

Exhibit No:
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Witness: J. Scott McPhee
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Sponsoring Party: Southwestern Bell
Telephone Company, d/b/a/
AT&T Missouri
Case No: CO-2009-0239

SOUTHWESTERN BELL TELEPHONE COMPANY,
d/b/a AT&T MISSOURI

CASE NO. CO-2009-0239

DIRECT TESTIMONY

OF

J. SCOTT McPHEE

San Ramon, California
February 4, 2009

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

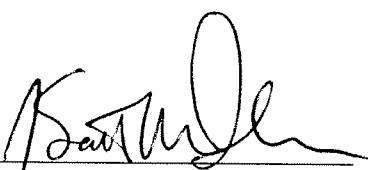
Verified Petition of Sprint Communications Company,)
L.P., Sprint Spectrum, L.P., and Nextel West Corp. For) Case No. CO-2009-0239
Arbitration of Interconnection Agreements with)
Southwestern Bell Telephone Company d/b/a AT&T)
Missouri.

AFFIDAVIT OF J. SCOTT MCPHEE

STATE OF CALIFORNIA)
CITY OF SAN RAMON) SS

I, J. Scott McPhee, of lawful age, being duly sworn, depose and state:

1. My name is J. Scott McPhee. I am presently Associate Director – Wholesale Regulatory Policy.
2. Attached hereto and made a part hereof for all purposes is my direct testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.



J. Scott McPhee

Subscribed and sworn to before this 4th day of February, 2009

Notary Public

My Commission Expires: _____

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–5 to be completed only by document signer[s], *not* Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

State of California

County of Contra Costa

Subscribed and sworn to (or affirmed) before me on this

4th day of February, 2009, by
Date Month Year

(1) J. Scott McPhee
Name of Signer

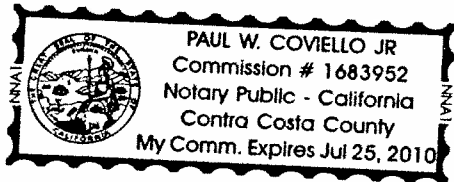
proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) **A**

(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)

Signature Paul W. Coviello Jr.
Signature of Notary Public



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OPTIONAL

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I.
INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San Ramon, California, 94583.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am an Associate Director – Wholesale Regulatory Policy. I work in AT&T's Wholesale Specialized Services organization that supports AT&T incumbent local exchange carriers ("ILECs") throughout AT&T's 22-state Regional Bell Operating Company region, including Southwestern Bell Telephone Company ("AT&T Missouri").

Q. WHAT ARE YOUR RESPONSIBILITIES AS ASSOCIATE DIRECTOR-WHOLESALE MARKETING?

A. I am responsible for developing, supporting, and communicating AT&T's wholesale product policy positions in regulatory proceedings across the 22 AT&T ILEC states, including Missouri.

Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.

A. I began employment with SBC in 2000 in the Wholesale Marketing – Industry Markets organization as Product Manager for Reciprocal Compensation throughout SBC's 13-state region. My responsibilities included developing and implementing product policies and methods and procedures to assist negotiators and witnesses for SBC's reciprocal compensation and interconnection arrangements, as well as SBC's transit traffic offering. In June of 2003, I moved into my current role as an Associate Director in the Wholesale

1 Regulatory organization. In this position, my responsibilities include helping define
2 AT&T's positions on certain issues for Wholesale services, and ensuring that those
3 positions are consistently articulated in proceedings before state commissions. Prior to
4 joining SBC, I spent nine and a half years working in the insurance industry, primarily as
5 an underwriter of worker's compensation insurance.

6
7 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

8 A. I received my Bachelor of Arts degree with a double major in Economics and Political
9 Science from the University of California at Davis.

10
11 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY**
12 **COMMISSIONS?**

13 A. Yes, I have filed testimony and/or appeared in regulatory proceedings in 12 of the 13
14 former SBC states where AT&T provides local service, as well as in the states of
15 Alabama, Georgia, Louisiana, North Carolina and South Carolina. I have provided
16 written and/or live testimony before the Missouri Public Service Commission
17 ("Commission") in the following cases: *Southwestern Bell Telephone, L.P., d/b/a SBC*
18 *Missouri's Petition for Compulsory Arbitration of Unresolved Issues For a Successor*
19 *Interconnection Agreement to the Missouri 271 Agreement ("M2A"), Case No. TO-2005-*
20 *0336; and In the Matter of Level 3 Communications, LLC's Petition for Arbitration*
21 *Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the*
22 *Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and*
23 *Conditions of Interconnection with Southwestern Bell Telephone Company, L.P. d/b/a*
24 *SBC Missouri, Case No. TO-2005-0166.*

1

II.
PURPOSE OF TESTIMONY

2 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

3 A. I will explain and support AT&T Missouri’s positions in this arbitration. Specifically, I
4 will explain why the Commission should not arbitrate Sprint’s complaint alleging AT&T
5 Missouri violated a commitment contained in the FCC’s AT&T/BellSouth Merger Order
6 by refusing to extend the term of Sprint’s three expired Missouri interconnection
7 agreements (“ICAs”). In addition, in case the Commission nonetheless decides to
8 arbitrate Sprint’s complaint, I will show that Sprint is not entitled to extend its current
9 ICAs under Merger Commitment 7.4 because Sprint requested the extension too late.

10

11

12

III.

THE COMMISSION SHOULD NOT HEAR THIS ARBITRATION

13 **Q. WHY HAS AT&T MISSOURI MOVED TO DISMISS SPRINT’S PETITION?**

14 A. The question of whether an interconnection agreement can be extended pursuant to
15 Merger Commitment 7.4 is not subject to arbitration under the Telecommunications Act
16 of 1996 (the “Act”) – it simply is not among the matters that Congress required ILECs to
17 negotiate or authorized state commissions to arbitrate under the Act. As a threshold
18 matter, a request to extend an *existing* interconnection agreement, and whether AT&T is
19 or is not required to grant such request, is clearly a matter of contention arising under
20 such existing interconnection agreement. It has nothing to do with the negotiation and
21 arbitration of a *new* interconnection agreement pursuant to Sections 251 and 252 of the

1 Act. And while some matters that would not otherwise be subject to arbitration under the
2 Act may arguably be made subject to arbitration if parties voluntarily negotiate them
3 under the Act, that did not happen here. Sprint and AT&T Missouri did not negotiate
4 Sprint's request to extend its current ICAs.

5
6 **Q. WHAT ISSUES DO YOU UNDERSTAND MAY BE SUBMITTED TO A STATE**
7 **COMMISSION FOR ARBITRATION UNDER SECTION 252(b) OF THE ACT?**

8
9 A. It is my understanding that only open issues from the parties' Section 252 negotiations
10 may be submitted for state commission arbitration under the Act. My understanding
11 comes from Section 252(b)(1) of the Act, which states that once the incumbent LEC
12 receives a request for negotiation under Section 252, "the carrier or any party to the
13 negotiations may petition a State commission to arbitrate any open issues." (Emphasis
14 added.) The term of an existing interconnection agreement between the parties could not
15 possibly be an "open issue" with respect to the negotiation and subsequent arbitration of a
16 new interconnection agreement.

17
18 **Q. WHAT IS YOUR UNDERSTANDING OF WHAT AT&T MISSOURI MUST**
19 **NEGOTIATE WITH SPRINT UNDER THE ACT?**

20
21 A. Per Section 251(c)(1) of the Act, AT&T Missouri has a "duty to negotiate in good faith in
22 accordance with Section 252 the particular terms and conditions of agreements to fulfill
23 the duties described in [Sections 251(b)(1) through 251(b)(5)] and this subsection
24 [251(c)]." These duties are resale, number portability, dialing parity, access to rights-of-
25 way, reciprocal compensation, interconnection, unbundled access, notice of changes and

1 collocation. AT&T Missouri is not required to engage in negotiations beyond the scope
2 of the items described above.

3
4 **Q. IS AN EXTENSION OF AN EXISTING INTERCONNECTION AGREEMENT**
5 **UNDER MERGER COMMITMENT 7.4 ONE OF THOSE ITEMS?**

6
7 A. No, it is not.

8
9 **Q. WHY NOT?**

10 A. For several reasons. In the first place, AT&T's commitment to extend an existing ICA
11 under Merger Commitment 7.4 is a separate and distinct duty from its duties under
12 Section 251 and imposes requirements above and beyond the requirements in Section
13 251. While the Section 252 negotiation process is a method for arriving at a new ICA,
14 Merger Commitment 7.4 provides an alternative – extension of an existing ICA. Section
15 251(c)(1), which enumerates the matters an incumbent LEC is required to negotiate, does
16 not encompass ICA extensions, under Merger Commitment 7.4 or otherwise. As the
17 FCC explained, this and the other Merger Commitments come from a wholly separate
18 part of the Act and were intended to address issues specific to the AT&T/BellSouth
19 merger. Citing 47 U.S.C. §303(r) and 47 U.S.C. §214(c), the FCC in its Merger
20 Commitment Order stated that it

21 has the authority to impose and enforce narrowly tailored, transaction-specific
22 conditions that ensure that the public interest is served by the transaction. Indeed,
23 our public interest authority enables us to impose and enforce conditions based
24 upon our extensive regulatory and enforcement experience to ensure that the
25 merger will, overall, serve the public interest. Despite broad authority, the
26 Commission has held that it will impose conditions only to remedy harms that
27 arise from the transaction (*i.e.*, transaction-specific harms) and that are related to
28 the Commission's responsibilities under the Communications Act and related
29 statutes.

1
2 Merger Commitment Order, para. 22 (internal cites omitted).
3

4 Because extensions under Merger Commitment 7.4 are not a Section 251 obligation,
5 AT&T Missouri is not required to negotiate such an extension under Section 252 of the
6 Act.
7

8 **Q. DOES THIS MEAN THAT AT&T MISSOURI IS NOT WILLING TO DISCUSS**
9 **WITH SPRINT THE EXTENSION OF ITS CURRENT INTERCONNECTION**
10 **AGREEMENTS?**
11

12 A. No, it does not. But such discussions are not part of the Section 252 process, and the
13 limited communications that AT&T and Sprint had concerning Sprint's extension request
14 under Merger Commitment 7.4 were not part of the Section 252 negotiations in this case,
15 as AT&T witness Lynn Allen-Flood explains.
16

17 **Q. ISN'T THE TERM OF AN INTERCONNECTION AGREEMENT – I.E., THE**
18 **DURATION OF THE AGREEMENT – AN ISSUE THAT IS ROUTINELY**
19 **ARBITRATED?**
20

21 A. Yes, when parties seek to negotiate a new interconnection agreement.
22

23 **Q. IS THAT WHAT IS HAPPENING HERE?**

24 A. No. Here, Sprint is seeking an extension of its *existing* agreements under Merger
25 Commitment 7.4.
26

27 **Q. HOW CAN THIS DIFFERENCE BE SEEN?**

28 A. When parties negotiate a new interconnection agreement under Section 252, numerous
29 individual terms and conditions are negotiated. As occurred during AT&T Missouri and

1 Sprint's Section 252 negotiations, the parties reflect their substantive positions through
2 red-lined draft agreements and summaries of issues they exchange. As an example, I
3 have attached as Schedule 1P the last red-lined draft the parties exchanged of one part
4 (General Terms and Conditions) of the proposed new interconnection agreement for
5 Missouri. Schedule 1P also contains a list of the open issues between the parties for that
6 part of the agreement. Had the parties proceeded to arbitration on substantive issues like
7 these, the Commission would be required to decide the disputed issues in accordance
8 with the requirements of the Act and the FCC's rules. Once the Commission issued a
9 final arbitration order, the parties would then have incorporated the Commission's
10 arbitration decisions into the new interconnection agreement, a massive 1000+ page
11 document containing multiple separate appendices and attachments.

12
13 **Q. WHAT IS DIFFERENT ABOUT AN EXTENSION UNDER MERGER**
14 **COMMITMENT 7.4?**

15 A. When, as here, an extension of an existing interconnection agreement under Merger
16 Commitment 7.4 is sought, no substantive negotiations occur over specific
17 interconnection terms or conditions because with an extension, the existing terms and
18 conditions are simply being extended.¹ No red-line draft interconnection agreements or
19 list of disputed issues (used to track open issues) need be exchanged. No request for
20 negotiations pursuant to Section 252(a) of the Act is made, and the statutory time frame
21 set forth in Section 252(b)(1) for seeking arbitration is not applicable. Instead of using
22 the "just and reasonable" standard in accordance with the Act and FCC rules, Merger

¹ Subject to amendment to reflect prior and future changes of law.

1 Commitment 7.4 and the FCC's Merger Order must be used to resolve any disputes. And
2 the final product is vastly different. Instead of winding up with a 1000+ page,
3 interconnection agreement, an extension under Merger Commitment 7.4 results in a mere
4 two page amendment to the existing agreement to reflect the extended term, like the one
5 this Commission approved in Case No. IK-2008-0222 between AT&T Missouri and
6 Verizon Wireless; copy included as Schedule 2.

7
8 **Q. ARE THESE DIFFERENCES IMPORTANT?**

9 A. Yes. It is true that parties sometimes arbitrate how long an ICA should be effective under
10 the "just and reasonable terms and conditions" language in Section 251, but no such
11 question is presented here. Sprint is asking the Commission to determine whether it can
12 or cannot extend its current ICAs under Merger Commitment 7.4. That is a very different
13 question than the question of the term of a new ICA negotiated pursuant to Section 251,
14 and it is one that is not subject to arbitration.

15
16 **Q. FURTHERMORE, YOU STATED EARLIER THAT SPRINT'S EXTENSION**
17 **REQUEST IS NOT SUBJECT TO ARBITRATION BECAUSE THE PARTIES**
18 **DID NOT NEGOTIATE IT. PLEASE EXPLAIN**

19
20 A. I should note first that I do not mean to suggest that the extension request would be
21 subject to arbitration even if the parties did negotiate it. If Sprint offered to buy an
22 AT&T office building and the parties somehow discussed that offer in the course of their
23 negotiation of a new interconnection agreement under Section 252, I do not believe that
24 would make the purchase price subject to arbitration under the Act. Similarly, discussion

1 of an extension request under Merger Commitment 7.4 in the course of Section 252
2 negotiations would not automatically make the extension request subject to arbitration.

3
4 That said, the fact is that AT&T and Sprint did not negotiate Sprint's extension request
5 under the merger commitment at all, and they certainly did not do so as part of their
6 Section 252 negotiation of new interconnection agreements. As AT&T Missouri witness
7 Lynn Allen-Flood describes, Sprint presented the extension request to AT&T Missouri as
8 a unilateral and non-negotiable demand. Bottom line, Sprint is asking the Commission to
9 decide an issue that has not been subject to any negotiations whatsoever, let alone
10 negotiations under Section 252.

11
12 **Q. WHY MUST THE PARTIES NEGOTIATE AN ISSUE IN ORDER FOR IT TO BE**
13 **SUBJECT TO ARBITRATION?**

14
15 A. As I explained above, Section 252(b) of the 1996 Act authorizes arbitration only of "open
16 issues" from the parties' negotiations. A matter is not an "open issue" within the
17 meaning of Section 252(b) if it was not the subject of the parties' negotiations.

18
19 **Q. ARE THERE ADDITIONAL REASONS FOR DISMISSING SPRINT'S**
20 **ARBITRATION PETITION BEYOND THOSE YOU HAVE DISCUSSED?**

21
22 A. Yes. A complete statement of the reasons for dismissing the Petition, including some
23 points that I have not discussed, are set forth in AT&T Missouri's December 30, 2008
24 Motion to Dismiss and its January 26, 2009 Reply concerning the Motion to Dismiss.

IV.
MERGER COMMITMENT 7.4 DOES NOT APPLY
TO SPRINT'S MISSOURI AGREEMENTS

1 **Q. PLEASE PROVIDE BACKGROUND ON THE AT&T/BELLSOUTH MERGER**
2 **COMMITMENTS.**

3 A. In order to obtain approval of its merger with BellSouth Corporation, AT&T Inc. made
4 certain commitments to the FCC. The FCC incorporated these commitments into its
5 Order approving the merger as Appendix F (attached to my testimony as Schedule 3).²
6 The seventh section of Appendix F is titled “Reducing Transaction Costs Associated with
7 Interconnection Agreements.” The four commitments contained under this heading
8 provide new methods for telecommunications carriers to have an interconnection
9 agreement with an AT&T ILEC. The intent of these new commitments are just as the
10 section header describes; to provide alternative methods for a carrier to have an
11 interconnection agreement – methods that would not otherwise be required pursuant to
12 the Act and FCC rules.

13
14 **Q. WHAT IS MERGER COMMITMENT 7.4?**

15 A. Merger Commitment 7.4 describes how a carrier may extend its ICA. The commitment
16 states:

17 The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier
18 to extend its current interconnection agreement, regardless of whether its initial
19 term has expired, for a period of up to three years, subject to amendments to
20 reflect prior or future changes of law. During this period, the interconnection
21 agreement may be terminated only via the carrier’s request unless terminated
22 pursuant to the agreement’s “default” provisions.
23

² See Memorandum Opinion and Order, *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, 22 F.C.C.R. 5662 at ¶222, Appendix F (March 26, 2007).

1 **Q. DID SPRINT MAKE A REQUEST TO EXTEND ITS EXISTING AGREEMENTS**
2 **UNDER MERGER COMMITMENT 7.4?**

3 A. Yes, it did. Sprint requested that each of its three ICAs³ in Missouri be extended
4 pursuant to Merger Commitment 7.4 via a letter it submitted to AT&T.
5

6 **Q. DID AT&T MISSOURI PROVIDE A FORMAL RESPONSE TO SPRINT?**

7 A. Yes. AT&T provided a written response dated December 5, 2008, from Eddie A. Reed,
8 Jr., Director – Interconnection Agreements, addressed to Manager – ICA Solutions,
9 Sprint Communications Company, Sprint Spectrum and Nextel West Corp. In its
10 response, AT&T Missouri explained that Sprint’s request did not comply with the terms
11 of AT&T’s November 16, 2007 Accessible Letter, which explained AT&T’s application
12 of Merger Commitment 7.4.⁴ A copy of AT&T’s written response to Sprint is attached
13 as Schedule 4. A copy of AT&T’s November 16, 2007 Accessible letter is attached as
14 Schedule 5.
15

16 **Q. DID AT&T’S NOVEMBER 16, 2007 ACCESSIBLE LETTER MODIFY AT&T’S**
17 **APPLICATION OF MERGER COMMITMENT 7.4?**

18 A. Yes. AT&T Missouri originally applied Merger Commitment 7.4 as allowing an
19 extension of a carrier’s interconnection agreement for a period of 36 months from the
20 expiration of the initial term of the ICA.
21

22 **Q HOW DID OTHER CARRIERS VIEW AT&T’S APPLICATION OF MERGER**
23 **COMMITMENT 7.4?**

³ Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp.

⁴ Accessible Letter CLECALL07-086, Issued and effective November 16, 2007

1 A. Various carriers, including Sprint, objected to this application because it provided no
2 benefits to carriers whose interconnection agreements had been expired more than three
3 years.

4
5 **Q. HOW DID AT&T ADDRESS THESE CARRIERS' CONCERNS?**

6 A. In an effort to resolve disputes with multiple carriers as to the implementation of the
7 commitments, AT&T issued an Accessible Letter to modify how AT&T would
8 implement Merger Commitments 7.1 and 7.4 in light of the differing interpretations of
9 various carriers. With regard to Merger Commitment 7.4, at issue here, the Accessible
10 Letter clarified the applicable effective dates of any requested extension:

11 Merger Commitment 7.4 allows carriers to extend the terms of their current ICAs
12 for a period of up to three (3) years, subject to amendment to reflect prior and
13 future changes of law. The question has arisen whether ICAs may be extended
14 for three years from the expiration date of the ICA's initial term (as interpreted
15 and implemented by AT&T) or some other date (e.g., the merger close date of
16 December 29, 2006 or the date of a carrier's extension request). While AT&T
17 believes that its interpretation is supported by the plain language of Merger
18 Commitment 7.4, as well as by the *ex parte* documents submitted to the FCC and
19 the negotiations of the commitment prior to release of the Merger Order, AT&T is
20 modifying its position to allow carriers additional opportunities to extend the
21 terms of their agreements.
22

23 This Accessible Letter essentially provided a "grace period" for carriers to use for
24 extending their ICAs in those instances where the ICA had been expired more than three
25 years, rendering a three year extension useless. For ICAs expiring prior to January 15,
26 2008, carriers could submit a request for ICA extension prior to that date which would
27 then extend the ICA for up to three years from the date of the carrier's extension request.
28 For ICAs expiring after January 15, 2008, so long as the initial term expires prior to the
29 merger commitment's sunset date of June 29, 2010, carriers could request to extend those

1 agreements for three years from the stated expiration date, provided that any request for
2 extension would have to be submitted prior to that ICA's expiration date.

3
4 **Q. HAS SPRINT TAKEN ADVANTAGE OF THE GRACE PERIOD AT&T**
5 **PROVIDED UNDER THE ACCESSIBLE LETTER?**

6 A. Yes. Sprint previously requested extension of its expired agreements throughout the
7 former BellSouth region, consisting of Tennessee, Kentucky, Louisiana, Mississippi,
8 Alabama, Florida, Georgia, North Carolina and South Carolina. Those requests were
9 initially denied in accordance with the terms of the merger commitment, since those
10 agreements had all been expired in excess of three years. After AT&T agreed to modify
11 its application of the merger commitments and issued its November 2007 Accessible
12 Letter, AT&T granted the requested extensions to Sprint's agreements in eight of the nine
13 states.⁵

14
15 **Q. WAS SPRINT'S REQUEST FOR AN EXTENSION OF ITS MISSOURI**
16 **AGREEMENTS TIMELY?**

17 No, it was not. Per the Accessible Letter, Option 1 for ICAs expiring prior to January 15,
18 2008 is applicable to the Sprint wireless entities' ICAs, as both agreements expired prior
19 to January 2008. In order to benefit from the expanded application of the merger
20 commitment, Sprint would have had to request extension of the wireless agreements prior
21 to January 15, 2008, which it did not do. Furthermore, under Option 2 applying to ICAs
22 expiring on or after January 15, 2008, Sprint would have had to submit its request for
23 extending the Sprint Communications Company ICA prior to the expiration of its initial

⁵ In Kentucky, the Commission previously ordered that Sprint could extend its agreement in that State for three years from the merger close date of December 29, 2006.

1 term on April 29, 2008. Sprint did not submit its request for extension of its agreements
2 until November 21st, after all its agreements had long expired, and many months after
3 AT&T's offered grace period detailed in its Accessible Letter.

4
5 **Q. HOW WOULD SPRINT'S EXTENSION REQUEST HAVE FARED UNDER**
6 **AT&T'S ORIGINAL INTERPRETATION?**

7 A. Sprint Communications Company's agreement (which expired April 29, 2008) would
8 have been eligible for extension until April 29, 2011. Sprint Spectrum's wireless
9 agreement (which expired November 30, 2004) and Nextel West Corp.'s wireless
10 agreement (which expired November 1, 2003) would have remained expired, as their
11 expiration dates could only have been extended to November 30, 2007 and November 1,
12 2006, respectively.

13
14 **Q. WHY SHOULD SPRINT'S EXTENSION REQUEST BE SUBJECT TO THE**
15 **CRITERIA IN AT&T'S NOVEMBER 16, 2007 ACCESSIBLE LETTER INSTEAD**
16 **OF AT&T'S ORIGINAL INTERPRETATION?**

17 A. AT&T Missouri issues accessible letters to communicate policies and procedures to its
18 wholesale carrier customers and endeavors to follow them in an effort to ensure uniform
19 and non-discriminatory application. AT&T's November 16, 2007 Accessible Letter
20 represents an accommodation it made to carriers to expand an agreement's eligibility
21 under the Merger Commitment for extension in exchange for the carriers abiding by
22 certain timeliness criteria.

23
24 **Q. DID SPRINT OBJECT TO AT&T'S NOVEMBER 16, 2007 ACCESSIBLE**
25 **LETTER?**
26

1 A. No. Until it filed this arbitration, Sprint voiced no objection to AT&T's November 16,
2 2007 Accessible Letter, and in fact took advantage of the expanded right to extend, over
3 and above what was required by the merger commitment. Sprint was fully aware of the
4 terms of the additional "grace period" and did make timely requests in 8 of AT&T's 22
5 states, which resulted in AT&T's granting of extension requests that would have been
6 denied under the merger commitment. Having availed itself of the benefits it and other
7 CLECs received from the resolution of their dispute over AT&T's original interpretation
8 of Merger Commitment 7.4, Sprint should not now be permitted to disavow the terms of
9 that resolution.

10
V.
CONCLUSION

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 A. Yes.

SCHEDULE 1

IS

PROPRIETARY

IN ITS ENTIRETY

**AMENDMENT TO
INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996
BETWEEN
SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T MISSOURI
AND
VERIZON WIRELESS (VAW) LLC D/B/A VERIZON WIRELESS**

The Interconnection Agreement dated April 2, 1997 by and between Southwestern Bell Telephone Company d/b/a AT&T Missouri¹ ("AT&T") and Cellco Partnership d/b/a Verizon Wireless, Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, St. Joseph CellTelCo d/b/a Verizon Wireless and CyberTel Cellular Telephone Company d/b/a Verizon Wireless (collectively, "Verizon Wireless") ("Agreement") effective in the state of Missouri is hereby amended as follows:

1. Section 18 of the General Terms and Conditions is amended by adding the following section:
 - 18.2.1.1 Notwithstanding anything to the contrary in this section 18, the original expiration date of this Agreement, as modified by this Amendment, will be extended for a period of three (3) years commencing on May 10, 2007 until May 10, 2010 (the "Extended Expiration Date"). The Agreement shall expire on the Extended Expiration Date; provided, however, that during the period from the effective date of this Amendment until the Extended Expiration Date, the Agreement may be terminated earlier either by written notice from Verizon Wireless, by AT&T pursuant to the Agreement's early termination provisions, by mutual agreement of the parties, or upon the effective date of a written and signed superseding agreement between the parties.
2. The Parties acknowledge and agree that AT&T shall permit the extension of this Agreement, subject to amendment to reflect future changes of law as and when they may arise.
3. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
4. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.
6. This Amendment shall be filed with and is subject to approval by the Missouri Public Service Commission and shall become effective ten (10) days following approval by such Commission.

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership. On June 29, 2007, Southwestern Bell Telephone, L.P., a Texas limited partnership, was merged with and into SWBT Inc., a Missouri corporation, with SWBT Inc. as the survivor entity. Simultaneous with the merger, SWBT Inc. changed its name to Southwestern Bell Telephone Company. Southwestern Bell Telephone Company is doing business in Missouri as "AT&T Missouri".

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this _____ day of _____, 2007, by AT&T, signing by and through its duly authorized representative, and Verizon Wireless, signing by and through its duly authorized representative.

Cellco Partnership d/b/a Verizon Wireless

**Southwestern Bell Telephone Company d/b/a AT&T
Missouri by AT&T Operations, Inc., its authorized
agent**

Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

**St. Joseph CellTelCo d/b/a Verizon Wireless by
Verizon Wireless (VAW) LLC, Its General Partner**

**CyberTel Cellular Telephone Company d/b/a Verizon
Wireless by Cellco Partnership, Its General Partner**

By: Beth Ann Drohan

By: Eddie A. Reed, Jr.

Name: BETH ANN DROHAN
(Print or Type)

Name: EDDIE A. REED, JR.
(Print or Type)

Title: AREA VICE PRESIDENT-NETWORKS
(Print or Type)

Title: Director-Contract Management

Date: 12/10/07

Date: 12.20.07

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APPENDIX F

Conditions

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

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

MERGER COMMITMENTS

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

Repatriation of Jobs to the U.S.

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

Promoting Accessibility of Broadband Service

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

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

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

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

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

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

Statement of Video Roll-Out Intentions

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

Public Safety, Disaster Recovery

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

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

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

Service to Customers with Disabilities

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

UNEs

1. The AT&T and BellSouth ILECs shall continue to offer and shall not seek any increase in state-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. For purposes of this commitment, an increase includes an increased existing surcharge or a new surcharge unless such new or increased surcharge is authorized by (i) the applicable interconnection agreement or tariff, as applicable, and (ii) by the relevant state commission. This commitment shall not limit the ability of the AT&T and BellSouth ILECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.
2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.
3. AT&T/BellSouth shall cease all ongoing or threatened audits of compliance with the Commission's EELs eligibility criteria (as set forth in the *Supplemental Order Clarification's* significant local use requirement and related safe harbors, and the *Triennial Review Order's* high capacity EEL eligibility criteria), and shall not initiate any new EELs audits.

Reducing Transaction Costs Associated with Interconnection Agreements

1. The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.
2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.
3. The AT&T/BellSouth ILECs shall allow a requesting telecommunications carrier to use its pre-existing interconnection agreement as the starting point for negotiating a new agreement.

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

Special Access

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

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

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

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

4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a)

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

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

⁶ BOC data shall not include retail data.

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

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

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

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

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

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

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

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

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

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

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

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

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

Transit Service

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

ADSL Service¹²

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the “Implementation Date” in that state. For purposes of this commitment, the “Implementation Date” for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth’s in-region territory in that state.¹³ Within twenty days after meeting the Implementation Date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.
2. AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within AT&T’s in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).
3. Within twelve months of the Merger Closing Date, AT&T/BellSouth will make available in its in-region territory an ADSL service capable of speeds up to 768 Kbps to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service (“Stand Alone 768 Kbps service”). AT&T/BellSouth will continue to offer the 768 Kbps service in a state for thirty months after the “Stand Alone 768 Kbps Implementation Date” for that state. For purposes of this commitment, the “Stand Alone 768 Kbps Implementation Date” for a state shall be the date on which AT&T/BellSouth can offer the Stand Alone 768 Kbps service to eighty percent of the ADSL-capable premises in AT&T/BellSouth’s in-region territory in that state. The Stand Alone 768 Kbps service will be offered at a rate of not more than \$19.95 per month (exclusive of regulatory fees and taxes). AT&T/BellSouth may make available such services at other speeds at prices that are competitive with the broadband market taken as a whole.

ADSL Transmission Service

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

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

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

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

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

Net Neutrality

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

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

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

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

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

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

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

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

Internet Backbone

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

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

Forbearance

1. AT&T/BellSouth will not seek or give effect to a ruling, including through a forbearance petition under section 10 of the Communications Act (the “Act”) 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.
2. AT&T/BellSouth will not seek or give effect to any future grant of forbearance that diminishes or supersedes the merged entity’s obligations or responsibilities under these merger commitments during the period in which those obligations are in effect.

Wireless

1. AT&T/BellSouth shall assign and/or transfer to an unaffiliated third party all of the 2.5 GHz spectrum (broadband radio service (BRS)/educational broadband service (EBS)) currently licensed to or leased by BellSouth within one year of the Merger Closing Date.
2. By July 21, 2010, AT&T/BellSouth agrees to: (1) offer service in the 2.3 GHz band to 25% of the population in the service area of AT&T/BellSouth’s wireless communications services (WCS) licenses,

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

Divestiture of Facilities

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

Tunney Act

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

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

Certification

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

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

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



December 05, 2008

Manager-ICA Solutions
Sprint Communications Company; Sprint Spectrum; Nextel West Corp.
KSOPHA0310-3B268
6330 Sprint Parkway
Overland Park, KS 66251

Dear Manager-ICA Solutions:

Your letters dated November 21, 2008, pursuant to Merger Commitment No. 4 under "Reducing Transaction Costs Associated with Interconnection Agreements" associated with the merger of AT&T Inc. and BellSouth Corp., were received via electronic mail on November 24, 2008. The aforementioned letters state that Sprint Communications Company, Sprint Spectrum, and Nextel West Corp. wish to extend the term of their current Agreements in the State of Missouri for a period of three (3) years

Accessible Letter CLECALL07-086 issued November 16, 2007 ("AL"), specified that . interconnection agreements with initial terms that expired before January 15, 2008. may be extended for a period of three years from the date of the request, provided that AT&T receives the carrier's request prior to January 15, 2008. It further specified that interconnection agreements with initial terms that expire on or after January 15, 2008, could be extended for a period of three years from the expiration date of the Agreement's initial term, provided that AT&T receives the carrier's request prior to the Agreement's initial expiration date. Sprint Communications Company's Interconnection Agreement expired on April 29, 2008, Sprint Spectrum's Wireless Agreement expired on November 30, 2004, and Nextel West Corp.'s Wireless Agreement expired on November 01, 2003. The requests were received on November 24, 2008. Unfortunately, since they didn't comply with the terms of the AL as outlined above, we are unable to honor the requests for extension.

Lynn Allen-Flood will continue to be the AT&T Lead Negotiator for Sprint Communications Company, Randy Ham will continue to be the AT&T Lead Negotiator for Sprint Spectrum and Nextel West Corp. Lynn can be reached at 214-858-0698, and Randy can be reached at (205) 321-7795. Please address any questions or concerns you may have to Lynn and Randy.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Reed".

Eddie A. Reed, Jr.

cc: Lynn Allen-Flood
Randy Ham
Susan Kemp
Jim Tamplin
Annamarie Lemoine
Kristen Shore

Date:	November 16, 2007	Number:	CLECSE07-055
Effective Date:	November 16, 2007	Category:	Other
Subject:	(Interconnection Agreements) Clarification of BellSouth Merger Commitments		
Related Letters:	NA	Attachment:	NA
States Impacted:	Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee		
Issuing ILECS:	AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee		
Response Deadline:	January 15, 2008	Contact:	AT&T Negotiator
Conference Call/Meeting:	NA		

The purpose of this Accessible Letter is to clarify AT&T's implementation of two merger commitments adopted and approved by the Federal Communications Commission ("FCC") in its BellSouth/AT&T "Merger Order".¹ The commitments discussed herein concern porting and extending interconnection agreements ("ICAs").

Porting ICAs

Merger Commitment 7.1 allows carriers to port effective interconnection agreements entered into in any state in AT&T's 22-state ILEC operating territory (subject to stated limitations and requirements).² Some carriers have inquired why they are not able to port an agreement when the initial term has expired but the agreement itself has not yet been noticed for termination/renewal. This letter clarifies that such agreements are, in fact, eligible for porting under Merger Commitment 7.1, and AT&T has consistently implemented the commitment in this manner. However, carriers should be aware that adopted agreements always carry the same expiration date as the underlying agreement that is being adopted.³ Therefore, if a carrier adopts and ports an ICA whose initial term has expired, subsequent noticing of that ICA for termination and renewal will require that the adopted/porting agreement also be renewed. Moreover, consistent with federal rules, ICAs that have been noticed for termination/renewal are not eligible to be ported because they have already "remain[ed] available for use by telecommunications carriers...for a reasonable period of time."⁴ Accordingly, when porting agreements pursuant to Merger Commitment 7.1, carriers should be mindful of whether the ICA, by its terms, is eligible to be noticed for termination/renewal or has already been noticed by either party.

¹ Memorandum Opinion and Order, *In the Matter of AT&T, Inc. and BellSouth Corporation Application for Transfer of Control*, 22 F.C.C.R. 5662 at ¶222, Appendix F (March 26, 2007) ("Merger Order").

² Merger Order at Appendix F, "Reducing Transaction Costs Associated with Interconnection Agreements," ¶ 1.

³ *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 (FCC 2004).

⁴ 47 C.F.R. § 51.809(c).

Extending ICAs' Terms

Merger Commitment 7.4 allows carriers to extend the terms of their current ICAs for a period of up to three (3) years, subject to amendment to reflect prior and future changes of law.⁵ The question has arisen whether ICAs may be extended for three years from the expiration date of the ICA's initial term (as interpreted and implemented by AT&T) or some other date (e.g., the merger close date of December 29, 2006 or the date of a carrier's extension request). While AT&T believes that its interpretation is supported by the plain language of Merger Commitment 7.4, as well as by the *ex parte* documents submitted to the FCC and the negotiations of the commitment prior to release of the Merger Order, AT&T is modifying its position to allow carriers additional opportunities to extend the terms of their agreements. As such, effective with the date of this Accessible Letter, AT&T will implement Merger Commitment 7.4 as follows:

ICAs Expiring Prior to January 15, 2008 (Option 1): ICAs whose initial terms have already expired, or will expire prior to January 15, 2008, may be extended for up to three years from the date of a carrier's extension request, provided that AT&T receives the carrier's extension request prior to January 15, 2008.⁶ An ICA's term may be extended only once pursuant to Merger Commitment 7.4.⁷ If no request to extend the ICA's term has been received by AT&T prior to January 15, 2008, the ICA's term may not be extended pursuant to the merger commitment.

ICAs Expiring On or After January 15, 2008 (Option 2): ICAs whose initial terms will expire on or after January 15, 2008, may be extended for up to three years from the expiration date of the ICA's initial term, provided that (i) AT&T receives a carrier's extension request prior to the ICA's expiration date of the initial term, and (ii) the ICA's initial term expires before June 29, 2010, the sunset date of the merger commitment. ICAs whose initial term expires after June 29, 2010 are not eligible for extension. An ICA's term may be extended only once pursuant to Merger Commitment 7.4. If no request to extend the ICA's term has been received by AT&T as of the expiration date of the ICA's initial term, the ICA may not be extended pursuant to the merger commitment.

Important Note for Both Options Above: The expiration date of an agreement's initial term may be either express (e.g., "January 15, 2008") or a date that requires calculation (e.g., "three years from the Effective Date"). Initial terms may also be a date established by a filed and approved amendment (e.g., an ICA's initial term expired on January 15, 2001, but an amendment extended the expiration date until January 15, 2003, in which case the latter is still considered the expiration date of the ICA's initial term). For purposes of implementing Merger Commitment 7.4, the expiration date of an agreement's ***initial term*** will in all cases be used, as described above, to calculate whether the agreement is eligible for extension. Any evergreen term, renewal term or default term (e.g., month-to-month or year-to-year) or any other term that continues the agreement beyond the expiration of its initial term will

⁵ Merger Order at Appendix F, "Reducing Transaction Costs Associated with Interconnection Agreements," ¶ 4. Merger Commitment 7.4 applies to ICAs in effect as of the date of the Merger Order, December 29, 2006.

⁶ Compare with *Order of the Kentucky Public Service Commission*, Petition of Sprint Communications Company L.P. et al. For Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast, Case No. 2007-00180 (Sept. 18, 2007) (holding that Merger Commitment 7.4 gives carriers the right to extend ICAs for three years from the merger close date of December 29, 2006, or until December 29, 2009).

⁷ Carriers that extended or requested to extend the initial term of an ICA that has already expired pursuant to AT&T's prior policy (i.e., for up to three years from the initial expiration date) may re-submit a request to extend the ICA pursuant to this Accessible Letter. For such carriers, the ICA may be extended under Option 1 for up to three years from the date of carrier's ***initial, prior*** request, as long as carrier sends the required notice discussed herein by January 15, 2008.

have no bearing on whether and how the agreement may be extended. This has important implications for the options discussed above, including without limitation:

- For Option 1, the initial term of an ICA may have already expired but the ICA may still be in effect (e.g., the ICA expired on June 1, 2007 and it is presently in effect on a month-to-month basis). The required extension notice under Option 1 must be received by AT&T prior to January 15, 2008, regardless of the fact that the ICA remains in effect on a month-to-month or other basis. On January 15, 2008, unless a carrier has submitted the required notice to extend the term, it will be deemed to have waived any extension rights with respect to that ICA.
- For Option 2, the required term extension notice must be received by AT&T prior to the expiration date of the ICA's initial term, regardless of whether the ICA continues in effect beyond the expiration date of the initial term. Upon the expiration date of an ICA's initial term, a carrier will be deemed to have waived any extension rights with respect to that ICA.

The options under Merger Commitment 7.4 as described in this Accessible Letter are available to carriers regardless of whether they have already submitted an extension request, and regardless of the disposition of that prior request. However, carriers desiring to extend the terms of their ICAs as stated herein must submit another extension request, as AT&T is unable to decide unilaterally what any carrier may want to avail itself of at this point in time. **Carriers may not rely on prior extension requests to avail themselves of the options discussed in this Accessible Letter. Carriers who do not submit an extension request, by the time periods indicated above, may not extend their ICAs pursuant to Merger Commitment 7.4 as described herein.** Extension Request Forms can be found by CLECs on AT&T's CLEC Online website at <https://clec.att.com/clec>⁸ and by paging/wireless carriers at <https://primeaccess.att.com/>.⁹

Conclusion

Any questions regarding this Accessible Letter should be directed to your Lead Negotiator.

⁸ From the HOME page of CLEC Online, click on the sub-heading Interconnection Agreements located on the left-hand side of the page and follow your cursor to the BLS Merger Commitment Request Forms link. A new window will appear. On the page AT&T/BLS Merger Commitments under Reducing Transaction Costs Associated with Interconnection Agreements, you will see a list of four commitments. The fourth contains an Extension Request Form to be completed and submitted to AT&T Wholesale Contract Management, via fax or email. The fax number and email address are provided on this page.

⁹ From the HOME page of Prime Access, click on the subheading BLS-Merger Request Forms located on the left-hand side of the page. An AT&T CLEC Online Disclaimer will appear, click OK. A page containing the BLS Merger Commitment Request Forms will be displayed. Under Reducing Transaction Costs Associated with Interconnection Agreements, you will see a list of four commitments. The fourth contains an Extension Request Form to be completed and submitted to AT&T Wholesale Contract Management, via fax or email. The fax number and email address are provided on this page.