA pages 835-836.
- *The 6th Amendment* was executed by legacy BellSouth on January 19, 2005 and Sprint on January 13, 2005 to make changes to Section 4.8 in Attachment 3 regarding Sprint PCS Network Managers, and is located at Composite ICA pages 837-838.
- *The 7th Amendment* was executed by legacy BellSouth on February 2, 2005 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.

33

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

Docket No. P-294, Sub 31

FILED
JUN 08 2007
Clark'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 Harper¹. 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) the history of both the ICA and the negotiations as detailed in my Direct Testimony, Section II, page 4 line 16 through page 11, line 21;
- 2) the “tentative” nature of any pre-merger settlement discussions between the parties and the necessity to resolve all remaining outstanding issues and language before a negotiated agreement could be executed;
- 3) how AT&T’s positions made it very uncertain as to whether a non-arbitrated final, executable subsequent agreement could in fact be reached with respect to the remaining outstanding issues and language; and,
- 4) by its own action in seeking merger approval subject to Merger Commitments, *it was AT&T that interjected a new offer of extending the 2001 ICA 3 years into the parties’ negotiations before any “final” resolution was reached, and Sprint chose to accept the 3-year extension.*

Instead, Messrs. Ferguson’s and Harper’s testimony is apparently premised on Mr. Harper’s mischaracterization of a privileged December 14, 2006 “tentative settlement” communication (i.e. Proprietary Exhibit MH-1). The document does not state anywhere on its face that “all issues had been resolved”. To the contrary, it expressly refers to a “tentative settlement” that contemplates a yet to be reached “final settlement”, with language still to be crafted, completion of Attachment 3 (which isn’t even mentioned, yet Mr. Harper admits it was not completed) and resolution of yet another issue discussed in the e-mail. This is consistent with my May 1, 2007 Direct Testimony, at p. 11, in which I stated that the parties had reached tentative agreement on several significant issues, but that substantive areas of dispute still existed. As of December 29, 2006, even AT&T counsel questioned whether there was any merit in further discussions regarding the other specific issue mentioned in the e-mail, and that AT&T’s position 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 can 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.

1 MR. ATKINSON: We also, at this time, would like
2 to move Mr. Felton's Testimony Exhibit MGF-1 to his Direct
3 Testimony, we would also like to move that into the
4 record.

5 COMMISSIONER CULPEPPER: All right. That
6 exhibit is received and it is marked -- prefiled and
7 marked MGF-1.

8 (Whereupon, MGF-1 was admitted into the
9 record.)

10 MR. ATKINSON: Thank you.

11 Q (By Mr. Atkinson) Mr. Felton have you prepared a
12 summary of your testimony?

13 A Yes.

14 Q Would you please give that at this time.

15 A Read summary into the record.

16

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Summary of Mark G. Felton

Good morning. My name is Mark Felton, and I am appearing on behalf of Sprint. Today my testimony will focus on the single issue I addressed in my direct and rebuttal testimony, which is, "May AT&T North Carolina effectively deny Sprint's request to extend its current interconnection agreement for three full years from March 20, 2007 pursuant to Interconnection Merger Commitment No. 4"?

AT&T has argued that this issue is not suitable for a 252 arbitration and that this Commission does not have jurisdiction to make a determination in this case. While Sprint's attorneys will address the legal aspects of jurisdiction, I'd like to provide the factual backdrop in which to consider those legal arguments. The Merger Commitments were approved by the FCC at a time when the parties were in the thick of negotiations for a new agreement. Indeed the parties had resolved several substantial issues but there remained areas of dispute yet to be resolved. When the Merger Commitments were offered, a new agreement was far from finalized, voluntary agreement was uncertain, and Sprint was duty-bound to consider this new offer by AT&T in the context of the open negotiations. This was not a separate, unrelated effort. It was part and parcel of the negotiation. Therefore, to suggest that Sprint's issue is not suitable for 252 arbitration because it is somehow not part of the negotiations between the parties is nonsense.

AT&T's interpretation of its own Merger Commitment number 4 is misguided. Sprint's attorneys have offered Sprint's legal interpretation of this Merger Commitment and it is unnecessary for me to try and expand on

that here. From my business experience and a common sense perspective, however, it is clear that a plain reading of the Merger Commitment entitles Sprint to extend its current agreement with AT&T for a full 3 years. AT&T even included the qualifier “regardless of whether its initial term has expired”, giving the appearance of expanding this offer to the broadest possible audience. Now, however, AT&T seeks to deny Sprint the benefits of this offer with a confusing interpretation that is beyond what a reasonable person would suggest. At a minimum, AT&T’s explanation violates the spirit of the Merger Commitments, promising a benefit to requesting carriers such as Sprint in return for merger approval and then attempting to avoid that obligation with a far-fetched interpretation of its own Commitment.

The Sprint / AT&T agreement is indeed a “current” agreement and the parties continue to operate under it without interruption or issue. AT&T has suggested that Sprint’s agreement expired on December 31, 2004 and that any three year extension would begin at the end of that “expiration”. This is simply not the case. As I clearly demonstrate in my pre-filed testimony, the *fixed term* of Sprint’s agreement with AT&T automatically converted on December 31, 2004 to a month-to-month term, which is known as “evergreen” status. The parties have continued operating under this agreement and, as stated in my testimony, amended it 6 times since the conversion to evergreen status. Moreover, there is considerable difference between the expiration of an agreement and the expiration of a fixed-term of an agreement. Consequently, AT&T’s argument that the extension be applied from the expiration of the fixed-term is without merit.

Let me conclude by saying, the irony of this unresolved arbitration issue is that AT&T's purported rationale for offering the Merger Commitment in question was to reduce the transaction costs of requesting carriers in doing business with AT&T, however, Sprint finds itself in the untenable position of expending its time and resources and those of this Commission to obtain the benefits promised as a *quid pro quo* for the merger approval. Sprint asks this Commission to enforce the Commitment made by AT&T to the telecommunications industry by ordering AT&T to extend its agreement with Sprint until March 20, 2010.

Thank you. That concludes my summary.

1 MR. ATKINSON: The witness is available for
2 cross-examination.

3 COMMISSIONER CULPEPPER: Cross-examination by
4 AT&T.

5 MR. TYLER: Thank you, Mr. Chairman.

6 CROSS-EXAMINATION BY MR. TYLER:

7 Q Good morning, Mr. Felton.

8 A Good morning.

9 Q Sir, you have an extensive background
10 in the Telecommunications Industry; is that correct?

11 A I have been with Sprint for 19 years. And I began
12 there right after college. I consider that fairly
13 extensive.

14 Q And you have a working knowledge, no doubt, of the
15 Telecommunications Act of 1996?

16 A Yes. A general working knowledge, yes.

17 Q That working knowledge relates to implementation
18 of Interconnection Agreements.

19 A Yes. I have working knowledge of implementation
20 of Interconnection Agreements by negotiating and then
21 implementing for 9 years.

22 Q That implementation relates to the
23 Telecommunications Act? You are not just looking at
24 implementation of Interconnection Agreements outside of

1 the Act; correct?

2 A Yes. I would agree with that.

3 Q So you have an understanding of Section 251 and
4 Section 252 of the Act?

5 A I do have a general understanding, yes.

6 MR. TYLER: If I may, Mr. Chairman, I'd like to
7 pass out an exhibit. This is more or less for
8 illustrative purposes. I don't know that it would be
9 necessary to move it into the record. It's Section 251
10 and Section 252 of the Telecommunications Act.

11 COMMISSIONER CULPEPPER: Let's get that exhibit
12 marked. I'm going to label this as AT&T Felton CX Exhibit
13 No. 1?

14 MR. TYLER: Yes, sir, please.

15 COMMISSIONER CULPEPPER: All right. If the
16 court reporter will so label the exhibit.

17 (Whereupon, AT&T Felton CX Exhibit No. 1
18 was marked for identification.)

19 Q (By Mr. Tyler) Do you agree that what was passed
20 out to you, Mr. Felton, is Section 251 and Section 252 of
21 the Act?

22 A I would agree that it is labeled as such. And
23 subject to check, I am willing to accept that that is a
24 correct representation.

1 Q I want you to take your time and look through it.
2 You are familiar with these sections. If you see
3 something that doesn't comport with what you believe to be
4 in those sections, let me know.

5 A Okay. Sitting here right now, I don't see
6 anything that doesn't comport with it. But, again, I
7 would like to reserve the right that be subject to check.

8 Q Sure. And if you look at Section 252. Tell me
9 when you get there?

10 A I'm there.

11 Q That begins, I believe, on Page 96 of this
12 excerpt?

13 A Yes.

14 Q Do you agree with me that within Section 252, that
15 section sets out an arbitrator's role in arbitration?

16 A Yes, I would agree with that.

17 Q And would you agree with me that that role is set
18 forth as resolving open issues to meet requirements of
19 Section 251? And I will help you with the citation I am
20 looking at. I'm looking at 252(C)(1).

21 A Yes, I would agree that is one of the standards
22 for arbitration. Yes.

23 Q And it says plainly that the arbitrator's role is
24 to resolve open issues to meet the requirements of Section

1 251; right? Do you see that?

2 A Yes, I do see that. Yes.

3 Q And go back to Section 251, if you would briefly.

4 A Okay.

5 Q And 251 is setting out three requirements that
6 arbitrators would review; correct?

7 A Yes.

8 Q And there is an enumeration of those specific
9 requirements, obligations of carriers; ILECs like AT&T.
10 Would you agree that there are five general duties that
11 are enumerated there?

12 A If you are referring to 251B, I would agree with
13 that, yes.

14 MR. ATKINSON: Mr. Chairman, at this time I will
15 have to interpose an objection. The Act says what it
16 says. I don't think there is a lot of purpose for letting
17 this non--lawyer go through and tell us what the Act says.
18 The Act speaks for itself. We think this line of
19 cross-examination is unwarranted. The Act speaks for its
20 itself.

21 COMMISSIONER CULPEPPER: I understand. Your
22 objection is overruled. This is cross-examination. We've
23 got a pretty wide latitude here in the State about that.
24 So your objection is overruled.

1 Q (By Mr. Tyler) My question to you, sir, was: Do
2 you see that there are five general duties that are
3 enumerated there under 251? And I will read them for you:
4 Resale is one; number of affordability is the second;
5 dialing parity is the third; access to rights-of-way is
6 the fourth; and reciprocal compensation is the fifth. Do
7 you see that?

8 A I do see that, yes.

9 Q Then there are additional obligations of incumbent
10 local exchange carriers. Do you see that?

11 A Yes.

12 Q And do you see that those duties are
13 interconnection, unbundled access, resale, notices of
14 change and collocation?

15 A Yes.

16 Q You would agree with me there?

17 A I do agree, yes.

18 Q Is there is any language in 251 that expressly
19 addresses extending Interconnection Agreements pursuant to
20 merger commitments?

21 A Well, I don't see it here sitting here today. I
22 did review the Act prior to coming. And in response to an
23 earlier question that you asked me, there is something I
24 read in there and I don't know -- do you have a copy of

1 the Act? I guess I'm wondering if there is something
2 missing from here. There was a section that addressed the
3 implementation of Interconnection Agreements that would
4 lead one to believe that the Commission had broader
5 authority in arbitrating issues that just wasn't in B and
6 C. Certainly, I would think that the terms of the
7 agreements is a critical part of an agreement. And if the
8 parties cannot agree on that term, that is an issue that
9 the Commission may have to help the parties resolve.

10 Q Mr. Felton, I don't know that I received an answer
11 to my question. My question to you was: Out of those
12 commitments that we went, throughout our review of Section
13 251 as you sit here today testifying -- and you already
14 told us that you have familiarity with Section 251 -- as
15 you sit there today, can you point the Commission to
16 anything that allows for a party to extend an
17 Interconnection Agreement concurrent with a merger
18 commitment? Yes or no?

19 A Well, I would say, no, I can't point the
20 Commission to anything in this document here. But
21 certainly the merger commitment was made during a time
22 that the parties were in the middle of negotiations with
23 unresolved issues and AT&T set forth this commitment to
24 extend any current Interconnection Agreement request for

1 three years. And that to Sprint was offered to extend our
2 Interconnection Agreement for three years. So we decided
3 after some analysis to take AT&T up on that offer.

4 Q And your analysis is beyond what you find there in
5 Section 251. Let me ask you there, sir: Are you familiar
6 with the parties' Interconnection Agreement?

7 A Yes. I'm very familiar with it.

8 Q Are you familiar with the amendment that has in it
9 explicitly it expired date of expiration?

10 A I am familiar with the amendment that has an
11 expiration of the fixed term, yes.

12 MR. TYLER: Mr. Chairman, I'd like to mark an
13 additional exhibit. This will be CX Exhibit 2.

14 COMMISSIONER CULPEPPER: All right. If you will
15 bring the exhibit forward. The court reporter will mark a
16 copy of it as AT&T Felton CX Exhibit No. 2.

17 (Whereupon, AT&T Felton CX Exhibit No. 2
18 was marked for identification.)

19 Q (By Mr. Tyler) Have you had a chance to review
20 what has been marked as Exhibit 2?

21 A Yes.

22 Q You would agree with me that that is entitled,
23 Amendment to Interconnection Agreements between Sprint --
24 various Sprint business entities and BellSouth, and it's

1 dated January 1, 2001?

2 A Yes.

3 Q If you look down at 1, Subparagraph 2.1, do you
4 see the language there that says, the term of this
5 agreement shall be from the effective date as set forth
6 above and shall expire as of December 31, 2004? Did I
7 read that correctly?

8 A Yes, you did. I see that. I also see the
9 language that follows that says, if as of the expiration
10 of this agreement, a subsequent agreement as defined in
11 Section 3.1 below has not been executed by the parties,
12 this agreement shall continue on a month-to-month basis.

13 Q So, sir, you do not -- Sprint does not take issue,
14 then, with the fact that the agreement has expired, do
15 you?

16 A I take issue with that characterization. I would
17 not say that the agreement expired. I would say that the
18 fixed term of that agreement has expired and converted to
19 a month-to-month agreement. Sprint has numerous
20 agreements that continue on a month-to-month basis with
21 multiple carriers in this state and others. In fact, our
22 agreement with Verizon is a 1999 vintage agreement and is
23 still in effect today. So I would not agree with your
24 characterization.

1 Q It is not a characterization. What I want you to
2 do is just look at the plain language. I'm not asking you
3 about what it says in terms of month-to-month. You can
4 certainly read the entire subparagraph in context. Read
5 the entire thing. What I am asking you is: Does it or
6 does it not say the term of this agreement shall be from
7 the effective date as set forth above and shall expire as
8 of December 31, 2004? Is that the first sentence?

9 A And, again, that is the first sentence. But I
10 think we would all be remiss if we didn't read the whole
11 paragraph in context.

12 Q Is there anything within the party's
13 Interconnection Agreement that mentions extending that
14 agreement pursuant to merger commitments?

15 A No.

16 Q So you are not relying on something that is with
17 the parties' Interconnection Agreement; correct?

18 A That is correct. We would have had no way of
19 knowing there would have been a merger commitment to
20 include in the Interconnection Agreement. But the
21 agreement does allow the parties to extend the agreement
22 generally. Upon agreement between the parties and when
23 AT&T offers to extend the agreement before the entire
24 Telecommunications Industry and the FCC, we would consider

1 that to be AT&T's part of the mutual agreement and we
2 accepted it.

3 Q So it's really about what Sprint's interpretation
4 -- what Sprint believes the FCC meant in its Merger Order;
5 isn't that right?

6 A I'm sorry, can you repeat that question?

7 Q At essence the dispute is over what Sprint
8 believes the FCC meant in language contained in the FCC's
9 Merger Order; right?

10 A Well, I think the language was actually AT&T's
11 language. And if you really go back to the root of the
12 language, it was the cable companies' language that came
13 up with this merger commitment. And it's -- I guess in my
14 experience and reading contracts and interpreting them,
15 there is very little room to interpret it any other way
16 than you offered a three-year extension and we accepted
17 that extension. Then to go back and back date that to
18 December 31, 2004, seems inappropriate.

19 Q I am not even trying to quibble with you about
20 your interpretation. All I am asking you, sir, is doesn't
21 this, in essence, sir, boil down to a question of Sprint's
22 interpretation of what the FCC meant in that Order?

23 A Yes, I would agree. But I think that we have
24 arbitration issues since 1996 that boil down to what the

1 FCC meant in some Order that it issued, including the
2 Order that it issued as a result of the Telecommunications
3 Act of 1996. There have been disagreements since we have
4 been negotiating Interconnection Agreements that this
5 Commission and other Commissions have had to resolve
6 because there is a difference of interpretation on what
7 the FCC meant.

8 Q Mr. Felton, if Sprint wants to know exactly what
9 the FCC meant, can Sprint go to the FCC and ask for
10 clarification?

11 A Sprint can go to the FCC and ask for
12 clarification. But, again, you are suggesting that Sprint
13 and other requesting carriers would have to go to the FCC
14 for clarification on every Order that it ever issues when,
15 in fact, Congress says the Telecommunications Act
16 delegated that authority to the State Commission.

17 Q Sir, are we here about every Order the FCC issues?

18 A No, certainly we are not. But I am drawing the
19 analogy to what that can become if you take it to its
20 logical conclusion.

21 Q Yes. And I'm just asking you questions today that
22 really require a yes or no. I believe what you said is
23 that yes, Sprint certainly can go to the FCC and seek
24 clarification; correct?

1 A That is certainly an option available to us. But
2 I don't think that is what is intended by the
3 Telecommunications Act and even -- my personal belief is
4 that the FCC felt like that AT&T got what it wanted out of
5 the Merger Order, and that it would live up to its end of
6 the bargain, which included this merger commitment.

7 Q And that is what you are basing your argument on
8 is your personal belief as a representative of Sprint?

9 A It's my personal belief; and it is also the
10 position of Sprint.

11 MR. TYLER: I don't have anything further, Mr.
12 Chairman.

13 COMMISSIONER CULPEPPER: All right. Thank you
14 very much. Ms. Fentress, do you care to ask any
15 questions?

16 MS. FENTRESS: I have one.

17 CROSS-EXAMINATION BY MS. FENTRESS:

18 Q Mr. Felton, just to clarify, has AT&T ever put the
19 terms and conditions in its Proposed Attachment 3 to
20 Sprint for its acceptance?

21 A The one that is proposing --

22 Q In this proceeding?

23 A -- today?

24 Q Yes, sir.

1 A To my knowledge, the exact Attachment 3 they are
2 proposing, no. We did begin with a generic template of
3 Attachment 3 way back in -- I guess we started
4 negotiations in March of 2006 -- and made very substantial
5 changes during negotiations. And there were substantial
6 changes yet to come if we were to ultimately reach
7 agreement on that Attachment 3. So ultimately, I would
8 say, no, this would be the first opportunity we have had
9 to review that.

10 MS. FENTRESS: Thank you. That is all I have.

11 COMMISSIONER CULPEPPER: Redirect examination?

12 MR. ATKINSON: Thank you, Commissioner.

13 REDIRECT EXAMINATION BY MR. ATKINSON:

14 Q Do you recall the questions from counsel for AT&T,
15 Mr. Tyler, when he asked you whether there was anything in
16 the agreement regarding three-year extensions? Do you
17 recall those questions?

18 A Yes.

19 Q Does the current Interconnection Agreement between
20 Sprint and AT&T North Carolina have a broad change of law
21 provision?

22 A It does.

23 Q Finally, do you know whether or not the merger
24 conditions, specifically the one that is the subject of

1 this proceeding, were adopted by the FCC as part of its
2 Merger Order? Do you happen to know that?

3 A That is my understanding, yes.

4 MR. ATKINSON: Thank you, Mr. Felton. No
5 further on redirect.

6 COMMISSIONER CULPEPPER: Questions by
7 Commissioner?

8 (No response.)

9 All right. Hearing none, that will conclude
10 your testimony, Mr. Felton. You can be excused from the
11 witness stand.

12 (Whereupon, the witness was excused.)

13 MR. ATKINSON: I believe Mr. Felton's testimony
14 and exhibits have already been admitted into the record,
15 Commissioner. And, if so, that concludes Sprint's direct
16 case.

17 COMMISSIONER CULPEPPER: They have been. I
18 understand your case is concluded.

19 MR. TYLER: Mr. Chairman, rather than paper the
20 record and the Commission, we would like to just take
21 judicial notice of those sections of the Act and the
22 Amendment to the Interconnection Agreement, which is of
23 record with the Commission. We don't necessarily need to
24 move them into the record.

1 COMMISSIONER CULPEPPER: If you want us to take
2 a look at those things, why don't you move them into the
3 record?

4 MR. TYLER: All right then. We ask that you
5 move AT&T Felton CX Exhibit 1 and 2 into the record at
6 this time.

7 COMMISSIONER CULPEPPER: Without objection, the
8 exhibits marked as AT&T Felton CX Exhibit 1 and AT&T
9 Felton CX Exhibit No. 2 are admitted into evidence.

10 (Whereupon, AT&T Felton CX Exhibit 1 and 2
11 were admitted into the record.)

12 All right. The case is with AT&T.

13 MR. TYLER: Thank you, Mr. Chairman. AT&T would
14 call as its first witness J. Scott McPhee.

15 J. SCOTT MCPHEE; Being first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION BY MR. TYLER:

18 Q Please state your full name and your occupation
19 for the record, sir.

20 A My name is J. Scott McPhee. I am an Associate
21 Director with AT&T.

22 Q And did you cause to be filed in this docket 6
23 pages of Direct Testimony along with one exhibit?

24 A Yes, I did.

1 Q Do you have any corrections to that testimony or
2 the exhibit?

3 A I have no corrections beyond the questions
4 regarding my name, address and experience.

5 Q If I were to ask you the same questions that were
6 posed to you and that you answered in that Prefiled
7 Testimony, would your answers be the same?

8 A Yes, they would.

9 MR. TYLER: Mr. Chairman, subject to
10 cross-examination, we ask that his testimony be entered
11 into the record as if read from the stand.

12 COMMISSIONER CULPEPPER: All right. The motion
13 for adoption of Prefiled Testimony of Mike Harper by the
14 witness Mr. McPhee is allowed. And the Prefiled Testimony
15 of Mr. Harper as adopted by Mr. McPhee is admitted into
16 evidence of the case.

17 (Whereupon, the Testimony of Mike Harper
18 was adopted by Mr. McPhee and was copied
19 into the record as if given orally from the
20 stand.)

21 MR. TYLER: Thank you, Mr. Chairman.

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N.C. Utilities Commission

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AT&T NORTH CAROLINA
DIRECT TESTIMONY OF MIKE HARPER
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. P-294, SUB 31
MAY 25, 2007

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH AT&T ("AT&T"),
AND YOUR BUSINESS ADDRESS.

A. My name is Mike Harper. I am employed by BellSouth
Telecommunications, Inc., d/b/a AT&T Southeast as an Associate Director
Regulatory—Wholesale Operations. My business address is 675 West
Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I have a Bachelor's Degree in Physics and a Master of Business
Administration from the University of Louisville in Louisville, Kentucky.

I have over thirty years of experience in telecommunications. I was
employed by South Central Bell in Louisville, Kentucky and Birmingham,
Alabama until December, 1983, holding positions in Outside Plant
Engineering, Investment and Costs Engineering, and Bell-Independent
Relations, among others. From January 1984 until June 1998, I was
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

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12 678586

1 Q (By Mr. Tyler) Mr. McPhee, did you provide a --
2 Did you prepare a summary of your testimony?

3 A Yes, I did.

4 Q Would you please provide that to the Commission at
5 this time?

6 A Summary was read into the record.

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AT&T NORTH CAROLINA
SUMMARY OF J. SCOTT MCPHEE
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. P-294, SUB 31

My testimony addresses AT&T North Carolina's policy position for implementation of a successor interconnection agreement between AT&T North Carolina and Sprint. While interpretation of the BellSouth/AT&T Merger commitments is a legal matter subject to the jurisdiction of the FCC, AT&T is willing to extend the interconnection agreement Sprint operates under today for a period of 3 years from its expiration date of December 31, 2004. This proceeding is an interconnection arbitration under Section 252 of the Act, and Sprint's sole issue is non-arbitrable under the Act. However, in accordance with the Act, AT&T, as a non-petitioning party to this proceeding can respond with its own arbitrable issues. Therefore, AT&T has raised an arbitrable issue; that is, AT&T proposes language for a successor interconnection agreement with Sprint.

As the Parties have negotiated at length the terms for a new interconnection agreement, including the drafting of a large portion of the successor agreement's specific contract language, AT&T proposes this language, along with AT&T's standard proposed language for Attachments 3A and 3B, to be approved by this Commission in this proceeding. The parties agreed in principle on the terms for Attachment 3, going so far as to agree a tentative settlement was reached, AT&T proposes its standard Attachment 3 contract language because the parties never formalized contract language for this

attachment. Therefore, in the absence of any other proposed contract language in this proceeding, AT&T seeks commission approval of its proposed interconnection agreement.

1 MR. TYLER: Mr. McPhee is available for
2 cross-examination.

3 CROSS-EXAMINATION BY MR. ATKINSON:

4 Q Good morning, Mr. McPhee. Bill Atkinson on behalf
5 of Sprint. We have just a few questions for you this
6 morning. Have you ever met Sprint's lead negotiator Mr.
7 Felton prior to today?

8 A I don't believe so, no.

9 Q You have never participated in negotiations on
10 behalf of AT&T with Sprint in the interconnection
11 negotiations?

12 A Not in this current contract negotiation. I have
13 participated years ago through Legacy SBC on certain
14 issues in negotiations with Sprint.

15 Q But it did not cover the Legacy BellSouth states
16 negotiations that are the subject of this proceeding; is
17 that correct?

18 A That's correct.

19 Q So is it fair to say that you do not have any
20 personal first-hand knowledge of the interconnection
21 negotiations that occurred between Sprint and AT&T between
22 the first of this year and today; is that correct?

23 A First-hand knowledge, that's correct.

24 Q Now you are not a lawyer; is that correct?

1 A That's correct.

2 Q I would like to refer to you Page 3 of your
3 adopted testimony. Let me know when you get there?

4 A I am there.

5 Q I believe on Page 3 there is a question and answer
6 that says, if the sole issue identified by Sprint in its
7 petition for arbitration an appropriate issue for Section
8 252 Arbitration? And your answer is, no, because the
9 issue seeks to arbitrate the interpretation of a merger
10 commitment that lies within the exclusive jurisdiction of
11 the FCC. That issue is not appropriate for a Section 252
12 Arbitration and should, therefore, be dismissed. Did I
13 read your testimony correct?

14 A Yes.

15 Q Now, I assume by this you mean that all of the
16 AT&T merger commitments lie within the exclusive
17 jurisdiction of the FCC; is that your testimony?

18 A That is correct.

19 Q Are you familiar with AT&T's transiting service
20 for merger commitments that is in Appendix F of the Merger
21 Order in March?

22 A Generally speaking, yes.

23 Q And do you agree it says that AT&T has agreed it
24 will not increase its rates for transit service during the

1 term of the merger commitments, which, I believe, was 42
2 months for this one?

3 A I believe that is correct.

4 Q Let me ask you a hypothetical, Mr. McPhee: If
5 AT&T and an interconnecting carrier had a dispute over
6 what AT&T was attempting to charge for transit because the
7 interconnection carrier thought AT&T was charging more
8 than AT&T agreed to, it would under the merger commitment
9 we just discussed, the transiting commitment, is it AT&T's
10 position that only the FCC could resolve that transit rate
11 dispute and this Commission would not have jurisdiction?

12 A I would have to seek legal counsel on that. But
13 I'm not sure that transit services is even conceded as a
14 Section 251, 252 service. Therefore, I am not sure that
15 it would be included within an Interconnection Agreement
16 in the first place. However in your hypothetical, if it
17 were included in the Interconnection Agreement and there
18 was dispute over the rate, I do believe that would allow
19 the State Commission to rule upon the application of that
20 rate within that Interconnection Agreement.

21 Q Now, let's back up to something you just testified
22 to, Mr. McPhee. How long have you been working for AT&T?

23 A Little bit over seven years.

24 Q Have you had occasion on behalf of AT&T -- I

1 believe you testified previously that you have
2 participated in interconnection negotiations?

3 A Yes.

4 Q Previously?

5 A Yes.

6 Q On how many occasions?

7 A Probably a dozen different occasions I would be
8 brought in for certain discussions. I didn't participate
9 in the entire negotiations. That wasn't my role.

10 Q And it's your testimony here this morning that you
11 are not sure whether an Interconnection Agreement would
12 normally include the transit rate or not; is that your
13 testimony?

14 A It has been my experience working for SBC that the
15 SBC argued that the transit rate was not included within a
16 251 Interconnection Agreement. So while the companies are
17 still joining together their policies and interpretation,
18 I specifically can't speak to whether or not it is
19 generally included in the BellSouth agreement. If it were
20 included in an Interconnection Agreement, I believe the
21 Commission could determine the applicability of that rate.

22

23 Q Despite the fact that the FCC merger condition on
24 transiting in AT&T's opinion could only solely be decided

1 by the FCC; is that correct?

2 A I'm sorry, could you restate that?

3 Q You said that if a transiting rate, if the
4 transiting issue was in a state -- Interconnection
5 Agreement approved by a State Commission, then the State
6 Commission would have jurisdiction. We just discussed the
7 transiting commitment that's in Appendix F to be FCC's
8 Merger Order approving AT&T/BellSouth merger. And I
9 believe you just testified that the FCC has sole exclusive
10 jurisdiction over the merger commitments, which would
11 presumably include the transiting commitment; is that
12 correct?

13 A That is correct. Again, I am not an attorney, so
14 when we are talking about the applicability of the merger
15 commitments beyond the scope of an Interconnection
16 Agreement, the FCC has jurisdiction. When, I believe,
17 when the parties agree to incorporate something within its
18 Section 251, 252 Interconnection Agreement, it comes under
19 the jurisdiction of the State Commission.

20 Q So it's possible that for some of those merger
21 commitments, the State Commission would have jurisdiction;
22 is that your testimony?

23 A I think there might be a possibility if the
24 parties were to agree to incorporate it into an agreement.

1 MR. ATKINSON: Thank you, Mr. McPhee. That's
2 all I have for this witness.

3 COMMISSIONER CULPEPPER: Ms. Fentress?

4 CROSS-EXAMINATION BY MS. FENTRESS:

5 Q Good morning, Mr. McPhee, I'm Kendrick Fentress
6 with the Public Staff. I just have a couple questions
7 for. You indicated that you did not participate in
8 negotiations. In Mr. Felton's Rebuttal Testimony, he
9 indicated that Mr. Harper, likewise, did not participate
10 in negotiations; is that true?

11 A That is my understanding.

12 Q Although you didn't participate in negotiations,
13 are you aware if AT&T ever put forth the conditions in its
14 Proposed Attachment 3 to Sprint for its acceptance?

15 A The specific conditions that are in Attachment 3.

16

17 Q Yes.

18 A I don't know if the language -- as Mr. Felton
19 said, I don't know if this specific language was proposed
20 to Sprint or if it was a different variation of a standard
21 agreement that was current for that period of time it
22 began negotiations.

23 Q So you don't know if Sprint ever accepted the
24 terms and conditions of the proposed attachment?

1 A It is my understanding they didn't because I know
2 discussions went back and forth as to the different terms
3 that would be agreed upon in that attachment and that's
4 what they were proposing, a standard attachment without
5 the agreed upon terms.

6 Q Do you know how many Interconnection Agreements
7 AT&T/BellSouth has in effect in North Carolina that are
8 similar to this Interconnection Agreement in that the
9 initial term expired prior to December 29, 2006, and the
10 agreement continuing on a month-to-month or some other
11 increment basis?

12 A I don't know the specific number, I'm sorry. I do
13 believe that there are -- that Sprint's not the only
14 carrier in that scenario. But I don't know specific
15 numbers.

16 Q So let me ask you a hypothetical since we don't
17 know for sure: If there were an agreement out there
18 similar to Sprint's, but the initial term expired in 2003
19 and then went to a month-to-month basis, is it AT&T's
20 argument that that agreement pursuant to the merger
21 commitments could only be extended until 2006, which is
22 prior to the merger agreement coming into effect?

23 A That would be my understanding. It would be three
24 years from the expiration date of that contract.

1 Q So the merger commitments would be meaningless for
2 any agreement that expired 2003 or earlier?

3 A The specific extension three years beyond the
4 expiration date would not be applicable in that case.

5 MS. FENTRESS: Thank you. That's all I have.

6 COMMISSIONER CULPEPPER: Redirect examination.

7 REDIRECT EXAMINATION BY MR. TYLER:

8 Q Mr. McPhee, you were asked a number of questions
9 regarding a merger commitment that deals with transiting.
10 Is the merger commitment that we are here to talk about
11 today, does that have anything at all to do with transit?

12 A No, it does not.

13 MR. TYLER: That's all I have.

14 COMMISSIONER CULPEPPER: Questions from the
15 Commissioners?

16 (No response.)

17 All right. Apparently there are none, so that
18 would conclude your testimony, Mr. McPhee. You are
19 excused from the witness stand.

20 (Whereupon, the witness was excused from
21 the witness stand.)

22 Do you have another witness?

23 MR. TYLER: Yes, sir. AT&T would call P.L. Scot
24 Ferguson.

1 P.L. SCOT FERGUSON; Being first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION BY MR. TYLER:

4 Q Please state your full name and your occupation
5 for the record.

6 A My name is P.L. go by Scot Ferguson. Scot with
7 one "t." I am Associate Director for wholesale policies
8 with AT&T Atlanta.

9 Q Mr. Ferguson, did you cause 12 pages of Direct
10 Testimony along with one exhibit to be prefiled in this
11 docket?

12 A Yes, I did. And, of course, I think we have had
13 the discussion this morning that we have changed out the
14 amended prefiled four-page exhibit.

15 Q Do you have any other corrections to your
16 testimony or to your exhibit?

17 A I do not.

18 Q If I were to ask you today the same questions that
19 were posed to you and that you responded to in your
20 prefiled testimony, would your answers be the same?

21 A Yes, they would.

22 MR. TYLER: Mr. Chairman, I would ask that the
23 testimony of P.L. Scot Ferguson be entered into the record
24 as if read from the stand subject to cross-examination.

1 COMMISSIONER CULPEPPER: All right. So the
2 prefiled testimony of the witness is received into
3 evidence as if testified to word-for-word from the witness
4 stand orally. And your exhibit was identified as Exhibit
5 PLF-1, which was filed on July 26, 2007.

6 (Whereupon, Mr. Ferguson's Prefiled Direct
7 Testimony was copied into the record as if
8 given orally from the stand.)

9 (Whereupon, PLF-1 was admitted into
10 evidence.)

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AT&T
DIRECT TESTIMONY OF P.L. (SCOT) FERGUSON
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. P-294, SUB 31
MAY 25, 2007

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

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

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

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

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

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

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

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

Q. WHAT SPECIFIC LANGUAGE DID THE CABLE COMPANIES PROPOSE?

A. On page 11 of their comments, in paragraph 4 of a section titled "Reducing Transaction Costs" the Cable Companies proposed the following commitment language:

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."²

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.

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.

1 Q (By Mr. Tyler) Did you prepare a summary of your
2 testimony?

3 A Yes, I did.

4 Q Would you please provide that to the Commission at
5 this time?

6 A I'd be happy to. Summary was read into the record.

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AT&T
TESTIMONY SUMMARY – P.L (SCOT) FERGUSON
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. P-294, SUB 31

Good morning, Commissioners. My testimony on behalf of AT&T addresses the only issue filed by Sprint in this arbitration – that is, whether Sprint, under the terms of the relevant AT&T/BellSouth merger commitment, can extend its expired interconnection agreement, and from what date that extension may commence.

First and foremost, AT&T has met its obligations with respect to the relevant merger commitment proposed during the AT&T/BellSouth merger proceedings, and subsequently adopted by the FCC. The intent of the commitment is to alleviate transaction costs associated with renegotiating interconnection agreements every three years while offering a one-time, 3-year extension of the term of the agreement from the initial or amended term expiration date of the most recent agreement – regardless of whether that most recent agreement has expired.

For the AT&T/Sprint agreement at issue, the amended term expired on December 31, 2004. Consistent with the relevant merger commitment, AT&T offered to Sprint a 3-year extension from that amended term expiration date, with a new term expiration date of December 31, 2007. Sprint refused the offer, and chose to file arbitration in North Carolina and other southeastern states solely upon the extension issue – and not including the few remaining unresolved issues of the ongoing negotiations. As filed previously

with this Commission, AT&T's attorneys have briefed AT&T's position as to the appropriateness of the extension issue for arbitration.

Second, Sprint mistakenly believes that the agreement at issue somehow has not expired. To Sprint, the December 31, 2004 term expiration date of the agreement means nothing because the parties continue to do business under the agreement while in the *third* year of negotiating a new successor agreement. Sprint wants to extend the agreement 3 years from its request date in March 2007 to a term expiration date in March 2010.

AT&T believes that the agreement has indeed expired, and that the parties continue to operate on a month-to-month basis *after* the term expiration of the agreement because the language of the agreement allows for that. Historically, however, the month-to-month provision has been an interim measure intended to accommodate ongoing negotiations for a successor agreement while ensuring no interruption of service to a CLP's end users. While the agreement is effective for the purposes I just mentioned, the term of the agreement still has expired.

To extend Sprint's currently expired interconnection agreement would result in Sprint receiving what, in effect, is a 6-year extension of an agreement – the almost 3 years it has already run beyond the original 2004 expiration *plus* the 3 years of an extension beginning in 2007. That's on top of the 4-year amended term of the original agreement. In other words, Sprint would have what amounts to an almost 10-year-old agreement. That's just not good business policy in such a dynamic industry, and runs counter to the intent of the merger condition.

The AT&T/Sprint agreement has become a collection of amendments that have kept the agreement compliant with change-of-law requirements, and there have been other amended changes, but there's a lot of 2001 operations language that just doesn't fit even 2007, much less 2010. The agreement resulting from current negotiations would have remedied most of that (and the parties were almost there), but extending the currently expired agreement remedies nothing.

AT&T requests that, if this Commission decides that it has jurisdiction over the interpretation of the FCC-ordered AT&T/BellSouth merger commitments, it determine that AT&T has met its obligation under the relevant merger commitment by offering to Sprint the ability to extend until December 31, 2007 its currently expired agreement. The most logical solution is to order the parties to continue negotiations for a successor agreement that brings up to date the agreement as a whole.

That concludes my summary. Thank you.

1 MR. TYLER: The witness is available for
2 cross-examination.

3 COMMISSIONER CULPEPPER: Before we get to that,
4 do you want to move the admission of replacement exhibit
5 PLF-1?

6 MR. TYLER: Yes, sir.

7 COMMISSIONER CULPEPPER: Without objection, it
8 is received. Cross-examination by Sprint.

9 CROSS-EXAMINATION BY MR. ATKINSON:

10 Q Thank you Commissioners. Good morning, Mr.
11 Ferguson.

12 A Good morning.

13 Q Bill Atkinson on behalf of Sprint. I'd like to
14 begin by asking you, briefly, what I asked Mr. McPhee a
15 few minutes ago. Have you ever met Sprint's lead
16 negotiator Mr. Felton prior to today or heard his voice on
17 negotiation calls?

18 A Yes, I've heard his voice on negotiation calls,
19 and no, I've never met him.

20 Q Were you involved personally in the Sprint/AT&T
21 interconnection negotiations that are the subject of this
22 proceeding?

23 A Yes, I was.

24 Q Can you identify the -- Did you identify yourself

1 on conference calls?

2 A Yes, I did.

3 Q Were you involved in negotiations prior to the
4 filing of Sprint's arbitration petitions in this matter?

5 A Yes, I was.

6 Q You don't discuss that participation in your
7 testimony, do you?

8 A No, I don't. Mr. Felton filed Rebuttal Testimony
9 that indicated that I had not been involved. And, of
10 course, in this proceeding, we have not had a chance to
11 file any Rebuttal.

12 Q Thank you for that clarification, Mr. Ferguson.
13 I'm glad you and Mr. Felton had a chance to meet today.

14 A Mr. Felton was not on the call that I participated
15 on.

16 Q You participated on one call?

17 A One call in a series of swapping of language
18 through our chief negotiator Allen Flood(phonetic), whose
19 office is right next mine.

20 Q Do you know how many interconnection calls there
21 were between what you call the expiration of the fixed
22 term of the agreement and the filing of Sprint's petition
23 in this docket?

24 A There has been a significant amount.

1 Q You were on one call?

2 A Just for the section that I had part in
3 negotiating, yes.

4 Q Let me refer you to Page 8 of your Direct
5 Testimony. Let me know when you get there.

6 A I am there.

7 Q I believe you state on Page 8 of that Merger
8 Commitment 4, as you said in your summary, only
9 contemplates a six-year total life of Interconnection
10 Agreements. Is that a correct reading of your testimony?

11 A Are you on Line 4?

12 Q Lines 4 through 13.

13 A Bear with me a moment.

14 Q Sure.

15 A Yes.

16 Q Yes, it's your testimony that Merger Commitment
17 No. 4 only contemplates a six-year total life for
18 Interconnection Agreements?

19 A That is the general gist of what I said, yes.

20 Q You also state, I believe on that same page, that
21 the cable companies' comment that the FCC was the source
22 of Merger Commitment No. 4; is that correct?

23 A Yes. They were the first ones to offer that
24 language which was subsequently adopted almost verbatim by

1 the FCC.

2 Q Okay. So it was adopted verbatim what the cable
3 company said?

4 A Almost verbatim to the best of my recollection,
5 and with our agreement to it, yes.

6 Q So you are generally familiar with the cable
7 comments that were filed in the FCC Merger Docket?

8 A Generally, yes.

9 Q As matter of fact, you filed, I believe, last week
10 a replacement exhibit, Ferguson -- SF-1?

11 A PLF-1.

12 Q PLF-1, excuse me, to your Prefiled Direct
13 Testimony that incorporates the October 24 cable coalition
14 comments of the FCC; is that correct?

15 A Subject to check on the date, I did incorporate
16 the entire comments as opposed to a subset, which had been
17 filed erroneously previously.

18 Q Did you also happen to review the erroneously
19 filed comments, I believe they were dated November 17th,
20 that you originally filed in this proceeding? Did you
21 review those November 17th comments?

22 A Subject to check --

23 MR. TYLER: Hang on. Let me interject an
24 objection here as to the characterization of something

1 having been misfiled. I'm not certain that that
2 characterization if appropriate or did this witness
3 testify to that.

4 COMMISSIONER CULPEPPER: Well, the fact of the
5 matter was it was filed.

6 MR. ATKINSON: I should have said inadvertently
7 filed. Let me clarify.

8 Q (By Mr. Atkinson) Mr. Ferguson, I'm not trying to
9 suggest anything was done improperly. I am just saying
10 that the November 17th comments that were inadvertently
11 filed, did you have occasion to read those as well?

12 A Yes, I did.

13 Q Would you please point out to me specifically
14 where in those cable companies' comments we have just
15 discussed or any other comments filed in the AT&T merger
16 docket that it makes any reference whatsoever to a
17 six-year total life span of any Interconnection Agreement?

18 A No, I can't point to that. It only follows logic
19 that if you have it in force and a current agreement that
20 is valid for three years and it's already in place, and
21 according to the merger commitment we would extend that
22 for three years, that it could be as much as six years.
23 It doesn't have to be totally six years. It just depends
24 on where the current agreement stands for a specific CLP.

1 It may not extend six years.

2 Q When you say, it only follows by logic, when you
3 are speaking on behalf of AT&T, it's AT&T's logic and not
4 necessarily what the cable companies' logic; is that
5 correct?

6 A Yes, that's correct. AT&T reviewed the
7 commitments, agreed to the commitments, and it's AT&T's
8 position that what you are extending for three years is
9 the expiration date of the term of the existing contract.
10 If the existing contract is expired and it said regardless
11 of whether it's expired, we agree to extend it for three
12 years from the expiration date, the term of the agreement.
13 And as was pointed out earlier, if that doesn't bring it
14 current, then it's still an expired contract.

15 Q Does that conclude your response?

16 A Yes.

17 Q Mr. Ferguson, did AT&T's merger commitment letter
18 filed with the FCC on December 28th that we have already
19 discussed, did AT&T commit to providing all the merger
20 conditions proposed by the cable companies?

21 A I am not totally familiar with that document, the
22 letter filed in terms of what it -- I am familiar
23 generally with the merger commitments. And it is my
24 understanding that we did commit to follow the merger

1 commitments.

2 Q So you are familiar with the merger commitments
3 that were filed as part of Appendix F of the FCC Merger
4 Order?

5 A Yes. And specifically Merger Commitment 4 which
6 is what we are here talking about.

7 Q I don't believe you answered my question, so let
8 me state it again: Are you aware whether the merger
9 commitment that are a part of Appendix F include all of
10 the cable companies proposed merger conditions as they
11 filed in the merger docket?

12 A I can't attest to that, that they include all of
13 them, no.

14 Q Do you know whether Appendix F, the merger
15 conditions that were are discussing, does it include a
16 cable companies' proposal regarding a single point of
17 interconnection per LATA? Do you know whether that was
18 included in the merger conditions?

19 A I don't recall that.

20 Q You would agree with me that AT&T voluntarily
21 agreed to comply with those of the cable companies
22 proposed merger commitments that AT&T could commit to
23 carrying out in full; is that a reasonable assumption?

24 A That is a reasonable assumption. Subject to check

1 I would agree with it.

2 Q Would you agree with me, Mr. Ferguson, that the
3 true purpose of the interconnection and merger commitments
4 we have been discussing is to foster competition? Is that
5 a fair statement?

6 A I think it's certainly a by-product and it's
7 something that -- there were subheadings in the merger
8 commitments. And, of course, the one we were talking
9 about today was under the subheading of dealing with
10 transaction costs and reducing those related to
11 negotiations of Interconnection Agreements. So that is
12 related to competition.

13 Q If you reduce transaction costs for competitive
14 carriers, presumably, that will foster competition, would
15 that stand to follow?

16 A It will certainly save the proposed parties'
17 money. That's certainly a competitive aspect, too, when
18 you are talking about revenues and costs.

19 Q Well, Mr. Ferguson, isn't it true that if you do
20 what AT&T is suggesting in this docket and apply the
21 three-year extension so it commences in December 2004, it
22 couldn't be fostering any competition between Sprint and
23 the new AT&T for two years because the virginity did not
24 even exist until December 29th, 2006? We are missing two

1 years of competition under AT&T's position; isn't that
2 correct?

3 A I guess I can agree with your characterization.
4 But, however, I will point out that we continued to
5 operate under an expired agreement for almost three years
6 to this point. The parties were fairly close to reaching
7 agreement on a new Interconnection Agreement, which itself
8 would have had a three-year, at least the term of a new
9 agreement, which as I pointed out in my testimony, would
10 bring everything up to date and incorporate all of the
11 amendments that have been done, all of the change of law
12 -- have its own termination date. And Sprint would have
13 its three years and AT&T and Sprint together would have an
14 updated agreement.

15 Q I know on the basis of your one negotiation call
16 you may or may not be able to answer this question, so you
17 just tell me if you can't answer it. Do you know whether
18 AT&T and Sprint in the course of their interconnection
19 negotiations over the past two and a half years, were they
20 close to settling issues that they reached tentative
21 settlement on issues prior to December 2006?

22 A It is my understanding that starting out with well
23 over 50 issues two and a half years ago, across all the
24 different attachments of the Interconnection Agreement,

1 then, yes, for the most part other than what Mr. McPhee
2 talked about in Attachment 3, that agreement and principle
3 has been reached.

4 And it is my understanding in talking with our
5 lead negotiator is that even language for those resolved
6 issues had been agreed to. Nothing had been put into any
7 formal filing with this Commission or any other, but at
8 some point during negotiation process, you have to say,
9 here is where we are and we move on to another section.
10 That is what was done and we ended up with the unresolved
11 issues of Attachment 3.

12 Q I don't think you followed my question, Mr.
13 Ferguson, so I am going to repeat it again. But I will
14 ask you to reply yes or no. If you don't know based on
15 your one negotiations call, please, you are certainly free
16 to say so. But prior to this December 2006, tentative
17 resolution that you just discussed, were the parties close
18 to resolution prior to that December 2006? Or do you
19 know?

20 A I believe I know, yes.

21 Q All right, sir, what is the answer?

22 A The answer is yes, they had.

23 Q Prior to December 2006?

24 A Prior to the merger commitments being announced,

1 which wasn't until, December 29th.

2 Q How many months prior?

3 A I can't answer that.

4 Q How many times? How many times had they been
5 close to resolving the issues prior to this December 29 --

6 A I can't answer that.

7 MR. ATKINSON: Thank you, Mr. Ferguson. No
8 further questions.

9 COMMISSIONER CULPEPPER: Public Staff
10 Examination?

11 MS. FENTRESS: Yes, just briefly.

12 CROSS-EXAMINATION BY MS. FENTRESS:

13 Q Good morning, Mr. Ferguson. I am Kendrick
14 Fentress with the Public Staff. You indicated that you
15 were aware of the Merger Commitments Order but that you
16 were not aware of the merger commitment offer that
17 BellSouth made the day before the FCC accepted the merger;
18 is that correct?

19 A I don't recall that question, Ms. Fentress. You
20 mentioned BellSouth's offer. We do get confused whether
21 we are talking about AT&T or BellSouth. But you meant
22 AT&T; is that correct?

23 Q Yes, sir. I think maybe I can clarify it. Are
24 you familiar with the December 28, 2006, letter from AT&T

1 to the FCC, that set out their voluntary merger
2 commitments?

3 A I am aware that it exists. I don't have any
4 first-hand knowledge of that.

5 MS. FENTRESS: If I could pass this out.

6 COMMISSIONER CULPEPPER: Do you have an exhibit?

7 MS. FENTRESS: Yes, sir. I'd like for this to
8 be marked Public Staff Ferguson CX Exhibit No. 1.

9 COMMISSIONER CULPEPPER: Let it be so marked.

10 (Whereupon, Public Staff Ferguson CX
11 Exhibit No. 1 was marked for
12 identification.)

13 Q (By Ms. Fentress) If you can turn to the second
14 page of this document.

15 A Ms. Fentress, I'd like to make one comment. Now
16 that I see this, I have seen this before.

17 Q Okay, good. Look at the second page at the top
18 where it says, Merger Commitment. In that merger
19 commitment from AT&T it discusses jurisdiction by the FCC;
20 is that correct?

21 A It does somewhere. Are you pointing me to a
22 specific --

23 Q Yes, sir. Page 2 at the top it says, Merger
24 Commitment.

1 A Yes. Yes.

2 Q In the first paragraph deals with the FCC has
3 jurisdiction?

4 A Right.

5 Q And you are familiar with the Merger Order; is
6 that correct?

7 A Yes.

8 Q And I believe the Merger Order was attached to Mr.
9 Harper's testimony as Exhibit A, so it has been admitted
10 into the record. Are you familiar with the first two
11 paragraphs of that Merger Order with regard to merger
12 conditions?

13 MR. TYLER: Do you want to provide him with a
14 copy?

15 MS. FENTRESS: I am going to do that. I
16 apologize.

17 Q (By Ms. Fentress) I am going to take Mr. Harper's
18 Exhibit A from his testimony. This is from Mr. Harper's
19 Prefiled Testimony filed May 25, 2007. It is the first
20 page. Can you read the second paragraph under conditions?

21 A The entire paragraph?

22 Q Yes, sir.

23 MR. TYLER: Excuse me counsel, please direct me
24 to what you are looking at.

1 MS. FENTRESS: I am looking at the second
2 paragraph on Appendix F of Mr. Harper's Exhibit A, on the
3 first page of the merger conditions.

4 MS. GRIGG: We have copies of Appendix F if it
5 would help.

6 COMMISSIONER CULPEPPER: That would be of good
7 assistance. Ms. Fentress, are you going to mark another
8 exhibit or are you just making use of an Exhibit A that is
9 part of the record in the case?

10 MS. FENTRESS: My intent is to make use of
11 Exhibit A which is part of the record.

12 COMMISSIONER CULPEPPER: Okay.

13 Q (By Ms. Fentress) Can you read that paragraph?

14 A Yes. It is not the intent of these commitments to
15 restrict, supersede, or otherwise alter state or local
16 jurisdiction under the Communications Act of 1934 as
17 amended or over the matters addressed in these commitments
18 or to limit state authority to adopt rules and regulations
19 performance monitoring programs or other policies that are
20 not inconsistent with these commitments.

21 Q Thank you. So that paragraph was not part of the
22 FCC's initial offer made on December 28th?

23 A As counterpoint to where it says, it's enforceable
24 by the FCC?

1 Q Yes. That paragraph is not shown on the front
2 page of AT&T's offer?

3 A What I just read, that is correct, it is not.

4 Q So the FCC outed that subsequent to AT&T's offer?

5 A I will make the assumption subject to check. I
6 wasn't involved in the drafting of all these documents.

7 MS. FENTRESS: That's all I have. I would move
8 for the admission of Public Staff CX Exhibit 1.

9 COMMISSIONER CULPEPPER: All right. Public
10 Staff Ferguson CX Exhibit No. 1 is received into evidence.

11 (Whereupon, Public Staff Ferguson CX
12 Exhibit No. 1 was admitted into evidence.)

13 Redirect examination?

14 MR. TYLER: Thank you, sir.

15 REDIRECT EXAMINATION BY MR. TYLER:

16 Q Mr. Ferguson, what happens when a contract
17 expires? Do consumers lose service?

18 A No, sir. As I stated earlier, the intent of the
19 clause in the general terms and conditions that allows a
20 Interconnection Agreement to go on a month-to-month basis
21 is to insure the negotiations for a successor agreement to
22 go on and to prevent any loss of service to CLP end users.

23 Q So do the parties continue to operate under the
24 terms and conditions of the expired agreement?

1 A That is correct. It is an effective agreement,
2 but it is an expired agreement.

3 Q There was some questioning regarding your
4 knowledge of negotiations in the new Interconnection
5 Agreement. Was your knowledge of those negotiations based
6 solely on one call?

7 A No, absolutely not. I did participate in one
8 call. As I said, I swapped some e-mails and sent redline
9 language back and forth with Sprint through our chief
10 negotiator. But also, as I also mentioned, my office is
11 right next to our chief negotiator, and she and I have
12 conversations all the time regarding ongoing negotiations.
13 I do that with all the negotiators, Sprint or otherwise.
14 I keep up with what is going on in negotiations.

15 Q Is that a part of your job requirement?

16 A Yes, it is. In fact, as I said earlier, I do have
17 also the responsibility of negotiating certain pieces of
18 Interconnection Agreements with all CLPs.

19 Q You received some questioning about regarding
20 Appendix F, and specifically that second paragraph where
21 it talks about that the intent is not to supersede or
22 otherwise alter state jurisdictions. Does AT&T's position
23 here, is that to alter state or local jurisdiction?

24 A In my personal opinion, although I am not a

1 lawyer, I don't think it's -- I know it's not AT&T's
2 intent. But I would have to leave it to the attorneys to
3 define those words, and make it clear that we are not
4 seeking to do that.

5 MR. TYLER: That's all I have, sir.

6 COMMISSIONER CULPEPPER: Questions by the
7 Commission?

8 COMMISSIONER ERVIN: I've got a couple.

9 EXAMINATION BY COMMISSIONER ERVIN:

10 Q You talked a little bit on both cross and redirect
11 about your role in the negotiation process.

12 A Yes, sir.

13 Q As a result of your participation in that process,
14 did you obtain any familiarity with the existing agreement
15 between BellSouth and Sprint?

16 A Yes, definitely.

17 Q Have you had any role in the administration of
18 that agreement?

19 A If I understand what you mean by administration, I
20 would say, no.

21 Q I meant by administration the day-to-day
22 operations under the agreement?

23 A No, not specifically with Sprint. I have a
24 general understanding of how Interconnection Agreements

1 work in general.

2 Q Do you have a copy of Mr. Felton's Direct
3 Testimony?

4 A Yes, I do.

5 Q In your presence?

6 A Yes, I do.

7 Q Would you look at Page 6 and 7 of that document?

8 A Witness complies.

9 Q Do you have that?

10 A Yes.

11 Q Line 6 on Page 6 where you see what purports to be
12 a quotation from an existing agreement; is that your
13 understanding of what it is?

14 A Yes. This was language from one of the amendments
15 to the agreement.

16 Q As I read it, at least on Page 6 and running over
17 to the top of Page 7, you have language in the original
18 Interconnection Agreement. And then on Page 7, you've got
19 discussion of various amendments; right?

20 A Yes, sir.

21 Q If you look at the amendment which is Paragraph
22 2.1 shown on Page 7, Lines 12 through 17, that appears to
23 be the same amendment that was discussed in AT&T Felton CX
24 Exhibit 2 changing the expiration date from June 30, 2006,

1 to December 31, 2004, is that your understanding as well?

2 A Yes. I know there were two amendments that
3 changed the term, expiration date; one was June 20, '04,
4 and the other was December 31, '04.

5 Q But if one was to look at the material that begins
6 on Page 6, Line 6 and continues over on Page 7, Line 4 and
7 change the reference to June 30, 2004, date on Page 6,
8 Line 9 to a reference of December 31, 2004, would that be
9 the operative language that was in effect for this
10 agreement?

11 A Well --

12 Q Would we have properly incorporated all of the
13 amendments to the expiration date?

14 A I believe I would say, yes. But I also note that
15 on Page 7, Line 12, that is the language of the amendment
16 that brought it up to December 31.

17 Q I guess my only -- My point was trying to
18 understand what the final language of the agreement was as
19 of December 31, 2004. What we've got on Page 6, Line 6
20 through Page 7, Line 4 would be right except for
21 substituting December 31 to June 30 date?

22 A That's correct.

23 Q Now, got really two questions about it. First of
24 all, if you look at Paragraph 3.3, which appears on Page

1 6, Lines 29 through 36 as a reference to a notice of
2 termination, I believe. Do you see that?

3 A Yes.

4 Q Any such notice ever been given?

5 A Not to my knowledge. That is a notice that
6 termination that the parties will no longer do business
7 together, I believe that is a reference to.

8 Q New business under the agreement. It says, at
9 least as I read it and to summarize it, it says, that the
10 parties having either entered into subsequent agreement
11 and no arbitration proceeding has been filed and either
12 party may terminate this agreement from 60-days notice to
13 the other party.

14 A That's correct.

15 Q You can give a notice of termination in those
16 instances under that language; correct?

17 A Yes, to terminate the agreement in its totality.

18 Q So it's not so you can never ever do any business
19 again. But to the effect giving such a notice would be to
20 terminate this agreement?

21 A This particular agreement, yes.

22 Q And at least as you understand it that's not been
23 done?

24 A That's correct.

1 Q You seem to be the witness that AT&T has sponsored
2 to talk about in a non-lawyer sense what AT&T meant with
3 this agreement. At Page 6, Lines 11 through 13, there is
4 a bolded(sic) sentence that says, "if as of the expiration
5 of this agreement the subsequent agreement has not been
6 executed by the parties, this agreement shall continue on
7 a month-to-month basis." Given that you're not a lawyer,
8 what is your understanding of what that sentence means?

9 A The sentence does not address extending the term
10 -- the expiration term or date. But it does allow the
11 parties to continue operating under what has now become an
12 effective agreement; meaning they, the terms and
13 conditions of the now expired contract continue on a
14 month-to-month basis. But it is not intended to be
15 forever. It is intended to allow the parties to continue
16 negotiating subsequent successor agreements.

17 Q What is it then -- As you understand this
18 language, what is it that "continues on a month-to-month
19 basis"?

20 A It continues past the expiration --

21 Q Right.

22 A -- date.

23 Q And maybe I didn't ask that very well. Under this
24 language, at least as I read it, something continues

1 beyond the December 31, '04, expiration.

2 A That's correct?

3 Q What is it that you understand continues on a
4 month-to-month basis pass the December 31, 2004, date
5 under this language as you understand it?

6 A The entirety of the expired agreement, the term --
7 the conditions. And the terms of that expired agreement
8 do continue on.

9 Q What would have to happen for that agreement to
10 not have effect any further?

11 A Either the termination that you just read about in
12 that paragraph or the parties ultimately reached
13 resolution on the subsequent agreement either through
14 arbitration or through just mutual agreement. Again,
15 never intended to carry on and on and on.

16 COMMISSIONER ERVIN: All right. Thank you.

17 That helped.

18 COMMISSIONER CULPEPPER: Commissioner Joyner?

19 EXAMINATION BY COMMISSIONER JOYNER:

20 Q Thank you. I think Commissioner Ervin clarified
21 what was a question for me. But just to be on the safe
22 side I want to ask you whether, in your opinion, the
23 language that converts disagreement to a month-to-month
24 basis, which you just discussed with Commissioner Ervin,

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