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

Petition for Declaratory Ruling That Sprint Nextel Corporation, Its Affiliates, And Other Requesting Carriers May Not Impose A Bill-and-Keep Arrangement Or A Facility Pricing Arrangement Under The Commitments Approved By The Commission In Approving The AT&T-BellSouth Merger	)	WC Docket No. _____

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PETITION OF THE AT&T ILECS FOR A DECLARATORY RULING

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INTRODUCTION AND SUMMARY

Among the many commitments adopted in the *AT&T/BellSouth Merger Order* was a group of four commitments that were intended to reduce transaction costs associated with the negotiation and execution of interconnection agreements. One of those commitments, Commitment 7.1, allows CLECs to port interconnection agreements from one AT&T state to another, subject to, *inter alia,* state-specific pricing and consistency with the laws and regulatory requirements of the state to which the agreement is to be ported.

This petition for declaratory ruling is necessary because Sprint Nextel, in defiance of the express terms and stated purpose of Commitment 7.1, is attempting to turn that commitment into a vehicle for reciprocal compensation arbitrage and other unwarranted subsidies, including economically irrational pricing of shared interconnection facilities. Sprint Nextel's ploy is an attempt to "port" to each of the 13 legacy AT&T ILEC states a bill-and-keep arrangement and a provision allowing for the equal sharing of the costs of interconnection facilities (facility pricing arrangement), which were included in interconnection agreements between each of the BellSouth ILECs, on the one hand, and two Sprint affiliates (Sprint CLEC and Sprint PCS), on the other.[1] Both the bill-and-keep arrangement and the facility pricing arrangement were predicated on specific assumptions by BellSouth about the balance of traffic between the BellSouth ILECs and the two Sprint entities within the BellSouth region. They are thus pricing arrangements that are specific, not only to the BellSouth states, but to the two Sprint affiliates that were the original parties to the agreement. For example, the bill-and-keep provision was based on an analysis showing that traffic flows between the BellSouth ILECs and the two Sprint affiliates were roughly in balance. The provision even includes language stating that the arrangement shall be

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[1] Although substantially the same agreement is in place in each of the former BellSouth ILEC states, Sprint Nextel's efforts have focused on the ICA between AT&T Kentucky and the two Sprint affiliates.

terminated if one of the two Sprint entities opts into another agreement, since that would upset the balance of traffic between the contracting parties.

Sprint Nextel nonetheless claims that Commitment 7.1 allows it to port these BellSouth-specific pricing arrangements to other states where the traffic exchanged by Sprint Nextel and AT&T is decidedly *out of balance* or otherwise inconsistent with the traffic flows on which the original agreements were premised. Indeed, Sprint Nextel goes so far as to claim that Commitment 7.1 wipes out all substantive Commission rules governing adoptions *even within a state,* and, based on that misreading of Commitment 7.1, is seeking to extend the two pricing provisions to other Sprint Nextel affiliates within each of the BellSouth states via in-state adoptions.

The Commission has devoted considerable effort to eliminating opportunities for reciprocal compensation and other arbitrage. It would be an affront to the spirit and the letter of Merger Commitment 7.1 if that commitment were allowed to become a vehicle for circumventing the Commission's substantive rules and creating yet another arbitrage.

To prevent this from occurring, the Commission should issue declaratory rulings that:

(1) bill-and-keep arrangements for the transport and termination of telecommunications and facility pricing arrangements are "state-specific pricing" terms that are not subject to porting under Commitment 7.1 to other states;

(2) Commitment 7.1 does not give a carrier the right to port an agreement from one state to another if that carrier would be barred by Commission rules implementing Section 252(i) of the Telecommunications Act of 1996 from adopting that agreement within the same state; and

(3) Commitment 7.1 does not apply to in-state adoptions of interconnection agreements or in any way supersede Commission rules governing such adoptions.

BACKGROUND

A. Merger Commitment 7.1

As a condition to its December 29, 2006, approval of the merger between AT&T Inc. and BellSouth Corporation, this Commission accepted certain commitments offered by AT&T Inc. and BellSouth. *In re AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, 22 FCC Rcd 5662, ¶ 222 (2007). One of those commitments, Commitment 7.1, is among a group of commitments set forth under the bold-face heading "**Reducing Transaction Costs Associated with Interconnection Agreements.**" *Id.* Appendix F, at 149.[2] The text of that commitment provides (*id.*):

> 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.

This commitment was derived from a package of proposals submitted by a collaboration of cable operators seeking to "[r]educe the [c]ost and [d]elay of [n]egotiating interconnection agreements."[3] The cable operators claimed that they experienced delays and increased costs associated with negotiating interconnection agreements and argued that allowing them, *inter*

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[2] The merger commitments are grouped into several categories. Merger Commitment 7.1 is item 1 in the seventh category.

[3] *See Ex Parte Presentation* - WC Docket No. 06-74, AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, filed by Michael Pryor, Mintz Levin (Sept. 27, 2006) at p. 11. *See also* Notice of Oral *Ex Parte* Presentation - WC Docket No. 06-74, AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, filed by Michael H. Pryor, Mintz Levin (October 3, 2006) at p. 2; Comments On AT&T's Proposed Conditions, filed by Advance/Newhouse Communications, Cablevision Systems Corporation, Charter Communications, Cox Communications, and Insight Communications Company (October 24, 2006) at pp. 8-11.

alia, to port interconnection agreements across state boundaries, subject to technical feasibility and state-specific pricing and performance plans, would allow them to enter the market more quickly.[4] Some CLECs also supported this proposal, repeating the cable operators' argument that it would reduce the burdens associated with negotiating interconnection agreements.[5] Notably all proponents of this commitment recognized that it should not apply to state-specific pricing, and the commitment on its face specifically excludes state-specific pricing from its scope.

B. The Kentucky Bill-and-Keep Arrangement and Facility Pricing Arrangement.

The dispute here centers on whether the porting commitment set forth above applies to pricing provisions contained in an interconnection agreement between AT&T Kentucky (f/k/a BellSouth) and two Sprint-affiliated entities: a competing local exchange carrier (identified in the agreement as "Sprint CLEC") and a commercial mobile radio service ("CMRS") provider (identified in the agreement as "Sprint PCS"). The Kentucky ICA is the Kentucky version of a nine-state agreement entered in 2001 between the former BellSouth ILECs, Sprint CLEC and Sprint PCS to govern the three parties' relationships in the nine southeastern states in the former

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[4] *Ex Parte Presentation* - WC Docket No. 06-74, AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, filed by Michael Pryor, Mintz Levin (Sept. 27, 2006) at p. 12.

[5] Some CLECs also argued that the proposal would help address the ostensible loss of benchmarking capabilities that would result from the merger. They claimed that allowing CLECs to adopt interconnection agreements across state lines "would permit CLECs to preserve at least for the duration of the interconnection agreement the best respective practices of either of the merged companies in any state." *See, e.g,* December 22, 2006 *ex parte* letter submitted jointly by Access Point, Inc., CAN Communications Services, Inc., Cavalier Telephone, LLC, DeltaCom, Inc., Florida Digital Network Inc. d/b/a FDN Communications, Inc., Globalcom Communications, Inc., and Pac-West Telecomm, Inc. In so arguing, CLECs pointed to analogous merger conditions from the Ameritech/SBC and Bell Atlantic/GTE mergers as justification and precedent for the proposed porting request. *See* Comments of CompTel, Oct. 25, 2006 at 25-26 ("In prior BOC to BOC mergers, the loss of the competitive benchmarking tool has been partially offset by enabling CLECs to "port" interconnection agreements from the region of one of the merging parties to the region of the other merging party.").

BellSouth region. Although that agreement expired in 2004, and although Sprint Nextel and AT&T had all but finalized a successor agreement as of the closing date of the AT&T/BellSouth merger, Sprint Nextel was able to take advantage of another merger commitment (Commitment 7.4) to obtain a three-year extension of that seven-year old agreement. On November 7, 2007, the Kentucky Public Service Commission approved this extension.

The bill-and-keep provision at issue appears in Kentucky ICA Attachment 3, Section 6.1, which governs reciprocal compensation for call transport and termination for: CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic. When BellSouth, Sprint PCS and Sprint CLEC entered into that agreement, their traffic was roughly balanced throughout the nine-state BellSouth region, as was the balance of compensation payments for such traffic. In light of that balance, the three parties agreed that the reciprocal compensation arrangement in the BellSouth states would be bill-and-keep. Indeed, Section 6.1 expressly states that the bill-and-keep arrangement set forth therein would be subject to termination if either Sprint PCS or Sprint CLEC opted into another interconnection arrangement that provides for reciprocal compensation insofar as that would upset the balance on which the agreement was premised.

> 6.1 Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic is the result of negotiation and compromise between BellSouth, Sprint CLEC and Sprint PCS. The Parties' agreement to establish a bill and keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic. Specifically, Sprint PCS provided BellSouth a substantial cost study supporting its costs. As such the bill and keep arrangement is contingent upon the agreement by all three Parties to adhere to bill and keep. Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between BellSouth and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by BellSouth.

Consistent with the parties' treatment of their reciprocal compensation obligations to each other as a wash in light of the balance of traffic, the parties also agreed to share equally the

cost of interconnection facilities between BellSouth and Sprint PCS switches within BellSouth's service area. Accordingly, the Kentucky ICA provides, in pertinent part, as follows for Sprint PCS and for Sprint CLEC, respectively:

> The cost of the interconnection facilities between BellSouth and Sprint PCS switches within BellSouth's service area shall be shared on an equal basis. (Section 2.3.2)
>
> For two-way interconnection trunking that carries the Parties' Local and IntraLATA Toll Traffic only, excluding Transit Traffic, and for the two-way Supergroup interconnection trunk group that carries the Parties' Local and IntraLATA Toll Traffic, plus Sprint CLEC's Transit Traffic, the Parties shall be compensated for the nonrecurring and recurring charges for trunks and facilities at 50% of the applicable contractual or tariff rates for the services provided by each Party. (Section 2.9.5.1)

C. Sprint's Attempt To Transplant The Kentucky Arrangement Out Of Its Highly Fact-Specific Context.

In 2005, Sprint acquired Nextel (another wireless carrier) and became Sprint Nextel. On October 26, 2007, Sprint Nextel filed a Complaint and Request for Expedited Ruling in the Public Utilities Commission of Ohio, seeking to "port" the Kentucky ICA (including its bill-and-keep and facility pricing arrangement) to Ohio.[6] Sprint Nextel sought, moreover, not only to port BellSouth-specific pricing arrangements outside the BellSouth area, but to couple that port with a critical substantive change to the Kentucky arrangement, by proposing to drastically change the mix of parties – and thus, the balance of traffic to be exchanged – that would be subject to bill-and-keep and the 50/50 facility pricing arrangement. Specifically, the Ohio Complaint sought to add other affiliates, including Nextel, to the combination of one Sprint CLEC and one Sprint CMRS provider on which the Kentucky agreement was founded.

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[6] *In re Carrier-to-Carrier Complaint and Request for Expedited Ruling of Sprint Commun's Co. v. Ohio Bell Tel. Co. d/b/a AT&T of Ohio, Relative to the Adoption of an Interconnection Agreement*, Case No. 07-1136-TP-CSS (Ohio Pub. Util. Comm'n filed Oct. 26, 2007)(Ohio Complaint).

On November 20, 2007, Sprint Nextel sent AT&T a letter indicating that Sprint Nextel affiliates wished to "port" the Kentucky ICA to other states served by AT&T ILECs.[7] Although the precise legal entities differ between states, the linchpin of Sprint's proposal was its attempt to port the BellSouth bill-and-keep arrangement and facility pricing arrangement with Sprint PCS and Sprint CLEC to other Sprint affiliates in non-BellSouth states, and to add Nextel to the mix of parties to the arrangement. Sprint Nextel's transparent purpose was arbitrage. On December 13, 2007, AT&T sent Sprint Nextel a letter indicating that Sprint Nextel's November 20 request was improper and asking Sprint Nextel to identify the one CMRS provider that would be the party to the port in order for AT&T to process the request.[8]

Notwithstanding AT&T's response, in December 2007 and early January 2008 Sprint Nextel initiated proceedings mirroring Sprint Nextel's Ohio Complaint (described above) in the 12 other legacy AT&T states.[9] Together with Ohio, those proceedings are now ongoing in all of

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[7] See Exhibit 1.

[8] See Exhibit 2. Although Commitment 7.1 does not permit Sprint Nextel to port any state-specific pricing arrangement – even to the same entities – AT&T was particularly concerned, as a practical matter, with Sprint Nextel's attempt to add affiliates whose traffic was out of balance with AT&T. AT&T's response accordingly focused on this aspect of Sprint Nextel's proposal.

[9] See *Sprint Commun's Co. v. Sw. Bell Tel. Co. d/b/a AT&T Arkansas*, Docket No. 07-161-C (Ark. Pub. Serv. Comm'n filed Dec. 20, 2007); *Application of Sprint Commun's Co. et al. for Comm'n Approval of an Interconnection Agreement with Pacific Bell Tel. Co. d/b/a AT&T California pursuant to the "Port-In Process" Voluntarily Created and Accepted by AT&T Inc. as a Condition of Securing Federal Commun's Comm'n Approval of AT&T Inc.'s Merger with BellSouth Corp.*, Application No. 07-12-017 (Cal. Pub. Util. Comm'n filed Dec. 20, 2007); *Application of Sprint Commun's Co. et al. for An Order Compelling The Southern New England Bell Tel. Co. d/b/a AT&T Connecticut to Enter an Interconnection Agreement on Terms Consistent with Federal Commun's Comm'n Orders*, Docket No. 07-12-19 (Conn. Dep't of Pub. Util. Control filed Dec. 14, 2007); *Sprint Commun's Co. v. Illinois Bell Tel. Co. d/b/a AT&T Illinois*, Docket No. 07-0629 (Ill. Comm. Comm'n filed Dec. 28, 2007); *Sprint Commun's Co. v. Indiana Bell Tel. Co. d/b/a AT&T Indiana*, Cause No. 43408 (Ind. Util. Reg. Comm'n filed Dec. 19, 2007); *Sprint Commun's Co. v. Sw. Bell Tel. Co. d/b/a AT&T Kansas*, Docket No. 08-SWBT-602-COM (Kan. Corp. Comm'n filed Dec. 26, 2007); *Complaint of Sprint Commun's Co. et al. against Michigan Bell Tel. Co. d/b/a AT&T Michigan*, Case No. U-15491 (Mich. Pub. Serv. Comm'n filed Dec. 21, 2007); *Sprint Commun's Co. v. Sw. Bell Tel. Co. d/b/a AT&T Missouri*, Case No. TC-2008-0182 (Mo. Pub. Serv. Comm'n filed Dec. 10, 2007); *Sprint Commun's Co. v. Nevada Bell Tel. Co. d/b/a AT&T Nevada*, Docket No. 08-01001 (Nev. Pub. Util. Comm'n filed Jan. 2, 2008); *Application of Sprint Commun's Co. et al. for Approval of Interconnection Agreement with AT&T Oklahoma*, Cause No.

the states that were served by AT&T ILECs prior to the merger between AT&T Inc. and BellSouth Corp. In addition, Nextel, which is not a party to the BellSouth agreement, has initiated proceedings in all nine AT&T ILEC states in the former BellSouth region, seeking to adopt the agreement in each state pursuant to Commitment 7.1.[10] In those proceedings, Nextel

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PUD 200700454 (Okla. Corp. Comm'n filed Dec. 14, 2007); *Sprint's Complaint for Post-Interconnection Dispute Resolution with Sw. Bell Tel. Co., d/b/a AT&T Texas, Regarding Adoption of Interconnection Agreement Pursuant to Merger Conditions*, Docket No. 35112 (Tex. Pub. Util. Comm'n filed Dec. 12, 2007); *Sprint Commun's Co. v. Wisconsin Bell, Inc. d/b/a AT&T Wisconsin*, Docket No. 6720-TI-211 (Wisc. Pub. Serv. Comm'n filed Dec. 19, 2007).

[10] See *Nextel South Corp. Notice of Adoption of Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. TBD (Al. Pub. Serv. Comm'n filed June 26, 2007); *NPCR, Inc. Notice of Adoption of Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. TBD (Al. Pub. Serv. Comm'n filed June 26, 2007); *Notice of Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 200l,* Docket No. 070368-TP (Fl. Pub. Serv. Comm'n filed June 8, 2007); *Notice of Adoption by Nextel South Corp and Nextel West Corp., (collectively "Nextel") of the Existing "Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 200l,* Docket No. 070369-TP (Fl. Pub. Serv. Comm'n filed June 8, 2007); *Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Georgia d/b/a AT&T Southeast,* Docket No. 25430-U (Ga. Pub. Serv. Comm'n filed June 21, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Georgia d/b/a AT&T Southeast,* Docket No. 25431-U (Ga. Pub. Serv. Comm'n filed June 21, 2007); *Notice of Adoption by Nextel West Corp. ("Nextel") of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 2001*, Case No. 2007-00255 (Ky. Pub. Serv. Comm'n filed June 21, 2007); *Notice of Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 2001*, Case No. 2007-00256 (Ky. Pub. Serv. Comm'n filed June 21, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Louisiana d/b/a AT&T Southeast* Docket No. U-30185 (La. Pub. Serv. Comm'n filed June 26, 2007); *Petition for Approval of Nextel Partners' Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Louisiana d/b/a AT&T Southeast* Docket No. U-30186 (La. Pub. Serv. Comm'n filed June 26, 2007); *NPCR, Inc. ("Nextel Partners") Petition for Adoption of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.* Docket No. 2007-UA-316 (Ms. Pub. Serv. Comm'n filed June 28, 2007); *Nextel South Corp. ("Nextel") Petition for Adoption of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. 2007-UA-317 (Ms. Pub. Serv. Comm'n filed June 28, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T North Carolina d/b/a AT&T Southeast* Docket No. P-55, Sub 1710 (NC Pub. Util. Comm'n filed June 22, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Commun's L.P. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast* Docket No. 2007-255-C (SC Pub.

maintains that even if it would not be permitted to adopt the BellSouth agreement pursuant to Section 252(i) of the Telecommunications Act of 1996 (which it would not, because AT&T's cost of providing the agreement to Nextel would be greater than AT&T's cost of providing the agreement to the original parties[11]) it can nonetheless adopt the agreement pursuant to Commitment 7.1, because Commitment 7.1 is, in Nextel's view, not subject to the limitations the Commission has applied to Section 252(i).[12]

In contrast with the rough balance of traffic and compensation payments that prevailed between BellSouth and Sprint CLEC and Sprint PCS under the BellSouth agreement, the AT&T ILECs in the 13 legacy AT&T states terminate much more traffic for the Sprint Nextel companies in the aggregate than the Sprint Nextel companies terminate for the AT&T ILECs in those states. As a result, if Sprint Nextel were permitted to port the bill-and-keep arrangement in the BellSouth agreement pursuant to Commitment 7.1, Sprint Nextel would be getting a free ride for every one of the millions of minutes of traffic that the AT&T ILECs terminate for Sprint/Nextel that is in excess of the minutes of traffic that Sprint Nextel terminate for the AT&T ILECs. Likewise, Sprint Nextel make much more relative use of the interconnection facilities

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Serv. Comm'n. filed June 28, 2007); *Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement Between Sprint Commun's L.P. et al., and BellSouth Telecommun's, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast* Docket No. 2007-256-C (SC Pub. Serv. Comm'n. filed June 28, 2007); *Nextel South Corp.'s Notice of Election of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. 07-00161 (Tn. Reg. Auth. filed June 21, 2007). *NPCR, Inc. d/b/a Nextel Partners' Notice of Election of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.,* Docket No. 07-00162 (Tn. Reg. Auth. filed June 21, 2007).

[11] 47 C.F.R. § 809(b) provides that an incumbent LEC's obligation to make available to any requesting telecommunications carrier any agreement to which the incumbent LEC is a party that is approved by a state commission pursuant to Section 252 of the 1996 Act "shall not apply where the incumbent LEC proves to the state commission that . . . [t]he costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement."

[12] In the proceedings in the former BellSouth region, Nextel is also seeking, in the alternative, to adopt the BellSouth agreement pursuant to Section 252(i).

between the parties' switches than did Sprint PCS and Sprint CLEC, so that if AT&T were required to share equally with Sprint Nextel the price of those facilities in the legacy AT&T ILEC states, AT&T would be effectively subsidizing Sprint Nextel's use of those facilities through an economically irrational pricing arrangement.

DISCUSSION

I. THE COMMISSION SHOULD DECLARE THAT THE KENTUCKY BILL-AND-KEEP ARRANGEMENT AND THE KENTUCKY FACILITY PRICING ARRANGEMENT ARE STATE-SPECIFIC PRICING ARRANGEMENTS THAT ARE NOT ELIGIBLE FOR PORTING UNDER MERGER COMMITMENT 7.1.

As is clear from its heading (*see supra* at p. 3), Commitment 7.1 was intended as a procedural mechanism to "Reduc[e] Transaction Costs Associated with Interconnection Agreements" by allowing carriers to "port" an interconnection agreement from one AT&T/BellSouth state to another without the need for a new negotiation and arbitration. It was never intended to allow CLECs to impose pricing arrangements that apply in one state on the incumbent of another state. In fact, although AT&T's competitors (and other parties) were not shy about asking for the moon and the stars in the AT&T/BellSouth merger proceeding, and although the record of that proceeding reflects a host of requests for merger conditions, *no* party even *asked* for the scheme that Sprint Nextel seeks to impose now, and for good reason: to allow the porting of bill-and-keep arrangements and pricing formulas for interconnection facilities would turn Commitment 7.1 into a vehicle for economically irrational pricing and arbitrage. Unfortunately, that is exactly what Sprint has in mind.

A. Bill-and-Keep Is A State-Specific Pricing Plan That Is Not Subject To Porting Under Merger Commitment 7.1.

The plain language of Commitment 7.1 bars Sprint's scheme. It expressly excludes "state-specific pricing . . . plans" from the porting commitment. The bill-and-keep arrangement at issue is a state-specific "pricing plan." It sets a price – zero – for the transport and termination

of traffic by each party. Likewise, the 1996 Act classifies bill-and-keep arrangements as a form of pricing plan, as one of the "*Pricing* Standards" governed by Section 252(d). 47 U.S.C. § 252(d) (emphasis added). Subsection (2) of that Section addresses "*Charges* for transport and termination of traffic."[13] Subsection 252(d)(2)(A)(i) provides that such charges are to "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[14] Subsection 252(d)(2)(B)(i) then adds that the general provisions regarding reciprocal compensation charges do not preclude "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations," a category that "include[es] arrangements that waive mutual recovery (*such as bill-and-keep arrangements*)."[15] Simply put, the Act recognizes that bill-and-keep is simply one method to address "charges" for the "recovery of costs," just like any other pricing plan governed by the Act's "Pricing Standards."

It is equally plain that the pricing arrangement here is "state-specific." The arrangement was premised on a BellSouth study of the balance of traffic and payments among the contracting entities *within the nine BellSouth states*. This pricing arrangement is thus ineligible for porting outside those states under the plain terms of Commitment 7.1.

That bill-and-keep arrangements are inherently state-specific pricing arrangements, and thus ineligible for porting under Commitment 7.1 is further underscored by the 1996 Act and the Commission's rules implementing the Act. The Act requires that reciprocal compensation arrangements "provide for the mutual and reciprocal recovery" of costs "by *each* carrier" and it contemplates bill-and-keep only as an arrangement to "afford the *mutual* recovery of costs

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13 *Id.* at § 252(d)(2) (emphasis added).

14 *Id.* at § 252(d)(2)(A)(i).

15 *Id.* at § 252(d)(2)(B)(i) (emphasis added).

through the *offsetting* of *reciprocal* obligations."[16] The Act thus prevents a requesting carrier (or a state commission) from forcing an incumbent LEC to participate in a highly unbalanced exchange of traffic where it does not recover its costs and where the parties' obligations are neither truly "reciprocal" nor "offsetting." Likewise, this Commission's rules implementing the 1996 Act limit the imposition of bill-and-keep arrangements to the context where "the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so."[17] Because a state may require bill-and-keep only for traffic that is roughly balanced, bill-and-keep is *necessarily* a state-specific pricing arrangement. Traffic that is balanced in one state may not be balanced in another. It is up to each state to weigh the evidence.

B. The Facility Pricing Arrangement in the Kentucky ICA Is Also A State-Specific Pricing Plan That Is Not Subject To Porting Under Merger Commitment 7.1.

Facility pricing arrangements, no less than bill and keep arrangements, also are state specific pricing arrangements that are not subject to porting under Commitment 7.1. A facility pricing arrangement is, like bill and keep, a formula for determining the price that each party pays for interconnection facilities. And, just as plainly, the facility pricing arrangement in the Kentucky ICA is "state-specific." As one would expect, the arrangement was premised on a Bellsouth study of the flow of interconnection traffic *within the nine BellSouth states*. It thus represents a state-specific pricing formula that is ineligible for porting outside those states under the plain terms of Commitment 7.1.

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[16] 47 U.S.C. § 252(d)(2)(A)(i), (B)(1) (emphasis added).

[17] 47 C.F.R. § 51.713(b).

Indeed, it would be completely antithetical to the purpose of Commitment 7.1 to treat facility pricing arrangements as anything other than state-specific pricing. The facility pricing arrangements were incorporated into the Kentucky ICA because, based on traffic flows between the BellSouth ILECs, on the one hand, and Sprint PCS and Sprint CLEC, on the other, that arrangement was economically rational and efficient. Forcing BellSouth to agree to the same arrangement elsewhere and/or with other Sprint Nextel affiliates with different traffic mixes, however, necessarily leads to economically *irrational and inefficient* pricing. Surely Commitment 7.1 was not intended to require such absurd results.

The Commission should make clear that Merger Commitment 7.1 cannot be used to obtain the illicit subsidy that Sprint Nextel seeks.

C. Merger Commitment 7.1 Does Not Entitle a Carrier to Port an Agreement to Another State When it Would be Ineligible Under Commission Rules to Adopt that Agreement in the Same State.

Each of the AT&T ILECs has a general obligation under Section 252(i) of the Telecommunications Act of 1996 to make available to any requesting carrier any interconnection agreement to which it is a party.[18] This Commission has ruled that the obligation

> shall not apply where the incumbent LEC proves to the state commission that . . . [t]he costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement.

47 C.F.R. § 51.809(b). The rationale of Rule 809(b) is obvious: A general provision that allows requesting carriers to adopt an existing agreement, rather than negotiating and arbitrating an

[18] Section 252(i) of the 1996 Act provides, "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section [252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). Although Section 252(i) speaks in terms of making available "any interconnection, service, or network element," the Commission has ruled that a requesting carrier that seeks to make an adoption under Section 252(i) may not adopt part of an interconnection agreement, but instead must make an adoption on an "all or nothing" basis. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, 19 FCC Rcd 13494 (rel. July 13, 2004).

agreement of their own, cannot properly be applied to contract provisions that, if adopted, would impose costs on the ILEC in excess of the costs the ILEC incurs to perform the original agreement.

Merger Commitment 7.1 does not nullify this limitation on interconnection agreement adoptions. Indeed, to read the commitment otherwise would result in the absurd situation in which a carrier in, for example, Ohio could port an interconnection agreement approved in, for example, Florida, even though a carrier in Florida could not adopt the agreement under Section 252(i). Alternatively, this reading could effectively eviscerate Rule 809(b) altogether – even for in-state adoptions – by permitting carriers to end-run around that rule through a two-step process: specifically, and to use the previous example, a carrier in Ohio with an affiliate in Florida could port a Florida agreement not available for adoption in Florida under Commission rules from Florida to its affiliate in Ohio and then back to Florida, thereby accomplishing through two steps what Commission rules prohibit that carrier from accomplishing in one step. Merger Commitment 7.1 should not be read to allow such absurd results. Indeed, those who proposed or advocated for Commitment 7.1 failed even to mention the substantive limits in Rule 809(b) in their advocacy, much less present a case that those limits were a barrier to competition or should otherwise be superseded. To the contrary, the proponents of Commitment 7.1, *which did not include Sprint,* consistently presented this commitment as a means of extending in-state porting rights to out-of-state agreements. Some of them argued that the commitment would thereby reduce administrative costs by expanding the number of agreements available for adoption; a few argued that the commitment would also ameliorate the ostensible loss of benchmarking opportunities. No one suggested that the commitment should be read to confer broader out-of-state adoptions right than were sanctioned under Commission rules

for in-state adoptions. Sprint Nextel's claim that Commitment 7.1 repealed those rules *sub silentio* should thus be rejected.

Under section 51.809(b) of the Commission's rules, a local exchange carrier is not obligated to make available to a requesting telecommunications carrier an interconnection agreement if the costs of providing that agreement to the requesting carrier exceed the costs of providing that agreement to the carrier with which it was originally negotiated. Here, Sprint Nextel seeks to port an interconnection agreement under circumstances that would result in a significant increase in costs to AT&T, both interconnection costs, by virtue of the uncompensated costs of terminating for free Sprint Nextel traffic that is in excess of the traffic Sprint Nextel terminates for AT&T, and interconnection facility costs, by virtue of a 50/50 allocation of costs that, if rationally allocated in accordance with the parties' actual usage of the facilities, would be borne predominantly by Sprint Nextel. Under section 51.809(b), which must necessarily apply to out-of-state ports, just as it applies to in-state adoptions under Section 252(i), Sprint Nextel may not effect that result.

D. Merger Commitment 7.1 Does Not Entitle a Carrier to "Port" an Agreement In-State That it Cannot Adopt Under Section 252(i) Pursuant to The Commission's Rules.

Finally, Nextel cannot properly be permitted to avoid section 51.809(b) of the Commission's rules by "porting" pursuant to Commitment 7.1 an in-state interconnection agreement. As explained above, Nextel has initiated proceedings in the nine former BellSouth ILEC states, seeking to opt into the BellSouth agreement between the AT&T ILECs and Sprint CLEC and Sprint PCS. In those proceedings, Nextel contends it should be permitted to adopt those agreements in-state pursuant to Section 252(i), but also contends, in case adoption under Section 252(i) is prohibited by section 51.809(b) (as it should be), that Merger Commitment 7.1 permits it to make an in-state adoption without regard to the limitations the Commission has

recognized for Section 252(i). This would be a truly absurd result. Plainly, no one – not AT&T, not the Commission, and not the CLEC and cable operator proponents of the commitment, intended for Merger Commitment 7.1 to override or displace Section 252(i) for in-state adoptions. Certainly, no commenter proposed such a thing. The intent was to permit adoptions, which are available only in-state under Section 252(i), to cross state lines – not to change the rules for in-state adoptions.

II. EXPEDITED RESOLUTION OF THESE ISSUES IS ESSENTIAL TO PREVENT STATE COMMISSIONS FROM USURPING THIS COMMISSION'S JURISDICTION TO INTERPRET AND ENFORCE THE MERGER COMMITMENT.

The foregoing discussion makes clear that the Commission should reject any interpretation of Merger Commitment 7.1 that would allow Sprint Nextel to port the Kentucky bill-and-keep arrangement and facility pricing arrangement out of the states – and the specific three-carrier factual context – for which those provisions were developed. The need for a prompt Commission ruling is equally clear.

Even now, Sprint Nextel is pressing the state commissions in the 13 legacy AT&T ILEC states to resolve this issue, and Nextel is pressing the state commissions in the nine legacy BellSouth ILEC states to resolve Nextel's related request to adopt the AT&T/Sprint CLEC/Sprint PCS agreement within each state under Merger Commitment 7.1. Absent prompt action by this Commission, there is a substantial risk that some or all of the states that now have the dispute before them will decide to step into this Commission's shoes and try to resolve the parties' dispute for themselves. But *this* Commission is the one that should be resolving disputes about the meaning and intent of the merger commitment that it approved. The states are not as well suited to resolve those disputes, and the intervention of state commissions runs the risk that states will issue conflicting decisions that would take a great deal of time and judicial resources

to untangle. That result would, in and of itself, conflict with the 22-state nature of the merger commitment, and its true intent of reducing transaction costs of negotiation and arbitration.

Worse, there is always the risk that one or more states could issue decisions that conflict with this Commission's intent. The result would be a new scheme of regulatory arbitrage – after this Commission has gone to a great deal of trouble to eliminate such schemes, and at a time when this Commission is attempting to develop comprehensive reform. Other carriers may attempt to further spread that scheme. The Commission should act now to nip Sprint Nextel's attempted arbitrage in the bud.

Dovetailing with the need for prompt action, the dispute here is also eminently suited for expedited resolution. As demonstrated above, the issues between the parties can be resolved from the plain and express terms of a single merger commitment and of the specific contractual pricing arrangements that Sprint Nextel is trying to port. And of course, this Commission can quickly decide what *it* intended in approving the merger just over a year ago. There is no need for extensive evidence-gathering or fact-finding. Accordingly, the Commission can and should resolve this Petition on an expedited basis.

CONCLUSION

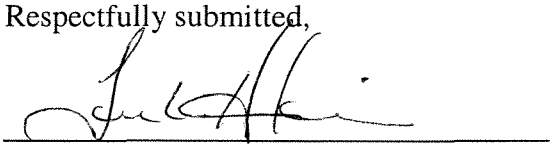
For the reasons set forth above, the Commission should grant the AT&T ILECs' request for expedited resolution, and declare that

(1) bill-and-keep arrangements for the transport and termination of telecommunications and facility pricing arrangements are "state-specific pricing" terms, not subject to porting under Commitment 7.1 to other states;

(2) Commitment 7.1 does not give a carrier the right to port an agreement from one state to another if that carrier would be barred by Commission rules implementing Section 252(i) of the Telecommunications Act of 1996 from adopting that agreement within the same state; and

(3) Commitment 7.1 does not apply to in-state adoptions of interconnection agreements or in any way supersede Commission rules governing such adoptions.

Respectfully submitted,



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Washington, D.C. 20036
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Counsel for the AT&T ILECs

February 5, 2008

EXHIBIT 1

Sprint
Together with NEXTEL

Sprint Nextel
6330 Sprint Parkway - KSOPHA0310
Overland Park, KS 66251
Office: (913) 762-4200 Fax: (913) 762-0104
Keith.kassien@sprint.com

Keith Kassien
Manager - Access Solutions

November 20, 2007

Electronic and Overnight mail

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

Mr. Randy Ham, Assistant Director
AT&T Wholesale
8th Floor
600 North 19th Street
Birmingham, Alabama 35203

Ms. Lynn Allen-Flood
AT&T Wholesale - Contract Negotiations
675 W. Peachtree St. N.E.
34S91 Atlanta, GA 30375

Re: Adoption of the Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P. and Sprint Spectrum L.P. dated January 1, 2001.

Dear Kay, Randy and Lynn:

The purpose of this letter is to notify the AT&T Corporation incumbent local exchange entities operating in the former SBC legacy territory ("AT&T) that the wireless and CLEC subsidiaries of Sprint Nextel Corporation ("Sprint Nextel") are exercising their right to adopt the "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001 ("Sprint ICA") as amended, filed and approved in the 9 legacy BellSouth states and extended in Kentucky. Sprint Nextel exercises this right pursuant to the FCC approved Merger Commitment Nos. 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements" ("Merger Commitments") as ordered in the AT&T/BellSouth merger, WC Docket No. 06-74. The Sprint ICA is available online at AT&T's website at:

http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf

The impacted AT&T incumbent local exchange companies, Sprint CLEC and wireless entities are identified by state in the attached Exhibit 1. The Sprint Nextel entities are wholly owned subsidiaries of Sprint Nextel Corporation. Enclosed is Sprint Nextel's completed AT&T form with

respect to the Merger Commitments, with any language within such forms stricken to the extent such language is not contained within the Merger Commitments.

As AT&T is aware, all relevant state-specific sections are already identified in the Sprint ICA (the "state-specific sections"). Likewise, since the Sprint ICA is already TRRO-compliant and has an otherwise effective change of law provision, there is no issue to prevent AT&T from also making the Sprint ICA available to Sprint Nextel in the states listed on Exhibit 1 pursuant to Merger Commitment No. 2. By correspondence dated July 10, 2007, Sprint Nextel previously notified AT&T in connection with Sprint Nextel's intention to adopt the Sprint ICA in Ohio. We indicated in that letter that we recognized that within these state-specific sections "state-specific pricing and performance plans and technical feasibility" issues may need to be negotiated. We requested you to identify any state orders that AT&T believed constituted "state-specific pricing and performance plans and technical feasibility" issues that affected these state specific sections. We have also verbally indicated to AT&T that we intended to adopt the Sprint ICA in additional states beyond Ohio.

We have heard nothing from you on any proposed contract sections to be modified to address the state-specific sections or any state-specific orders regarding pricing, performance plans or other issues. Rather than address the issues presented, AT&T responded with cancellation letters of not only the existing agreement in Ohio but all of the existing agreements in all of the legacy 13 SBC states.

As you are aware we have filed a complaint in Ohio regarding the substance of our July 10th letter. AT&T recently filed its motion to dismiss. In light of these circumstances, it is apparent to us that AT&T simply is not interested in discussions regarding state-specific issues associated with the adoption of the Sprint ICA in other states. However, if AT&T is willing to discuss negotiations to address state-specific issues, please let us know by November 28, 2007. We understand that these negotiations would not prevent the adoption of the Sprint ICA pursuant to Merger Commitment No. 1 while those negotiations proceed.

Sprint Nextel hereby requests that AT&T provide, upon receipt of this letter, but no later than November 28, 2007, written acknowledgement of adoption of the Sprint ICA within the states listed on Exhibit 1.

Sprint's exercise of its rights under the Merger Commitments is in response to AT&T's termination of the Sprint Nextel interconnection agreements in the referenced states. This letter constitutes the notice we indicated that we would provide in our correspondence dated November 12, 2007. Should AT&T have any questions regarding Sprint Nextel's exercise of these rights under the Merger Commitments, please do not hesitate to call. Thank you in advance for your prompt attention to this matter.

Sincerely,

Keith L. Kassien

Enclosures

Cc: Mr. Jeffrey M. Pfaff, Counsel for Sprint Nextel
Mr. Fred Broughton, Interconnection Solutions

Carrier Contact Notice Information Attachment

All AT&T notices to Sprint Nextel should be sent to the same person(s) at the following addresses as an update to the addresses identified in the interconnection agreement between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P. a/k/a Sprint Communications Company Limited Partnership and Sprint Spectrum L.P. (collectively "Sprint") ("the Sprint ICA").

For Sprint Nextel:

Manager, ICA Solutions
Sprint
P. O. Box 7954
Shawnee Mission, Kansas 66207-0954

or

Manager, ICA Solutions
Sprint
KSOPHA0310-3B268
6330 Sprint Parkway
Overland Park, KS 66251
(913) 762-4847 (overnight mail only)

With a copy to:

Legal/Telecom Mgmt Privacy Group
P O Box 7966
Overland Park, KS 66207-0966

or

Legal/Telecom Mgmnt Privacy Group
Mailstop: KSOPKN0214-2A568
6450 Sprint Parkway
Overland Park, KS 66251
913-315-9348 (overnight mail only)

Exhibit 1

State	AT&T Entity	Sprint Entities
AR	Southwestern Bell Telephone d/b/a AT&T Arkansas	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel South Corp., NPCR, Inc.
CA	Pacific Bell Telephone d/b/a AT&T California	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel of California, Inc.
CT	The Southern New England Bell Telephone d/b/a AT&T Connecticut	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel Communications of the Mid-Atlantic, Inc.
KS	Southwestern Bell Telephone Company d/b/a AT&T Kansas	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp.
IL	Illinois Bell Telephone d/b/a AT&T Illinois	Sprint Communications L.P. d/b/a Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., NPCR, Inc.
IN	Indiana Bell Telephone d/b/a AT&T Indiana	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp, NPCR, Inc.
MI	Michigan Bell Telephone Company d/b/a AT&T Michigan	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp.
MO	Southwestern Bell Telephone Company d/b/a AT&T Missouri	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp.
NV	Nevada Bell Telephone Company d/b/a AT&T Nevada	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel of California, Inc.
OK	Southwestern Bell Telephone Company d/b/a AT&T Oklahoma	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp.
TX	Southwestern Bell Telephone Company d/b/a AT&T Texas	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel of Texas, Inc., NPCR, Inc.
WI	Wisconsin Bell Incorporated d/b/a AT&T Wisconsin	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., NPCR, Inc.

TO: **Contract Management**
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

November 20, 2007

RE: Request to Port Interconnection Agreement

Director – Contract Management:

Pursuant to ICA Merger Commitment 7.1 under "Reducing Transaction Costs Associated with Interconnection Agreements," effective December 29, 2006, associated with the merger of AT&T Inc. and BellSouth Corp. ("ICA Merger Commitment 7.1"), Sprint Nextel Corporation, through its wholly-owned subsidiaries (jointly "Sprint Nextel"), exercises its right to port the existing Interconnection Agreement between BellSouth Telecom, Inc. and Sprint Communication Company L.P. and Sprint Spectrum L.P. in the state of Kentucky to the states of Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Oklahoma, Texas and Wisconsin and, by this notice, requests AT&T, through its incumbent local exchange carriers, to support this exercised right. Sprint Nextel understands that pursuant to ICA Merger Commitment 7.1, porting of the Interconnection Agreement is subject to state-specific pricing and performance plans.

	CARRIER NOTICE CONTACT INFO*
NOTICE CONTACT NAME	(see Attached)
NOTICE CONTACT TITLE	
STREET ADDRESS	
ROOM OR SUITE	
CITY, STATE, ZIP CODE	
E-MAIL ADDRESS	
TELEPHONE NUMBER	
FACSIMILE NUMBER	
STATE OF INCORPORATION	Delaware
TYPE OF ENTITY (corporation, limited liability company, etc.)	Corporation

AT&T already possesses appropriate proof of certification for state requested.

Form completed and submitted by: Fred Broughton

Contact number: 913-762-4070

*** All requested carrier notice contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.**

EXHIBIT 2

Eddie A. Reed, Jr.
Director-Contract Management
AT&T Wholesale Customer Care

AT&T Inc.
311 S. Akard, Room 940.01
Dallas, TX 75202
Fax 214 464-2006

December 13, 2007

Fred Broughton
Contract Negotiator
Sprint Nextel Access Solutions
6330 Sprint Parkway
KSOPHA0310-3B320
Overland Park, KS 66251

Re: Sprint Nextel's Requests to Port Interconnection Agreement

Dear Mr. Broughton:

Your letter and Exhibit 1 dated November 20, 2007 on behalf of Sprint Nextel Corporation ("Sprint Nextel") were received via e-mail on November 20, 2007. The aforementioned letter states that Sprint Nextel, through its wholly-owned subsidiaries listed on Exhibit 1, desires to port the existing three-way Interconnection Agreement (" Kentucky ICA") between BellSouth Communications, Inc. d/b/a AT&T Kentucky, Sprint Communications Company, L.P., and Sprint Spectrum, L.P. in the state of Kentucky to the states of Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Oklahoma, Texas and Wisconsin, pursuant to Merger Commitment 7.1 under "Reducing Transaction Costs Associated with Interconnection Agreements," effective December 29, 2006, associated with the merger of AT&T Inc. and BellSouth Corp. ("Merger Commitment 7.1").

Merger Commitment 7.1 does not permit all the entities listed on Exhibit 1 of your November 20th letter (one (1) CLEC and two (2) or more CMRS providers per state) to port into another state the Kentucky ICA, which is a three-way agreement between an ILEC, one (1) CLEC and one (1) CMRS provider. Merger Commitment 7.1 would permit one (1) CLEC and one (1) CMRS provider per state to port the Kentucky ICA.

To that end, please notify AT&T in writing which CMRS provider will be the porting CMRS provider for each state in which Sprint Nextel requests to port the Kentucky ICA. As soon as AT&T has been notified in writing of Sprint Nextel's election, AT&T will process Sprint Nextel's request and identify the state-specific modifications and modifications for technical feasibility and for technical, network and OSS attributes and limitations, and any other modifications required or permitted in accordance with Merger Commitment 7.1.

Sincerely,

Lena Rylander

Eddie A. Reed, Jr.