

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

In the Matter of)	
)	
Application of BellSouth Corporation,)	WT Docket No. 06-74
Transferor, and AT&T, Inc., Transferee, for)	
Consent to Transfer Control of Licenses)	DA 06-2035
and Authorizations)	

COMMENTS OF SPRINT NEXTEL CORPORATION

I. INTRODUCTION AND SUMMARY

Sprint Nextel Corporation (Sprint Nextel) submits these comments in response to the Public Notices (DA 06-2035) released on October 13 and October 16, 2006.¹ The proposed merger of AT&T Inc. and BellSouth Corporation is the latest consolidation involving the Bell Operating Companies (“BOCs”) that will reshape the telecommunications industry. Although the structure of the industry has changed dramatically in recent years as Bell Companies have acquired their rivals, one constant has remained: wireless and wireline competitors of the BOCs have been and continue to be greatly dependent on special access services that are provided almost exclusively by the BOCs. Indeed, before its acquisition by SBC, AT&T observed in its request that the Commission re-regulate special access service that “there is now indisputable proof that:

¹ Public Notice, “Application for Consent to Transfer of Control Filed by AT&T Inc. and BellSouth Corporation; Commission Seeks Comment on Proposals Submitted by AT&T Inc. and BellSouth Corporation,” WC Docket No. 06-74, DA 06-2035 (rel. Oct. 13, 2006), as amended by *Erratum* (rel. Oct. 16, 2006) (“Public Notice”).

(i) large ILECs, and particularly the [BOCs] retain pervasive market power in the provision of [interstate special access services]”²

Access to reasonably priced BOC-provided special access services is critical to Sprint Nextel’s ability to compete effectively for wireless and enterprise wireline customers. Sprint Nextel, therefore, has underscored in its written submissions and oral *ex parte* presentations in this proceeding both the anticompetitive effects that the proposed transaction would have on the provision of special access in the merged company’s service territory as well as the need for the Commission to impose conditions on the merger that would address those harms.³ More recently, Sprint Nextel, through its membership in COMPTTEL, has supported the merger conditions relating to special access that were filed with the Commission by COMPTTEL and other parties (“COMPTTEL *et al.*”) in a written *ex parte* presentation on September 22, 2006.⁴

As explained below, Sprint Nextel

- Continues to support the special access merger conditions advanced by COMPTTEL *et al.*, particularly the proposal to reinstate price cap controls over AT&T/BellSouth’s provision of key special access services and to require AT&T/BellSouth to make their service offerings available throughout their service territory; and

² *AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593, Petition of AT&T, at 1 (filed Oct. 15, 2002) (AT&T Petition).

³ *See, e.g.*, Comments of Sprint Nextel Corporation on Application for Transfer of Control, WC Docket No. 06-74 (June 5, 2006); Letter from A. Richard Metzger, Jr., counsel to Sprint Nextel, to Marlene H. Dortch, FCC, WC Docket No. 06-74 (Sept. 29, 2006).

⁴ Letter from Karen Reidy, COMPTTEL; Colleen Boothby, Counsel for Ad Hoc Telecommunications Users Committee; Jennifer A. Manner, Mobile Satellite Ventures Subsidiary LLC; and Don Shephard, Time Warner Telecom, to Marlene H. Dortch, FCC, WC Docket No. 06-74 (Sept. 22, 2006) (“COMPTTEL *et al.* Sept. 22 Submission”).

- Fully supports the position of COMPTTEL *et al.* that the conditions proposed by AT&T/BellSouth at the eleventh hour are totally inadequate, particularly those that by their terms would not protect Sprint Nextel and other CMRS providers against discriminatory conduct by AT&T/BellSouth.

II. THE PRICE CAP AND CONTRACT PORTABILITY CONDITIONS ARE ESSENTIAL TO OFFSETTING THE HARMFUL COMPETITIVE EFFECTS OF THE PROPOSED TRANSACTION

In their September 22, 2006 submission, COMPTTEL *et al.* asked the Commission, as a condition of its approval of the transaction, to eliminate Phase II pricing flexibility for DS1, DS3, and certain other special access services offered by the Applicants and to require those services to be provided pursuant to price caps within 60 days after closing.⁵ The September 22 *ex parte* also described in detail the specific requirements that the Commission should impose in order to make the designated services subject to effective pricing controls, because it is clear that competition for special access service today is woefully inadequate to provide the discipline necessary to restrain supra-competitive pricing. And the merger will exacerbate this condition to the detriment of the public interest.

As Sprint Nextel has previously shown in this proceeding, the merger of AT&T and BellSouth will 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. Sprint Nextel is heavily dependent on the special access services of BellSouth and AT&T in providing wireless service in competition with Cingular, which will become a wholly-owned subsidiary of the combined company. The Commission previously has recognized that dominant providers of special access have the incentive and ability to use that power to

⁵ COMPTTEL *et al.* Sept. 22 Submission at 4-5 and Ex. B at 11-12.

raise the costs of their rivals in downstream marketplaces, both CMRS as well as wireline.⁶ In fact, there are no realistic facilities-based alternatives to the incumbent local exchange carrier (“LEC”) for lower capacity special access facilities, e.g., DS-1, DS-3 and Ethernet connections. Indeed, as Sprint Nextel explained in its initial comments, it has no alternative to BellSouth or AT&T for more than 99 percent of Sprint Nextel’s PCS cell sites in BellSouth and AT&T service areas.⁷

The price cap condition set forth in the September 22 *ex parte* is the only reliable and effective method of ensuring that the special access services on which Sprint Nextel and others are most dependent will be available in the service territory of the merged company at reasonable prices. This condition also will ensure that the combined company will have an ongoing incentive to improve its efficiency in the provision of the designated special access services.

The September 22 *ex parte* also proposed a contract portability condition that would require the merged firm to make available throughout its service territory all of its contract and tariffed offerings.⁸ This condition is intended to address the fact that the merger will eliminate BellSouth as an independent benchmark. If implemented, the condition would allow a customer of the merged company’s transit service to obtain that service at the same price in any area within the company’s service territory.

⁶ See, e.g., *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶¶ 60-61 (1999); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 24 (2005); *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, ¶ 3 (2005).

⁷ Comments of Sprint Nextel Corporation on Application for Transfer of Control, WC Docket No. 06-74 at i, 9 (June 5, 2006).

⁸ COMPTTEL *et al.* Sept. 22 Submission at 8 and Ex. B at 18.

III. THE APPLICANTS' PROPOSED CONDITIONS ARE INADEQUATE AND SHOULD BE REJECTED

AT&T and BellSouth a few days ago submitted for the first time a short list of "Potential Merger Conditions." As noted above, Sprint Nextel supports the view of COMPTTEL *et al.* that these eleventh hour proposals are wholly inadequate to address the anticompetitive effects of the AT&T/BellSouth transaction. In addition, as explained below, several of the AT&T/BellSouth proposals provide no protection for Sprint Nextel and other CMRS providers.

One of the proposed conditions, for example, would bar the merged firm from providing "special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions."⁹ By its terms, this condition would not prevent the combined company from offering to Cingular a special access service that it did not offer to Sprint Nextel or other CMRS providers.

Another proposed condition would prohibit the merged company from offering a special access service pursuant to Phase I pricing flexibility "to its own section 272(a) affiliate(s)" unless the company first certifies that it provides the same service to an unaffiliated entity.¹⁰ AT&T/BellSouth offer no justification for limiting the scope of this obligation to special access provided to a section 272(a) affiliate, which BOCs are required by statute to establish for the provision of in-region interLATA services. This limitation is particularly unreasonable in view of the fact that that affiliate requirement is subject to a statutory sunset.¹¹

⁹ Public Notice, Attachment at 4, ¶ 3.

¹⁰ *Id.*, ¶ 4.

¹¹ 47 U.S.C. § 272(f).

In a similar vein, the Service Quality Measurement Plan for Interstate Special Access Services that AT&T/BellSouth proposes to implement does not provide for separate performance reports for affiliated and non-affiliated CMRS carriers. As Sprint Nextel has previously stressed, this transaction, unlike the SBC/AT&T merger, will have an impact on the CMRS industry by unifying the ownership of Cingular. Because the AT&T/BellSouth proposal would not require disaggregated reporting of the merged company's performance in serving affiliated and unaffiliated CMRS carriers, it would neither deter nor enhance the detection of discriminatory special access practices that are intended to advantage Cingular and disadvantage its CMRS rivals.

Finally, the condition AT&T proposes to address concerns about rate increases for TCG customers also falls well short of offering adequate protection from the public interest harms that will occur if the merger is approved.¹² First, the proposed condition would apply only to existing customers and, apparently, would cover only services being provided as of the Merger Closing Date. The proposed condition apparently would not apply to new customers or to additional DS1 or DS3 services purchased by existing customers. Second, the condition is unreasonably vague. For example, it is not clear whether the proposed condition would restrict all rate increases or whether it would preserve existing contract clauses that grant AT&T broad pricing discretion.

In sum, for the foregoing reasons and those set forth in the comments of COMPTTEL *et al.*, the last-minute conditions proposed by AT&T/BellSouth fall well short of protecting the wireless and wireline industry and their consumers against the

¹² Public Notice, Attachment at 4, ¶ 2 (proposing not to increase rates paid by existing customers for certain services provided in-region “pursuant to, or referenced in, TCG FCC Tariff No. 2”).

anticompetitive effects of this merger. The Commission, therefore, should reject those proposals and require more meaningful special access measures, including especially the conditions proposed by COMPTEL *et al.*, to address the harms presented.

IV. CONCLUSION

For the aforementioned reasons, the Commission should grant the above-captioned Application only if it adopts and enforces the conditions described herein to offset the adverse effects of the proposed transaction.

Respectfully submitted,

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