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

In the Matter of	)	
	)	
Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Broadband Services	)	
	)	
Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to its Broadband Services	)	WC Docket No. 06-125
	)	
Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Its Broadband Services	)	
	)	
Embarq Local Operating Companies' Petition for Forbearance Under 47 U.S.C. § 160(c) from Application of *Computer Inquiry* and Certain Title II Common Carriage Requirements	)	WC Docket No. 06-147
	)	

REPLY COMMENTS OF MOBILE SATELLITE VENTURES SUBSIDIARY LLC

Mobile Satellite Ventures Subsidiary LLC ("MSV")[1] agrees with the numerous parties that filed oppositions to the above-captioned forbearance petitions ("ILEC

[1] MSV is the entity authorized by the Commission in 1989 to construct, launch, and operate a U.S. mobile satellite service ("MSS") system in the L-band. In November 2004, MSV became the first entity licensed to operate an Ancillary Terrestrial Component ("ATC"). MSV is developing the first hybrid cellular-satellite communications network, which will create a new category of wireless services and reshape the telecommunications industry through the delivery of ubiquitous, transparent and seamless coverage of North America to conventional handsets. When completed, the MSV network will transform communications through the delivery of advanced emergency response, aviation and transportation services as well as content-rich entertainment services to consumers through interoperable, user-friendly voice, video and high-speed data services.

petitions").[2] Given the uncertainty regarding the scope of the forbearance petitions (both with respect to the services covered and the rules from which forbearance is sought) and the potential for serious anticompetitive effects, the Commission should deny the ILEC petitions or, at minimum, ensure that any grant of forbearance does not apply to services utilized for special access or other services for which the petitioners continue to dominate the market.

As a provider of Mobile Satellite Service ("MSS"), MSV uses special access services provided by ILECs to connect its ground stations to its switching center and to interconnect to the PSTN. However, as MSV rolls out its next generation integrated satellite/terrestrial network, it will be far more dependent on special access services and tariffs offered on just, reasonable, and nondiscriminatory rates, terms, and conditions. As MSV rolls out the terrestrial component of its network, it will rely on special access services provided by the petitioners within their respective territories for backhaul links from its towers to its local switching centers and other aggregation facilities. Thus, while MSV does not have much prior experience as a special access customer, it will soon find itself in a position similar to that of independent wireless carriers such as Sprint Nextel and T-Mobile that rely on ILEC special access.[3] Accordingly, MSV has an important

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[2] Oppositions to the ILEC petitions were filed by, among others, Sprint Nextel Corporation, COMPTEL, Time Warner Telecom, Inc. et al., Alpheus Communications, LP et al., Broadview Networks et al., EarthLink, Inc. & New Edge Networks, Inc., and the National Telecommunications Cooperative Association.

[3] Independent wireless carriers are perhaps the most effective source of intermodal competition to ILECs and can serve as a check on ILEC pricing in some markets, such as the retail market. However, effective competition is only feasible if special access services are available at reasonable and nondiscriminatory rates. Independent wireless carriers and new entrants such as MSV cannot simply replicate nationwide networks that took ILECs decades to build when they were monopoly service providers, and therefore depend on ILEC special access as a vital input for interconnecting their networks to those of other carriers and for interoffice transport. *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-65, FCC 05-183, para. 24 (rel. Nov. 17,

interest in the outcome of this proceeding, and it supports the arguments made by Sprint Nextel in opposing the ILEC petitions.[4]

I. THE COMMISSION MUST MAINTAIN REGULATORY OVERSIGHT OVER A SPECIAL ACCESS MARKETPLACE THAT IS DOMINATED BY ILECs

Despite petitioners' claims that there is "intense" or "robust" competition in the "broadband" services covered by their petitions, the reality is that ILECs continue to dominate the market for special access, which in turn makes continued regulatory oversight necessary to protect competition.[5] As Sprint Nextel points out in its Opposition, it has paid ILECs higher special access rates in markets with Phase 2 pricing flexibility, and pays significantly higher rates in markets with pricing flexibility than in markets subject to price cap regulation.[6] Sprint Nextel also illustrates the ILECs' dominance in the special access market by noting that ARMIS data indicates extremely high rates of return for special access services – rates that are clearly not a product of a competitive

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2005); *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-25, FCC 05-18, para. 3 (rel. Jan. 31, 2005) ("[C]ommercial mobile radio service (CMRS) providers . . . use special access services as a key input in many of their . . . service offerings."); T-Mobile Reply Comments in WC Docket No. 05-65 at 9-11 (filed May 10, 2005) (discussing critical importance to competition of last-mile links between T-mobile base stations and ILEC central offices and interoffice transport connecting ILEC central offices).

[4] Sprint Nextel Corporation's Opposition to Petitions for Forbearance (filed August 17, 2006) ("Sprint Nextel Opposition").

[5] While the precise scope of the ILEC petitions is unclear, it appears that some of the services identified in the petitions are used to provide special access. Moreover, the petitions appear to ask for the same relief as that deemed granted to Verizon. While the scope of relief granted to Verizon is unclear and is a matter of some debate, at least two Commissioners have suggested that the relief granted may include the removal of regulatory oversight for special access. *See* News Release, *Verizon Telephone Companies' Petition for Forbearance from Title II and* Computer Inquiry *Rules with Respect to their Broadband Services Is Granted by Operation of Law*, WC Docket No. 04-440 (Mar. 20, 2006), Statement of Commissioner Michael J. Copps ("[C]ustomers could see special access rates skyrocket …."); *id.*, Statement of Commissioner Jonathan S. Adelstein ("[I]f the non-discrimination obligations of sections 201 and 202 no longer apply, will the petitioner have a legal obligation to offer [the services covered by the forbearance petition] to unaffiliated wireless providers that compete with its own wireless service?").

[6] Sprint Nextel Opposition at 6-7.

market.[7] Sprint Nextel also describes the futility of trying to purchase special access from alternative vendors, even when it would prefer to purchase services from such non-ILEC vendors.[8] This reliance on ILECs, which is consistent with the experience of other independent wireless carriers,[9] occurs for several reasons ranging from alternative vendors failing to provide service to every location at which a wireless carrier would require special access to anticompetitive terms and conditions offered by ILECs that make it administratively and financially difficult (if not impossible) for special access customers to switch vendors.[10]

For all the above reasons, independent wireless carriers have no effective choice but to purchase special access from ILECs.[11] This puts independent wireless carriers in the unenviable circumstance of having to rely on ILECs – two of whom are the parent companies of their largest rivals, Cingular and Verizon Wireless. In the face of such

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[7] *Id.* at 9-10.
[8] *Id.* at 7-9.
[9] T-Mobile Reply Comments in WC Docket No. 05-65 at 7 & n.15 ("As a general matter, for special access services in an ILEC's service area, T-Mobile relies on services provided by that ILEC, with very limited competitive services available."). Perhaps most tellingly, AT&T Wireless noted the same reality of its reliance on ILEC special access before it was affiliated with an ILEC.

> CMRS Carriers are major consumers of ILEC special access services. *They have no choice*. Although wireless services are increasingly viewed as a form of inter-modal competition to wired telephony services, including broadband services, the ironic fact is that wireless networks out of *necessity* consist largely of wireline facilities. As explained in other proceedings, the ubiquitously deployed array of wireless cell sites required to provide CMRS services must all be connected to mobile switching centers. These connections *overwhelmingly* are made with landline transport facilities purchased from ILEC special access tariffs. *There are few alternatives to the ILECs' ubiquitous transport networks* ….

Comments of AT&T Wireless Services, Inc. in RM No. 10593 at 2-3 (filed Dec. 2, 2002) (emphasis added).
[10] Sprint Nextel Opposition at 7-9.
[11] Sprint Nextel notes that it relies on ILECs for almost 95 % of its DS1 circuits, 83% of its DS3 circuits, well over 95% of its links between cell sites and switching centers, and between 75% and 85% of its OCn level circuits. Sprint Nextel also notes that its reliance on ILEC special access is even greater in rural areas and in smaller markets. *Id.* at 9.

ILEC dominance of the market for special access, it would be unwise for the Commission to forbear from applying Title II regulatory oversight on the provision of services offered by the ILECs that are used for special access. Because special access forms the basis for effective intermodal competition, MSV agrees with Sprint Nextel and other parties who argue that continued enforcement of Title II obligations is needed to protect wholesale and retail customers.

II. THE COMMISSION SHOULD ENSURE THAT ANY RELIEF GRANTED IN RESPONSE TO THE ILEC PETITIONS DOES NOT ENCOMPASS SERVICES USED FOR SPECIAL ACCESS

As noted by several parties opposing the ILEC petitions, the scope of the petitions is far from clear.[12] While petitioners include a list of services in appendices, they also ask for the same relief as that granted to Verizon – relief whose scope is controversial and open to debate.[13] In addition, the ILEC petitions are not clear with respect to the specific regulatory requirements from which relief is sought. Moreover, regardless of the services covered by the ILEC petitions and the regulatory requirements from which relief is sought, petitioners do not provide anywhere near enough information in their respective petitions to justify as fundamental a change in the regulatory landscape as the removal of all Title II regulation of all "broadband" services – especially when such a definition encompasses services used for special access.

Accordingly, the Commission should, *at the very least*, ensure that any relief granted in response to the ILEC petitions does not encompass any services offered by the

[12] *See, e.g.*, Sprint Nextel Opposition at 17; Alpheus Communications, LP et al. Opposition at 2; COMPTEL Opposition at 8-9.
[13] *See supra* note 5.

petitioners that may be used for special access.[14] As explained above, effective intermodal competition depends upon special access being available at reasonable rates, terms, and conditions. The Commission should address the lack of competition and the increasing rates in the special access market in its open *Special Access* proceeding[15] and should not prejudge the important issues raised in that proceeding by forbearing from applying Title II regulation to the wide array of services discussed in the ILEC petitions.

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Respectfully submitted,

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[14] Note that by arguing that the Commission should ensure that services used for special access are not covered by any relief granted to petitioners, MSV is not suggesting that the Commission should grant the ILEC petitions with respect to other services. For example, at the very least, the Commission should be extremely wary of taking any action that undercuts the effectiveness of such basic principles of telecommunications policy as the interconnection and nondiscrimination provisions of Sections 201 and 202 of the Communications Act – particularly as applied to ILECs.
[15] *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-25, FCC 05-18 (rel. Jan. 31, 2005)