

Exhibit No. _____
Sprint Nextel
Rebuttal Testimony of Mark G. Felton
Case No. CO-2009-0239
February 18, 2009

BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

VERIFIED PETITION OF SPRINT)
COMMUNICATIONS COMPANY L.P.,)
SPRINT SPECTRUM L.P., AND NEXTEL)
WEST CORP. FOR ARBITRATION OF)
INTERCONNECTION OF)
INTERCONNECTION AGREEMENTS)
WITH SOUTHWESTERN BELL)
TELEPHONE COMPANY D/B/A AT&T)
MISSOURI)

Case No. CO-2009-0239

REBUTTAL TESTIMONY OF
MARK G. FELTON
FEBRUARY 18, 2009

Sprint Exhibit No. 2
Case No(s). CO-2009-0239
Date 2-25-09 Rptr. RF

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 **A. My name is Mark G. Felton. My business address is 6330 Sprint Parkway,**
4 **Overland Park, KS 66251.**

5 **Q. Are you the same Mark G. Felton that filed direct testimony and exhibits on**
6 **February 4, 2009?**

7 **A. Yes.**

8 **Q. What is the purpose of your Rebuttal Testimony?**

9 **A. The purpose of my Rebuttal Testimony is to respond to the direct testimony of**
10 **AT&T's witnesses Ms. Lynn Allen-Flood and Mr. Scott McPhee.**

11 **Q. Do you have a general statement regarding the direct testimony of the AT&T**
12 **witnesses?**

13 **A. Yes. While I will discuss in detail the areas of each AT&T witness's testimony**
14 **where I have disagreement, I would like to say that, as a general matter, it is clear**
15 **that the main thrust of AT&T's arguments and positions is that if AT&T opposes**
16 **a carrier's election of one of the merger conditions, the requesting carrier should**
17 **have no remedy at a state commission. The arguments raised in AT&T's direct**
18 **testimony are just further attempts to divest state commissions of jurisdiction over**
19 **merger commitments. AT&T intends to use any possible obstacle to prevent**
20 **Sprint from reaping the benefits of the commitments AT&T made to gain**
21 **approval for its merger with BellSouth ("Merger Commitments"). Sprint first**

1 attempted to port its agreement with AT&T in Kentucky into Missouri and AT&T
2 made that process so burdensome and time-consuming that the benefits of porting
3 the Kentucky ICA have largely been eliminated. Sprint has now opted for what it
4 incorrectly assumed would be a simpler and less controversial process. So, while
5 it is important for this Commission to consider the arguments each party makes in
6 this proceeding, Sprint believes it is important to do so in the context of AT&T's
7 strategy (based on Sprint's experiences in trying to utilize the Merger
8 Commitments in this and other states) - to renege on its promises made to gain the
9 substantial benefits of its merger with BellSouth.

10
11 **II. REBUTTAL TO MS. ALLEN-FLOOD'S DIRECT TESTIMONY**

12 **Q. Do you agree with Ms. Allen-Flood's statement on page 2, lines 7-8 of her**
13 **direct testimony that "Sprint's request [to extend its current agreement]**
14 **under the merger commitment and AT&T's response to that request, were**
15 **not part of those negotiations [under 252]??**

16 **A. No.** Ms. Allen-Flood's testimony is internally inconsistent. While she makes the
17 statement on page 2 of her direct testimony that Sprint's request to extend its
18 current agreement pursuant to the Merger Commitment 7.4 was not part of the
19 negotiations, she later acknowledges¹ that Sprint did in fact raise the issue of
20 extending its current agreement on at least two of the negotiations calls. How

¹ Direct Testimony of Lynn Allen-Flood ("Allen-Flood Testimony"), page 6, lines 7-9.

1 AT&T can now claim that Sprint did not raise this issue in the context of the 252
2 negotiations is beyond comprehension. A party to the 252 negotiation process
3 does not have the ability to pick and choose the issues that the other party can
4 raise in an arbitration petition.

5 **Q. Ms. Allen-Flood later states that "AT&T would certainly be willing to hear**
6 **and respond to Sprint's request" outside of the Section 252 process. Did**
7 **AT&T hear and respond to Sprint's request?**

8 **A.** Yes, AT&T did provide a response. While the content of that response is
9 confidential, Sprint understood the response to be yet another denial of Sprint's
10 efforts to avail itself of a Merger Commitment. The very existence of this
11 arbitration proceeding is necessary because AT&T denied Sprint an unambiguous
12 right that was granted to requesting carriers in the FCC's Merger Order.
13 Moreover, Sprint does believe AT&T should be permitted to dictate under what
14 circumstances AT&T will consider a carrier's election under a Merger
15 Commitment.

16 **Q. In describing the negotiations that took place prior to Sprint modifying its**
17 **approach and opting to extend its current agreement rather than port the**
18 **Kentucky ICA into Missouri, Ms. Allen-Flood states that AT&T "provided**
19 **Sprint the Kentucky ICA redlined with the necessary changes for AT&T's**

1 13-state region”². Please comment.

2 A. I agree that AT&T provided a redline of the Kentucky ICA to Sprint. I do not
3 agree that all of the changes AT&T proposed were necessary. While the number
4 and nature of the changes may be moot at this point, it is important to understand
5 that the voluminous changes proposed by AT&T weighed heavily in Sprint’s
6 decision to pursue an extension of its current agreement rather than continue in its
7 effort to port the Kentucky ICA.

8 Q. Ms. Allen-Flood goes on to characterize Sprint’s decision to alter its
9 approach and seek to extend its current agreement as “abandoning the
10 parties’ Section 252 negotiations”³. Do you agree?

11 A. No. Sprint’s decision to extend its current agreement is more appropriately
12 characterized as Sprint’s acceptance of AT&T’s offer in the form of the Merger
13 Commitment 7.4. Sprint did not abandon anything. Negotiations for an ICA take
14 place in a fluid environment. Each party to the negotiations continually adjusts its
15 positions and proposed language based on the responses of the other party and
16 other business considerations. Moreover, as I stated before, Sprint’s decision to
17 pursue an extension to its current agreement was in response to AT&T’s
18 seemingly unending proposed changes to the Kentucky ICA.

19
20 **III. REBUTTAL TO THE DIRECT TESTIMONY OF MR. MCPHEE**

² Allen-Flood Testimony, page 3, lines 15-16.

1 **Q. In his Direct Testimony, Mr. McPhee spends a great deal of time explaining**
2 **why this Commission should not hear this Arbitration Case. Do you agree**
3 **with his arguments?**

4 **A. No. It is also my understanding that the Commission has determined that it will**
5 hear this Arbitration Case. Notwithstanding, Mr. McPhee's basic argument is that
6 an ILEC such as AT&T is not required by the Act to negotiate Merger
7 Commitments and that state commissions are not authorized by Congress to
8 arbitrate any unresolved issues related to Merger Commitments under the Section
9 252 process. What Mr. McPhee really seems to be saying is that no state
10 commission should resolve Merger Commitment disputes.

11 **Q. Is there any dispute that the term of an ICA is an appropriate issue for a**
12 **Section 252(a) arbitration?**

13 **A. No. The fundamental issue of this arbitration is the term, or duration, of the new**
14 ICA between AT&T and Sprint. Mr. McPhee himself admits that the term of an
15 agreement is an appropriate matter for a Section 252 arbitration⁴.

16 **Q. Mr. McPhee makes a distinction between the negotiation of a new agreement**
17 **and the extension of an existing agreement⁵. Do you agree with the**
18 **distinction he makes?**

19 **A. Fundamentally, no. While I would agree that the path the parties take to get to a**

³ Allen-Flood Testimony, page 6, lines 20-21.

⁴ Allen-Flood Testimony, page 8, lines 9-11.

⁵ Direct Testimony of J. Scott McPhee ("McPhee Testimony"), page 3, lines 17-21.

1 new agreement may be different, the end result is the same, i.e., the parties end up
2 with an agreement under which they will operate for some given period of time in
3 the future. Even in the absence of the Merger Commitments, a requesting carrier
4 could propose an extension to its existing agreement with an ILEC and, to the
5 extent the parties could not reach agreement, present the matter to the
6 Commission under Section 252 of the Act for resolution.

7 **Q. Do you agree with Mr. McPhee's statement that the "term of an existing**
8 **agreement could not possibly be an 'open issue' with respect to the**
9 **negotiation and subsequent arbitration of a new interconnection**
10 **agreement"**⁶?

11 **A. No. AT&T appears to be resorting to wordplay to avoid its obligations under the**
12 **Act. As I described earlier, the end result of an extension to an existing agreement**
13 **is essentially a "new" agreement. An extended agreement represents the**
14 **agreement under which the parties operate in the future; therefore, it is no**
15 **different than a new agreement.**

16 **Q. Is it Sprint's position that anything a requesting carrier raises in the context**
17 **of Section 252 negotiations is subject to Arbitration by the Commission?**

18 **A. No. Mr. McPhee uses an example of Sprint offering to buy an AT&T office**
19 **building in the course of Section 252 negotiations and states that the purchase**
20 **price would not be subject to arbitration under the Act. I agree. That is a red**

1 herring, however. The purchase of an AT&T office building has nothing to do
2 with AT&T's interconnection obligations under Section 251 of the Act. The term
3 of the interconnection agreement, on the other hand, does. It is one of the terms
4 and conditions that must be just, reasonable, and non-discriminatory pursuant to
5 Section 251(c)(2)(D). Therefore, while Sprint would certainly not say that any
6 issue is fair game for arbitration, the issue of the term of the agreement brought by
7 Sprint in this proceeding certainly is.

8 **Q. Did Sprint present its extension request to AT&T as "a unilateral and non-**
9 **negotiable demand"**⁷?

10 **A. No.** Sprint presented its extension request as an acceptance of the offer made by
11 AT&T in the form of Merger Commitment 7.4.

12 **Q. Mr. McPhee claims Sprint's request to extend its current agreement was not**
13 **timely**⁸. **Do you agree?**

14 **A. No.** As I discuss in greater detail in my Direct Testimony, Merger Commitment
15 7.4 contains no deadline for requesting to extend its existing ICA. Sprint's
16 request was made prior to June 28, 2010, the sunset date of the Merger
17 Commitments, and is therefore timely. AT&T's artificial deadline of January 15,
18 2008 in the Accessible Letter is arbitrary and AT&T should not be allowed to
19 rewrite the Merger Commitments after gaining approval for its merger with

⁶ McPhee Testimony, lines 14-16.

⁷ McPhee Testimony, Page 9, lines 6-8.

⁸ McPhee Testimony, Page 13, line 17 through page 14, line 3.

1 BellSouth.

2 **Q. Is Sprint trying to disavow the terms of AT&T's Accessible Letter after**
3 **availing itself of it in 8 of AT&T's 22 states?**

4 **A. Absolutely not. AT&T issued its Accessible Letter after Sprint's position on the**
5 **extension issue prevailed in Kentucky. Arbitration proceedings were pending in**
6 **the other 8 AT&T-Southeast states and AT&T's decision to issue its Accessible**
7 **Letter effectively ensured that no further adverse decisions would be issued.**
8 **Sprint did not agree with AT&T's arbitrary deadline of January 15, 2008 to**
9 **process extensions of agreements whose term had expired but Sprint had no**
10 **reason (nor excess resources) at the time to raise the issue to other state**
11 **commissions. Therefore, Mr. McPhee's testimony is misleading in that it implies**
12 **Sprint agreed with AT&T's arbitrary deadline.**

13

14 **VI. SUMMARY AND CONCLUSION**

15 **Q. Please summarize your Rebuttal Testimony.**

16 **A. AT&T continues to raise obstacle after obstacle in an effort to renege on the**
17 **Merger Commitments made to gain approval of its merger with BellSouth. As I**
18 **have demonstrated here, the Direct Testimony of the AT&T witnesses should be**
19 **considered in this context. Sprint did raise the extension of its current agreement**
20 **in its Section 252 negotiations with AT&T. The term of an ICA is a suitable**
21 **arbitration issue, whether the extension is requested pursuant to Merger**

1 Commitment 7.4 or not.

2 **Q. What does Sprint ask this Commission to do?**

3 **A. As I stated in my Direct Testimony, Sprint asks this Commission to order AT&T**
4 **to immediately process Sprint's request to extend its current ICAs for three years**
5 **commencing on the date of Sprint's request, November, 21, 2008.**

6 **Q. Does this conclude your Rebuttal Testimony?**

7 **A. Yes, it does.**

Verified Petition of Sprint)
Communications Company L.P., Sprint)
Spectrum L.P., and Nextel West Corp.)
for Arbitration of Interconnection)
Agreements with Southwestern Bell)
Telephone Company d/b/a AT&T)
Missouri)

Case No. CO-2009-0239

AFFIDAVIT OF MARK G. FELTON

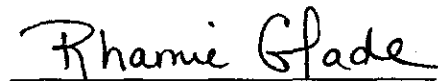
STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

Mark G. Felton, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers, and that such matters are true to the best of his knowledge and belief.


Mark G. Felton

Subscribed and sworn before me this 18th day of February, 2009.




Rhame Glade

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Rebuttal Testimony has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 18th day of February, 2009, to:

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