

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

IN THE MATTER OF PETITION OF)
CRICKET COMMUNICATIONS, INC. FOR)
ARBITRATION OF RATES, TERMS AND)
CONDITIONS OF INTERCONNECTION)
WITH BELLSOUTH)
TELECOMMUNICATIONS, INC. D/B/A)
AT&T KENTUCKY)
)

Case No. 2010-00131

INITIAL BRIEF ON THRESHOLD ISSUES
OF
CRICKET COMMUNICATIONS, INC.

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I. INTRODUCTION

Cricket Communications, Inc. (“Cricket”), hereby presents its initial briefing on the threshold issues raised in this proceeding. The two “threshold” issues in this proceeding are legal questions which the Commission can resolve without a hearing or fact finding processes. These issues are identified as threshold questions because the resolution of each issue will dictate the scope of the proceeding.

The first threshold issue is whether the Commission should order BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (hereafter “BellSouth”, “AT&T” or “AT&T Kentucky”) to extend the term of the current interconnection agreement between Cricket and AT&T (the “Parties”) pursuant to merger commitments made by AT&T. The issue also raises a preliminary question: does the Commission have the authority to arbitrate the term extension issue? The answer is yes; precedent supports the Commission’s authority to arbitrate this issue. Further, clear and unambiguous language of certain merger commitments made by AT&T to the Federal Communications Commissions (“FCC”) support Cricket’s proposal to extend the term of

the agreement. If the Commission finds that the AT&T merger commitments permit Cricket to extend the term of the agreement, every other issue raised in this proceeding will be moot. The Commission could, therefore, conclude this proceeding without taking any further action.

However, if the term of the agreement is not extended, Cricket respectfully requests that the Commission consider the second threshold issue of whether transit traffic service terms should be included in a new arbitrated interconnection agreement between Cricket and AT&T. Cricket believes that such terms can, and must, be included in the interconnection agreement. AT&T argues otherwise, and is attempting to exclude transit traffic terms from the agreement. This question has also been answered by the Commission. Commission precedent tells us that transit traffic terms must be included in the agreement, and that AT&T's position is inconsistent with this Commission's prior decision directing AT&T to include such terms in the Section 251/252 interconnection agreements it enters with other telecommunications carriers in Kentucky. That precedent provides a clear basis for the Commission to reaffirm its directive and order AT&T to include transit traffic terms in its Kentucky interconnection agreement with Cricket.

For the reasons set forth below, this Commission should order AT&T to extend the term of its interconnection agreement with Cricket, consistent with merger commitments made to the FCC. However, if the Commission declines to do so, it should reaffirm that AT&T is obligated to provide transit traffic service pursuant to terms of an interconnection agreement subject to Sections 251 and 252 of the Act, and state law.

II. THRESHOLD ISSUE 1: THE COMMISSION CAN, AND SHOULD, EXTEND THE TERM OF THE AGREEMENT PURSUANT TO MERGER COMMITMENTS BY AT&T

This Commission has arbitrated the question of whether the term of an interconnection agreement may be extended pursuant to commitments made by AT&T to the FCC. In a 2007 order this Commission affirmed its authority under both federal and state law to arbitrate open, unresolved, issues concerning the extension of an agreement between AT&T and another carrier in Kentucky. The same authority supporting the Commission’s decision in that proceeding supports an identical Commission decision in this proceeding. Further, one of the merger commitments made by AT&T to the FCC applies directly, and unambiguously, to the term extension request made by Cricket. The Commission should therefore extend the term of the Parties current agreement, consistent with merger commitments ordered by the FCC.

A. The Commission Has the Authority to Arbitrate the Term Extension Issue

Before this Commission is a petition to arbitrate unresolved and open issues arising from negotiations between Cricket and AT&T over the terms of an interconnection agreement in Kentucky. These unresolved issues include one dispute concerning the extension of the term of an interconnection agreement that would govern the Parties’ respective obligations for the next several years. Arbitration of that unresolved issue is squarely within the Commission’s jurisdiction under both federal and state law, and a question over which this Commission has already established its authority and jurisdiction.

Cricket’s petition for arbitration was filed, and accepted, by this Commission under Section 252 of the Telecommunications Act of 1996 (the “Act”).¹ Sections 252(b)(1) and (b)(2) of that statute contemplate that petitions for arbitration will identify “*any* open issues”² and *all*

¹ 47 U.S.C. § 252.

² 47 U.S.C. § 252(b)(1) (emphasis added).

“unresolved issues”³ between the Parties to the negotiations. There is no factual dispute that Cricket has proposed that the Parties resolve all open and unresolved issues in their negotiations over the terms of a Kentucky interconnection agreement by extending the term of the existing agreement for a period of three years in accordance with AT&T’s merger commitments.⁴ Cricket’s extension proposal was presented during negotiations, both in writing and verbally, and discussed by the Parties’ negotiators. AT&T rejected the proposal verbally, and thereafter via formal correspondence. Although AT&T will claim that the issue was outside the scope of negotiations, and not part of the Section 252 process, the facts and law do not support that claim.⁵

AT&T’s attempt to characterize the issue as outside the scope of the Commission’s authority conflicts with Commission precedent establishing that the issue is one that this Commission has the authority to arbitrate under both federal and state law. Specifically, in its 2007 order approving the extension of the term of the agreement between AT&T and Sprint, this Commission affirmed its authority to resolve the term extension dispute via, *inter alia*, its arbitration authority.⁶

In that decision the Commission explained that the Act confers upon the state commissions the authority to oversee the implementation of, and to enforce the terms of, interconnection agreements they approve.⁷ Section 252 requires that state commissions arbitrate unresolved, open issues to ensure that the resolution of the disputed issue meets the requirements

³ *Id.* at § 252(b)(2).

⁴ *See* Exhibit B to this brief.

⁵ Correspondence between the Parties addressing three year extension proposal by Cricket (Exhibits A-2 and A-3 of Cricket Petition for Arbitration filed in this case).

⁶ *In the Matter of the Petition of Sprint Communications Company, L.P., et. al. for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications Company, Inc., d/b/a AT&T Kentucky, d/b/a AT&T Southeast*, Order, Case No. 2007-00180 at 6 (Kentucky PSC Sept. 18, 2007).

⁷ *Id.* (citing *Iowa Utilities Board v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997)).

of section 251, in addition to “providing a schedule for the implementation of the terms and conditions of the agreements.”⁸ The Commission also found that it “is charged by statute with overseeing the rates, terms, and conditions of service provided by and between utilities operating in Kentucky.”⁹ Further, this Commission has recognized that the FCC has not asserted that state commissions would be without jurisdiction to address interconnection agreement issues stemming from the merger commitments.¹⁰ Based upon these findings of law, and facts that are very similar to those raised here, the Commission ruled that it had the authority to arbitrate the open unresolved term extension issue between BellSouth and Sprint.¹¹ For that reason, the Commission denied AT&T’s motion to dismiss the unresolved arbitration issue raised by Sprint.

Those findings of law apply equally here. The authorities cited by the Commission in 2007, including both the express authority under state law to review terms of agreements between utilities, and the authority under federal law to arbitrate open issues identified in a Section 252 petition, remain in force. Furthermore, this Commission has affirmatively maintained jurisdiction over previous *arbitration* matters concerning the commencement and termination dates of carrier-to-carrier contracts.¹² Therefore, both federal and state law, including Commission precedent, unequivocally empower this Commission to arbitrate the unresolved issue of whether the term of the agreement should be extended.

⁸ *Id.*

⁹ *Id.* (citing KRS 278.040).

¹⁰ *Id.* at 7.

¹¹ *Id.* at 9-10.

¹² *Id.* at 9 (citing *Case No. 2001-00224, Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. pursuant to the Communications Act of 1934, As Amended by the Telecommunications Act of 1996*, Order dated November 15, 2001; and *Case No. 2004-00044, Joint Petition for Arbitration of NewSouth Communications Corp., Nuvox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*, Order dated march 14, 2006.).

Finally, the term extension issue raised in Cricket's petition is very similar to the extension issue raised in the Sprint arbitration case before this Commission in 2007. In that case, as in this, the petition, as filed, included the unresolved issue of whether the term of the interconnection agreement should be extended. Similarly, the extension proposal was raised verbally by Sprint during negotiations with AT&T (as it was in this case), and was the subject of formal written correspondence between the parties in that case (as it was in this case). Accordingly, the Commission's 2007 order approving Sprint's term extension request clearly establishes the Commission's authority and jurisdiction to decide the same issue in this case.

Given the Commission's previous ruling on this issue, and the clear weight of authority cited in that previous ruling, AT&T's argument that this Commission lacks authority to arbitrate the unresolved issue of Cricket's term extension proposal is without merit. The Commission has the authority under both federal and state law to resolve this disputed issue.

B. The Merger Commitments Made by AT&T Permit Cricket to Extend the Term of the Agreement for a Period of Three Years

1. AT&T Committed to Extend Terms of Interconnection Agreements As A Condition of the FCC's Approval of Its Merger With BellSouth

On March 4, 2006, AT&T Kentucky's parent corporation, AT&T, Inc., entered into an agreement to merge with the BellSouth Corporation, the parent company of BellSouth Telecommunications, Inc. (the respondent in this proceeding). On March 31, 2006, AT&T Inc. and BellSouth Corporation filed a series of applications seeking FCC approval of the merger.¹³ During the FCC's consideration of the proposed merger, AT&T proposed a set of conditions that would apply to the merged companies, if approved by the FCC (collectively referred to as the "Merger Commitments"). The Merger Commitments are attached as Exhibit A to this brief.

¹³ *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order*, FCC 06-189, PP 14 and 17 (released Mar. 26, 2007) (hereinafter the "Merger Order").

Those conditions were, in AT&T's own words, intended to "reduc[e] transaction costs associated with interconnection agreements."¹⁴ After AT&T made these commitments to the FCC, the FCC approved the merger. Relevant to this dispute is the fourth Merger Commitment made under the category of reducing transaction costs associated with interconnection agreements. That commitment, which is often referred to as "Merger Commitment 7.4", states that:

The AT&T/BellSouth ILECs *shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of when its initial term expired, for a period of up to three years*, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.¹⁵

The Merger Order further states: "all conditions and commitments proposed in this letter . . . would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter."¹⁶ The Merger Closing Date was December 29, 2006, accordingly, the ATT-BellSouth Merger Commitments remain in effect until June 29, 2010.

2. The Interconnection Agreement Between Cricket and AT&T Kentucky Is the "Current" Agreement Within the Scope of Merger Commitment 7.4

In September of 2008 Cricket and AT&T Kentucky filed with this Commission the current interconnection agreement between the Parties (referred to herein as the "Cricket Kentucky ICA"). The Cricket Kentucky ICA is the product of Cricket's adoption of the interconnection agreement between BellSouth and Sprint in Kentucky. On September 5, 2008 the Commission approved that adoption in Case No. 2008-0331, and the Parties filed the Cricket

¹⁴ *Id.* at Appendix F.

¹⁵ *Merger Order* at Appendix F, Merger Commitment 7.4 (emphasis added).

¹⁶ *Id.* at Appendix F.

Kentucky ICA on September 26, 2008. Thus, since September 2008 Cricket and AT&T Kentucky have operated under the terms of the agreement approved by, and on file with, the Commission. The Cricket Kentucky ICA has not been replaced or superseded, it remains in place as the current agreement between Cricket and AT&T in Kentucky.

On June 24, 2009, only nine months after the Cricket Kentucky ICA became operational, AT&T noticed Cricket for termination of that agreement. In response to AT&T's termination notice, Cricket delivered to AT&T notice of Cricket's intent to continue operating under the Kentucky Agreement during negotiations. Since that time the Parties have met on a regular basis during the last five months to negotiate terms of an interconnection agreement for the state of Kentucky.

During negotiations, Cricket proposed a resolution of all disputed issues in existence. Specifically, Cricket proposed to extend the term of the Parties' current agreement for a period of three years. On November 19, 2009, as part of the ongoing negotiations, Cricket sent AT&T formal correspondence outlining its proposal to extend the Parties' current agreement for three years pursuant to Merger Commitment 7.4. Specifically, Cricket proposed that the term of the Cricket Kentucky ICA be extended three years from the date of AT&T's termination notice—in other words, three years from June 24, 2009.¹⁷ Notably, this approach would reduce transaction costs associated with continued negotiations of disputed terms, and eliminate the need for a costly and time-consuming arbitration proceeding before this Commission.

During subsequent negotiations AT&T rejected Cricket's proposal to extend the Cricket Kentucky ICA for a period of three years. AT&T's representatives asserted that Merger Commitment 7.4 does not apply to the Cricket Kentucky ICA. Via correspondence dated

¹⁷ Cricket's proposal is attached as Exhibit B to this brief.

December 7, 2009 AT&T reiterated its unwillingness to accept Cricket's proposal to extend the term of the agreement.¹⁸

3. Merger Commitment 7.4 Is Plain on Its Face and Permits Extension of the Cricket Kentucky ICA

The language of Merger Commitment 7.4 is plain and unambiguous. It permits any "requesting telecommunications carrier" to extend the term of that carrier's "current interconnection agreement, regardless of when its initial term expired" with AT&T "for a period of up to three years."¹⁹ This broad statement of rights is limited only by two conditions. First, the requesting carrier must have a "current" agreement with AT&T. Second, the request must be made within the period that the merger commitments are effective, between December 29, 2006 and June 29, 2010.

Both of these conditions are satisfied here. There is no dispute that Cricket and AT&T presently operate under the terms of a current agreement in Kentucky. Merriam-Webster defines the term "current" as an adjective meaning "occurring in or existing at the present time."²⁰ Several other state commissions have construed the term in the same way, reaching the common sense conclusion that "current" means "belonging to the current time."²¹ As noted in the Cricket's petition for arbitration, and the correspondence attached thereto, AT&T and Cricket have been operating under the terms of the Cricket Kentucky ICA since September 2008. That agreement continues in effect to this day, and is Cricket's "current" agreement with AT&T.

¹⁸ AT&T's response to Cricket's proposal is attached as Exhibit A-3 to Cricket's Petition for Arbitration.

¹⁹ *Merger Order* at Appendix F, Merger Commitment 7.4.

²⁰ See Merriam-Webster Online, (available at <http://www.merriam-webster.com/dictionary/current>).

²¹ See *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 NCPR, Inc., v. The Ohio Bell Telephone Company dba AT&T Ohio*, Order at ¶¶ 18 and 26, Case No. 07-1136-TP-CSS (PUC of Ohio Mar. 31, 2010). See also, *Sprint Communications Company, L.P., Sprint Spectrum L.P., and Nextel West Corp., v. Southwestern Bell Telephone Company d/b/a AT&T Kansas*, Order, Docket No. 10-SCCC-273-COM, 2010 Kan. PUC LEXIS 215 (Kan. PUC Mar. 10, 2010).

Further, the extension proposal was made in November 2009, within the period that the Merger Commitments are in force (indeed it was made seven months prior to the anticipated expiration date of the Merger Commitments: June 30, 2010). Thus, Cricket's proposal to extend the term of the current agreement between Cricket and AT&T falls squarely within the scope of Merger Commitment 7.4. Accordingly, this Commission should find that Cricket is entitled to avail itself of the benefits of Merger Commitment 7.4, and order AT&T to extend the term of the Cricket Kentucky ICA.

Construing the merger conditions in this way is consistent with several recent decisions of other state commissions construing Merger Commitment 7.4. The Public Utilities Commission of Ohio recently ruled that "an interpretation [of the text of the merger commitment] that is more consistent with the *clear language* of Merger Commitment [7.4] is that current interconnection agreements *may be renewed at any point during the 42-month duration* of the Merger Commitments."²² Similarly, the Kansas Corporation Commission recently reaffirmed its prior decision finding that the "language of Merger Commitment 7.4 is *clear and unambiguous*" when it rejected AT&T's attempts to limit the application of the commitment.²³ Similar decisions have recently been rendered by the state commissions in Missouri,²⁴ Michigan,²⁵ Connecticut,²⁶ North Carolina,²⁷ and California.²⁸

²² *In the Matter of the Carrier-to-Carrier Complaint and Request for Expedited Ruling of Sprint Communications Company L.P., et. al. v. The Ohio Bell Telephone Company dba AT&T Ohio*, Entry of Order at ¶ 26, Case No. 07-1136-TP-CSS 2010 Ohio PUC LEXIS 348 (PUC of Ohio Mar. 31, 2010) (emphasis added).

²³ *Sprint Communications Company, L.P., et. al. v. Southwestern Bell Telephone Company d/b/a AT&T Kansas*, Order Denying Reconsideration at ¶ 5, Docket No. 10-SCCC-273-COM, 2010 Kan. PUC LEXIS 372 (Kansas Corp. Comm'n Apr. 28, 2010) (emphasis added).

²⁴ *In the Matter of the Verified Petition of Sprint Communications Company L.P., et. al. for Arbitration of Interconnection Agreements with Southwestern Bell Telephone Company, d/b/a AT&T Missouri*, Order Denying Application for Reconsideration, Case No. CO-2009-0239, 2009 Missouri PSC LEXIS 403 (Missouri PSC May 12, 2009).

²⁵ *In the Matter of the Petition of Sprint Communications Company L.P., et. al. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish Interconnection Agreements with Michigan Bell*

Despite the plain and unambiguous language of Merger Commitment 7.4, we expect AT&T to argue that the commitment does not apply to the Cricket Kentucky ICA. Cricket will show, in its reply brief, that such limitations are without any foundation in the Merger Commitments.

AT&T's opposition to the extension proposal, and its unyielding position on the extension question during negotiations, is telling. It highlights the fact that AT&T's actions have forced Cricket to engage in protracted negotiations, and expensive administrative litigation (i.e. this proceeding), to obtain rights that apply under the plain language of the FCC's Merger Order. As a result, Cricket's transaction costs associated with its agreement with AT&T in Kentucky are substantially higher than normal. It is particularly ironic then, that AT&T's actions have forced upon Cricket *higher* transaction costs in this situation, despite the fact that AT&T's merger commitments to the FCC are intended to *reduce* the transaction costs associated with interconnection agreements. AT&T's opposition to this extension is therefore contrary to both the letter, and the spirit, of the law.

Telephone Company, d/b/a AT&T Michigan, Order, Case No. U-15788, 2009 Mich. PSC LEXIS (Michigan PSC June 2, 2009).

²⁶ *Application Of Sprint Communications Company, L.P., Sprint Spectrum L.P., Nextel Communications Of The Mid-Atlantic, Inc., For An Order Compelling The Southern New England Telephone Company To Enter An Interconnection Agreement On Terms Consistent With Federal Communications Commission Orders*, Decision, Docket No. 07-12-19RE01, 2009 Conn. PUC LEXIS 188 (Conn. PUC Sept. 16, 2009).

²⁷ *In the Matter of Amendment to Interconnection Agreement Between AT&T North Carolina and Alltel Communications, Inc.*, Order Allowing Extension of Agreement, Docket No. P-55, Sub. 1352, 2008 N.C. PUC LEXIS 1860 (North Carolina Util. Comm'n Nov. 3, 2008).

²⁸ *In the Matter of the Application of Sprint Communications Company L.P. (U-5112-C), for Commission Approval of an Amendment Extending its Existing Interconnection Agreement for Three Years with the Pacific Bell Telephone Company d/b/a AT&T California pursuant to the Merger Commitment Voluntarily Created and Accepted by AT&T, Inc. (AT&T), as a Condition of Securing Federal Communications Commission Approval of AT&T's Merger with BellSouth Corporation*, Decision Granting Applicant's Motion for Reconsideration, 10-01-008; Application 09-06-006, 2010 Cal. PUC LEXIS 17 (Cal. PUC Jan. 22, 2010).

4. Extension of the Term of the Agreement Per Merger Commitment 7.4 Will Allow the Commission to Close this Arbitration Proceeding Without Any Further Substantive Action

If this Commission applies Merger Commitment 7.4 as written, and orders AT&T to extend the term of the Cricket Kentucky ICA, all other disputed issues in this proceeding will be moot. An extension of the Cricket Kentucky ICA from the date proposed by Cricket, i.e., from June, 2009 (when AT&T sent its notice of termination of the agreement) will extend the terms of the agreement through June, 2012.

All of the other disputed issues in this proceeding arise from the Parties unresolved issues surrounding terms of a successor agreement. However, if the agreement is extended as proposed by Cricket, there will be no need to continue arbitration over disputed issues of the terms of a successor agreement (including the second threshold issue identified herein) because the Cricket Kentucky ICA would continue in effect and no successor agreement will be necessary. Therefore, this Commission could simply close this proceeding without taking any further action. To be clear, there would be no need for the Commission to oversee and resolve discovery disputes, take and hear evidence through a formal hearing (or other means), review briefs and counter-briefs, or render a final decision. All those actions would not be necessary if the Commission decides to extend the term of the Cricket Kentucky ICA.

III. THRESHOLD ISSUE 2: TRANSIT TRAFFIC TERMS MUST BE INCLUDED IN THE ARBITRATED AGREEMENT, AND SUBJECT TO THE COMMISSION'S CONTINUING OVERSIGHT AND AUTHORITY

The issue here is whether the Commission should arbitrate the unresolved, open issues between Cricket and AT&T concerning transit traffic terms. Cricket asserts that if the Commission declines to enforce Cricket's term extension request, the Commission must arbitrate the open, unresolved transit traffic terms between the Parties in this arbitration proceeding.

AT&T, in contrast, argues that the Commission should not arbitrate the unresolved transit issues because transit traffic terms should not be included in a Section 251/252 interconnection agreement. The Commission's prior decisions on this question prove AT&T wrong.

A. Commission Precedent Establishes That AT&T Kentucky Must Include Transit Traffic Terms in the Section 251/252 Interconnection Agreement with Cricket

This Commission has held on multiple occasions that incumbents, including BellSouth, are required to include transit traffic terms in interconnection agreements with other carriers in Kentucky.²⁹ In so holding the Commission rejected BellSouth's arguments that transit traffic service was not a Section 251(c) obligation, and that state commissions have no authority to require transit traffic terms as part of a Section 251/252 interconnection agreement. The Commission reasoned that:

The Commission has not been precluded by the FCC from requiring BellSouth to transit traffic under the circumstances requested by the Joint Petitioners. The Commission has previously required third party transiting by the incumbent based on efficient network use. The Commission will continue to require BellSouth to transit such traffic.³⁰

In its order on reconsideration of its *NewSouth Merits Order*, the Commission affirmed its prior holding and stated:

BellSouth has not demonstrated that the Commission is precluded by the FCC from requiring BellSouth to transit traffic. . . . However, based on the Commission's previous determinations regarding third-party transiting, and because transiting uses intra-

²⁹ See *In re Joint Petition For Arbitration of NewSouth Communications Corp., et al of an Interconnection Agreement With Bellsouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*, Case No. 2004-00044, Order, 2005 Ky. PUC LEXIS 810 (Sep. 26, 2005) ("*NewSouth Merits Order*"); *In re Joint Petition For Arbitration of NewSouth Communications Corp., et al of an Interconnection Agreement With Bellsouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*, Case No. 2004-00044, Order, 2006 Ky. PUC LEXIS 159 (Mar. 14, 2006) ("*NewSouth Recon Order*") (collectively, "*NewSouth Orders*"). See also *In re Brandenburg Telecom LLC v. Verizon South, Inc.*, Case No. 2002-00143, 2002 Ky. PUC LEXIS 278 (May 23, 2002) (ordering Verizon South to provide transit services to a rural ILEC).

³⁰ *NewSouth Merits Order*, *22.

state facilities to provide an intra-state service, the Commission finds that it has jurisdiction over these matters until and unless the FCC specifically preempts the state commission.³¹

Nothing has changed since the Commission issued its *NewSouth Orders* and determined that BellSouth must provide transit service to competitors in Kentucky. Just as the competitive carriers in the *NewSouth* case sought transit traffic terms from AT&T Kentucky to facilitate their provision of competitive services, Cricket also seeks transit traffic terms from AT&T Kentucky to support its provision of desirable, high quality wireless services to residents of Kentucky. Therefore, the Commission's prior holding constitutes binding precedent on AT&T.

Moreover, the policy considerations underlying the *NewSouth* and *Brandenburg Telecom* decisions are as important today as they were when the Commission first considered transit traffic issues. As the Commission explained in its *NewSouth Orders*, requiring AT&T to provide transit traffic services to other carriers supports efficient use of networks deployed in Kentucky.³² As more customers consider wireless solutions, indirect interconnection remains vital to statewide deployment. As the incumbent local telephone company in Kentucky, AT&T maintains a ubiquitous network in the state that includes "tandem" offices that are points of aggregation in the network with substantial switching capabilities.³³ Most, if not all, of the telecommunications carriers operating in the AT&T service territory interconnect at one of several AT&T tandem offices in the state. The AT&T tandem offices can, and do, carry transit traffic between other telecommunications carriers in Kentucky. There is no other major tandem

³¹ *NewSouth Recon Order*, *27-28.

³² *NewSouth Merits Order*, *22; *NewSouth Recon Order*, *27-28.

³³ See *In the Matter of: Petition of Ballard Rural Telephone Cooperative Corporation, Inc. For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, et. al.*, Order, 2007 Ky. PUC LEXIS 191, *9 (2007) ("These differences in obligations [of LECs] recognize the ILECs' unique standing as the "carriers of last resort" and the ubiquitousness of the overall incumbent networks.").

provider in the state that is interconnected to all other carriers in the state similar to AT&T Kentucky.³⁴ For these reasons, competitive carriers in Kentucky rely upon AT&T to carry traffic to and from their respective networks by transiting the AT&T network. Without such arrangements, every telecommunications carrier in the state would be forced to build its own direct interconnection with every other telecommunications carrier in Kentucky in order to exchange traffic. Clearly, direct connections between every carrier are neither efficient nor feasible. Such arrangements would be costly, and wastefully duplicative.

Indeed, this Commission has implicitly recognized that there is a legitimate role for AT&T to serve as a transit service provider in Kentucky. In 2004, this Commission approved a settlement between AT&T, rural LECs, and CMRS providers in Kentucky that recognizes that AT&T will provide transit traffic service to rural LECs and CMRS providers in Kentucky to facilitate existing traffic exchange arrangements.³⁵

The operational and financial ramifications of Cricket's (and other carriers) inability to secure reasonable and cost efficient transit traffic service from AT&T would be staggering. If the Commission permits AT&T Kentucky to exclude transit traffic terms from the Section 251/252 process, competitive providers in Kentucky will suffer because AT&T will have no incentive to continue to provide transit traffic service on reasonable and equitable terms. Many carriers, like Cricket, that rely upon AT&T's transit traffic service to complete calls to and from CLECs, rural independent ILECs, and other telecommunications carriers with which they have no direct connections, would be forced to construct direct interconnection facilities with many other Kentucky carriers. These facilities would essentially duplicate facilities that AT&T

³⁴ See Local Exchange Carrier Coverage Map, <http://www.psc.state.ky.us/agencies/psc/images/lecbycounty.pdf>.

³⁵ See *In re Petition of BellSouth Telecommunications, Inc. Seeking Resolution of Third Party Transit Traffic Issues*, Order, Case No. 2003-00045, 2004 Ky. PUC LEXIS 331 (2004).

already has in place and which are entirely suited to transiting the traffic of other carriers. These network inefficiencies are precisely what the Commission sought to avoid in its *NewSouth* decision. There is no reason for the Commission to stray from that decision by permitting AT&T to exclude transit terms from the Section 251/252 interconnection agreement to be arbitrated with Cricket.

B. Federal Law Supports the Commission’s Prior Decisions to Mandate Transit Terms in AT&T Section 251/252 Interconnection Agreements in Kentucky

In addition to the foregoing reasons, AT&T is also obligated under federal law to include transit traffic terms in a Section 251/252 interconnection agreement. Section 251 sets forth several different interconnection obligations applicable to telecommunications carriers. Section 251(a) imposes on all telecommunications carriers the obligation to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”³⁶ This in and of itself implies an obligation to provide transit service. Telecommunications carriers indirectly interconnecting with each other necessarily require direct interconnection with an intermediate carrier. Because only ILECs such as AT&T have a *duty* to permit direct interconnection, Congress implicitly required ILECs to transit traffic amongst competing carriers. This implied obligation has been recognized by the FCC in its *Intercarrier Compensation Reform FNPRM* in which it determined that transit traffic service is an essential component of indirect interconnection under Section 251(a). After receiving comments on the issue, the FCC explained that:

The record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection—a form of interconnection explicitly recognized and supported by the Act (See 47 U.S.C § 251(a)(1)). It is evident that competitive LECs, CMRS carriers, and rural LECs often rely upon transit

³⁶ 47 U.S.C. § 251(a)(1).

service from the incumbent LECs to facilitate indirect interconnection with each other. Without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks . . . Moreover, it appears that indirect interconnection via a transit service provider is an efficient way to interconnect when carriers do not exchange significant amounts of traffic.³⁷

Transit traffic service is also encompassed within the statutory obligations imposed on ILECs to provide interconnection pursuant to Section 251(c). Section 251(c) imposes six additional obligations solely on ILECs, such as AT&T.³⁸ In particular, Section 251(c)(2) specifically obligates AT&T to provide interconnection with its network “for the transmission and routing of telephone exchange service and exchange access” traffic “that is at least equal in quality to that provided by” AT&T to itself.³⁹ With respect to AT&T’s obligation under Section 251(c)(2), there is no limiting language in the statute that allows AT&T to only provide interconnection for the transmission and routing of traffic between a requesting interconnecting carrier’s network and an AT&T end office. To the contrary, the statute is unlimited with respect to the scope of the routing and transmission that AT&T must provide to an interconnecting carrier. Neither the definition of “telephone exchange service” nor “exchange access” in the Act is limited to traffic exchanged by directly interconnected carriers.⁴⁰ Therefore, Section 251(c)(2) is broad enough to include the routing and transmission of traffic between an interconnecting carrier’s network and any network of other carriers that are interconnected with the AT&T Kentucky network (for example, other CMRS, CLEC, and ILEC networks).

³⁷ *In re Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4740 ¶¶ 125-126 (2005) (“*Intercarrier Compensation FNPRM*”).

³⁸ 47 U.S.C. § 251(c).

³⁹ *Id.* at 251(c)(2).

⁴⁰ *See* 47 U.S.C. § 153(16), (47).

Separate and apart from AT&T's obligation to provide transit traffic service under Section 251, this Commission has ample authority to require AT&T Kentucky to include transit traffic terms as part of a Section 251/252 interconnection agreement. First, there is no dispute that most of the traffic Cricket will be exchanging with other Kentucky carriers, and that transits AT&T's network, will be intrastate traffic. Section 152(b) of the Act expressly provides that states have authority over intrastate telecommunications services. KRS Chapter 278 includes long-standing interconnection provisions that support the concept of indirect interconnection and are not inconsistent with the Telecommunications Act.⁴¹ Therefore, this Commission has the authority to order AT&T to provide transit traffic service to other telecommunications carriers in Kentucky. Second, Congress provided in Section 252(e)(3) that "nothing in this section [252] shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement"⁴²

Accordingly, this Commission can require, as it has in the past, AT&T to include transit traffic terms in Section 251/252 interconnection agreements pursuant to state law. Third, Congress has specified that a state commission may enforce state law so long as the law does "not substantially prevent implementation of the requirements of this section [251]"⁴³ Requiring AT&T to utilize the negotiation/arbitration process specifically provided in the Act to include transit traffic terms in the Parties' subsequent interconnection agreement is consistent with the Act and its purposes. Accordingly, there is nothing preventing this Commission from continuing to require AT&T to provide transit traffic service to other Kentucky carriers pursuant to terms in a Section 251/252 interconnection agreement.

⁴¹ See KRS 278.520 and .530.

⁴² *Id.* at § 252(e)(3).

⁴³ *Id.* at § 251(d)(3).

C. Other State Commissions Have Also Ruled That AT&T Affiliates Must Provide Transit Traffic Service Pursuant to a Section 251/252 Interconnection Agreement

Other state commissions have also concluded that AT&T and other incumbent LECS are obligated to provide transit functions. For example, the North Carolina Utilities Commission has held that “the transit function is a Section 251 obligation.”⁴⁴ The Public Utility Commission of Texas (“PUCT”) has affirmed prior decisions that AT&T’s affiliate in Texas, SBC Texas, “shall provide transit services at TELRIC rates,” and noted that “there has been no change in law or FCC policy to warrant a departure from prior [PUCT] decisions on transit service.”⁴⁵ The PUCT based its decision on the fact that transit services are necessary for carriers to efficiently interconnect—“given SBC Texas’ ubiquitous network in Texas and the evidence regarding absence of alternative competitive transit providers in Texas, the Commission concludes that requiring SBC Texas to provide transit services at cost-based rates will promote interconnection of all telecommunications networks.”⁴⁶ The PUCT also explicitly rejected SBC Texas’ assertion that the Section 252 negotiation and arbitration process should exclude transit issues, stating that “SBC Texas’ proposal to negotiate transit services separately outside the scope of an FTA §251/252 negotiation may result in cost-prohibitive rates for transit service.”⁴⁷

The State Corporation Commission of Kansas has also rejected AT&T’s position that transit issues should be excluded from an interconnection agreement and Section 252 arbitration

⁴⁴ *In re Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.*, Recommended Arbitration Order, Docket No. P-772, SUB 8; Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket No. P-824, SUB 6; Docket No. P-1202, SUB 4, 2005 N.C. PUC LEXIS 888, *130 (July 26, 2005) (citing *In re Petition of Verizon South, Inc., for Declaratory Ruling that Verizon is Not Required to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Company to Adopt Alternative Transport Method*, Order Denying Petition, 2003 N.C. PUC LEXIS 1062 (Sep. 22, 2003) (holding that Verizon has an obligation to provide transit service)).

⁴⁵ *Arbitration Of Non-Costing Issues For Successor Interconnection Agreements To The Texas 271 Agreement*, Arbitration Award, Docket No. 28821, slip op. at 23 (Tex. Pub. Util. Comm’n Feb. 23, 2005).

⁴⁶ *Id.*

⁴⁷ *Id.*

proceeding.⁴⁸ The Kansas Commission reached its decision in part because AT&T's affiliate in Kansas, Southwestern Bell Telephone ("SWBT"), had previously included transit traffic terms in its interconnection agreements, and SWBT did not cite to any change in law justifying excluding transit.⁴⁹ The Kansas Commission concluded that sound public policy required that transit traffic terms be included in interconnection agreements while the FCC decides on the proper treatment of transit traffic because "it is necessary to ensure that all traffic is exchanged by including these issues in the final ICA."⁵⁰

The Florida Public Service Commission recognized that an implied transit obligation arises under Section 251(a) of the Act, reasoning that it "need only acknowledge . . . that § 251(a) requires all telecommunications carriers to interconnect directly or indirectly, and that transit service has been expressly recognized by the FCC as a means to establish indirect interconnection."⁵¹ In addition to these state commissions, a federal court has affirmed another state commission's decision to require an AT&T affiliate in Michigan to provide transiting to CLECs under state law.⁵² These authorities are consistent with this Commission's prior rulings on the issue, and demonstrate the soundness of the Commission's decision to require AT&T Kentucky to include transit traffic terms in a Section 251/252 interconnection agreement.

If for some reason the Commission departed from past precedent, and the weight of authority on this issue, and decided not to require AT&T to continue to provide transit traffic

⁴⁸ *In re Arbitration between Telcove Investment, LLC and Southwestern Bell Telephone Company D/B/A SBC Kansas Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection*, Order 11: Commission Order on Arbitrator's Award, Docket No. 05-ABIT-507-ARB, 2005 Kan. PUC LEXIS 920, *24-26 ¶ 48-51 (July 21, 2005).

⁴⁹ *Id.* at *25 ¶ 51.

⁵⁰ *Id.* at *26 ¶ 51.

⁵¹ *In re TDS Telecom dba TDS Telecom/Quincy Telephone*, Order, Docket Nos. 050119-TP, 050125-TP, 2006 Fla. PUC LEXIS 543, *79-83 (Sep. 18, 2006).

⁵² *Michigan Bell Tel. Co. v. Chapelle*, 222 F. Supp. 2d 905, 918 (E.D. Mich. 2002).

terms pursuant to a Section 251/252 interconnection agreement, the consequences would be dire for competitors and rural incumbents in Kentucky. AT&T would likely cite to such a decision as “change of law” event that would provide a pretext for AT&T to attempt to exclude transit obligations from existing interconnection agreements. Competitive carriers, including Cricket, would be placed in a very difficult negotiating position, as AT&T would have no incentive to continue to provide transiting services on equitable terms. AT&T could then withhold transiting service and calls between carriers with indirect interconnection arrangements would not be completed, thereby stranding or isolating callers. Further, all carriers in Kentucky would have to interconnect directly with nearly every other carrier—regardless of the volume of traffic exchanged between them—a costly and inefficient alternative, especially for rural carriers, where the volume of the traffic exchanged does not warrant the cost of obtaining direct interconnection with every other carrier that operates in its service area, or neighboring service areas.

In view of the foregoing, there is no reason to deviate from the status quo. Binding precedent, federal and state law, and other commission decisions all support the conclusion that this Commission should order that AT&T include transit traffic service terms in its agreement with Cricket, and that the Commission should arbitrate the unresolved transit terms in this proceeding.

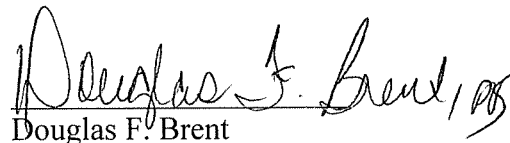
IV. CONCLUSION

For the reasons stated herein, Cricket respectfully requests that this Commission require AT&T Kentucky to extend the term of the Cricket Kentucky ICA for three years from the date of AT&T Kentucky’s notice of termination (June 24, 2009), or the date that this Commission issues its final order in this proceeding. This Commission has the requisite authority to address the issue based on sections 251 and 252 of the Act, the Merger Order, and its own precedent.

Accordingly, this Commission should direct the parties to execute an amendment to extend the term of their current agreement, and conclude this proceeding without further substantive action.

In addition, if the Commission finds that the term of the Cricket Kentucky ICA should not be extended, then the Commission should direct the Parties to present their unresolved, open issues related to transit traffic terms to this Commission for arbitration.

Respectfully submitted,



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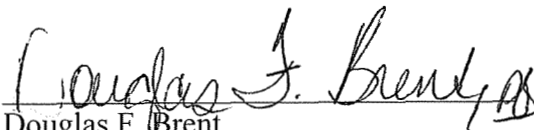
May 19, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by First Class Mail on those persons whose names appear below this 19th day of May, 2010.

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EXHIBITS

EXHIBIT A: AT&T-BellSouth Merger Commitments; FCC 06-189

EXHIBIT B: Cricket Negotiation Proposal to AT&T Regarding Extension of the Parties' Current Interconnection Agreement

EXHIBIT A

AT&T-BellSouth Merger Commitments; FCC 06-189

APPENDIX F**Conditions**

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them. Unless otherwise specified herein, the commitments described herein shall become effective on the Merger Closing Date. The commitments described herein shall be null and void if AT&T and BellSouth do not merge and there is no Merger Closing Date.

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

MERGER COMMITMENTS

For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.

Repatriation of Jobs to the U.S.

AT&T/BellSouth¹ is committed to providing high quality employment opportunities in the U.S. In order to further this commitment, AT&T/BellSouth will repatriate 3,000 jobs that are currently outsourced by BellSouth outside of the U.S. This repatriation will be completed by December 31, 2008. At least 200 of the repatriated jobs will be physically located within the New Orleans, Louisiana MSA.

Promoting Accessibility of Broadband Service

1. By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (*i.e.*, Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory.² To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). AT&T/BellSouth will make available broadband Internet access service to the remaining living units using alternative

¹ AT&T/BellSouth refers to AT&T Inc., BellSouth Corporation, and their affiliates that provide domestic wireline or Wi-Max fixed wireless services.

² As used herein, the "AT&T/BellSouth in-region territory" means the areas in which an AT&T or BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i). "AT&T in-region territory" means the area in which an AT&T operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i), and "BellSouth in-region territory" means the area in which a BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.³

2. AT&T/BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, between July 1, 2007, and June 30, 2008, replace their AT&T/BellSouth dial-up Internet access service with AT&T/BellSouth's ADSL service and elect a term plan for their ADSL service of twelve months or greater.

3. Within six months of the Merger Closing Date, and continuing for at least 30 months from the inception of the offer, AT&T/BellSouth will offer to retail consumers in the Wireline Buildout Area, who have not previously subscribed to AT&T's or BellSouth's ADSL service, a broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of \$10 per month.

Statement of Video Roll-Out Intentions

AT&T is committed to providing, and has expended substantial resources to provide, a broad array of advanced video programming services in the AT&T in-region territory. These advanced video services include Uverse, on an integrated IP platform, and HomeZone, which integrates advanced broadband and satellite services. Subject to obtaining all necessary authorizations to do so, AT&T/BellSouth intends to bring such services to the BellSouth in-region territory in a manner reasonably consistent with AT&T's roll-out of such services within the AT&T in-region territory. In order to facilitate the provision of such advanced video services in the BellSouth in-region territory, AT&T/BellSouth will continue to deploy fiber-based facilities and intends to have the capability to reach at least 1.5 million homes in the BellSouth in-region territory by the end of 2007. AT&T/BellSouth agrees to provide a written report to the Commission by December 31, 2007, describing progress made in obtaining necessary authorizations to roll-out, and the actual roll-out of, such advanced video services in the BellSouth in-region territory.

Public Safety, Disaster Recovery

1. By June 1, 2007, AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster.

2. In order to further promote public safety, within thirty days of the Merger Closing Date, AT&T/BellSouth will donate \$1 million to a section 501(c)(3) foundation or public entities for the purpose of promoting public safety.

³ For purposes of this commitment, a low income living unit shall mean a living unit in AT&T/BellSouth's in-region territory with an average annual income of less than \$35,000, determined consistent with Census Bureau data, *see* California Public Utilities Code section 5890(j)(2) (as added by AB 2987) (defining low income households as those with annual incomes below \$35,000), and a rural area shall consist of the zones in AT&T/BellSouth's in-region territory with the highest deaveraged UNE loop rates as established by the state commission consistent with the procedures set forth in section 51.507 of the Commission's rules. 47 C.F.R. § 51.507.

Service to Customers with Disabilities

AT&T/BellSouth has a long and distinguished history of serving customers with disabilities. AT&T/BellSouth commits to provide the Commission, within 12 months of the Merger Closing Date, a report describing its efforts to provide high quality service to customers with disabilities.

UNEs

1. The AT&T and BellSouth ILECs shall continue to offer and shall not seek any increase in state-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. For purposes of this commitment, an increase includes an increased existing surcharge or a new surcharge unless such new or increased surcharge is authorized by (i) the applicable interconnection agreement or tariff, as applicable, and (ii) by the relevant state commission. This commitment shall not limit the ability of the AT&T and BellSouth ILECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.

2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.

3. AT&T/BellSouth shall cease all ongoing or threatened audits of compliance with the Commission's EELs eligibility criteria (as set forth in the *Supplemental Order Clarification's* significant local use requirement and related safe harbors, and the *Triennial Review Order's* high capacity EEL eligibility criteria), and shall not initiate any new EELs audits.

Reducing Transaction Costs Associated with Interconnection Agreements

1. The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

3. The AT&T/BellSouth ILECs shall allow a requesting telecommunications carrier to use its pre-existing interconnection agreement as the starting point for negotiating a new agreement.

4. 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 amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.

Special Access

Each of the following special access commitments shall remain in effect until 48 months from the Merger Closing Date.

1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act ("AT&T/BellSouth BOCs")⁴ will implement, in the AT&T and BellSouth Service Areas,⁵ the Service Quality Measurement Plan for Interstate Special Access Services ("the Plan"), similar to that set forth in the SBC/AT&T Merger Conditions, as described herein and in Attachment A to this Appendix F. The AT&T/BellSouth BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T/BellSouth BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T and BellSouth Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and BellSouth section 272(a) affiliates, (ii) their BOC and other affiliates, and (iii) non-affiliates.⁶ The AT&T/BellSouth BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T/BellSouth BOCs shall implement the Plan for the first full quarter following the Merger Closing Date. This commitment shall terminate on the earlier of (i) 48 months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth files its 16th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

2. AT&T/BellSouth shall not increase the rates paid by existing customers (as of the Merger Closing Date) of DS1 and DS3 local private line services that it provides in the AT&T/BellSouth in-region territory pursuant to, or referenced in, TCG FCC Tariff No. 2 above their level as of the Merger Closing Date.

3. AT&T/BellSouth will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified

⁴ For purposes of clarity, the special access commitments set forth herein do not apply to AT&T Advanced Solutions, Inc. and the Ameritech Advanced Data Services Companies, doing business collectively as "ASI."

⁵ For purposes of this commitment, "AT&T and BellSouth Service Areas" means the areas within AT&T/BellSouth's in-region territory in which the AT&T and BellSouth ILECs are Bell operating companies as defined in 47 U.S.C. § 153(4)(A).

⁶ BOC data shall not include retail data.

contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates. AT&T/BellSouth also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.⁷

5. No AT&T/BellSouth ILEC may increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T/BellSouth in-region territory, as set forth in tariffs on file at the Commission on the Merger Closing Date, and as set forth in tariffs amended subsequently in order to comply with the provisions of these commitments.

6. In areas within the AT&T/BellSouth in-region territory where an AT&T/BellSouth ILEC has obtained Phase II pricing flexibility for price cap services ("Phase II areas"), such ILEC will offer DS1 and DS3 channel termination services, DS1 and DS3 mileage services, and Ethernet services,⁸ that currently are offered pursuant to the Phase II Pricing Flexibility Provisions of its special access tariffs,⁹ at rates that are no higher than, and on the same terms and conditions as, its tariffed rates, terms, and conditions as of the Merger Closing Date for such services in areas within its in-region territory where it has not obtained Phase II pricing flexibility. In Phase II areas, AT&T/BellSouth also will reduce by 15% the rates in its interstate tariffs as of the Merger Closing Date for Ethernet services that are not at that time subject to price cap regulation. The foregoing commitments shall not apply to DS1, DS3, or Ethernet services provided by an AT&T/BellSouth ILEC to any other price cap ILEC, including any affiliate of such other price cap ILEC,¹⁰ unless such other price cap ILEC offers DS1 and DS3 channel termination and mileage services, and price cap Ethernet services in all areas in which it has obtained Phase II pricing flexibility relief for such services (hereinafter "Reciprocal Price Cap Services") at rates, and on the terms and conditions, applicable to such services in areas in which it has not obtained Phase II pricing flexibility for such services, nor shall AT&T/BellSouth provide the aforementioned 15% discount to such price cap ILEC or affiliate thereof unless such ILEC makes generally available a reciprocal discount for any Ethernet service it offers outside of price cap regulation (hereinafter "Reciprocal Non-Price Cap Services"). Within 14 days of the Merger Closing Date, AT&T/BellSouth will provide notice of this commitment to each price cap ILEC that purchases, or that has an affiliate that purchases, services subject to this commitment from an AT&T/BellSouth ILEC. If within 30 days thereafter, such price cap ILEC does not: (i) affirmatively inform AT&T/BellSouth and the Commission of its intent to sell Reciprocal

⁷ Neither this merger commitment nor any other merger commitment herein shall be construed to require AT&T/BellSouth to provide any service through a separate affiliate if AT&T/BellSouth is not otherwise required by law to establish or maintain such separate affiliate.

⁸ The Ethernet services subject to this commitment are AT&T's interstate OPT-E-MAN, GigaMAN and DecaMAN services and BellSouth's interstate Metro Ethernet Service.

⁹ The Phase II Pricing Flexibility Provisions for DS1 and DS3 services are those set forth in Ameritech Tariff FCC No. 2, Section 21; Pacific Bell Tariff FCC No. 1, Section 31; Nevada Bell Tariff FCC No. 1, Section 22; Southwestern Bell Telephone Company Tariff FCC No. 73, Section 39; Southern New England Telephone Tariff FCC No. 39, Section 24; and BellSouth Telecommunications Tariff FCC No. 1, Section 23.

¹⁰ For purposes of this commitment, the term "price cap ILEC" refers to an incumbent local exchange carrier that is subject to price cap regulation and all of its affiliates that are subject to price cap regulation. The term "affiliate" means an affiliate as defined in 47 U.S.C. § 153(1) and is not limited to affiliates that are subject to price cap regulation.

Price Cap Services in areas where it has received Phase II pricing flexibility for such services at the rates, terms, and conditions that apply in areas where it has not received such flexibility, and to provide a 15% discount on Reciprocal Non-Price Cap Services; and (ii) file tariff revisions that would implement such changes within 90 days of the Merger Closing Date (a "Non-Reciprocating Carrier"), the AT&T/BellSouth ILECs shall be deemed by the FCC to have substantial cause to make any necessary revisions to the tariffs under which they provide the services subject to this commitment to such Non-Reciprocating Carrier, including any affiliates, to prevent or offset any change in the effective rate charged such entities for such services. The AT&T/BellSouth ILECs will file all tariff revisions necessary to effectuate this commitment, including any provisions addressing Non-Reciprocating Carriers and their affiliates, within 90 days from the Merger Closing Date.

7. AT&T/BellSouth will not oppose any request by a purchaser of interstate special access services for mediation by Commission staff of disputes relating to AT&T/BellSouth's compliance with the rates, terms, and conditions set forth in its interstate special access tariffs and pricing flexibility contracts or to the lawfulness of the rates, terms, and conditions in such tariffs and contracts, nor shall AT&T/BellSouth oppose any request that such disputes be accepted by the Commission onto the Accelerated Docket.

8. The AT&T/BellSouth ILECs will not include in any pricing flexibility contract or tariff filed with the Commission after the Merger Closing Date access service ratio terms which limit the extent to which customers may obtain transmission services as UNEs, rather than special access services.

9. Within 60 days after the Merger Closing Date, the AT&T/BellSouth ILECs will file one or more interstate tariffs that make available to customers of DS1, DS3, and Ethernet service reasonable volume and term discounts without minimum annual revenue commitments (MARC) or growth discounts. To the extent an AT&T/BellSouth ILEC files an interstate tariff for DS1, DS3, or Ethernet services with a varying MARC, it will at the same time file an interstate tariff for such services with a fixed MARC. For purposes of these commitments, a MARC is a requirement that the customer maintain a minimum specified level of spending for specified services per year.

10. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC, AT&T/BellSouth will offer an alternative proposal that gives the customer the option of obtaining a volume and/or term discount(s) without a MARC. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC that varies over the life of the contract, AT&T/BellSouth will offer an alternative proposal that includes a fixed MARC.

11. Within 14 days of the Merger Closing Date, the AT&T/BellSouth ILECs will give notice to customers of AT&T/BellSouth with interstate pricing flexibility contracts that provide for a MARC that varies over the life of the contract that, within 45 days of such notice, customers may elect to freeze, for the remaining term of such pricing flexibility contract, the MARC in effect as of the Merger Closing Date, provided that the customer also freezes, for the remaining term of such pricing flexibility contract, the contract discount rate (or specified rate if the contract sets forth specific rates rather than discounts off of referenced tariffed rates) in effect as of the Merger Closing Date.

Transit Service

The AT&T and BellSouth ILECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth ILECs provide in the AT&T/BellSouth in-region territory.¹¹

ADSL Service¹²

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the "Implementation Date" in that state. For purposes of this commitment, the "Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth's in-region territory in that state.¹³ Within twenty days after meeting the Implementation Date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.

2. AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within AT&T's in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).

3. Within twelve months of the Merger Closing Date, AT&T/BellSouth will make available in its in-region territory an ADSL service capable of speeds up to 768 Kbps to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service ("Stand Alone 768 Kbps service"). AT&T/BellSouth will continue to offer the 768 Kbps service in a state for thirty months after the "Stand Alone 768 Kbps Implementation Date" for that state. For purposes of this commitment, the "Stand Alone 768 Kbps Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer the Stand Alone 768 Kbps service to eighty percent of the ADSL-capable premises in AT&T/BellSouth's in-region territory in that state. The Stand Alone 768 Kbps service will be offered at a rate of not more than \$19.95 per month (exclusive of regulatory fees and taxes). AT&T/BellSouth may make available such services at other speeds at prices that are competitive with the broadband market taken as a whole.

ADSL Transmission Service

AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the

¹¹ Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier.

¹² The commitments set forth under the heading "ADSL Service" are, by their terms, available to retail customers only. Wholesale commitments are addressed separately under the heading "ADSL Transmission Service."

¹³ After meeting the implementation date in each state, AT&T/BellSouth will continue deployment so that it can offer the service to all ADSL-capable premises in its in-region territory within twelve months of the Merger Closing Date.

combined AT&T/BellSouth territory that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date.¹⁴ Such wholesale offering will be at a price not greater than the retail price in a state for ADSL service that is separately purchased by customers who also subscribe to AT&T/BellSouth local telephone service.

Net Neutrality

1. Effective on the Merger Closing Date, and continuing for 30 months thereafter, AT&T/BellSouth will conduct business in a manner that comports with the principles set forth in the Commission's Policy Statement, issued September 23, 2005 (FCC 05-151).

2. AT&T/BellSouth also commits that it will maintain a neutral network and neutral routing in its wireline broadband Internet access service.¹⁵ This commitment shall be satisfied by AT&T/BellSouth's agreement not to provide or to sell to Internet content, application, or service providers, including those affiliated with AT&T/BellSouth, any service that privileges, degrades or prioritizes any packet transmitted over AT&T/BellSouth's wireline broadband Internet access service based on its source, ownership or destination.

This commitment shall apply to AT&T/BellSouth's wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, defined as the point of interconnection that is logically, temporally or physically closest to the customer's premise where public or private Internet backbone networks freely exchange Internet packets.

This commitment does not apply to AT&T/BellSouth's enterprise managed IP services, defined as services available only to enterprise customers¹⁶ that are separate services from, and can be purchased without, AT&T/BellSouth's wireline broadband Internet access service, including, but not limited to, virtual private network (VPN) services provided to enterprise customers. This commitment also does not apply to AT&T/BellSouth's Internet Protocol television (IPTV) service. These exclusions shall not result in the privileging, degradation, or prioritization of packets transmitted or received by AT&T/BellSouth's non-enterprise customers' wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, as defined above.

¹⁴ An ADSL transmission service shall be considered "functionally the same" as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date if the ADSL transmission service relies on ATM transport from the DSLAM (or equivalent device) to the interface with the Internet service provider, and provides a maximum asymmetrical downstream speed of 1.5Mbps or 3.0Mbps, or a maximum symmetrical upstream/downstream speed of 384Kbps or 416Kbps, where each respective speed is available (the "Broadband ADSL Transmission Service"). Nothing in this commitment shall require AT&T/BellSouth to serve any geographic areas it currently does not serve with Broadband ADSL Transmission Service or to provide Internet service providers with broadband Internet access transmission technology that was not offered by AT&T to such providers in its in-region territory as of the Merger Closing Date.

¹⁵ For purposes of this commitment, AT&T/BellSouth's wireline broadband Internet access service and its Wi-Max fixed wireless broadband Internet access service are, collectively, AT&T/BellSouth's "wireline broadband Internet access service."

¹⁶ "Enterprise customers" refers to that class of customer identified as enterprise customers on AT&T's website (<http://www.att.com>) as of December 28, 2006.

This commitment shall sunset on the earlier of (1) two years from the Merger Closing Date, or (2) the effective date of any legislation enacted by Congress subsequent to the Merger Closing Date that substantially addresses “network neutrality” obligations of broadband Internet access providers, including, but not limited to, any legislation that substantially addresses the privileging, degradation, or prioritization of broadband Internet access traffic.

Internet Backbone

1. For a period of three years after the Merger Closing Date, AT&T/BellSouth will maintain at least as many discrete settlement-free peering arrangements for Internet backbone services with domestic operating entities within the United States as they did on the Merger Closing Date, provided that the number of settlement-free peering arrangements that AT&T/BellSouth is required to maintain hereunder shall be adjusted downward to account for any mergers, acquisitions, or bankruptcies by existing peering entities or the voluntary election by a peering entity to discontinue its peering arrangement. If on the Merger Closing Date, AT&T and BellSouth both maintain a settlement free peering arrangement for Internet backbone services with the same entity (or an affiliate thereof), the separate arrangements shall count as one settlement-free peering arrangement for purposes of determining the number of discrete peering entities with whom AT&T/BellSouth must peer pursuant to this commitment. AT&T/BellSouth may waive terms of its published peering policy to the extent necessary to maintain the number of peering arrangements required by this commitment. Notwithstanding the above, if within three years after the Merger Closing Date, one of the ten largest entities with which AT&T/BellSouth engages in settlement free peering for Internet backbone services (as measured by traffic volume delivered to AT&T/BellSouth’s backbone network facilities by such entity) terminates its peering arrangement with AT&T/BellSouth for any reason (including bankruptcy, acquisition, or merger), AT&T/BellSouth will replace that peering arrangement with another settlement free peering arrangement and shall not adjust its total number of settlement free peers downward as a result.

2. Within thirty days after the Merger Closing Date, and continuing for three years thereafter, AT&T/BellSouth will post its peering policy on a publicly accessible website. During this three-year period, AT&T/BellSouth will post any revisions to its peering policy on a timely basis as they occur.

Forbearance

1. AT&T/BellSouth will not seek or give effect to a ruling, including through a forbearance petition under section 10 of the Communications Act (the “Act”) 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

2. AT&T/BellSouth will not seek or give effect to any future grant of forbearance that diminishes or supersedes the merged entity’s obligations or responsibilities under these merger commitments during the period in which those obligations are in effect.

Wireless

1. AT&T/BellSouth shall assign and/or transfer to an unaffiliated third party all of the 2.5 GHz spectrum (broadband radio service (BRS)/educational broadband service (EBS)) currently licensed to or leased by BellSouth within one year of the Merger Closing Date.

2. By July 21, 2010, AT&T/BellSouth agrees to: (1) offer service in the 2.3 GHz band to 25% of the population in the service area of AT&T/BellSouth’s wireless communications services (WCS)

licenses, for mobile or fixed point-to-multi-point services, or (2) construct at least five permanent links per one million people in the service area of AT&T/BellSouth's WCS licenses, for fixed point-to-point services. In the event AT&T/BellSouth fails to meet either of these service requirements, AT&T/BellSouth will forfeit the unconstructed portion of the individual WCS licenses for which it did not meet either of these service requirements as of July 21, 2010; provided, however, that in the event the Commission extends the July 21, 2010, buildout date for 2.3GHz service for the WCS industry at large ("Extended Date"), the July 21, 2010 buildout date specified herein shall be modified to conform to the Extended Date. The wireless commitments set forth above do not apply to any 2.3 GHz wireless spectrum held by AT&T/BellSouth in the state of Alaska.

Divestiture of Facilities

Within twelve months of the Merger Closing Date, AT&T/BellSouth will sell to an unaffiliated third party(ies) an indefeasible right of use ("IRU") to fiber strands within the existing "Lateral Connections," as that term is defined in the *SBC/AT&T Consent Decree*,¹⁷ to the buildings listed in Attachment B to this Appendix F ("BellSouth Divestiture Assets"). These divestitures will be effected in a manner consistent with the divestiture framework agreed to in the *SBC/AT&T Consent Decree*, provided that such divestitures will be subject to approval by the FCC, rather than the Department of Justice.

Tunney Act

AT&T is a party to a Consent Decree entered into following the merger of SBC and AT&T (the "Consent Decree"). The Consent Decree documents the terms under which AT&T agreed to divest special access facilities serving 383 buildings within the former SBC in-region ILEC territory (the "SBC Divestiture Assets"). In its Order approving the AT&T/SBC merger, the Commission also required the divestiture of these same facilities on the terms and conditions contained in the Consent Decree. The Consent Decree is currently under review pursuant to the Tunney Act in the U.S. District Court for the District of Columbia (the "Court") in *U.S. v. SBC Communications, Inc. and AT&T Corp.*, Civil Action No. 1:05CV02102 (EGS) (D.D.C.), where the Court is reviewing the adequacy of the remedy contained in the Consent Decree to address the competitive concerns described in the Complaint filed by the Department of Justice (DOJ).

If it is found in a final, non-appealable order, that the remedy in the Consent Decree is not adequate to address the concerns raised in the Complaint and AT&T and the DOJ agree to a modification of the Consent Decree (the "Modified Consent Decree"), then AT&T agrees that (1) AT&T/BellSouth will conform its divestiture of the BellSouth Divestiture Assets to the terms of the Modified Consent Decree; and (2) AT&T/BellSouth will negotiate in good faith with the Commission to determine whether the conditions imposed on AT&T/BellSouth in the Commission order approving the merger of AT&T and BellSouth satisfies, with respect to the BellSouth territory, the concerns addressed in the Modified Consent Decree.

Certification

AT&T/BellSouth shall annually file a declaration by an officer of the corporation attesting that AT&T/BellSouth has substantially complied with the terms of these commitments in all material

¹⁷ See *United States v. SBC Communications, Inc.*, Civil Action No. 1:05CV02102, Final Judgment (D.D.C. filed Oct. 27, 2005).

respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, and the second, third, and fourth declarations shall be filed one, two, and three years thereafter, respectively.

EXHIBIT B

**Cricket Negotiation Proposal to AT&T Regarding Proposed Extension of the
Parties' Current Interconnection Agreement**



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November 19, 2009

Via Electronic and Overnight Mail

Ms. Kay Lyon
Lead Negotiator
AT&T, Inc.
4 AT&T Plaza, 311 S. Akard
Room 2040.03
Dallas, Texas 75202

Re: *Cricket Communications, Inc. Proposal Pursuant to AT&T/BellSouth Merger
Commitment No. 4 to Extend Parties' Interconnection Agreement for Three Years*

Dear Ms. Lyon:

As noted during our recent telephone conversations, Cricket Communications, Inc. ("Cricket") believes that an extension of the current interconnection agreement between Cricket and AT&T Kentucky, Inc. (f/k/a BellSouth Telecommunications, Inc.) ("AT&T") in the state of Kentucky is permitted by law. Accordingly, by this correspondence, Cricket hereby proposes an extension of the interconnection agreement that is currently in effect in the state of Kentucky between AT&T and Cricket.

This proposal is made pursuant to the express terms of Interconnection Merger Commitment No. 4, of Federal Communications Commission ("FCC") Order No. 06-189, approving the merger between AT&T, Inc. and BellSouth Corporation. As you know, that commitment states that:

4. The AT&T/BellSouth ILEC 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 amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's 'default' provisions.

Ms. Kay Lyon, AT&T
November 19, 2009
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Accordingly, to effectuate this extension, Cricket proposes that the Parties immediately enter into an amendment to the current interconnection agreement that: (1) extends the current term of the agreement by three years from the date of AT&T's June 24, 2009 letter providing notice of its intent to terminate the current agreement (i.e. three years from June 24, 2009); (2) provides that the agreement (as extended) may be terminated only via Cricket's request, unless terminated pursuant to a default provision of the agreement; and, (3) recognizes that all other provisions of the agreement, as amended, shall remain in full force and effect since the agreement has already been modified to be TRRO compliant, and has an otherwise effective change of law provision.

Please provide your consent to this proposal by contacting me at your earliest convenience at the telephone number listed above. Thank you in advance for your prompt attention to this matter.

Very truly yours,

Davis Wright Tremaine LLP


K.C. Halm

cc: Diana Durham, Esq., AT&T, Inc.
Dan Graf, Cricket Communications