Sprint

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August 23, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Sunil Daluvoy
Cable Services Bureau
Federal Communications Commission
445 12th Street S.W., 4-A737
Washington D.C. 20554

Re: Comments of Sprint Corporation in CS Docket No. 99-251

Dear Ms. Daluvoy:

Enclosed herewith is a 3.5 inch diskette containing the Comments of Sprint Corporation in the above-referenced proceeding. If you have any questions, please call me at 828-7438.

Respectfully submitted,

Michael B. Fingerhut
General Attorney

Enclosure

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List ABCDE

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

In the Matter of	)	
	)	
MediaOne Group Inc.,	)	
	)	
Transferor,	)	
	)	CS Docket No. 99-251
	)	
AT&T Corp.	)	
	)	
Transferee,	)	
	)	
Application for Authority	)	
to the Transfer of Control	)	
	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), pursuant to Public Notice DA 99-1447 issued July 23, 1999, in the above-referenced docket, respectfully submits its comments on the Application by AT&T and MediaOne Group ("MediaOne") seeking the consent of the Commission for AT&T's acquisition of MediaOne. Sprint does not oppose the requested transfer. But Sprint firmly believes that the Commission can no longer take a *laissez faire* attitude to the competitive implications of AT&T's acquisitions of cable companies and AT&T's use of the acquired broadband cable facilities on an exclusive basis. As discussed below, if the Commission is to fulfill the over-arching mandate of the Telecommunications Act of 1996 (1996 Act) to foster a competitive broadband telecommunications services market, it must act now to ensure that AT&T provides reasonable and nondiscriminatory access at reasonable points of interconnection

to what is effectively the second access line into the home to unaffiliated carriers and other entities, *e.g.*, Internet Service Providers (ISPs) in upstream markets.[1]

If approved by the Commission, AT&T's proposed acquisition of MediaOne will enlarge AT&T's already dominant position in the provision of broadband access facilities that it achieved through its acquisition of TCI. With TCI, AT&T has the ability to provide last-mile broadband access to approximately 39 million homes. *AT&T/TCI Order* at 3164, fn. 19. MediaOne will give AT&T the ability to provide such access to an additional 8.5 million homes. Transfer of Control Applications at 14. And, AT&T will be able to add still more homes to its network of broadband access facilities with consummation of its widely reported exclusive access arrangements with Time Warner, Cox Cable and other cable companies. All told, these acquisitions and other arrangements will give AT&T control of last-mile broadband access to at least 60-70 percent of all households in the Nation. No other access provider or known broadband access technology is able to offer such wide coverage.

The Commission has acknowledged that a fundamental goal of the 1996 Act is to stimulate competition in the provision of services dependent upon broadband access, especially "last-mile" access to the home.[2] The Commission has explained that the competitive deployment of broadband access will provide consumers with a host of new services as well as

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[1] The Commission should reaffirm that AT&T will be subject to the requirements of Section 251(a) and (b) of the Communications Act once AT&T begins to deliver telecommunications over MediaOne's cable infrastructure. While such reaffirmation should not be necessary in light of the Commission's unequivocal finding in its *AT&T/TCI Order* that Section 251(a) & (b) would apply to the merged AT&T/TCI entity's provision of telecommunications services over cable facilities, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc. Transferor to AT&T Corp., Transferee*, 14 FCC Rcd 3160, 3190 (¶56) (1999), AT&T's use of the term "cable telephony" in its Public Interest Statement (at 20-26) is somewhat disquieting, especially in light of the well-documented exclusionary practices of the cable companies.

[2] *Inquiry concerning the Deployment of Advanced Telecommunications Capability*, 14 FCC 2398, 2400 (¶1) (1999) (*Advanced Services Report*).

vastly improved existing services. Such services could include video telephony, "the ability to download feature-length movies in a matter of minutes," and the ability "to change web pages as fast as changing the channel on a television," thereby creating new opportunities for electronic commerce. Use of broadband technology could also lead to "increased prospects for at-home learning and working at home"; enhanced opportunities "for entrepreneurs to launch new information-based businesses and home-based businesses"; and "great improvements in medical treatment, and health case at home in emergencies and for the chronically infirm." *Advanced Services Report* at 2401 (¶3).

But, the Commission has thus far adamantly refused to take the necessary steps to ensure that such improved services are provided on a competitive basis. Rather than require open and equal access to the last-mile of broadband cable facilities that would enable competition over such facilities and thereby lead to the array of new and improved services for consumers envisioned by the Commission, it has decided only "to monitor broadband deployment closely." *Advanced Services Report* at 2449 (¶101); *see* also *AT&T/TCI Order* at 3192 (¶62). The Commission's decision appears to based on the expectation that "multiple methods of increasing bandwidth are or soon will be made available to a broad range of consumers." *Advanced Services Report* at 2449 (¶101). It is unclear whether the Commission's expectation here is realistic. In fact, the Commission concedes that it has little hard evidence to support it. As the Commission itself noted, the record in the *Advance Services Inquiry* on the deployment of different broadband access methods is "sparse." *Id.*

What is -- or at least should be -- clear is that the Commission's policy of waiting, watching and wishing for the best seriously jeopardizes the goal of a competitive broadband services market. The Commission's inaction enables AT&T to further its announced goal of

converting the facilities of the major cable companies that it has already acquired or may acquire in the future, as well as the facilities of the major cable companies with whom it has struck exclusive deals, into a closed broadband network. Stated differently, AT&T now has unfettered discretion to recreate itself as a new monopoly provider of access to broadband telecommunications services. If because of economics, technology, ubiquity or just plain dumb luck, cable does becomes the dominant method for delivering broadband services to the home, and if as current trends suggest, AT&T will either own or have exclusive access to the majority of the Nation's cable plant, the Commission will be compelled to require that AT&T open up its broadband access network in order to meet its statutory mandate to stimulate the competitive provision of broadband services.

It is counter-intuitive for the Commission to deliberately allow AT&T to build a closed system in the first instance and then, after AT&T achieves a dominant position in the broadband access market, require it to retrofit the system in order to provide reasonable and non-discriminatory access to all entities seeking to compete in the provision of broadband services. Ultimately, the Commission's lack of action at the outset will mean that the end users of AT&T's broadband system will be forced to pay AT&T twice: they will be required to pay AT&T directly for the construction of the closed system, and then they will be required to pay AT&T -- either directly or indirectly through their own service providers using AT&T's cable access facilities -- for retrofitting the system to provide for reasonable and non-discriminatory access. It is hardly in the public interest to require that end users pay for the retrofitting necessary to open cable access when the Commission could easily avoid imposing such costs by requiring that AT&T build an open system at the outset. At the very least, the Commission should determine at an

early stage whether it is technically feasible to have an open broadband system. Such a determination is necessary to foreclose AT&T's argument that an open system is not possible.[3]

Further, the requirement that AT&T build an open system at the outset would enable competition and the benefits such competition would bring to end users of broadband services to develop at a more rapid pace than would otherwise would be the case if AT&T were allowed to build a closed system and then ordered to retrofit such system to open it up to other providers of broadband services. Indeed, even if required by the Commission to retrofit its system, AT&T would have every incentive to employ various tactics to delay complying with such a requirement. By doing so, it would be able to forestall competition and continue to exploit its dominance to the detriment of consumers of broadband services. In short, the development of effective competition in the provision of such services would be long and difficult. The fact that it took over a decade since the break-up of the original Bell System for effective competition in the long distance market to develop and the fact that there is hardly any competition in local consumer markets despite the passage of the 1996 Act and the elimination of the ILECs' *de jure* monopoly control of such markets confirm that it is better to act at the outset to prevent a market from being monopolized than to attempt to enable competition after a market is monopolized.

For the reasons stated above, Sprint requests that the Commission require that AT&T provide reasonable and non-discriminatory access at reasonable points of interconnection, in accordance with reasonable and non-discriminatory network standards, to all of AT&T's cable

[3] AT&T's arguments in this regard would appear to be without merit in light of the fact that Canadian regulators and cable operators have agreed that to a set of technical parameters that enable such operators to offer higher-speed access services over cable facilities to competitive providers of retail Internet services, *Regulation Under the Telecommunications Act of Cable Carriers' Access Services*, Telecom Decision CRTC 99-8 issued July 6, 1999. Moreover, tests conducted by GTE show open access to cable networks is both practical and feasible. "GTE Test to Show that Cable Can Give ISPs Access to Networks," The Wall Street Journal, June 14, 1999 at B8.

facilities acquired or utilized by AT&T to provide its own common carrier services.[4] Such access must include the ability to create both voice and data quality and bandwidth-capable circuits or virtual circuits compatible with a circuit-switched network protocol or in a packet architecture. If the Commission is reluctant to impose such requirements in the context of this merger proceeding, it should immediately institute a rulemaking proceeding looking toward the development of rules and technical standards for such requested interconnection. The Commission should make clear in its decision in this proceeding that AT&T's obligations to provide open access to its cable facilities will be subject to the Commission's findings in such rulemaking.

Respectfully submitted,

SPRINT CORPORATION

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August 23, 1999

[4] Such interconnection would include individual, multiplexed and packet circuits or virtual circuits and data streams for use by common carriers.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 23rd day of August, 1999 to the parties on the attached list.

Christine Jackson

Christine Jackson

August 23, 1999