

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

In the Matter of

Sprint Petition for Declaratory Ruling

Obligation of Incumbent LECs to Load
Numbering Resources Lawfully Acquired and
to Honor Routing and Rating Points
Designated by Interconnecting Carriers

CC Docket No. 01-92

REPLY COMMENTS OF NEXTEL PARTNERS, INC.

Pursuant to the Public Notice released on July 18, 2002, DA-02-1740, Nextel Partners, Inc. (“Nextel Partners”) herein files its Reply Comments to the “Petition for Declaratory Ruling” filed by Sprint Corporation on May 9, 2002 (the “Petition”) in the above-captioned proceeding. As Nextel Partners will discuss further herein, the Commission should grant the requested ruling, affirming that BellSouth and other ILEC's have the obligation to permit indirect interconnection at reasonable rates, by transporting another carrier's traffic to a third party LEC's end office.

Nextel Partners and its subsidiaries provide digital wireless communication services in mid-sized and smaller markets throughout the United States. Nextel Partners holds or has the right to use wireless frequencies in 58 markets where approximately 51 million people live or work.¹ Given the rural nature of many of the markets that Nextel Partners serves, Nextel

¹ In January 1999, Nextel Partners entered into a joint venture agreement with Nextel WIP Corp. (“Nextel WIP”), an indirect wholly owned subsidiary of Nextel Communications, Inc. (“Nextel”). Nextel, through Nextel WIP, owned 32.3% of Nextel Partners’ common stock as of December 31, 2001 and is Nextel Partners’ largest stockholder. The Nextel relationship was created to accelerate the build-out of the Nextel digital mobile network by granting Nextel Partners the exclusive right to offer wireless communications services under the Nextel brand in selected mid-sized and smaller markets.

Partners is in an excellent position to provide the Commission with insights into some of the issues that have been raised in this proceeding.

Despite the context in which the Petition was filed -- *i.e.*, BellSouth's refusal to load telephone numbering resources and its refusal to honor the routing and rating points designated by an interconnecting carrier -- the comments that have been filed on the Petition make it clear that the issue in this proceeding is quite a bit broader. Specifically, the issue has become whether an incumbent Local Exchange Carrier ("ILEC") has an obligation to provide tandem transit service, for which it will be fully compensated, when a carrier interconnecting directly with that ILEC seeks to interconnect indirectly with another LEC in the ILECs' local service area. This issue is of critical importance to all carriers, especially CMRS carriers such as Nextel Partners, which serve customers in smaller and rural markets.

When Nextel Partners enters a new market, it directly interconnects with the major ILEC servicing the area, often an RBOC like BellSouth. Nextel Partners does not, as a matter of course, directly interconnect with every ILEC in the service area. Instead, when Nextel Partners first initiates service in an area, traffic between Nextel Partners' customers and the customers of smaller independent telcos in the area will be passed over the network of the dominant ILEC in the area. Nextel Partners pays the dominant ILEC a transiting charge and Nextel Partners and the smaller telcos make separate reciprocal compensation arrangements.

Indirect interconnection of this nature has for years been standard practice in telecommunications networks. As such, the routing discussed in the Petition, and which Sprint has asked the Commission to require of BellSouth, presents nothing at all unique or particularly "creative." Rather, it has long been commonplace for ILECs to route traffic of other carriers to third parties, under the terms and conditions of existing interconnection agreements. This

practice is also wholly consistent with Commission rules and precedent allowing carriers to interconnect directly or indirectly with other carriers using the facilities of any available ILEC.² This type of network design has helped promote the development of competitive telecommunications systems by avoiding the unnecessary cost and duplication of directly interconnecting such systems with each and every LEC with which an entering carrier exchanges traffic, however small the amount of traffic involved, as a precondition to offering service.

The only thing unique and creative here is the result that would be created if the Commission sanctions BellSouth's effort to avoid its obligation to carry interconnecting traffic, using the pretext of compensation arrangements that BellSouth and other ILECs claim are implicated by certain rating and routing arrangements.³ In that event, carriers such as Nextel Partners that seek to provide service to residents of smaller markets and rural communities would be severely hindered in their efforts to provide competitive telecommunications services in these areas, due to the unnecessary and prohibitive cost of directly interconnecting with every LEC rate center with which Nextel Partners seeks to exchange traffic.

Requiring direct interconnection with all LECs raises a significant barrier to competitive entry. This process is not only costly, but it is also cumbersome, time-consuming and wholly unnecessary, requiring the negotiation of formal agreements and the construction of facilities duplicating those that are already in use. The result of requiring the establishment of such

² See 47 U.S.C. § 251(a)(1); *Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, 11 FCC Rcd 15499, 15991 (1996) (subsequent history omitted) (“the duty to interconnect directly or *indirectly* is central to the 1996 Act and achieves important policy objectives”).

³ See, e.g. “Opposition” filed July 19, 2002 by BellSouth Corporation and BellSouth Telecommunications, Inc.; “National Telecommunications Cooperative Association Initial Comments,” filed August 8, 2002.

systems would be to severely inhibit the ability of competitive carriers to commence operations, having an immediate impact on smaller and rural markets where the minimal quantities of traffic that would initially be exchanged with multiple independent LECs could not economically justify the construction of direct trunks.

Contrary to the argument of BellSouth and other ILECs,⁴ the issue in this proceeding really has little to do with compensation. Nextel Partners is willing to pay, and has paid in situations where the ILEC performs a transiting service, for a call originated by Nextel Partners, all appropriate costs required in connection with carriage of its traffic, including reciprocal compensation to the terminating LEC and transiting charges to the ILEC, where such charges are required. Where an ILEC originates the call, it too should pay for the transit function that another ILEC provides. Nextel Partners is not seeking to avoid payment of such financial obligations. Nextel Partners' interest in this proceeding is solely to ensure that BellSouth and other similarly situated ILECs will allow use of their networks for transiting service where a CMRS carrier seeks to have the ILEC transport the CMRS traffic from an ILEC intra-LATA tandem switch to an independent LEC's end office serviced by that tandem. Nextel Partners is of course willing to make all appropriate payment arrangements with the independent ILEC's with which it indirectly interconnects, although in its experience the exchange of such *de minimis* amounts of traffic generally has lead parties to adopt a "bill and keep" system.

Again, this situation arises very frequently in rural areas, where the traffic exchanged with any single independent LEC is often quite low, at least at the time of initial roll-out of

⁴ See, e.g. "Opposition" filed July 19, 2002 by BellSouth Corporation and BellSouth Telecommunications, Inc.; "National Telecommunications Cooperative Association Initial Comments," filed August 8, 2002; "Comments of Fred Williamson and Associates, Inc., filed August 8, 2002.

service. As traffic volumes with a particular independent LEC grow, Nextel Partners recognizes that it may become appropriate to establish direct interconnection facilities. However, this network design decision should be undertaken jointly by the CMRS carrier, the ILEC and the affected LEC. Direct interconnection should be required only when justified by traffic volumes, and should not be imposed by ILECs on new market entrants to restrict the entry of competitors.

Moreover, it is no surprise that CMRS operators have participated in this proceeding to such a great extent. CMRS operators are the only type of telecommunications carriers that are providing any significant degree of competition to the ILECs in rural areas, where the impact of requiring direct interconnection with all carriers would be most severe. As a result, accepting the positions expressed by BellSouth in this proceeding would stifle the only currently viable form of competition to the ILECs in most rural areas and frustrate the Commission's goal of promoting intermodal competition.

The Commission's Wireline Competition Bureau has recently had occasion to confirm the need for ILECs to transport a carrier's traffic to a third-party LEC, in the context of its Virginia Interconnection Order.⁵ In that proceeding, the Bureau rejected Verizon's proposal to discontinue its tandem transit service after a transition period, recognizing instead that such an action "creates too great a risk to service disruption to AT&T's end users" who rely on this service. *Id.* at ¶ 115. The Bureau also required Verizon to provide such service at TELRIC rates until such point as AT&T's traffic exceeds a DS-1 level. *Id.* at ¶ 115. Contrary to SBC's

⁵ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc., and for Expedited Arbitration*, DA 02-1731 (Wireline Competition Bureau, released July 17, 2002 ("Virginia Arbitration Order").

interpretation of the decision,⁶ the Bureau's underlying rationale in the Virginia Interconnection Order supports the position urged in the Petition, namely, that BellSouth has an obligation to transit the traffic requested by Sprint.

Finally, Nextel Partners agrees with the parties who explain that the Commission has the authority to preempt any state commission action and that it should exercise that authority in this circumstance.⁷ The Supreme Court has found that the Commission has the exclusive authority to determine which ILEC facilities are essential to the development of local service competition and to require that those facilities be unbundled and made available to competitors.⁸ Having such authority over interconnection matters, the Commission should unambiguously exercise that authority in this circumstance, where the cost and delay of proceeding before individual state commissions would place competing carriers at a distinct disadvantage *vis a vis* the incumbents. Moreover, the risk of allowing the states to adopt differing interconnection policies would further frustrate the development of a competitive telecommunications market.

In conclusion, the positions urged by BellSouth and other ILECs in this proceeding would create an untenable situation for Nextel Partners and other similarly situated carriers, by unnecessarily raising their costs of interconnection and adding new obstacles to their commencement and expansion of operations. The result would necessarily delay the deployment of new telecommunications services to rural and underserved markets, thereby undermining the Commission's express policies of expanding service to such areas.

⁶ See "Comments of SBC Communications, Inc.," filed August 8, 2002, at pp. 5- 6

⁷ See "Comments of Nextel Communications, Inc.," filed August 8, 2002; "Comments of the Cellular Telecommunications & Internet Association In Support Of Sprint Petition for Declaratory Ruling," filed June 10, 2002.

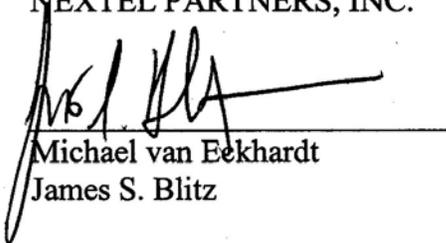
⁸ See *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999).

Accordingly, for the reasons discussed herein, the Commission should GRANT the relief requested by Sprint in its "Petition for Declaratory Ruling."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James S. Blitz, an attorney at Davis Wright Tremaine LLP, do hereby certify that on this 19th day of August, 2002, a copy of the foregoing "REPLY COMMENTS OF NEXTEL PARTNERS, INC." was electronically served to each of the following:

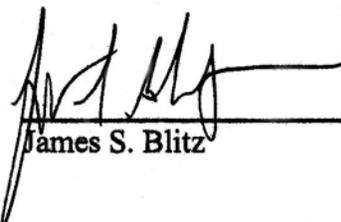
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