

**BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION**

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

Case No. 2007-00255

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PUBLIC SERVICE  
COMMISSION

**NEXTEL'S RESPONSE  
TO AT&T'S SUPPLEMENTAL SUBMISSION**

Nextel West Corp. ("Nextel"), by counsel, files its Response to BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky's ("AT&T") Supplemental Submission filed February 8, 2008 with the Kentucky Public Service Commission ("Commission"). Nextel urges the Commission *not* to "defer ruling on this matter" as requested by AT&T.

**I. INTRODUCTION**

AT&T's Supplemental Submission provided the Commission a copy of a "Petition of the AT&T ILECs for Declaratory Ruling" that has been filed at the Federal Communications Commission by various AT&T entities ("AT&T Petition"), including AT&T Kentucky. The AT&T Petition is nothing more than another delay tactic in a long line of such tactics employed by AT&T to avoid complying with the Merger Commitments and its obligations under Section 252(i) of the Telecommunications Act of 1996 ("Act").

Nextel requests the Commission pay particular attention to the inconsistencies between assertions in the FCC Petition and assertions made by AT&T in prior filings before this Commission. Specifically, AT&T is now arguing before the FCC precisely

what Nextel has argued in this proceeding and before other state commissions: that there “is no need for extensive evidence-gathering or fact-finding”<sup>1</sup> that requires further proceedings before making a determination on Nextel’s adoption of the Sprint ICA.<sup>2</sup>

This Commission has already determined that Nextel is entitled to adopt the Sprint ICA, both under the Merger Commitments and Section 252(i) and it should not permit AT&T’s filing at the FCC to distract it from affirming that decision without further proceeding or reconsideration, particularly given the AT&T Petition itself argues that there are is no need for further determinations of fact. This Commission has also determined that it has concurrent jurisdiction with the FCC over the Merger Commitments as well as jurisdiction to approve Nextel’s adoption of the Sprint ICA pursuant to Section 252(i) of the Act<sup>3</sup> and Nextel urges the Commission to continue to exercise that jurisdiction and affirm its December 18, 2007 Order. There is no legal or logical reason for the Commission to defer final action on Nextel’s adoption request while the matter is pending for an indefinite period at the FCC.

Even assuming a valid basis to the allegations set forth in the AT&T Petition, an assumption which Nextel denies to be valid, the allegations are irrelevant to the proceedings pending in the nine state legacy BellSouth region. The AT&T Petition does not and can not alter this Commission’s finding with respect to the adoption of the Sprint

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<sup>1</sup> AT&T Petition at page 17.

<sup>2</sup> The “Sprint ICA” is the currently effective interconnection agreement between AT&T Kentucky and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P dated January 1, 2001, as amended and extended by this Commission in Case No. 2007-00180.

<sup>3</sup> See Order in 2007-00256, December 18, 2007.

ICA under Section 252(i) of the Act. This finding is unaffected however the FCC treats the AT&T Petition.<sup>4</sup>

AT&T could have sought FCC intervention earlier; however, by waiting until state commissions such as this Commission are already deciding these issues, AT&T is attempting to reap the benefit of yet further delay. By waiting to this juncture in the proceedings to interpose its filing with the FCC in the pending matter AT&T is demonstrating a callous disregard for the efforts of not only the Sprint entities, but also the Commission and the Commission staff involved in this matter. Moreover, this is a clear demonstration of bad faith on the part of AT&T under the FCC's rules by its intentional delay of the resolution of the issues pending in this proceeding which should not be tolerated.

## **II. AT&T'S PETITION STATES THAT THE DISPUTE "IS EMINENTLY SUITED FOR EXPEDITED RESOLUTION," CONTRARY TO ITS POSITIONS IN THIS CASE**

In its Motion for Reconsideration filed on December 21, 2007, AT&T argued that the Commission's December 18, 2007 Order granting Nextel's adoption of the Sprint ICA was premature and procedurally-flawed because AT&T did not have opportunity for a hearing and to provide further factual evidence. Specifically, AT&T Kentucky argued that "[t]he Commission should grant rehearing to permit AT&T Kentucky to provide factual evidence demonstrating that, for substantive reasons (beyond the procedural basis that was before the Commission in the Motion to Dismiss) adoption of the Agreement is

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<sup>4</sup> Although there is a section of the AT&T Petition in which AT&T attempts to rewrite the merger commitments by imposing its interpretation of the requirements set forth in Section 252(i) of the Act into the merger commitments this does not affect the applicability of Section 252(i) to the present case.

improper.”<sup>5</sup> AT&T requested that the Commission “schedule a hearing on the merits and enter a final order based on evidence adduced at hearing.”<sup>6</sup>

These arguments made by AT&T before this Commission also fly in the face of the arguments now made in AT&T’s Petition. Before the FCC, AT&T is arguing that “the dispute here is eminently suited for expedited resolution ...the issues between the parties can be resolved from the plain and express terms of a single merger commitment and of the specific contractual pricing arrangements that Sprint Nextel is trying to port.”<sup>7</sup> AT&T expressly states to the FCC that [t]here is no need for extensive evidence-gathering or fact-finding.”<sup>8</sup>

This stark difference in AT&T’s characterization of what is needed to decide the dispute lays bare its main goal: delay in permitting competing carriers to realize the benefits of the Merger Commitments and their basic 252(i) statutory right to adopt an interconnection agreement. In Kentucky, where the Commission has already acted and is considering an AT&T request for rehearing, the tactic is to delay by arguing more proceedings are needed, including a hearing and further evidence. At the FCC, where declaratory ruling requests have taken months or years to resolve, AT&T is happy to inform the FCC that the issue is ripe for decision without extensive evidence gathering or fact-finding. The questions that jump to mind most readily are: “Why did AT&T not go to the FCC sooner?”, and “Why did AT&T wait to raise the need for hearing and further evidence with this Commission?” The only answer is that AT&T’s main objective is to delay and avoid adoption decisions that may be construed as being adverse to AT&T.

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<sup>5</sup> See AT&T Kentucky’s Motion for Reconsideration, p. 2.

<sup>6</sup> *Id.*

<sup>7</sup> See AT&T Petition, p. 19.

<sup>8</sup> *Id.*

Now that state commissions, including this one, are determining that they do have authority to enforce the Merger Commitments, AT&T is turning to its next strategy – asserting that the FCC should decide these questions. Of course, AT&T also suggests to those state commissions that they need not act while this matter is pending before the FCC, which would delay Nextel’s requested relief even longer.

There is no guarantee of prompt FCC action, much less that the FCC would reverse any of the state commission decisions that have already been made.

**III. THE COMMISSION SHOULD RESOLVE THIS MATTER WITHOUT FURTHER DELAY AND IF THE FCC EVER RULED AGAINST NEXTEL, THIS COMMISSION CAN REEXAMINE ITS DETERMINATION IN THIS DOCKET**

**A. The Commission should avoid needless delay while the FCC Petition is pending.**

AT&T fervently wishes this Commission to delay final disposition of this matter while AT&T’s Petition is pending at the FCC. As the Commission is aware, however, there is no guarantee of prompt FCC action, nor that the FCC would reverse any of the state commission decisions that have already been made. Further, nothing prevents this Commission from reexamining its determinations regarding Nextel’s adoptions, if necessary, should the FCC issue a future ruling on AT&T’s Petition that “might” be contrary to this Commission’s determination. Delay directly harms Nextel because AT&T will undoubtedly argue that the 42-month “clock” on the effectiveness of the AT&T Merger Commitments pursuant to Appendix F of the AT&T Merger Order is running all the while that AT&T’s Petition is pending before the FCC. If this

Commission defers to the FCC, then time will most definitely be on AT&T's side, and Nextel may never in practical terms get the benefit of what AT&T promised in the Merger Commitments or to which Nextel is independently entitled under section 252(i).

**B. As the Ohio Commission has recently found, it would be contrary to the FCC's policy aims to defer this matter to the FCC**

The same day AT&T filed its FCC Petition the Ohio Public Utilities Commission ("Ohio PUC") issued a Finding and Order that allows one wireline Sprint entity and three wireless Sprint entities, including Nextel West Corp. and NPCR, Inc., d/b/a Nextel Partners (collectively "Sprint") to port and adopt in Ohio the Sprint ICA (referred to in Ohio as the "BellSouth ICA") as extended for 3 years by this Commission, subject to the state-specific modifications mentioned in AT&T Merger Commitment 7.1. In its Finding and Order, the Ohio PUC denied AT&T Ohio's Motion to dismiss Sprint's complaint based on AT&T Merger Commitment 7.1, found that it had concurrent jurisdiction with the FCC to interpret the Merger Commitments, and ordered AT&T Ohio to permit Sprint "to port to Ohio the BellSouth ICA, subject to state-specific modifications." Further, the Ohio PUC specifically found:

Concluding that the FCC has specifically carved out a place for state jurisdiction in the enforcement of merger commitments, it would be contrary to the FCC's policy aims to defer this matter to the FCC, as AT&T would urge us to do.

This finding was based on the Ohio PUC's conclusion that "the FCC clarified that states have jurisdiction over matters arising under the [AT&T] commitments", and that "[e]ven more, states are granted authority to adopt rules, regulations, programs, and policies

respecting the commitments.”<sup>9</sup> Nextel urges this Commission to follow the same reasoning and reject AT&T’s attempt to do an “end run” around state Commissions’ authority to interpret and enforce Merger Commitments.

**C. Nextel has the clear right under Section 252(i) of the Act to adopt the Sprint ICA**

Nextel has already extensively addressed the rights and obligations under Section 252(i) in prior pleadings in these proceedings. This Commission has previously ruled that the adoption of the Sprint ICA was appropriate based on those arguments and the arguments set forth based on the Merger Commitments. Nothing in the AT&T Petition alters this conclusion.

In its December 18, 2008, Order in this matter the Commission specifically noted that the Sprint ICA had been extended for 3 additional years pursuant to Merger Commitment No. 4, agreed upon by AT&T and BellSouth in the FCC merger proceeding. The Commission then found as a result there was a reasonable amount of time left to the Sprint ICA making its adoption lawful. Although not expressly stated, clearly the Commission was acting under the authority set forth in Section 252(i) of the Act as it has done in numerous other proceedings. Nothing has changed. Nothing contained in the AT&T Petition can be construed to even remotely affect this finding. AT&T’s previous arguments were that Nextel cannot adopt the Sprint ICA because it is not “similarly situated” to the original parties to the Sprint ICA. As Nextel previously pointed out, this argument is contrary to the express provisions of § 51.809(a), it has been rejected by the

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<sup>9</sup> Ohio PUC Case No.07-1136-TP-CSS, *In the Matter of the Carrier-to-Carrier Complaint and Request for Expedited Ruling of Sprint Communications Company L.P., Sprint Spectrum, L.P., Nextel West Corp., and NPCR, Inc.*, Finding and Order (issued February 5, 2008), at 13-14.

FCC and, regarding any consideration of additional “costs” under § 51.809(b), the FCC has held that the fact a carrier serves a different class of customers, or provides a different type of service does not bear a direct relationship with the costs incurred by the LEC to interconnect with that carrier. AT&T has not contended in these proceedings, nor can it, that it will incur any additional costs to provide the exact same services to Nextel than it cost to provide such services to Sprint PCS.<sup>10</sup> The AT&T Petition adds nothing to the previous arguments which this Commission has already considered and rejected, or are now pending for reconsideration.

#### **IV. CONCLUSION**

AT&T’s Supplemental Submission is nothing more than another delay tactic in a long line of such tactics employed by AT&T to avoid complying with its voluntarily offered Merger Commitments and its obligations under Section 252(i). As the Commission knows, Sprint Nextel subsidiaries, including Nextel, have been attempting to accept AT&T’s offer of the Merger Commitments for almost a year, and at every turn, have met with strong resistance from AT&T.

In recognition of the foregoing, there is no legal or logical reason for the Commission to refrain from continuing to act on its concurrent authority over the AT&T Merger Commitments, and even less reason for the Commission not to act under its authority delegated by Congress to approve 252(i) adoptions. Accordingly, Nextel respectfully requests that the Commission:

- a) Issue a Order affirming its December 18, 2007 Order granting Nextel’s adoption requests regarding the Sprint-AT&T ICA;

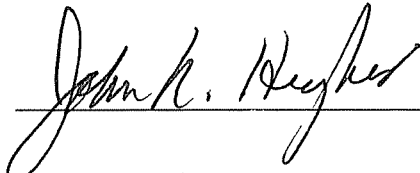
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<sup>10</sup> See Nextel’s Response to AT&T Kentucky’s Motion for Reconsideration at pages 13 and 18.



- b) Retain jurisdiction of this matter and the parties hereto as necessary to enforce the adopted Nextel -AT&T Interconnection Agreement; and
- c) Grant such other and further relief as the Commission deems just and proper.

Submitted this 13th day of February, 2008.



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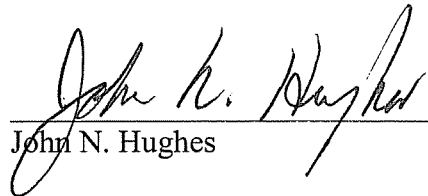
Certificate of Service:

I certify that a copy of this pleading was served by first class mail the 13<sup>th</sup> day of February, 2008 on:

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