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September 17, 2008

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Docket No. 070368-TP (Nextel Partners)**
Docket No. 070369-TP (Nextel)

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion For Reconsideration, which we ask that you file in the captioned dockets.

Copies have been served to the parties shown on the attached Certificate of Service on this day.

Sincerely,

John T. Tyler

cc: All Parties of Record
Gregory Follensbee
E. Earl Edenfield, Jr.
Lisa S. Foshee

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of the Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001	)	Docket No. 070368-TP
Notice of the Adoption by Nextel South Corp. And Nextel West Corp. (collectively "Nextel") Of the Existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001	)	Docket No. 070369-TP
	)	Filed: September 17, 2008

AT&T FLORIDA'S
MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T"), pursuant to Rule 25-22.060, Florida Administrative Code, hereby respectfully requests that the Florida Public Service Commission ("Commission") reconsider a portion of Order No. PSC 08-0584-FOF-TP ("Order") allowing the adoption by NPCR, Inc. d/b/a Nextel Partners and Nextel South Corp., (collectively "Nextel") of the AT&T—Sprint interconnection agreement with an effective date of June 8, 2007. As is established below, the effective date should properly be no earlier than the date upon which the Commission approved the adoption. Indeed, Section 364.162(1) Florida Statutes prohibits interconnection agreements from having retroactive effective dates, because it requires that interconnection rates, terms and conditions be filed with the Commission before they go into effect. *See infra* ¶¶ 16, 17, 21. Furthermore, this Commission has previously ruled, under circumstances not meaningfully distinguishable from those that pertain here, that an

adopted interconnection agreement becomes effective only after the Commission approves it, and not on the date when the adoption request was made. *See infra* ¶¶ 20, 21. Finally, establishing a retroactive effective date for the interconnection agreement is tantamount to retroactive ratemaking and is also therefore prohibited by State law. *See infra* ¶ 33. In support of this Motion AT&T states the following:

BACKGROUND

1. On June 8, 2007, Nextel filed Notice of Adoption of the existing three-party AT&T—Sprint interconnection agreement ("Agreement").

2. On June 28, 2007, AT&T filed a Motion to Dismiss Nextel's adoption, arguing, *inter alia*, that Nextel did not request adoption within a "reasonable period of time" as required by 47 C.F.R. §51.809(c), since the Agreement Nextel sought to adopt had by its express terms expired on December 31, 2004: over two years prior to Nextel's adoption request.[1]

3. On October 16, 2007, AT&T's Motion to Dismiss was denied, and the Commission ordered the Dockets held open pending resolution of Docket No. 070249-TP—which dealt with Sprint's Petition for Arbitration.

4. Docket No. 070249-TP was resolved when AT&T and Sprint filed a Joint Motion on December 4, 2007, to approve an amendment extending the Agreement for three years. The Commission entered an order acknowledging amendment of the Agreement on January 29, 2008. This extension of the Sprint ICA did not, either by its terms or by implication, alter the fact that the Sprint ICA was expired, and therefore not available for adoption, on June 8, 2007 when Nextel gave notice that it wished to adopt the Agreement.

5. Nextel filed a Motion for Summary Final Order in these adoption Dockets on December 26, 2007, and on January 22, 2008, AT&T filed its Response in Opposition.

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[1] *See* AT&T Motion to Dismiss dated June 28, 2007, at 7-10.

6. On June 23, 2008, the Commission denied Nextel's Motion For Summary Final Order and scheduled proceedings under Section 120.57(2), Florida Statutes. The parties subsequently filed position statements, stipulations of fact and legal briefs.

7. Staff reviewed the filings and submitted recommendations to the Commission. During the Commission's Agenda Conference on September 4, 2008, the Commission voted on Staff Recommendations.

8. Staff Recommendations included the following Recommendation on "**Issue 4**: Should this docket be closed?"

> **Recommendation**: If the Commission approves Nextel's adoption of the Sprint ICA in Issue 1 or Issue 2B, Docket Nos. 070368-TP and 070369-TP should remain open pending the ***filing of the signed adoption between the parties, which should occur no later than 7 days following the Commission's vote***. These dockets should be closed administratively upon issuance of a memo by staff acknowledging the Adoption of the Sprint – AT&T Interconnection Agreement.
>
> If the Commission denies Nextel's adoption of the Sprint ICA in Issue 1 and Issue 2B, Docket Nos. 070368-TP and 070369-TP should be closed upon issuance of the Final Order. (Emphasis added).

9. Upon the vote held during the September 4, 2008 Agenda Conference, the Commission approved Nextel's adoption of the Sprint ICA and approved Staff's Recommendation on Issue 4--thereby requiring the parties to submit signed adoption documents "no later than 7 days following the Commission's vote."

10. Compliance with the language contained in the Commission-approved Issue 4 Recommendation required filing signed adoption documents on or before September 11, 2008.

11. On September 9, 2008, AT&T filed an Expedited Motion To Stay Effectiveness of Commission Vote. In the Motion To Stay, AT&T asserted that by requiring AT&T to execute

and file adoption documents prior to entering a final order (which final order would trigger the Commission Rule 25-22.060(3) 15-day time period during which an aggrieved party may timely file for reconsideration) the Commission was effectively denying AT&T its due process right to seek reconsideration.

12. On the afternoon of September 10, 2008, prior to receiving Commission consideration of its Expedited Motion to Stay, AT&T received the Commission's order approving Nextel's adoption of the Agreement ("Order").

13. On September 11, 2008, signed adoption documents were filed with the Commission.

14. The Commission's September 10, 2008 Order establishes a retroactive effective date of June 8, 2007 for the adoption.

15. Pursuant to Commission Rule 25-22.060, AT&T hereby seeks reconsideration of the portion of Commission Order No. PSC-08-0584-FOF-TPA that establishes the effective date of the adoption.[2]

16. As discussed below, this Commission has previously ruled that an adopted interconnection agreement becomes effective only after the Commission has approved it, and there is no reason – certainly, the Order articulates none – for departing from that sound principle here. Furthermore, imposition of a June 8, 2007, effective rate on the adopted Agreement in this case is prohibited by Florida law. Section 364.162(1) Florida Statutes explicitly provides: **"Whether set by negotiation or by the commission, interconnection and resale prices, rates, terms, and conditions shall be filed with the commission *before their effective date*."**

[2] Although, AT&T maintains that the adoption is improper for all of the reasons asserted within pleadings on the record in these Dockets, this motion addresses only the improper retroactive effective date established in the Commission's Order. AT&T does not waive its right to challenge the adoption itself, or any of its arguments in opposition to the adoption.

(Emphasis added). The earliest date on which the adopted Agreement could possibly be seen as having been filed was September 11, 2008, when the parties filed the signed adoption papers with the Commission. Section 364.162(1) therefore prohibits the establishment of an effective date for the Agreement before September 11, 2008. Moreover, establishing a retroactive effective date of June 8, 2007 constitutes legally impermissible retroactive ratemaking.

ANALYSIS

17. The standard for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering an order. *See Diamond Cab Co. v. King*, 146 So. 2d 889, 891 (Fla. 1962). Here, the Florida statute that requires interconnection rates, terms and conditions to be filed before they become effective was overlooked, as were this Commission's prior rulings that an adopted interconnection agreement becomes effective only after the Commission approves it.

18. Although the Commission states, on page 11 of the Order, that "[w]hen an interconnection agreement is available for adoption under 47 C.F.R. 51.809(a), the adoption is considered *presumptively valid and effective upon receipt of the notice by the adoption party*[,]" the Commission does not cite to, nor can AT&T locate, any Rule whatsoever that expressly or implicitly sets forth or supports such an edict. (Emphasis added). Furthermore, the Order paradoxically states that "[w]ithout objection from the ILEC, the adoption would be acknowledged effective as of the filing date." Order at 11. In the present instance, AT&T strenuously objected to the adoption, and it is difficult to reconcile the "presumptively valid" proposition, espoused by the Commission, with the subsequent "without objection" phrase contained within the same paragraph. If an agreement is truly "valid and effective upon receipt of the notice by the adoption party," the ILEC is not afforded the opportunity to object before the agreement is effective. If the agreement is effective upon receipt of the notice of adoption

presumably the adopting party is able to immediately effectuate terms and conditions contained within the agreement, regardless of whether the terms and conditions are lawfully available to the adopting party, and notwithstanding any valid objections the ILEC may have to the adoption. Being forced to undo such harm--after the fact--would involve costs, and the expenditure of resources that might otherwise be properly preserved. Such a result runs counter to good public policy.

19. The Commission's well-established procedure in cases involving contested adoptions under §252(i) has heretofore been to make adopted agreements effective prospectively—on a going-forward basis after the parties have executed and filed the agreement with the Commission. *See, e.g., In re: Petition for approval of election of interconnection agreement with GTE Florida Inc. pursuant to Section 252(i) of the Telecommunications Act of 1996, by Sprint Communications Company Limited Partnership d/b/a Sprint*, Docket No. 971159, (February 2, 1998). In *GTE*, the Commission permitted Sprint to avail itself of §252(i) to adopt the then existing interconnection agreement between GTE Florida, Inc. and AT&T Communications of the Southern States, Inc. With respect to the effective date of the contested adoption, on page 14 of the Commission's Final Order, the Commission ordered that "**[u]pon filing of the signed agreement, the agreement shall be deemed effective and binding upon the parties**." (Emphasis added).

20. Subsequently, the Commission affirmatively rejected a CLEC's position that its adoption of terms and conditions under § 252(i) should be effective as of the notice of adoption. *MCI Metro Access Transmission Servs, LLC,* Docket No. 000-649-TP, PSC-01-0824-FOF-TP, 2001 WL 460666 (Fla. PSC Mar. 30, 2001), was a decision by the Commission in an interconnection agreement arbitration between MCI WorldCom and BellSouth. One of the

issues in the arbitration was "when WorldCom's request for substitution of terms and conditions from a third party agreement [under Section 252(i)] should become effective." *Id.* at *126. WorldCom argued that when it "elects to adopt a rate, term or condition from another party's interconnection agreement, the effective date should be when WorldCom elects to adopt the term and condition." *Id.* BellSouth, on the other hand, argued that "the effective date for terms and conditions adopted from a third party agreement is the date an amendment is signed by BellSouth and WorldCom." *Id.* The Commission resolved the dispute by holding that the adoption would be effective only upon Commission approval:

> While we agree with BellSouth's position that new terms and conditions cannot become effective until incorporated in writing by both WorldCom and BellSouth, we disagree that the written amendment to the interconnection agreement would become effective as of the date that the parties sign it . . . . Subsection 252(e)(1) [of the Telecommunications Act of 1996] states "Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." Pursuant to Section 252(e)(4), should we fail to approve or reject an agreement adopted by negotiation within 90 days after submission by the parties, the agreement is deemed approved. Therefore, we find that the effective date for these terms and conditions would be the issuance date of the order approving the agreement or, if we fail to act, 90 days after submission of the agreement by the parties for our approval.

Id. at 127.

21. Thus, the Commission's precedents squarely hold that an adopted interconnection agreement becomes effective only after it is approved by the Commission. There is no valid reason to depart from those precedents in this case. Furthermore, the Order includes no explanation for the departure, and that omission itself is contrary to the well-established principle that an administrative agency cannot properly change a practice of the sort at issue here without providing, *at a bare minimum*, an adequate justification for the change. *See, e.g., Courts v. Agency for Health Care Admin.*, 965 So.2d 154, 159 (Fla. Dist Ct. App. 2007) (reversing agency

change in policy for lack of adequate explanation, Court notes its prior holdings that, "if an agency changes a non-rule based policy, it must either explain its reasons for its discretionary action based upon expert testimony, documentary opinions, or other appropriate evidence . . . or it must implement its changed policy or interpretation by formal rule making"); *Velez v. City of Coral Gables,* 819 So.2d 895, 898 (Fla. Dist Ct. App. 2002) ("An administrative agency has the burden of providing a reasonable explanation for inconsistent results based upon similar facts"); *Southern States Utils. v. Florida PSC,* 714 So.2d 1046 (Fla. Dist. Ct. App. 1998) (reversing and remanding PSC rate-making decision where PSC failed to provide adequate explanation for the departure from prior practice, holds that PSC must either give a reasonable explanation for the departure or adhere to its prior practices)..

22. Imposition of a retroactive effective date in this case not only would be an unjustified departure from prior Commission practice, but also would be at odds with a decision by the United States Court of Appeals for the Sixth Circuit. In *BellSouth Telecomm., Inc. v. Southeast Telephone, Inc.,* 462 F.3d 650 (6th Cir. 2006), the Sixth Circuit held, consistent with this Commission's decision in the *WorldCom* arbitration discussed above, that a CLEC's right to adopt an interconnection agreement is conditional and dependent on a state commission's approval, so that the adoption request cannot become final and effective until it is approved. In that case, the Sixth Circuit noted, "At the heart of the dispute lies [the CLEC's] contention . . . that [it] acquired a vested right to adopt [certain provisions in an interconnection agreement] upon filing its notice of intent . . ." *Id.* at 658. The court rejected that contention, reasoning:

> Neither § 252(i) of the Act nor the FCC regulations interpreting it create an unconditional opt-in right or "guarantee" that a CLEC's adoption request will be granted. To the contrary, [the FCC's rules] contemplate a regime under which ILECs retain the ability to challenge opt-in requests . . . These grounds for challenging a CLEC's entitlement to opt-in to an existing agreement would be

> meaningless if, as [the CLEC] and the PSC maintain, [the CLEC's] adoption request became effective (and binding) at the moment that request was filed . . .
>
> [T]he right to adopt the provision of an existing agreement is contingent upon a state commission's determination that such an adoption is proper under the statute (Section 252(i) and the governing regulation . . . If, as [the CLEC] appears to concede, the opt-in result did not become final until approval by the PSC, then the event simply was not completed at the time of filing.

Id. at 658-660. Accordingly, the Sixth Circuit concluded, the CLEC acquired no vested rights upon the filing of its adoption request.

23. For the foregoing reasons, the Agreement cannot properly go into effect until the Commission has approved it. In addition, a separate and independent provision of Florida law effectively prohibits the Agreement from being deemed effective before September 11, 2008 – the date on which the parties filed the signed adoption documents. This Commission has previously acknowledged the statutory requirement that interconnection agreements must be filed with the Commission before they are lawfully effectuated. *See, e.g., In re: Request for arbitration concerning complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc. for resolution of billing disputes*, Docket No. 001097-TP, (April 8, 2002). In *Supra*, the Commission recognized that "as explicit state law... Section 364.162[(1)] *Florida Statues*, provides: "Whether set by negotiation or by the commission, interconnection and resale prices, rates, terms, and conditions **shall be filed with the commission *before their effective date*.**" *Supra*, 2002 Fla. PUC LEXIS 271, *37 (April 8, 2002) (emphasis added). *Ipso facto*, the Agreement in this case cannot be given an effective date before the prices, rates, terms and conditions it contains, as they will govern the relations between Nextel and AT&T, were filed on September 11, 2008.

24. The Commission's well-established practice of making agreements prospectively effective, after filing and Commission approval, is in keeping with a sound interpretation of the Federal Communication Commission's ("FCC") intentions as set forth in its rules and orders. For example, the section 252(i) adoption process allows an ILEC to determine whether or not it objects to a requested adoption. That process necessarily involves the passage of some period of time *after a carrier has requested the adoption* during which the ILEC is allowed to determine whether or not it will object to the adoption. If adoption is valid "upon receipt of the notice by the adoption party," as the Commission has erroneously asserted in the Order, the ILEC's right to analyze a request and object to adoption (as set forth in 47 C.F.R. §51.809(b)) is rendered a nullity. Clearly, the Commission's Order runs contrary to federal law as it erroneously presumes that all adoptions are facially valid and, therefore, completely disregards the federally-mandated right of an ILEC to object to an adoption.

25. The FCC's First Report and Order elucidates the FCC's intention that ILECs be afforded the opportunity to analyze attempted adoptions to determine, on a case-by-case basis, whether or not adoption should be restricted.[3] For example, ILECs are allowed, in accordance with Rule 809(b), to object to adoptions if it would cost more to provide an interconnection, service or element to the adopting carrier, or if the interconnection, service or element would be technically infeasible to provide to the requesting carrier.[4] By definition, that means that the

[3] *See* First Report and Order in the Matter of FCC Docket No. 96-98 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and FCC Docket No. 95-185 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers. For example, paragraphs 1315, 1317, and 1319 each include a discussion evincing the FCC's contemplation of a process that would necessarily involve some time for the ILEC to determine whether or not it objects to an adoption. If adoptions were deemed approved as soon as the ILEC receives a notice of adoption, the ILEC would no longer be afforded the time (plainly contemplated by the FCC) to determine whether or not it objects.

[4] *See* 47 C.F.R. §51.809(b).

ILEC has to be allowed to make an inquiry – very possibly concerning a requesting carrier about which the ILEC knows virtually nothing until it receives the request – into comparative costs and technical issues. To undertake that inquiry, the ILEC must be afforded some period of time after it has received the notice of adoption. As the Sixth Circuit held in the decision discussed above, to deem an adoption request effective as of the date the request is made would render meaningless the ILEC's right to make that inquiry and assert such objections as it might have.

26. Moreover, to deem an adoption request effective as of the date of the request is contrary to the FCC's *explicit* recognition that there will be some delay between request and grant. 47 C.R.F. § 51.809(a) requires the ILEC to make available adopted interconnection agreements "without reasonable delay." Reasonable minds may differ about how much delay is reasonable. Plainly, though, the FCC did not contemplate that adoption requests would be effective immediately. If that were its intent, the FCC would have required ILECs to make adopted provisions available "immediately."

27. The 1996 Act requires state commission approval of an interconnection agreement before it becomes binding. 47 U.S.C. § 252(e). Even when parties to an interconnection agreement have *agreed to* an effective date, an interconnection agreement still cannot lawfully take effect until the Commission approves the interconnection agreement under § 252(e) of the 1996 Act.[5]

28. The fact that Nextel originally requested adoption on June 8, 2007, does not justify an effective date of June 8, 2007. Significantly, in 2000, this Commission stated: "**we note that we have indicated in the past to the FCC that we believe that the ability of a**

[5] *See, e.g., Order No. 4, Complaint of AccuTel of Texas, Inc.*, Docket No. 26581, at 3, 5 (Pub. Utils. Comm'n of Texas, Dec. 13, 2002) (holding that, even if parties agree to an effective date, interconnection agreements cannot become effective before commission approval).

CLEC to obtain the terms and conditions of a pre-existing agreement ends at the expiration of that original agreement."[6] At the time of Nextel's June 8, 2007 request, the underlying Agreement had expired by its original terms and was not available for adoption. As AT&T asserted in its Motion to Dismiss, the request was untimely because by its express terms the Agreement had expired on December 31, 2004.[7] Furthermore, in accordance with federal law, AT&T's obligation to provide an adoption is limited to a "reasonable period of time" after the original contract is approved.[8] The Agreement was, at that time, by its express terms expired, and AT&T and Sprint were only operating under the terms and conditions of the agreement as the parties worked on a new agreement. A party attempting to adopt an expired agreement cannot rationally be said to have requested the adoption within the required "reasonable period of time." There is no valid reason for the Commission to reject the sound principle it has already acknowledged to the FCC—that expired agreements are not available for adoption. Therefore, because the AT&T—Sprint Agreement was expired when Nextel sought adoption on June 8, 2007, that cannot be the proper effective date for the Agreement.

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[6] *See In re: Petition by Global NAPS, Inc. for arbitration of interconnection rates, terms and conditions and related relief of proposed agreement with BellSouth Telecommunications, Inc.* Docket No. 991220-TP (Florida PSC, March 20, 2000) 2000 Fla. PUC LEXIS 347, at *27.

[7] *See* AT&T Motion to Dismiss dated June 28, 2007, at 7-10. AT&T and Sprint subsequently entered into an amendment of the interconnection agreement on December 7, 2007 and thereby amended the term of the agreement. However, that amendment is of no consequence to this analysis because at the time of Nextel's request, June 8, 2007, the agreement was by its express terms expired and the parties were involved in negotiating a new agreement. Moreover, the Commission's subsequent approval on January 29, 2008 of the extension of the agreement between Sprint and AT&T never addressed let alone resolved the issue of whether Sprint's expired agreement was somehow effective to render legitimacy to Nextel's adoption request at the time Nextel filed. On June 8, 2007 there was no agreement for Nextel to adopt. Nextel has yet to renew its request for adoption based on an effective agreement that is appropriately subject to adoption.

[8] In limiting the period of time during which an interconnection agreement can be adopted, 47 C.F.R. §51.809(c) asserts: "[i]ndividual agreements shall remain available for use by telecommunications carriers pursuant to this section **for *a reasonable period of time after the approved agreement is available for public inspection*** under § 252(h) of the Act" (emphasis added).

29. Commissions have found that attempting to adopt an agreement several months *before* expiration is not within "a reasonable period of time." For example, the Georgia Commission has established a bright line test requiring that to be properly adoptable an agreement must have at least six months remaining before expiration.[9] Specifically, in its Recommendation in the Georgia Nextel adoption docket, the Georgia Staff states:

> First, in its September 12, 2007 Order on Petitions, the Commission found that the Sprint agreement was not available for adoption unless and until the expiration date of the Sprint agreement was extended by negotiation or arbitration. This conclusion was based on the Commission's "bright line" test, which establishes that an agreement must have six months or more time remaining before expiration in order for it to be adopted.[10]

Likewise, in two cases from other jurisdictions, *In Re: Global NAPs South, Inc.*, 15 FCC R'cd 23318 (August 5, 1999) ("*Global NAPs One*") and *In re: Notice of Global NAPs South, Inc.*, Case No. 8731 (Md. PSC July 15, 1999) ("*Global NAPs Two*"), a CLEC's request to adopt an interconnection agreement within approximately ten months and seven months, respectively, of each adopted agreement's termination date was found to be beyond the "reasonable period of time" requirement.[11]

30. In *Global NAPs One*, Global NAPs requested adoption of an interconnection agreement approved in 1996. Global NAPs sought adoption of the agreement in August 1998, when the agreement was by its terms set to expire on July 1, 1999. The Virginia State

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[9] *See* Memorandum of Patrick Reinhardt, Telecommunications Unit, Public Service Commission of Georgia, to All Commissioners, dated September 8, 2008, filed in Petition for Approval of NPCR, Inc., d/b/a Nextel Partners' Adoption of the Interconnection Agreement Between Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T Georgia d/b/a AT&T Southeast, Docket No. 25430, at 4.

[10] *Id.*

[11] *See In Re: Global NAPs South, Inc.*, 15 FCC R'cd 23318 (August 5, 1999) *In re: Notice of Global NAPs South, Inc.*, Case No. 8731 (Md. PSC July 15, 1999).

Corporation Commission ("Virginia Commission") denied Global NAP's request because of the limited amount of time remaining under the agreement. As a result, Global NAPs petitioned the FCC for an order preempting the Virginia Commission's decision. The FCC denied Global NAP's petition.[12]

31. Likewise, in *Global NAPs Two*, the Maryland Public Service Commission held that it was unreasonable to allow Global NAPs to adopt a three year interconnection agreement approximately two and a half years into its term.[13]

32. Clearly, Nextel's request to adopt an expired agreement was not a timely request. An untimely request is a valid reason for an ILEC to deny an adoption. Nextel's untimely request, which was a proper basis for AT&T to deny adoption at that time, cannot now provide proper justification for establishing a retroactive effective date of June 8, 2007.[14]

33. Finally, establishing a retroactive effective date amounts to retroactive ratemaking, which is prohibited in Florida. The Florida Supreme Court has long held that "the

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[12] *See Global NAPs One.*

[13] *See Global NAPs Two*

[14] While AT&T believes that any retroactive treatment is inappropriate, contrary to both this Commission's prior practices and decisions, and violates both Florida law and federal law, the earliest arguable date under such an approach could have been no sooner than January 29, 2008, the date that the Commission acknowledged the amendment extending the AT&T--Sprint Agreement by Order No. PSC-08-0066-FOF-TP. Only after the Commission entered the January 29, 2008 Order was the amended Agreement available to other carriers (such as Nextel) for adoption assuming the proper filing and time procedures were followed. The Staff of the Georgia Public Service Commission recommended such an approach to its Commission acknowledging "...in its September 12, 2007 Order on Petition, the [Georgia Public Service] Commission found that the Sprint agreement was not available for adoption unless and until the expiration date of the Sprint agreement was extended by negotiation or arbitration." *See* Memorandum of Patrick Reinhardt, Telecommunications Unit, Public Service Commission of Georgia, to All Commissioners, dated September 8, 2008, filed in Petition for Approval of NPCR, Inc., d/b/a Nextel Partners' Adoption of the Interconnection Agreement Between Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T Georgia d/b/a AT&T Southeast, Docket No. 25430, at pg. 3. For the reasons stated herein, AT&T believes this approach is not appropriate and, if adopted by the Georgia Commission, may be the subject of a petition for reconsideration and/or an appeal; however, it is more defensible from a legal standpoint than a June 7, 2007 effective date.

Commission would have no authority to make retroactive ratemaking orders." *City of Miami v. Florida Public Service Commission*, 73 P.U.R. 3d 369, 208 So.2d 249, 259 (1968) (citing F.S.A. Section 364.14); *See also,* Southern *Bell Telephone v. Florida Public Service Commission*, 453 So.2d 780 (Fla. 1984). Establishing a retroactive effective date equates to retroactive ratemaking because upon the effective date the reciprocal compensation rate of $.0007 that existed between Nextel and AT&T prior to the adoption would be retroactively set at zero. That is so because the AT&T—Sprint Agreement calls for a bill-and-keep arrangement, so that the parties effectively charge a reciprocal rate of zero. Under the Commission's Order that rate would be retroactively and therefore unlawfully applied back to June 8, 2007.

34. In addition to the potential impact on current subscribers of imposing new costs on carriers retroactively (and encouraging carriers in turn to recoup those costs for old services on new customers), the concept of retroactive rate-making is fundamentally unfair and raises due process concerns. Retroactive rate-making, like prohibited *ex post facto* laws, changes the rules after the fact and alters the legal impact of conduct after that conduct has occurred.

35. The Commission has not provided an adequate basis for establishing a retroactive effective date—there is none. Upon reconsideration, the Commission should revoke the June 8, 2007 effective date, and should not establish an effective date any earlier than the date upon which the Commission approved the adoption.

WHEREFORE, for these reasons, AT&T requests that the Commission reconsider its finding that the adoption is effective as of June 8, 2007.

Respectfully submitted, this 17th day of September, 2008.

BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T FLORIDA

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CERTIFICATE OF SERVICE
Docket Nos. 070368-TP and 070369-TP

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 17th day of September, 2008 to the following:

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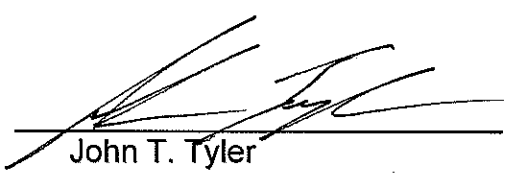

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