

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
)  
Joint Application by BellSouth Corporation, ) CC Docket No. 02-35  
BellSouth Telecommunications, Inc., and )  
BellSouth Long Distance, Inc. )  
)  
For authorization to provide in-region, )  
interLATA service in the States of Georgia )  
and Louisiana )

**REPLY COMMENTS OF NEXTEL  
COMMUNICATIONS, INC.**

Laura H. Phillips  
Laura S. Gallagher

Its Attorneys

**DRINKER BIDDLE & REATH LLP**  
1500 K Street, N.W., Suite 1100  
Washington, DC 20005  
(202) 842-8800

Leonard J. Kennedy  
Senior Vice President and General Counsel  
Joel M. Margolis  
Senior Corporate Counsel – Regulatory  
**NEXTEL COMMUNICATIONS, INC.**  
2001 Edmund Halley Drive  
Reston, VA 20191

March 28, 2002

## SUMMARY

Both BellSouth's "new" and "revised" interconnection policies represented in its Section 271 Application for interLATA service relief for the states of Georgia and Louisiana and subsequent March 20 *Ex Parte* filing are an attempt to disadvantage BellSouth's most dynamic competitor in the local services marketplace – Commercial Mobile Radio Service ("CMRS") providers. While initially seeking to block activation of new NXX codes in its switches if such codes were located in an independent local exchange carrier's service area, BellSouth now, under the "revised" policy, states that it will not block the implementation of new NXX codes. Rather, it will fight the legality of these CMRS interconnection arrangements in state adjudicatory proceedings. Neither policy is reasonable nor viable under the Commission's mandatory Section 271 checklist review.

BellSouth's "revised" policy represents only minimal improvement over its original NXX blocking policy. In reality, it is nothing more than a smoke and mirrors attempt to fool the Commission into believing that its interconnection practices are sufficient to pass muster under Section 271. Such is not the case. Indeed, the "revised" policy is anti-competitive and will require CMRS carriers, like Nextel, to confront numerous state proceedings and invest in unnecessary direct interconnection arrangements to all ILECs in a BellSouth territory to achieve the same interconnection status CMRS carriers have today in BellSouth's landline territories. Nextel and other CMRS carriers cannot broaden their service offerings to smaller, more rural communities under the threat of unreasonable, unjustifiable costs and constant litigation.

BellSouth has mischaracterized the issue at hand and is attempting to mask a very serious interconnection issue as a mere intercarrier compensation dispute. Rather than have to grapple with trying to explain the reasons for its anticompetitive interconnection practices in the present 271 proceeding – no easy task – BellSouth would rather have the Commission and other interested parties believe that the issues raised by Nextel and other CMRS providers center on the CMRS carrier’s financial responsibility under its interconnection arrangements. Nextel has interconnection agreements in place with BellSouth in all of BellSouth’s landline territories, including Georgia and Louisiana, that provide BellSouth with compensation for the very transport function it does not now want to provide. Thus, despite BellSouth’s attempts to minimize the significance of and mischaracterize the issues presented, this is simply *not* a case where there is any issue of no compensation or inappropriate compensation. BellSouth is being paid the compensation it negotiated for providing transport and the policies and rules at issue are federal rules and policies.

Commission precedent supports Nextel’s position that this issue must be dealt with in the present Section 271 proceeding. With its revised policy in effect, BellSouth’s compliance with checklist items 1 and 9 is plainly at issue. Questions regarding BellSouth’s quality of interconnection to CMRS carriers and compliance with industry numbering guidelines have been raised in this proceeding. It would be inappropriate for these issues to be resolved anywhere but at this Commission.

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COMMUNICATIONS, INC.**

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby submits these reply comments in opposition to the above-captioned application (the "Application") of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively "BellSouth") and the subsequent *ex parte* filed by BellSouth in this proceeding on March 20, 2002.<sup>1</sup> Nextel continues to oppose BellSouth's revised interconnection policy, which unilaterally injects unnecessary inefficiencies into currently functioning BellSouth-Commercial Mobile Radio Service ("CMRS") carrier interconnection arrangements. The only possible reason

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<sup>1</sup> See *Ex Parte* Letter to Mr. William Caton, Acting Secretary, Federal Communications Commission, from Sean A. Lev, Kellogg, Huber, Hansen, Todd & Evans, PLLC, dated March 20, 2002 ("BellSouth *Ex Parte*").

for BellSouth's new policy is that it places CMRS carriers – the most vibrant facilities-based competitors in the market today – at a serious competitive disadvantage.

## **I. BACKGROUND**

On March 4, 2002, Nextel filed comments in opposition to the grant of BellSouth's Section 271 Application for interLATA service relief for the states of Georgia and Louisiana. Nextel had, and continues to have, a deep concern that the recently announced BellSouth interconnection policy, requiring the linking of call routing and call rating, is anti-competitive and violates the basic interconnection rights of CMRS providers as interpreted by Federal Communications Commission ("Commission") rules and policy.

In its January 23, 2002 letter to Nextel, BellSouth communicated its intention to block activation of new NXX codes in its switches if the codes were to be located in an independent local exchange carrier ("ILEC") exchange, *i.e.*, rated at another ILEC's switch, but routed through BellSouth's tandem for termination to Nextel.<sup>2</sup> BellSouth's purported reason for this policy was a vague statement about its provision of service violating state landline franchise boundaries. BellSouth cited no legal precedent to support its new blocking policy.

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<sup>2</sup> BellSouth also stated that all existing interconnection arrangements that violated its new policy would have to be discontinued. Thus, to come "into compliance," Nextel would have to dismantle established service arrangements and enter into direct interconnection arrangements with numerous smaller, rural ILECs, even where the amount of land to mobile traffic generated in these communities could not justify the investment of resources and the cost of additional, totally unnecessary facilities.

In its comments, Nextel stated its concerns regarding BellSouth's new policy, including BellSouth's claim that existing arrangements that separate call rating from call routing violate state landline franchise boundaries.<sup>3</sup> Nextel also demonstrated that BellSouth's new policy fails to meet the requirements of Section 271 competitive checklist items 1 and 9, requiring that a Bell Operating Company ("BOC") demonstrate that it provides interconnection in accordance with statutory and Commission rule requirements and complies with the North American Numbering Plan ("NANP") guidelines and policies.

Plainly recognizing that it could not defend its new policy, BellSouth subsequently modified it.<sup>4</sup> In a March 20 notification to all telecommunications carriers operating in BellSouth's service areas, BellSouth stated that "[I]f this arrangement [of routing traffic to or from NPA/NXXs, which are established with a third-party rate center] is utilized, BellSouth will process the code memorandum request, while at the same time raising the issue with the appropriate state commission for determination."<sup>5</sup> Under its "revised" policy, BellSouth apparently will no longer block the implementation of new NXX codes with rating centers in an

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<sup>3</sup> As stated in its comments, Nextel previously sent a letter to BellSouth's General Counsel requesting an explanation of BellSouth's reasons for implementing its policy. Nextel has not received any substantive reply to that request.

<sup>4</sup> See BellSouth Carrier Notification (SN91082844), dated March 20, 2002 (Attachment 1).

<sup>5</sup> *Id.*

independent ILEC territory.<sup>6</sup> Rather, it will fight the legality of these extremely common CMRS interconnection arrangements in state-by-state tariff enforcement or declaratory ruling proceedings.

Also on March 20, and in response to Nextel's comments in this proceeding, BellSouth filed an *ex parte* letter with the Commission, asserting that Nextel's arguments – as well as the arguments of other wireless carriers that filed comments raising similar concerns – are improperly raised in the context of the Section 271 proceeding and should instead be resolved by individual state commissions.<sup>7</sup> In addition, the *ex parte* raised an entirely new but baseless justification of BellSouth's revised policy – that CMRS providers are not properly compensating BellSouth for the "inappropriate" traffic that is routed over BellSouth's facilities.

BellSouth's continuing threats to disrupt existing and utterly common CMRS interconnection arrangements by having them declared unlawful by state commissions is not a significant improvement over its previous statement that it would block activations of NXX

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<sup>6</sup> Interestingly, although BellSouth states that it has never failed to route calls or permit NXX number assignments for Nextel in Georgia or Louisiana, BellSouth has refused to do so for Nextel in South Carolina. In December 2001 through January 2002, BellSouth refused to activate in its tandem switch a Nextel NXX Code for Monks Corner, South Carolina in the Home Telephone Company service area, which subtends the BellSouth tandem. Nextel met all of the requirements for NeuStar to assign Nextel an NXX Code. BellSouth's refusal has resulted in Nextel not being able to sell mobile handsets with a local dialing plan in Monk's Corner, South Carolina. As a result, Nextel has lost revenue, and there are fewer choices for consumers in Monk's Corner. As BellSouth itself has stated, its interconnection policy applies across its entire landline region. Thus, the fact that BellSouth has not actually refused to activate a code in Georgia or Louisiana is irrelevant.

<sup>7</sup> BellSouth *Ex Parte* at 6.

codes it believes are misrated. In fact, the eleventh hour revision of its policy is a cynically calibrated attempt to have this Commission believe that BellSouth has done enough to receive interLATA relief.

The success of BellSouth's revised policy unquestionably would arbitrarily increase the costs that CMRS providers incur for CMRS-LEC interconnection. The institution of this policy coincides with BellSouth's anticipated entry into the interLATA market, which strongly suggests BellSouth's motive is to raise the costs of a competitive rival. Further, even as "revised," BellSouth's interconnection policy contravenes certain Section 271 checklist items, and thus is properly raised and resolved in this proceeding.

## **II. DISCUSSION**

### **A. BellSouth's Policy Is Anti-Competitive.**

BellSouth's obvious intention is to sow uncertainty and to discourage CMRS carriers from expanding local CMRS service availability in smaller, more rural communities by threatening to litigate the NXX rating issue at each and every state commission.<sup>8</sup> Indeed, Nextel and other CMRS carriers cannot expand their service offerings to rural and small communities often served by independent ILECs under the threat that BellSouth will fight to have the service

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<sup>8</sup> As previously stated, CMRS carriers have to open NXX codes associated with independent ILEC switches so that landline telephone customers in that area can call CMRS customers on a toll free basis. Contrary to BellSouth's assertions, the assignment of codes to Nextel and other CMRS providers in landline markets where there is not a direct interconnect arrangement is not a "virtual NXX" situation. Nextel does not seek to open codes where it is not authorized to and is not in fact providing service.

arrangement declared illegal, thereby forcing Nextel and other carriers to invest in wholly unnecessary direct interconnection arrangements with all ILECs in every BellSouth LATA. Under Commission rules, Nextel's local service area is the MTA, and it is entitled to interconnect at a single point of interconnection within each LATA.<sup>9</sup>

Unilateral action by the BOCs to frustrate efficient interconnection is not what the Commission envisioned when it adopted its LEC-CMRS interconnection rules. As the Commission has observed, the "purpose of the LEC-CMRS interconnection rule is to promote competition in the telecommunications market by ensuring that all LECs and CMRS providers provide reasonable interconnection to one another subject to reasonable rates, terms, and conditions."<sup>10</sup> In addition, the Commission noted that the CMRS interconnection rule "regulates the conduct of LECs with market power in their interconnection relationships with CMRS providers, [because] [h]istorically, some LECs denied or restricted interconnection options available to CMRS providers. . . ." <sup>11</sup> In the present case, BellSouth is attempting to use its market power by threatening CMRS providers with numerous adjudicatory proceedings in the states where BellSouth operates.

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<sup>9</sup> See 47 C.F.R. § 51.701(b)(2).

<sup>10</sup> Federal Communications Commission Issues Biennial Regulatory Review Report for the Year 2000, *News*, CC Docket No. 00-75, FCC 00-346 (January 17, 2001).

<sup>11</sup> *Id.*

In addition to the threat of numerous state proceedings, BellSouth would greatly increase CMRS costs for interconnection with no offsetting public benefit. Such increased costs will also impede Nextel and other CMRS competitors in their efforts to provide credible substitute service for traditional landline service. Indeed, if BellSouth can make CMRS interconnection arrangements more laborious and expensive, BellSouth will likely gain more margin in the interLATA interexchange market, as well as make CMRS a less potent local services competitor. The Commission should prohibit BellSouth from implementing its “new” or “revised” interconnection policy as part of its Section 271 compliance assessment.

**B. BellSouth Has Ignored its Present Obligations Under its Interconnection Agreements with Nextel in Recharacterizing the Issue as One of Proper Compensation.**

As discussed above, BellSouth, in an *ex parte* filing timed to coincide exactly with its announcement of a somewhat revised policy, argues that Nextel has raised a pricing policy issue that cannot and should not be resolved in the context of its Section 271 Application. This argument is an irrelevant distraction and is contrary to applicable law and Commission precedent.

In its *ex parte*, for the first time, BellSouth attempts to characterize the “problem” that its revised policy is designed to fix as one of correct compensation for its routing of calls to and from the independent ILEC and Nextel. BellSouth also mistakenly clings to the belief that the NXX code activations it and other BOCs have performed routinely over the years for CMRS

carriers are “inappropriate NXX rating assignment[s] used by CMRS providers in the Local Exchange Routing Guide (“LERG”)” that must end.<sup>12</sup>

BellSouth has never once cogently explained why the longstanding, common, and highly efficient interconnection arrangements all BOCs, including BellSouth, have supported suddenly are inappropriate. In fact, BellSouth’s stated reasons vary from filing to filing. Nextel suspects that the real reason is one of perceived competitive advantage for BellSouth as it contemplates selling local and interexchange services to consumers in a bundle, much like CMRS carriers do today.

BellSouth also mischaracterizes the issues that Nextel raised in its comments as issues related to intercarrier compensation. It attempts to suggest that because the Commission has an open docket on intercarrier compensation issues – one in which Nextel filed comments – and thus there is no reason to address the propriety of BellSouth’s revised interconnection policy in the context of its interLATA Application.

BellSouth also provides examples of purported problems with pricing and service provisioning for mobile to land traffic. This issue, however was not raised by Nextel. Rather, Nextel’s concern was and remains how BellSouth proposed to deal with land to mobile traffic originating at an NXX rating point in an independent LEC’s territory.<sup>13</sup>

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<sup>12</sup> See BellSouth *Ex Parte* at 2.

<sup>13</sup> See generally Comments of Nextel Communications, Inc., CC Docket No. 02-35 (filed March 4, 2002) (“Nextel Comments”).

Instead of addressing Nextel's concerns head on, BellSouth dances around the issues and attempts to portray a significant Section 271 matter as one of "intercarrier compensation and state tariffs."<sup>14</sup> Indeed, according to BellSouth, the present case merely raises the "question of a CMRS provider's responsibility for the financial consequences of its interconnection choices. . . ." <sup>15</sup>

BellSouth's rhetoric is not matched by any demonstrable facts. Nextel has interconnection agreements with BellSouth in all of BellSouth's landline territories, including in Georgia and Louisiana, that provide BellSouth with compensation for the very transport function it apparently no longer wants to provide.<sup>16</sup> Pursuant to its BellSouth interconnection agreement, Nextel already compensates BellSouth for any "non-local" traffic that is originated by Nextel and delivered by BellSouth for termination to the network of a third-party telecommunications carrier.<sup>17</sup> Ironically, BellSouth appears to have ignored the interconnection agreement currently

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<sup>14</sup> BellSouth *Ex Parte* at 3.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> See Interconnection Agreement Between BellSouth Telecommunications, Inc., and Nextel South Corp. (Effective June 4, 2001) (Attachment 2).

<sup>17</sup> Non-Local Traffic is defined in the Nextel/BellSouth Agreement as "all traffic that is not Local Traffic or access services. . . ." Local Traffic is defined as (1) any telephone call that originates on the network of Carrier [Nextel] within a Major Trading Area ("MTA") and terminates on the network of BellSouth in the same MTA and within the Local Access and Transport Area ("LATA") in which the call is handed off from Carrier [Nextel] to BellSouth, and (2) any telephone call that originates on the network of BellSouth that is handed off directly to Carrier [Nextel] in BellSouth's service territory and in the same LATA in which the call originates and terminates on the network of Carrier [Nextel] in the MTA in which the call is handed off from

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in effect with Nextel that provides for Nextel's payment of compensation to BellSouth for transit routing between Nextel and an independent LEC within a BellSouth LATA. Because current arrangements provide for compensation to BellSouth – indeed at a rate negotiated for providing intraLATA, intraMTA transport and far higher than the reciprocal compensation rate – there is plainly no unresolved compensation component to Nextel's opposition.

Interestingly, BellSouth also claims in its *ex parte* that CMRS carriers should not be permitted to avoid compensating BellSouth for transport from an independent LEC's territory to the CMRS/BellSouth point of interconnection ("POI.")<sup>18</sup> What BellSouth fails to recognize, however, is that not only does the Nextel/BellSouth Interconnection Agreement specifically call for *no* such compensation, but that BellSouth would already bill the independent ILEC that is originating the traffic transiting charges for such traffic in accordance with the Communications Act and presumably in accordance with BellSouth's own interconnection agreement with the respective independent ILEC. Thus, under the existing interconnection agreement between Nextel and BellSouth, BellSouth is not entitled to bill the terminating carrier (Nextel) for local transiting services, and any attempt by BellSouth to do so under its "revised" interconnection policy will plainly result in double recovery of BellSouth's costs.

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(..continued)

BellSouth to Carrier [Nextel]. *See* Interconnection Agreement Between BellSouth Telecommunications, Inc., and Nextel South Corp., at 4 (Effective June 4, 2001) (Attachment 2).

<sup>18</sup> BellSouth *Ex Parte* at 2-3.

Thus, this is *not* a case, as BellSouth would have the Commission believe, of Nextel's failure to compensate BellSouth. Instead, BellSouth apparently wants to withdraw from providing transit services and to do so by ignoring its current obligations under its interconnection agreement with Nextel.

**C. BellSouth's Revised Interconnection Policy Violates Section 271 Checklist Items No. 1 and 9 and Must Be Addressed in the Present Proceeding.**

Finally, case law on the Commission's Section 271 authority does not support BellSouth's *ex parte* assertion that its problem, whatever the problem may be, is more suitably dealt with at the state level and need not be considered in the context of BellSouth's interLATA Application. Pursuant to the Commission's Section 271 review proceedings, checklist item 1 requires that the Commission review and investigate whether the BOC is providing "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."<sup>19</sup> To make this determination, the Commission will look at several factors, including the quality of interconnection that the BOC is providing, trunk provisioning, the extent of call blocking, the timeliness of the interconnection provided and the BOC's average installation intervals.<sup>20</sup>

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<sup>19</sup> See, e.g., Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, *Memorandum Opinion and Order*, CC Docket No. 01-324, FCC 02-063 (rel. Feb. 22, 2002) ("Verizon Rhode Island Order").

<sup>20</sup> Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And  
(continued...)

Further, the Commission will look to see whether the BOC “makes interconnection available at any technically feasible point, including the option to interconnect at only one technically feasible point within a LATA.”<sup>21</sup>

In the present case, Nextel has raised a significant issue regarding the quality of interconnection that BellSouth provides. In particular, Nextel has asserted that BellSouth’s “new” and “revised” policies deprive Nextel of its right to interconnect with BellSouth at “any technically feasible point” within BellSouth’s network.<sup>22</sup> In addition, BellSouth’s policy deprives CMRS carriers of their right to choose a single point of interconnection in a LATA.<sup>23</sup> The Commission’s rule in this regard is plain and its application does not present the “novel” issue that BellSouth asserts.

In its *ex parte*, BellSouth also argues that traffic going to an NXX code assigned to an area outside BellSouth franchise territory should be treated as access traffic for compensation purposes.<sup>24</sup> BellSouth thus claims that it would normally be entitled to access charges for providing transit. BellSouth is mistaken because the Commission has determined that the

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Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, *Memorandum Opinion and Order*, 16 FCC Rcd 8988 (2001).

<sup>21</sup> *Id.* at ¶ 182.

<sup>22</sup> Nextel Comments at 5.

<sup>23</sup> *Id.*

<sup>24</sup> BellSouth *Ex Parte* at 2.

relevant “local” calling area for CMRS land to mobile traffic is the MTA. BellSouth’s statement fails to consider relevant MTA or LATA boundaries. It also ignores the fact that this same traffic is routed as local to and from independent ILECs within the same LATA. Thus, BellSouth’s failure to treat MTA traffic destined to a CMRS provider as local, particularly where BellSouth accords local treatment to ILEC traffic in similar circumstances, is discriminatory and violates the Commission’s interconnection rules.

Further, BellSouth’s “new” and “revised” interconnection policies violate the Commission’s numbering rules – an integral component to checklist requirement 9. Pursuant to checklist item 9, it is up the BOC to “demonstrate that it adheres to industry numbering guidelines and Commission rules.”<sup>25</sup> Despite BellSouth’s apparent rethinking of its policy on outright NXX blocking, there remains a substantial question as to whether BellSouth’s “new” and “revised” policies violate the Commission’s numbering rules. BellSouth’s *ex parte*, for example, continues to characterize the routine interconnection arrangements it dislikes as “inappropriate.” It is not BellSouth’s role to second guess the judgment of NeuStar in its role as numbering administrator in assigning numbers to CMRS carriers operating within their geographically broad service territories.

Contrary to BellSouth’s assertions, this is not a novel dispute. Nor is it an intercarrier compensation dispute that should be arbitrated or resolved at the state level. Rather, this is a case of history repeating itself – with BellSouth unilaterally changing the scope of its responsibilities

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<sup>25</sup> Verizon Rhode Island Order at ¶ 61.

that it committed to in signing an interconnection agreement with a competitive interconnecting carrier. And, it is doing so for a specific anti-competitive reason – BellSouth wants to hamstring the one type of competitive carrier that can match its service offerings after it receives interLATA authority by raising Nextel’s overall interconnection costs without any public benefit.

Thus, the interconnection policy issues at hand address significant federal rules and policies under Section 271, and these rules and policies can be easily applied within the context of BellSouth’s interLATA Application. The Commission should be concerned that BellSouth, even when confronted with legal or public policy reasons why its new policy violates its Section 271 obligations, still threatens to force Nextel and other concerned CMRS carriers to run the gauntlet of a variety of state commission proceedings. BellSouth is similarly unapologetic that it seeks to force CMRS carriers to make the case in multiple forums that common interconnection arrangements that traditionally have been used are reasonable and should continue.<sup>26</sup> At a minimum, the Commission should enforce its rules and condition any BellSouth interLATA authority on BellSouth’s compliance with the terms of its signed and effective interconnection agreements and confirm that basic interconnection policy issues – the framework of local interconnection – are exclusively a matter of federal interpretation.<sup>27</sup>

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<sup>26</sup> Indeed, BellSouth inconsistently argues that state commissions are the place to resolve interconnection and numbering matters, while at the same time arguing that this Commission should punt any transit traffic and other interconnection policy matters raised by BellSouth’s interconnection policies to Commission proceedings. BellSouth *Ex Parte* at 3-4.

<sup>27</sup> See *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

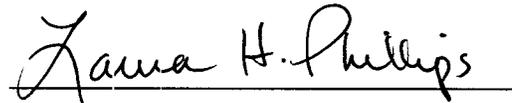
### III. CONCLUSION

For the foregoing reasons, Nextel opposes BellSouth's Section 271 Application in light of BellSouth's "revised" interconnection policy. While BellSouth's eleventh hour revision to its interconnection policy removes the immediate prospect of call blocking, the Commission must recognize that at its most basic, BellSouth's revised policy would prevent continued efficient interconnection for CMRS providers. The Commission should not allow BellSouth unilaterally to repudiate the terms of its interconnection agreement with Nextel and to hide behind the language of some state tariffs that BellSouth has, in practice, ignored up until now. Nextel thus requests that the Commission direct BellSouth to eliminate its "new" and "revised"

interconnection policies and confirm these interconnection issues are federal matters for this Commission to resolve.

Respectfully submitted,

**NEXTEL COMMUNICATIONS, INC.**



Laura H. Phillips  
Laura S. Gallagher

Its Attorneys

**DRINKER BIDDLE & REATH LLP**

1500 K Street, N.W.  
Suite 1100  
Washington, D.C. 20036  
(202) 842-8800

**DRINKER BIDDLE & REATH LLP**

1500 K Street, N.W., Suite 1100  
Washington, DC 20005  
(202) 842-8800

Leonard J. Kennedy  
Senior Vice President and General Counsel  
Joel M. Margolis  
Senior Corporate Counsel – Regulatory  
**NEXTEL COMMUNICATIONS, INC.**  
2001 Edmund Halley Drive  
Reston, VA 20191

March 28, 2002

**CERTIFICATE OF SERVICE**

I, Colleen A. Mulholland, a legal secretary at Drinker Biddle & Reath LLP do hereby certify that on this 28<sup>th</sup> day of March, 2002, a copy of the foregoing “**REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.**” was served via first-class mail, postage prepaid, unless otherwise noted, to each of the following:

Janice Myles \*\*  
Federal Communications Commission  
Wireline Competition Bureau  
445 12<sup>th</sup> Street, S.W.  
Room 5-B145  
Washington, D.C. 20554

Bennett L. Ross  
1025 Lenox Park Boulevard  
Suite 6C01  
Atlanta, GA 30319  
*Counsel for BellSouth Corporation*

Qualex International \*\*  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Room CY-B402  
Washington, D.C. 20554

Jonathan B. Banks  
Kathleen B. Levitz  
1133 21<sup>st</sup> Street, N.W.  
Room 900  
Washington, D.C. 20036  
*Counsel for BellSouth Corporation and  
BellSouth Telecommunications, Inc.*

Luin P. Fitch, Jr. \*\*  
U.S. Department of Justice  
Antitrust Division  
Telecommunications Task Force  
1401 H Street, N.W., Suite 8000  
Washington, D.C. 20005

Victoria M. McHenry  
365 Canal Street  
Suite 3060  
New Orleans, LA 70130  
*BellSouth Corporation*

James G. Harralson  
Fred J. McCallum, Jr.  
Jim O. Llewellyn  
Lisa S. Foshee  
BellSouth Corporation  
4300 BellSouth Center  
675 West Peachtree Street  
Atlanta, GA 30375

Michael K. Kellogg  
Sean A. Lev  
Leo R. Tsao  
Kellogg, Huber, Hansen, Todd  
& Evans, P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036

\*\* via Hand Delivery

Jeffrey S. Linder  
Suzanne Yelen  
Wiley, Rein & Fielding, LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
*Counsel for BellSouth Corporation,  
BellSouth Telecommunications, Inc, and  
BellSouth Long Distance, Inc.*

Harris R. Anthony  
400 Perimeter Center Terrace  
Suite 350  
Atlanta, GA 30346  
*Counsel for BellSouth Long Distance, Inc.*

Leon Bowes  
Division of the Telecommunications Unit  
Georgia Public Service Commission  
244 Washington Street, SW  
Atlanta, GA 30334

Arnold Chauviere  
Lawrence C. St. Blanc  
Vanessa L. Caston  
Brandon M. Frey  
Louisiana Public Service Commission  
One American Place, Suite 1620  
P.O. Box 91154  
Baton Rouge, LA 70821-9154

Marilyn Ash, Esq.  
Mpower Communications Corp.  
175 Sully's Trail, Suite 300  
Pittsford, NY 14534

Keith Seat  
WorldCom, Inc.  
1133 Nineteenth Street, N.W.  
Suite 721  
Washington, D.C. 20036

Brent E. McMahan  
Network Telephone Corporation  
815 South Palafox Street  
Pensacola, FL 32501

Joan Marsh  
AT&T  
1120 20<sup>th</sup> Street N.W.  
Suite 1000  
Washington, D.C. 20036

Andrew M. Klein  
Kelley, Drye & Warren  
1200 19<sup>th</sup> Street N.W.  
Suite 500  
Washington, D.C. 20036  
*Counsel for KMC Telecom, Inc.*

Gegi Leeger  
Allegiance Telecom, Inc.  
1919 M Street N.W.  
Suite 420  
Washington, D.C. 20036

Paul F. Guarison  
Shirley & Ezell, L.L.C.  
2354 South Acadean Thruway  
Suite F  
Baton Rouge, LA 70808  
*Counsel for Xspedius Corp.*

Florence M. Grasso  
Jason Oxman  
Covad Communications Company  
600 14<sup>th</sup> Street N.W.  
Suite 740  
Washington, D.C. 20005

Mary C. Albert  
Allegiance Telecom of Georgia, Inc.  
1919 M Street N.W.  
Suite 420  
Washington, D.C. 20036

Jake E. Jennings  
NewSouth Communications Corp.  
Two Main Street  
Greenville, SC 29601

Jennifer M. Kashatus  
Kelly, Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W.  
Suite 500  
Washington, D.C. 20036  
*Counsel for Competitive  
Telecommunications Assn.*

Patrick J. Donovan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007  
*Counsel for DIRECTTV Broadaband, Inc.*

Valerie M. Furman  
Dickstein Shapiro Morin & Oshinsky  
2101 L Street, N.W.  
Washington, D.C. 20039  
*Counsel for Birch Telecom of the  
South, Inc.*

Michael W. Fleming  
Swidler Berlin Shereff Friedman LLP  
3000 K Street N.W.  
Suite 300  
Washington, D.C. 20007  
*Counsel for US LEC Corp and XO Georgia,  
Inc.*

Ronald W. Del Sesto, Jr.  
Swidler Berlin Shereff Friedman LLP  
3000 K Street N.W.  
Suite 300  
Washington, D.C. 20007  
*Counsel for Network Telephone  
Corporation*

Larry E. Robbins  
Wyrick Robbins Yates and Ponton, LLP  
4101 Lake Boon Trail  
Suite 300  
Raleigh, NC 27607  
*Counsel for BTI Telecom Corp.*

Alliance for Public Technology  
919 18<sup>th</sup> Street, N.W.  
Suite 900  
Washington, D.C. 20006

Marybeth Banks  
Sprint Communications Company L.P.  
401 9<sup>th</sup> Street, N.W.  
Suite 400  
Washington, D.C. 20004

  
Colleen A. Mulholland