

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
AT&T Corp.)
)
Petition for Rulemaking to Reform)
Regulation of Incumbent Local Exchange)
Carrier Rates For Interstate Special)
Access Services)

RM No. 10593

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation, on behalf of its incumbent local exchange (“ILEC”), competitive LEC (“CLEC”)/long distance, and wireless divisions, respectfully submits its reply to Comments filed December 2, 2002 in response to the Public Notice’ requesting comments on AT&T Corp.’s (“AT&T”) Petition for Rulemaking.²

Not surprisingly, the Comments present a war of words and statistics. On the one hand the RBOCs complain about AT&T itself, as much as they complain about AT&T’s petition. In brief, the RBOCs claim that the special access market is robustly competitive; that pricing flexibility was not premised on a finding of non-dominance:

¹ Public Notice, Wireline Competition Bureau Seeks Comment on AT&T’s Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, DA 02-2913, released October 29, 2002.

² AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM No. 10593, filed October 15, 2002 (“AT&T Petition”).

³ See e.g., Comments of BellSouth at pp. 14-16.

⁴ Opposition of Qwest Communications International Inc. at p. 7.

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that RBOC special access price increases do not demonstrate dominant market power,⁵ and that collocation pricing flexibility triggers are working exactly as intended.⁶

On the other hand, competitive carriers and end users agree with AT&T that reform is needed and interim relief, including prescribing rates that produce an 11.25% rate of return, is necessary. For the most part, these commenters argue that the collocation triggers have not proven to be reliable predictors of competition: that there are few viable alternatives to RBOC provided special access⁷ and that the RBOCs are abusing their dominant position in the special access market by raising prices and using Optional Pricing Plans (“OPPs”) to lock customers in for current special access needs and growth.⁸ Several wireless carriers complain that the RBOCs do not provide wireless carriers with UNEs to transport calls among mobile switching facilities and between mobile switching facilities and transmitters and that there are no viable alternatives to RBOC special access for such transport, thus rendering the wireless carriers reluctant, captive customers of RBOC special access services.” In a similar vein, XO Communications, Inc. states that even where it is providing local service and should be able to purchase UNEs, the RBOCs are keeping it captive to special access by claiming a lack of facilities and refusing to build additional capacity.”

With significant interests on both sides of this issue, Sprint provides a unique view in this proceeding. Sprint’s ILECs are significant providers of special access

⁵ Comments of BellSouth at pp. 9-13.

⁶ Opposition of Verizon at pp. 9-11.

⁷ See e.g., Joint Comments of Pac-West Telecomm, Inc. and US LEC Corp. at pp. 7-10.

⁸ See e.g., Comments of the American Petroleum Institute at pp. 3-4.

⁹ See e.g., Comments of Ad Hoc Telecommunications Users Committee at p. 2 and Comments of WorldCom, Inc. at p. 12.

¹⁰ See e.g., Comments of Arch Wireless Operating Company, Inc. at pp. 2-5.

services and have, in a few selected markets, utilized the Commission's pricing flexibility scheme. Sprint's CLEC/IXC division and wireless division are captive customers of the RBOCs' special access service. Sprint's wireless division is especially disadvantaged because of the RBOCs' refusal to provide UNEs to wireless carriers as noted by Arch and others.¹¹ Even though it has taken advantage of pricing flexibility as an ILEC, Sprint believes that the current pricing flexibility scheme is flawed and should be revised. As noted in Sprint's comments, the problem is largely due to the RBOCs' continued dominance in the special access market and with the collocation pricing flexibility triggers selected by the Commission that do not provide the predicted correlation between the presence of collocators and the presence of alternative competitive services.¹³ As discussed below, Sprint agrees, for the most part, with the competitive carriers and end users and disagrees with the RBOCs.

Regardless of whether one believes the RBOCs claims of robust competition or the access customers' complaints that there *are* no, or few, viable alternatives to RBOC special access services, clearly the rate increases that the RBOCs have imposed in markets where they have obtained Phase II pricing flexibility cannot be justified and RBOC performance requires regulation. Ad Hoc makes this point especially clear.

If meaningful competition existed in special access markets, all providers' performance would improve and FCC regulation of carrier performance would be unnecessary. But despite the ILECs' repeated claims to the contrary, competition has not yet developed in special access markets. as even a cursory analysis of the ILECs' special access pricing demonstrates. Rates are higher in markets where the Commission has granted ILECs Phase II pricing flexibility than in markets still subject to price cap regulation – an outcome that is exactly the opposite of what a competitive

¹¹ Comments of XO Communications, Inc. at pp. 4-5.

¹² *See*, footnote 10 *supra*.

¹³ Sprint Comments at pp. 4-5.

market would produce and completely consistent with a market in which the ILECs are maintaining their legacy market power.¹⁴

Indeed, if the pricing flexibility collocation triggers accurately reflect a truly competitive marketplace, as the RBOCs urge, access customers should have at least some degree of success in negotiating arm's length agreements with the RBOCs. However, as Cable & Wireless demonstrates, such is not the case.

The BOCs, by contrast, have generally refused to negotiate better deals with Cable & Wireless, despite persistent efforts by Cable & Wireless. Indeed, the BOCs have not lowered their rates at all except as the X-Factor requires them to do in the increasingly limited areas in which they are still governed by price caps. [Citations omitted.] Where they have received Phase II pricing "flexibility," they have kept their rates at pre-pricing flexibility levels or, in some instances, actually raised them. [Citations omitted.] And Cable & Wireless has no choice but to pay those "off the rack" rates.¹⁵

As demonstrated by XO, this problem is exacerbated by the RBOCs' tying discounts to term commitments that commit access purchasers to current access needs AND growth.

SBC further claimed as part of that presentation that special access services are available at rates that allegedly are comparable to UNE prices but only if the CLEC enters into five year term commitments and commits to obtaining 95% or more of the high capacity circuits it purchases from the ILEC as special access circuits. The ILECs thus are using their pricing flexibility and the lack of Commission oversight of special access services to undermine the Act and to continue to monopolize local exchange markets.¹⁶

Such RBOC behavior is in stark contrast to the behavior of competitors who find it increasingly difficult, if not impossible, to compete with the RBOCs in the special access marketplace

¹⁴ Comments of Ad Hoc Telecommunications Users Committee at p. 3.

¹⁵ Comments of Cable & Wireless USA, Inc. at p. 15.

¹⁶ Comments of XO Communications, Inc. at p. 8.

Perhaps the starkest evidence that the BOCs have, and will exercise, market power is their actual pricing behavior in the wake of pricing flexibility, particularly as compared to the pricing behavior of CLECs with respect to the small minority of buildings to which there are multiple suppliers. For example, in the limited instances in which CLECs have their own optical facilities-based access alternatives, Cable & Wireless has been successful in negotiating significant price decreases. To meet the competition (from other CLECs), CLECs routinely provide one-year contracts, which minimize the extent to which Cable & Wireless is locked into a rate for an extended period of time. Moreover, CLECs' prices for optical services have, in many cases, declined as these agreements are re-negotiated. Although CLECs provide such alternatives in only a limited number of locations, where they exist CLECs provide superior service (including provisioning service) and substantially better prices than the BOCs.¹⁷

BellSouth attempts to justify price increases in markets with pricing flexibility by arguing that it has only increased month-to-month DS1 and DS3 rates because the price cap rules did not properly reflect the difference in transaction costs of month-to-month and term and volume services.“ However, under price caps all DSI services were in the same sub-category. A price cap ILEC had no limit to increases in month-to-month rates as long as there was a corresponding reduction to the term and volume products such that the total sub-category did not exceed its price index. BellSouth claims that over 90% of DS1s are purchased with term or volume plans. Accordingly, with its demand disbursed in this manner, price cap rules would have allowed very large price increases to month-to-month rates with only small reductions to term and volume plans. In short, price caps rules did not artificially deflate month-to-month rates as BellSouth claims.

However, there is one issue on which Sprint largely agrees with the RBOCs and Time Warner Telecom, a competitor and purchaser of RBOC special access services.

¹⁷ Comments of Cable & Wireless USA, Inc. at p. 15.

¹⁸ Comments of BellSouth at p. 11. *See also*, Opposition of Qwest Communications International Inc. at p. 25 and Opposition of Verizon at p. 25.

While Time Warner agrees that review and revision of the current pricing flexibility scheme is necessary, Time Warner, and Sprint, do not advocate AT&T's proposal to readjust price cap rates, to achieve an 11.25%, or any prescribed rate-of-return. Rather, Time Warner urges a return to price cap regulation.

Rather than "retargeting" rates as AT&T suggests, it would be more efficient for the Commission to quickly complete a rulemaking to adopt a long-term solution by repealing pricing flexibility and re-imposing price caps.¹⁹

Sprint agrees. Sprint would add that in the rulemaking to revise the current pricing flexibility scheme the Commission should also devise a mechanism that would grant relief from price caps in situations where ILECs face truly effective competition.²⁰

In conclusion, Sprint urges the Commission to grant, in part, and deny, in part, AT&T's Petition. The Commission should grant AT&T's request for a rulemaking to reform the pricing flexibility rules for price cap ILEC provision of interstate special access services. The BOCs still possess tremendous market power in these services and have combined that market power with pricing flexibility to further control the interstate

¹⁹ Comments of Time Warner Telecom at p. 16. Indeed, Sprint, and the RBOCs, point out that the Commission does not have the authority in this proceeding to prescribe rates. *See e.g.*, Comments of Sprint at pp. 7-8 and Opposition of Verizon at pp. 34-35.

²⁰ For instance, Texas allows ILECs price flexibility where the customer signs an affidavit attesting that it was aware of a competitive alternative. *See*, Texas Commission Substantive Rules § 26.211. While Sprint believes this issue needs a full hearing through the rulemaking requested by AT&T, Sprint would note that something more than the affidavit outlined in the Texas rule may be necessary – e.g., proof that a viable competitive bid by an authorized carrier was actually presented to the customer Sprint believes that a process can be set up that allows an ILEC pricing flexibility to respond to a verified competitive service provider bid through filing with the Commission the name of the competitive provider, the service being provided, the physical location of the service, the terms and conditions of the provision of the service, the price of the service, and a cost study proving that the price recovers the cost of the service. . *See also*, Joint Comments of Pac-West Telecomm, Inc. and US LEC Corp. at p. 10 pointing too the

special access market and to increase prices where competition does not exist. However, the Commission should deny the interim relief requested by AT&T. Instead, Sprint believes an appropriate remedy would be a return to price cap regulation at the current rates and adoption of a new “trigger” for pricing flexibility.

Respectfully submitted,

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factors the California Commission reviews before granting Pacific Bell pricing flexibility for special access (essentially equivalent to Phase II relief).

CERTIFICATE OF SERVICE

I, Joyce Y. Walker, hereby certify that I have on this 23rd day of January 2003, served a copy of Sprint Corporation's foregoing reply comments, with the Secretary, Federal Communications Commission, to the persons listed below.

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