

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application of BellSouth Corporation,)	WC Docket No. 06-74
Transferor, and AT&T Inc., Transferee, for)	
Consent to Transfer Control of Licenses and)	DA 06-904
Authorizations)	

**COMMENTS OF SPRINT NEXTEL CORPORATION
ON APPLICATION FOR TRANSFER OF CONTROL**

SPRINT NEXTEL CORPORATION

Robert S. Foosaner
Senior Vice President – Government Affairs

Luisa L. Lancetti
Vice President – Government Affairs, Wireless Regulatory

Michael B. Fingerhut
Director – Government Affairs

2001 Edmund Halley Drive
Reston, VA 20191

A. Richard Metzger, Jr.
Regina M. Keeney
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street, NW, Suite 802
Washington, D.C. 20006
(202) 777-7700

Counsel for Sprint Nextel Corporation

June 5, 2006

EXECUTIVE SUMMARY

The proposed merger of AT&T and BellSouth – two of the three largest local exchange carriers (“LECs”) in the United States – would not serve the public interest, and should not be approved, **unless** the Commission adopts and enforces conditions that offset the adverse effects of the proposed transaction. Specifically, the merger would harm what is already very limited competition for special access services – the dedicated, high-capacity landline circuits that wireless carriers use to connect their cell sites to their switches and that business users rely on to connect their offices and buildings to the Internet and to carriers’ networks.

Sprint Nextel is heavily dependent on the special access services of BellSouth and AT&T, which it purchases in order to provide wireless services to Sprint Nextel customers. In fact, *Sprint Nextel has no alternative to BellSouth or AT&T for more than 99 percent of Sprint Nextel’s PCS cell sites in the BellSouth and AT&T service areas*. BellSouth and AT&T, the providers of this key input, however, are also the two owners of Sprint Nextel’s competitor, Cingular, the nation’s largest wireless provider.

The merger of AT&T and BellSouth would create the largest provider of special access services in the country. The two companies already report the highest returns on special access investment among the Regional Bell Operating Companies – 92 percent for AT&T and 98 percent for BellSouth. The combined firm would control more than 45 percent of all the special access revenues reported by incumbent LECs nationwide. The merged company together with Verizon would account for over 80 percent of total annual special access revenues reported by incumbent LECs. This overwhelming concentration would belie any suggestion that the marketplace for special access service is

meaningfully competitive. Indeed, AT&T today is one of a few competing suppliers of special access service in BellSouth's region. The merger of AT&T and BellSouth will eliminate AT&T as an alternative special access provider. Consequently, if it approves the proposed combination, the Commission must adopt remedial measures to protect competition in downstream retail markets that depend on special access as a critical input.

The combination of AT&T and BellSouth will harm competition in at least three ways:

- Expanding the service territory of the merged company, thereby increasing the incentive to harm national competitors and magnifying the effects of any anticompetitive actions taken by the combined company;
- Consolidating ownership of Cingular, thereby increasing the merged company's incentive to use its special access pricing flexibility to benefit Cingular, its wholly-owned wireless subsidiary; and
- Eliminating AT&T as an unaffiliated provider and purchaser of special access service in BellSouth's region, thereby reducing competitive alternatives to BellSouth's services and shrinking the market of potential purchasers of competitive services.

Given these harms, the Commission should not grant AT&T and BellSouth's Application **unless** it imposes conditions designed to prevent the merged company from exploiting its dominance in the provision of special access services to harm competition in the wireline and wireless markets. The Commission must implement and enforce remedial measures to ensure that Sprint Nextel and other retail competitors of the merged company will be able to purchase reasonably priced special access services from the combined company on reasonable terms and conditions. Specifically, the Commission should impose the following conditions to address the harms posed by the proposed merger of AT&T and BellSouth:

- Requiring the combined company to divest loop and transport facilities needed to reach certain buildings in BellSouth's territory where AT&T and BellSouth have duplicative facilities and are the only carriers with direct wireline connections to the building;
- Requiring the combined company to include facilities in BellSouth's existing service area in future reports showing monthly performance results for special access provisioning measured in accordance with the Service Quality Measurement Plan for Interstate Special Access Services adopted in the *SBC-AT&T Merger Order*;
- Prohibiting the combined company from taking any of the following actions for a period of thirty months following the closing of the merger:
 - Increasing the rates paid by either AT&T's or BellSouth's existing customers of DS1 and DS3 local private line services;
 - Providing special access offerings to affiliates that are not available to other similarly situated special access customers on the same terms and conditions;
 - Providing a new or modified contract tariffed service to any section 272(a) affiliate(s), unless the company first certifies to the FCC that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon or its wireline or wireless affiliates;
 - Discriminating unreasonably in favor of affiliates in establishing the terms and conditions for grooming special access facilities;
 - Increasing the rates in either AT&T's or BellSouth's interstate tariffs, including contract tariffs, for special access services that either company provides in its in-region territory; or
 - Seeking increases in state-approved rates for unbundled network elements;
- Requiring the combined company to submit a revised list of wire centers in BellSouth's service territory for which the companies claim there is no impairment;
- Requiring the combined company to reduce all special access rates to reasonable levels;
- Prohibiting the combined company from using rates, terms, or conditions to discourage customers from relying on alternatives to the company's special access services;
- Prohibiting the combined company from bundling less competitive special access services with more competitive services;

- Prohibiting the combined company from requiring customers to offer it a right of first refusal with regard to bids for special access services; and
- Imposing non-discrimination requirements.

TABLE OF CONTENTS

I.	STANDARD OF REVIEW	2
II.	THE PROPOSED MERGER IS HIGHLY LIKELY TO HARM COMPETITION IN THE WHOLESALE SPECIAL ACCESS MARKET.....	3
A.	The Merger Will Harm Competition for Special Access Services	6
1.	The Merger Will Expand AT&T-BellSouth's Service Territory, Thereby Increasing Incentives and Opportunities to Harm National Competitors.....	6
2.	The Merger Will Result in Cingular Becoming a Wholly-Owned Subsidiary of AT&T-BellSouth, Thereby Increasing Incentives to Discriminate Against Competing Providers	9
3.	The Merger Will Eliminate AT&T as a Purchaser and Provider of Competitive Special Access Services in the BellSouth Region, Thereby Increasing the Combined Company's Dominance in that Region	11
B.	Special Access Remedies.....	12
III.	CONCLUSION.....	16

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

In the Matter of)	
)	
Application of BellSouth Corporation,)	WC Docket No. 06-74
Transferor, and AT&T Inc., Transferee, for)	
Consent to Transfer Control of Licenses and)	DA 06-904
Authorizations)	
)	

**COMMENTS OF SPRINT NEXTEL CORPORATION
ON APPLICATION FOR TRANSFER OF CONTROL**

Sprint Nextel Corporation (“Sprint Nextel”) hereby comments on the above-captioned merger application (“Application”) of AT&T Inc. (“AT&T”) and BellSouth Corporation (“BellSouth”) (together, the “Applicants”). Grant of the Application would serve the public interest **only** if the Commission adopts and enforces appropriate conditions to offset the potential adverse effects of the proposed transaction.

The proposed merger will make AT&T, the largest telecommunications company in the United States, even larger. The combination of AT&T and BellSouth will produce a company with \$100 billion in annual revenues that will be the dominant provider of local telephone service in most of the metropolitan areas in 22 states across the Midwest and South, serving 68.6 million access lines.¹ Cingular, with 55.8 million wireless customers, will become a wholly-owned subsidiary of the new company.²

¹ See “AT&T Fact Sheet,” *available at*: <<http://att.sbc.com/gen/investor-relations?pid=5711>>; “BellSouth Corporation Facts and Figures,” *available at*: <http://bellsouth.mediaroom.com/index.php?s=company_overview&item=27>.

² *Id.*

The merger of AT&T and BellSouth will maintain and strengthen the combined company's incentive to use its dominance in the provision of special access to disadvantage its wireline rivals as well as the Commercial Mobile Radio Service ("CMRS") competitors of Cingular. AT&T and BellSouth recently reported returns on special access investment in 2005 of 92 and 98 percent, respectively, the highest returns among the Regional Bell Operating Companies ("RBOCs"). After closing, AT&T by itself will control 45.17% percent of total annual special access revenues reported by incumbent LECs; the merged company and Verizon will account for 82.07% of total annual special access revenues reported by incumbent LECs.³ These overwhelming shares belie any suggestion that the marketplace for special access service is meaningfully competitive. Consequently, if it approves the proposed combination, the Commission must adopt remedial measures to ensure that competitive LECs and CMRS providers obtain access to reasonably priced special access services they need in order to compete with the merged company in downstream retail markets.

I. STANDARD OF REVIEW

The Communications Act requires merger applicants to establish that the proposed merger will further the public interest, convenience, and necessity. Under Sections 214(a) and 310(d) of the Communications Act, "[a]pplicants bear the burden of demonstrating that the proposed transaction is in the public interest," taking into

³ 2005 ARMIS 43-01, Table I, column (s) Special Access, Row 1090, Total Operating Revenue. Reporting incumbent LECs include all Tier 1 ILECS, including the RBOCs, United, Cincinnati Bell, Rochester and other large incumbent LECs.

consideration the “broad aims of the Communications Act.”⁴ The examination required under the Act “necessarily subsumes and extends beyond the traditional parameters of review under the antitrust laws.”⁵

In order to find that a merger is in the public interest, we must, for example, be convinced that it will enhance competition. A merger will be pro-competitive if the harms to competition – *i.e.*, enhancing market power, slowing the decline of market power, or impairing this Commission’s ability properly to establish and enforce those rules necessary to establish and maintain the competition that will be a prerequisite to deregulation – are outweighed by benefits that enhance competition. If applicants cannot carry this burden, the applications must be denied.⁶

In the absence of appropriate remedial action by the Commission, the merger application submitted by AT&T and BellSouth does not meet this burden.

II. THE PROPOSED MERGER IS HIGHLY LIKELY TO HARM COMPETITION IN THE WHOLESALE SPECIAL ACCESS MARKET

The merger of BellSouth and AT&T would combine the second and third largest providers of special access service, making the merged company by far the largest special access provider in the country. As such, the merged company would control the access of Sprint Nextel, other CMRS providers, and competitive LECs to the special access services they need to compete with the retail wireless and wireline offerings of the combined AT&T-BellSouth. As the Commission emphasized in its *SBC-AT&T Merger Order*, “wholesale special access service is a critical input for: competitive LECs in providing services to their retail enterprise customers, wireless and competitive LECs in

⁴ *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶ 2 (1997).

⁵ *Id.*

⁶ *Id.*

connecting their networks to other carriers, long distance carriers seeking to connect customers to their long-distance networks, and entities seeking to connect with Internet backbones.”⁷ For the reasons discussed below, the Commission must implement and enforce remedial measures to ensure that Sprint Nextel and other retail competitors of the merged company will be able to purchase reasonably-priced special access services from the combined company on reasonable terms and conditions. Otherwise, the merger will result in significant harms to competition.⁸

The combination of AT&T and BellSouth will have anticompetitive effects on the availability of reasonably priced special access service in the enlarged footprint of the

⁷ *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 24 (2005) (“*SBC-AT&T Merger Order*”).

⁸ See, e.g., Comments On Behalf Of The New Jersey Division Of The Ratepayer Advocate, WC Docket No. 05-65, at 24 (April 25, 2005) (“until the FCC resolves critical industry issues such as unifying the intercarrier compensation regime, addressing BOCs’ exorbitant special access profits, and ensuring appropriate interaffiliate transactions, it would be unwise to allow the market to undergo further concentration, absent commitments aimed at curtailing abusive behavior by the merged entity”); *id.* at 25 (“Competitive pressures are not sufficient to cause SBC to flow through the[] substantial [merger-related] synergies to consumers of basic services and other monopoly services (such as special access) through rate reductions, service innovation, or enhanced service quality. The FCC should recognize this market failure in its decisions in the Special Access and the Intercarrier Compensation proceedings in order to prevent SBC from earning supracompetitive profits from its non-competitive services.”); Petition to Deny of Consumer Federation of America, Consumers Union, and U.S. Public Interest Research Group, WC Docket 05-65, at 24 (Apr. 22, 2005) (responding to the proposed mergers of SBC-AT&T and Verizon-MCI by stating that “[a]s a vertically integrated entity, both of the resulting behemoth companies would have an incentive to maximize profits by using their leverage in the form of a price squeeze. Unfortunately, the opportunity to run a classic price squeeze will be readily available in the form of excessive access charges. The regional Bell companies have been overcharging for access, particularly special access that was prematurely deregulated by the FCC. AT&T and MCI were the leading critics of the access charge system. Should these mergers go through, those who profit from those overcharges will have swallowed those who sought lower access charges that drive down prices for consumers. These mergers should not be allowed to proceed until access charges are reformed.”).

merged company in at least three ways. First, as the Commission found in the SBC-Ameritech merger, the expanded service territory of the merged company will increase its incentive and opportunities to engage in anticompetitive practices designed to harm national competitors, such as Sprint Nextel. Further, because it will be able to control special access rates over a wider geographic area, increases in special access prices by the merged company will have a greater adverse impact on retail competition. Second, because Cingular will become a wholly-owned subsidiary, the merged company will have a greater incentive to use special access pricing flexibility to benefit its wireless affiliate. Third, the proposed transaction will eliminate AT&T as an unaffiliated purchaser and provider of special access service in BellSouth's region. Thus, special access users will no longer be able to purchase special access from AT&T as an alternative to BellSouth and existing and potential third-party providers of special access may no longer find that business to be viable because of the loss of AT&T as a potential purchaser of their services.

The merger of AT&T and BellSouth will result in even greater harms than those that led the Commission to adopt conditions as part of the *SBC-AT&T Merger Order*.⁹ Given the importance of special access services to competition for both wireline and wireless services, it is critical that the Commission take steps to protect and promote competition for special access services and for downstream services that depend on special access as an essential input. Thus, even if the Commission were disinclined to deny the merger application outright, it must, at a minimum, impose the remedial

⁹ In that order, the Commission found it necessary to ensure that the merged company would not be able to raise rivals' costs by increasing the rates for special access services not only to specific buildings in SBC's territories, but on an MSA-wide basis as well. *SBC-AT&T Merger Order* ¶¶ 37, 48, Appendix F.

measures set forth in section II.B below. These measures are designed to prevent the merged company from exploiting its dominance in the provision of special access services to harm competition in both the wireless and wireline markets.

A. The Merger Will Harm Competition for Special Access Services

The Applicants do not dispute the importance of special access to competition. Rather, they would have the Commission believe that there will be no harm to competition as a result of the instant merger because “[t]he competitive overlap in special access services between AT&T and BellSouth” is minimal.¹⁰ Sprint Nextel strongly disagrees. AT&T’s purchase of BellSouth and its concomitant expansion of its current stranglehold over the critical special access market in its franchised territories to the franchised territories of BellSouth will have significant anticompetitive effects.

1. The Merger Will Expand AT&T-BellSouth’s Service Territory, Thereby Increasing Incentives and Opportunities to Harm National Competitors

The Applicants’ analysis ignores the fact that the merger will substantially increase the combined company’s incentive to exploit its dominant control over the provision of special access services throughout its region. This is so because a combined AT&T-BellSouth will be able to achieve greater benefits from a strategy designed to raise its rivals’ costs than either could achieve separately, thereby making it more likely that the combined entity will engage in such a strategy.¹¹ As the Commission explained

¹⁰ Application of BellSouth and AT&T, WC Docket No. 06-74, Public Interest Showing at 55 (Mar. 31, 2006) (“Application”).

¹¹ See *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶¶ 207-211 (1999) (“*SBC-Ameritech Merger Order*”) (discussing the fact that the horizontal merger of Ameritech and SBC gives the merged entity a bigger footprint which in turn creates more opportunities and incentives to discriminate against its rivals);

in the *SBC-Ameritech Order*, “[t]he merger increases, from pre-existing substantial levels, the ability and incentive of the merged entity to discriminate” against other providers.¹² As in the SBC-Ameritech merger, the combined AT&T-BellSouth would “internalize external effects . . . thus increasing its incentive to act in one area in a manner that produces these effects in another. Economies of scale and scope, and network effects, imply that when incumbent LECs weaken” competition for a service in one region, they “weaken[] it in other regions as well.”¹³ Consequently, “[b]ecause of the possibility of internalizing such spillover effects, the incentive for the combined entity to discriminate against competitors . . . in particular areas within the combined region will be greater than the sum of the incentives for the companies operating alone.”¹⁴ For example, discrimination in the provision of special access in Chicago, where AT&T is the dominant provider of special access services, would adversely affect competition in that market. However, AT&T may not realize the benefit of such discrimination in the Atlanta market where it currently competes with BellSouth, the dominant provider of

see also, United States v. Griffith, 334 U.S. 100, 107 (1948) (Douglas, J.) (describing the potential dangers of enabling a firm with monopoly power in one market to extend its monopoly power to other markets). The Applicants dispute the applicability of the “bigger footprint” analysis used in the *SBC-Ameritech Merger Order* to the current merger, in part, because they claim that competition has grown substantially since that decision was issued and that as a result a discriminatory strategy cannot succeed. *See* Application, Declaration of Dennis W. Carlton and Hal S. Sider, ¶¶ 128-130. The difficulty with this argument is that there is virtually no competition in the provision of DS1 facilities in BellSouth’s franchised territories. Indeed, Sprint Nextel obtains nearly all of the DS1 facilities it needs to transport traffic from its cell sites to its MSOs from BellSouth, despite the fact that Sprint Nextel is willing to obtain such facilities in BellSouth’s territory from alternative access providers.

¹² *SBC-Ameritech Merger Order* ¶ 207.

¹³ *Id. See also id.* ¶ 208 (“After the merger, the combined company will be able to internalize these external effects of discriminatory conduct in one area in the combined region on another area in that region.”).

¹⁴ *Id.* ¶ 208.

special access services in that market. Post-merger, however, the “marginal benefit of discrimination” in Chicago will increase as the combined entity receives the benefits of such discrimination in Atlanta.¹⁵

Not only will the combined firm have an increased incentive to discriminate, it will also have an increased ability to do so. This enhanced ability results from:

(1) the reduction in the number of benchmarks, making it more difficult for regulators to monitor and detect misconduct; (2) the ability of the combined entity to coordinate and rationalize the discriminatory conduct of the two companies (sharing ‘worst practices’), making detection and proof of discrimination more difficult; and (3) the efficiencies (economies of scope) that result from being able to share strategies and arguments while fighting similar regulatory battles in multiple state forums.¹⁶

AT&T and BellSouth are currently the second and third largest providers of special access in the United States, and combined would be the largest by far, controlling over 45 percent of that market.¹⁷ Therefore, any change in prices adopted by the merged company would have a larger effect on potential competitors nationwide than the same change would have if adopted by either BellSouth or AT&T alone. For example, if the combined AT&T-BellSouth raised prices by \$.10, it would have a greater adverse effect on retail competition nationwide than if BellSouth were to impose a similar \$.10 increase today. The greater impact on national competition stems from the simple fact that the combined company will reach 45 percent of the market, compared to the 16 percent of

¹⁵ *Id.*

¹⁶ *Id.* ¶ 209.

¹⁷ These market shares are computed based on the special access revenue data reported for 2005 by the incumbent local exchange carriers in ARMIS 43-01. As the Commission has found, competitive local exchange carriers are much more likely to provide DS3 or higher service, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 178 (2005) (“*TRRO*”), so these market shares probably substantially understate the DS1 market share.

the market BellSouth controls today. Thus, the same \$.10 price increase would affect approximately 45 percent of the special access services purchased by a national competitor, such as Sprint Nextel, as opposed to the 16 percent of special access costs that would be affected by an increase in BellSouth's prices today. Thus, any price changes imposed by the merged company would be more likely to affect competition nationwide, and would require greater scrutiny from the Commission.

2. The Merger Will Result in Cingular Becoming a Wholly-Owned Subsidiary of AT&T-BellSouth, Thereby Increasing Incentives to Discriminate Against Competing Providers

Sprint Nextel today is extremely dependent on the special access services of BellSouth and AT&T in providing wireless service in competition with Cingular, the jointly-owned subsidiary of those two RBOCs. Sprint Nextel has no alternative to BellSouth or AT&T for more than 99 percent of Sprint Nextel's PCS cell sites in the BellSouth and AT&T regions, which are served through special access service, primarily DS-1 service.¹⁸

Currently, BellSouth and AT&T share ownership of Cingular. This reduces their incentives to engage in discriminatory practices in the provision of wireline services, such as special access, that benefit Cingular because each company bears the full cost of any such behavior, but neither company would receive the full benefit of the downstream effects. Consider, for example, the current incentive of BellSouth, which controls the provision of DS1 special access facilities to wireless carriers in its franchised territories, to use the pricing flexibility it has obtained in many of its Metropolitan Statistical Areas

¹⁸ Sprint Nextel's calculations were based on its CDMA network, but there is no *a priori* reason to believe that more competitive alternatives would be available for cell sites on its iDEN® network.

("MSAs") to discriminate in favor of Cingular by reducing the price of DS1 service to Cingular by one dollar.¹⁹ In that event, BellSouth would only realize a fraction of the benefit of that reduction (*i.e.*, less than one dollar) because of its limited equity ownership of Cingular. AT&T currently has the same incentive.

With the merger such restraint would disappear. The AT&T-BellSouth entity would now be able to realize 100% of the benefits that would flow to Cingular in the wireless market from a strategy of unreasonable discrimination in favor of Cingular in the upstream special access market. Clearly, the Commission needs to adopt safeguards to prevent the merged company from acting on that incentive.

Likewise, rate increases that would have a disproportionate impact on wireless carriers would become more attractive to the combined entity because it would now capture 100% of these increases, while placing competitors of Cingular at a disadvantage. For example, wireless carriers are heavily dependent upon transit services. Increases to transit rates, even if they resulted in a cost increase to Cingular, would benefit the combined entity at the cost of wireless competitors.

The availability of efficiently-priced transit services is especially important to Sprint Nextel and other carriers. CMRS providers as well as competitive LECs rely on transit services in order to exchange traffic with other carriers where the traffic volumes are not high enough to justify the establishment of direct connection arrangements. Indeed, this Commission has recognized the vital role transit services play in the

¹⁹ BellSouth has been granted pricing flexibility in 42 of the 92 MSAs in its region and has used such flexibility to lease DS1 facilities at rates that are 13.7% higher than in MSAs where they have not obtained pricing flexibility. *See* BellSouth Tariff FCC No. 1, §§ 7, 23.

deployment of competitive networks.²⁰ Pricing transit service at inefficient levels unnecessarily inflates the cost of this key input to CMRS providers.

By combining their ownership interests in Cingular, AT&T and BellSouth will have an increased incentive to raise the cost of this critical component of interconnection because the increased cost to Cingular (assuming the new entity even passes these costs on to its subsidiary) will now be retained in whole by the new entity. Wireless carriers competing with the merged company will have no such offset and will, in effect, be funding their competitor.

To address this potential competitive harm, the Commission should require the newly merged company to offer transit service at cost based rates and not the so-called “market based” rates AT&T and BellSouth have sought in the states. Access to efficiently-priced transit service is essential to a robustly competitive CMRS industry.

3. The Merger Will Eliminate AT&T as a Purchaser and Provider of Competitive Special Access Services in the BellSouth Region, Thereby Increasing the Combined Company’s Dominance in that Region

AT&T today is one of a few competing suppliers of special access service in BellSouth’s region. The merger of AT&T and BellSouth will eliminate AT&T as an alternative special access provider. Hence, the Commission, as it did in the SBC-AT&T merger, must ensure that the proposed transaction does not adversely affect the availability of alternative special access services at these locations.

In their Public Interest Statement, the Applicants concede there is an overlap between AT&T and BellSouth’s facilities, but attempt to minimize the significance of

²⁰ *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, ¶ 125 (2005).

that overlap by claiming there are only a small number of buildings for which AT&T and BellSouth are the sole providers.²¹ Such analysis is largely beside the point. The Commission has previously rejected the notion that the absolute number of buildings served by a carrier determines whether such carrier is “competitively significant.”²² Plainly, the elimination of AT&T as an alternative at these locations is competitively significant to the wireless and wireline carriers that obtain special access service from AT&T today.

The merger also would affect adversely special access competition in the current BellSouth territory by eliminating AT&T as a substantial, unaffiliated purchaser of special access from alternative providers. Long distance service providers and wireless service providers are the largest users of special access service, which they rely on to connect their customers to their networks. As the market leader for both long distance and wireless service, AT&T is likely the leading purchaser of special access service. Competing third-party providers of special access today benefit from the ability to sell service to AT&T.

B. Special Access Remedies

As explained above, the merger of two of the three largest remaining RBOCs would result in harm to competition and to consumers. In order to prevent these harms, the Commission should adopt several conditions as part of any order approving the proposed merger. Specifically, AT&T and BellSouth should be required to:

²¹ Application, Public Interest Showing at 56-57.

²² *SBC-AT&T Merger Order* ¶ 37 (“We disagree with the Applicants’ assertion that ‘the absolute number of buildings served by AT&T is so small that AT&T’s facilities cannot be considered competitively significant.’”).

- Divest loop and transport facilities in the form of Indefeasible Rights of Use (“IRUs”) needed to reach certain buildings in BellSouth’s territory where AT&T and BellSouth have duplicative facilities and are the only carriers with direct wireline connections to the building; ensure that access to IRUs is offered on terms and conditions that are just and reasonable.
- Include facilities in BellSouth’s existing service area in future reports showing monthly performance results for special access provisioning measured in accordance with the Service Quality Measurement Plan for Interstate Special Access Services adopted in the *SBC-AT&T Merger Order*.²³
- Commit that for a period of thirty months following the closing of the merger, the combined company will not:
 - Increase the rates paid by either AT&T’s or BellSouth’s existing customers of DS1 and DS3 local private line services;
 - Provide special access offerings to its affiliates that are not available to other similarly situated special access customers on the same terms and conditions;²⁴
 - Provide a new or modified contract tariffed service to any section 272(a) affiliate, unless the company first certifies to the FCC that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon or its wireline or wireless affiliates;
 - Unreasonably discriminate in favor of affiliates in establishing the terms and conditions for grooming special access facilities;
 - Increase the rates in either AT&T’s or BellSouth’s interstate tariffs, including contract tariffs, for special access services that either company provides in its in-region territory; or
 - Seek increases in state-approved rates for unbundled network elements (“UNEs”).
- Submit a revised list of wire centers in BellSouth’s service territory for which the companies claim there is no impairment. These revisions should take into account the effect of the merger on the UNE triggers that the Commission has established to determine whether dedicated transport and/or high-capacity loops must be unbundled pursuant to section 251 of the Act.

²³ *SBC-AT&T Merger Order* at Appendix F, Attachment A.

²⁴ In the event that AT&T-BellSouth is relieved of its obligation to tariff its interstate special access offerings, the company should be required to make available to the public information concerning current rates, terms, and conditions for all of their interstate special access offerings by posting such information on the company’s website.

Although the foregoing conditions based on those adopted in the SBC-AT&T and Verizon-MCI merger orders are necessary to address the combination of the legacy AT&T assets in BellSouth's service territory with BellSouth's facilities, **they are not sufficient to address the increased risk of harm posed by the proposed merger.** The combination of two of the three largest remaining BOCs further reduces both the actual and potential competition for wireline services. This reduction in competition is likely to harm unaffiliated wireless providers, such as Sprint Nextel, that rely on BellSouth and AT&T for key wireline inputs to their wireless services. The Commission should address these harms to both the wireline and wireless industries by:

- **Requiring the combined company to reduce all special access rates to reasonable levels.**²⁵ The merged company should be required to reduce all charges for DS1 and DS3 capacity special access services levels that are just and reasonable. These reductions should apply to all rate elements in all tariffed and non-tariffed pricing plans, including those in contract tariffs or other volume and term plans. For the reductions to be meaningful, the FCC must prohibit AT&T-BellSouth from increasing its adjusted special access rates for a period of thirty months after the merger. The company should also be prohibited from applying any termination liabilities, reductions in percentage discount availability, revenue shortfall charges, or other contract tariff penalties to customers that fail to meet revenue commitments due to the reduction in rates. To ensure that customers can take advantage of the reduced rates, customers that have agreements in place with either AT&T or BellSouth at the time the merger closes should be granted a one-

²⁵ AT&T and BellSouth have the highest returns for special access among all the RBOCs, having achieved returns of 92 and 98 percent, respectively, in 2005. 2005 ARMIS 43-01, column (f), Special Access, Row 1915 "Net Return," divided by Row 1910 "Average Net Investment." In a competitive market, neither carrier would be able to sustain prices that yielded returns of that magnitude. Bringing these two companies' rates down to the 11.25 percent rate of return that the Commission prescribed when it last conducted a rate prescription pursuant to Part 65 of its rules would require the companies to cut their special access rates by over 50 percent from their current levels; *see* Declaration of Susan M. Gately at 4, Updated table 1.1 (June 13, 2005), filed as Attachment B to Comments of Ad Hoc Telecommunications Users Committee (June 13, 2005) in WC Docket No. 05-25 (concluding that RBOC special access overcharges in 2004 amounted to nearly \$6.4 billion – approximately 45 percent of the RBOCs' total special access revenues of approximately \$14.3 billion for that year).

year period during which they can terminate their existing contracts without any penalty.

- **Prohibiting the combined company from using rates, terms, or conditions to discourage customers from relying on alternatives to the company's special access services.** The merged company should be prohibited from conditioning discounts, or other favorable terms or conditions, on a customer's commitment to purchasing from AT&T-BellSouth special access services equal to a minimum percentage of the customer's: (i) total special access service requirement; or (ii) special access spending with either BellSouth or AT&T during a past time period; or (iii) total purchase of all forms of local connectivity purchased from all service providers in the merged company's region; or (iv) any similar volume or revenue commitment tied to past or future requirements.
 - Nor should the merged company be permitted to link discounts, or other favorable terms or conditions for special access services to a customer's commitment to limit or cease its purchases of UNEs. Similarly, the combined company should be barred from implementing unreasonable "grooming" restrictions on the ability of a customer to migrate traffic from the merged company's special access service to facilities or services provided by a carrier that is not affiliated with the merged company. "Unreasonable restrictions" include, but are not limited to, unreasonable limitations on the quantity of additions, deletions, modifications, changes, hot cuts, or grooms that a particular customer may implement during a specific period.
- **Prohibiting the combined company from bundling less competitive special access services with more competitive services.** For example, the merged company should not be permitted to link purchases of: higher-capacity services (*e.g.*, OCn) to lower capacity services (*e.g.*, DS3 or lower); interoffice transmission or entrance facilities to channel termination services; transmission services to central office-based services, such as collocation or multiplexing; services in more densely populated geographic areas to services in less densely populated areas; unregulated services to regulated services; services in areas in which the company has pricing flexibility to services in areas where it lacks such flexibility.
- **Prohibiting the combined company from requiring customers to offer it a right of first refusal with regard to bids for special access services and by imposing non-discrimination requirements.** The merged company should not be permitted to enforce a right of first refusal in its special access service agreements restricting a customer's ability to accept bids from competing service providers unless AT&T-BellSouth offer their services at rates equal to or lower than the lowest offer from a competing service provider. The merged company also should be required to conduct all transactions with its affiliates and with Verizon and its wireline and wireless affiliates at arms length, to reduce any such transactions to writing and to make them available for public inspection.

III. CONCLUSION

In order for the Commission to grant the above-captioned Application, it must adopt and enforce the conditions described herein to offset the potential adverse effects of the proposed transaction.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

By: /s/ Robert S. Foosaner

Robert S. Foosaner
Senior Vice President – Government Affairs

Luisa L. Lancetti
Vice President – Government Affairs,
Wireless Regulatory

Michael B. Fingerhut
Director – Government Affairs

A. Richard Metzger, Jr.
Regina M. Keeney
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006
(202) 777-7700
Counsel for Sprint Nextel Corporation

June 5, 2006

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 5th day of June, 2006, I caused true and correct copies of the foregoing Comments of Sprint Nextel Corporation on Application for Transfer of Control to be mailed by first class mail to:

Wayne Watts
Senior Vice President & Associate General Counsel
AT&T Inc.
175 East Houston
San Antonio, TX 78205

Peter J. Schildkraut
Arnold & Porter LLP
555 12th Street NW
Washington, DC 20004

James G. Harralson
Vice President & Associate General Counsel
BellSouth Corporation
1155 Peachtree Street NE, Suite 1800
Atlanta, GA 30309-3610

Scott D. Delacourt
Wiley Rein & Fielding LLP
1776 K Street NW
Washington, DC 20006

Additionally, I caused true and correct copies of the foregoing Comments of Sprint Nextel Corporation on Application for Transfer of Control to be mailed by electronic mail to:

Best Copy and Printing, Inc.
fcc@bcpiweb.com

Gary Remondino
Competition Policy Division
Wireline Competition Bureau
Gary.Remondino@fcc.gov

Nick Alexander
Competition Policy Division
Wireline Competition Bureau
Nicholas.Alexander@fcc.gov

Bill Dever
Competition Policy Division
Wireline Competition Bureau
William.Dever@fcc.gov

Renée Crittendon
Competition Policy Division
Wireline Competition Bureau
Renee.Crittendon@fcc.gov

Donald Stockdale
Wireline Competition Bureau
Donald.Stockdale@fcc.gov

Mary Shultz
Broadband Division
Wireless Telecommunications Bureau
Mary.Shultz@fcc.gov

John Branscome
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
John.Branscome@fcc.gov

Erin McGrath
Mobility Division
Wireless Telecommunications Bureau
Erin.Mcgrath@fcc.gov

Jeff Tobias
Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau
Jeff.Tobias@fcc.gov

David Krech
Policy Division
International Bureau
David.Krech@fcc.gov

JoAnn Lucanik
Satellite Division
International Bureau
JoAnn.Lucanik@fcc.gov

Sarah Whitesell
Media Bureau
Sarah.Whitesell@fcc.gov

Tracy Waldon
Media Bureau
Tracy.Waldon@fcc.gov

Jim Bird
Office of General Counsel
Jim.Bird@fcc.gov

Leslie Marx
Office of Strategic Planning and Policy Analysis
Leslie.Marx@fcc.gov

/s/ Ruth E. Holder
Ruth E. Holder