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Anna M. Gomez
Vice President
Government Affairs – Federal Regulatory

August 31, 2007

Via Electronic Submission

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: ***Ex Parte Communication***
Qwest, AT&T, and BellSouth Petitions for Forbearance, WC Docket No. 06-125; Embarq, Frontier and Citizens Petitions for Forbearance, WC Docket No. 06-147; Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25

Dear Ms. Dortch:

On August 30, 2007, Colleen Boothby, Counsel for the Ad Hoc Telecommunications Users Committee, Amy Wolverton, Senior Corporate Counsel, T-Mobile, Richard Engelman, Director, Government Affairs, Sprint Nextel, Christopher Wright, Counsel for Sprint Nextel, and the undersigned met with Scott Bergmann, Legal Advisor to Commissioner Jonathan S. Adelstein, and discussed issues related to the above dockets. Our discussion was consistent with Ad Hoc's, Sprint Nextel's, and T-Mobile's comments in the above records as well as with the attached presentations.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed electronically in the above-referenced dockets.

Sincerely,

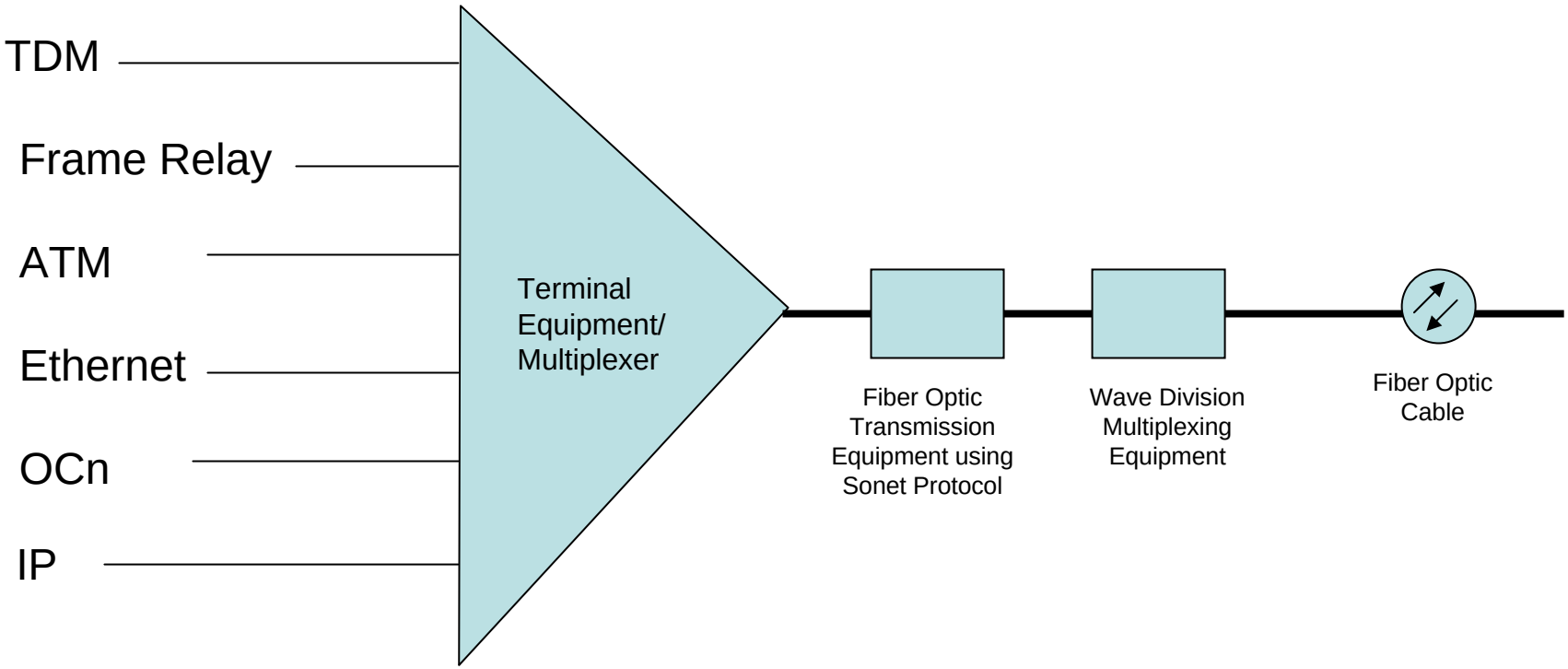
/s/ Anna M. Gomez
Anna M. Gomez

cc: Scott Bergmann

"Me Too" Petitions for Forbearance
August 2007

- **The Commission must deny the upcoming petitions for forbearance from Title II and *Computer Inquiry* regulation**
    - The Verizon Forbearance result is not valid precedent
    - Petitioners failed to provide sufficient market-specific evidence
    - The Commission must not deregulate until it can determine that competition is sufficient to prevent the Petitioners' current and future exploitation of their market power
    - August 23rd request for "local market" data is too late
        - Commission lacks the time to analyze and interpret the data
        - Interested parties will be unable to analyze and comment on the data
- **It is not appropriate to analyze the market on a national basis**
    - Services are not fungible from one location to another
- **The special access market is not competitive and competitive safeguards remain necessary.**
    - The "enterprise broadband" services listed in the petitions either are special access lines or include them as tariffed components
    - Competitors obtain special access inputs from the ILECs to provide "enterprise broadband services"
    - Competition in the retail market does not justify deregulating the wholesale market
- **The Commission should not grant the same or more forbearance than that in the ACS Forbearance Order**
    - Sections 201 and 202 alone are insufficient to prevent the ILECs from exploiting their market power
        - Grant of forbearance from tariffing and cost support requirements will eviscerate ability to prove overcharges
        - Prohibition on nondiscrimination has little "real world" effect if no proof and overcharges are a mere accounting cost on the ILECs' books, compared to a real cost to the purchasers.

- **The Commission should not adopt a TDM/non-TDM distinction**
    - It is inappropriate to base Commission policies on particular technologies
    - Use of TDM or packet technology over special access loops is irrelevant to whether competitors find it economic to build out alternative facilities
    - ILECs have the incentive and ability to manipulate the TDM/non-TDM distinction, and favor themselves by forcing carriers to purchase less efficient and less effective technologies
    - TDM-based special access circuits are not adequate substitutes for Ethernet and other packet-based special access technologies
- **Forbearance will hinder, not accelerate the deployment of broadband facilities**
    - The availability of wholesale inputs at reasonable prices is crucial
    - ILECs have the incentive and the ability to benefit themselves by imposing high prices, or by degrading the quality or delaying the provisioning of those inputs
        - In fact, as evidenced by the rising pricing flexibility tariffs, which are higher than fees in price cap areas, the ILECs are already manipulating special access prices.
    - Consumers benefit from new and innovative services, not from innovators diverting capital from deployment of services to build out costly last-mile facilities



Various protocols can ride over a fiber optic system that uses Sonet. The use of additional equipment sometimes enables different protocols to be “stacked” upon one another, e.g., IP over ATM. Stacking protocols results in increased costs due to the requirement to utilize additional equipment.

The Special Access Market Failure

August 30, 2007

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Why the FCC Must Act Now

- Special access is a critical input to every day communications
- The special access market has failed
- Special access purchasers are at the mercy of AT&T and Verizon
- Inflated prices ultimately harm consumers and competition
- The Time Is Now!

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How do We Know There is a Market Failure?

- Overwhelming Market Share is ***Increasing***
- Inflated Prices are ***Increasing***
- Significant Consumer Harm is ***Increasing***

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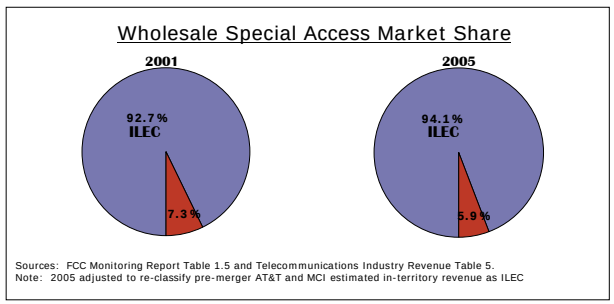
Overwhelming Market Share: ILECs, already dominant before price flex, ***increased*** their market share



Sources: FCC Monitoring Report Table 1.5 and Telecommunications Industry Revenue Table 5.
Note: 2005 adjusted to re-classify pre-merger AT&T and MCI estimated in-territory revenue as ILEC

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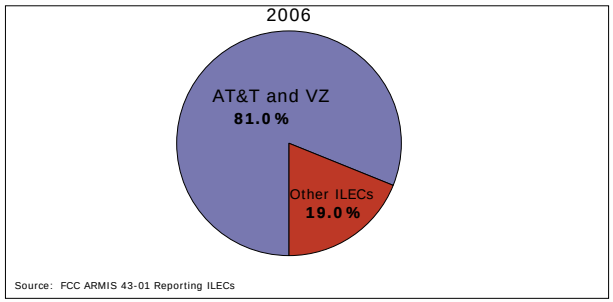
Overwhelming Market Share: Just 2 companies, **AT&T and Verizon**, represent ***81%*** of ILEC special access revenue nationwide



Source: FCC ARMIS 43-01 Reporting ILECs

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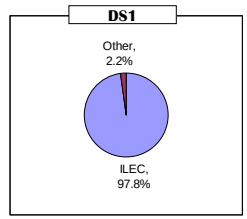
Overwhelming Market Share: **Nearly 98%** of Sprint Nextel's DS1 connections to cell sites in the Top 50 MSAs are provided by ILECs (primarily AT&T and VZ)

2006

MSA	DS1	
EXAMPLES	ILEC	Other
Boston	97.9%	2.1%
Chicago	99.4%	0.6%
San Francisco	100.0%	0.0%
New York	95.7%	4.3%
Philadelphia	100.0%	0.0%
St. Louis	99.4%	0.6%
TOP 50 MSAs	**97.8%**	**2.2%**



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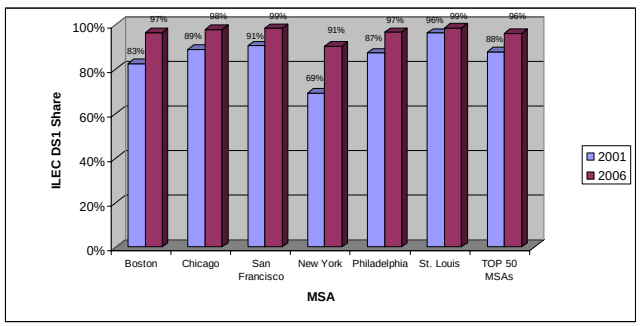
Overwhelming Market Share: ILEC Share of Sprint Nextel DS1 Connections to Office Buildings has Increased



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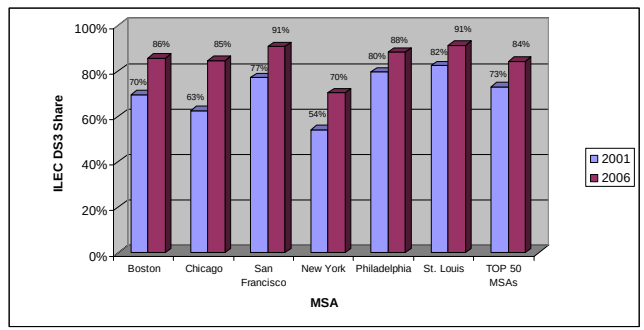
Overwhelming Market Share: ILEC Share of Sprint Nextel DS3 Connections to Office Buildings has Increased



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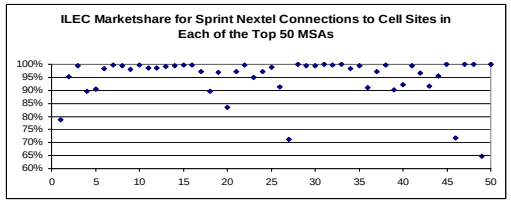
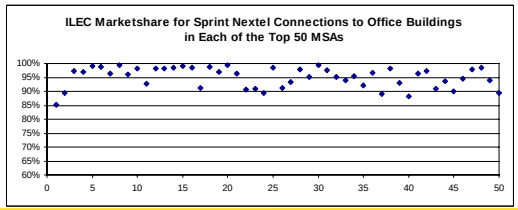
Overwhelming Market Share: Dominance prevails throughout the nation





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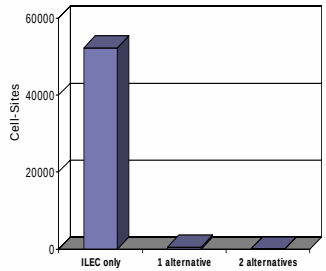
Overwhelming Market Share: Alternative Facilities at Cell Sites are Nearly Non-Existent

- A February 2007 Sprint Nextel poll of its vendors shows that there are *NO alternative facilities* at the overwhelming majority of Sprint Nextel cell-sites
  - 77 alternative vendors polled on fiber available at over 52,000 Sprint Nextel cell-sites
  - 16 vendors reported facilities available at about 1% of the cell-sites



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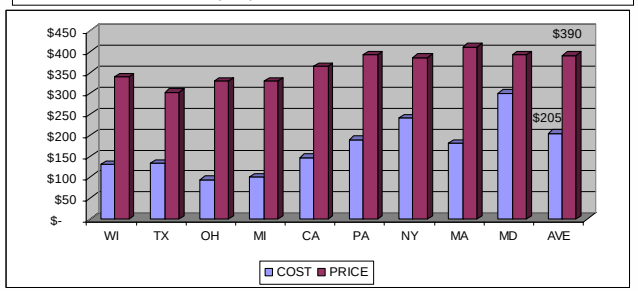
Inflated Prices: Prices AT&T and Verizon Charge for Special Access Greatly Exceed the Economically Efficient Price

The 5 Year Term Rate for a DS1 Special Access Circuit is **90% Higher** than the Functionally Equivalent Unbundled Network Element Rate



DS1 Circuit Price= 2 Channel Terminations and 10 miles of Transport
Cost Based Price = 2 DS1 UNE Loops and 10 miles of Transport
Comparison using the most urban set of UNE and special access rates
Average is simple average of rates in these 9 states.

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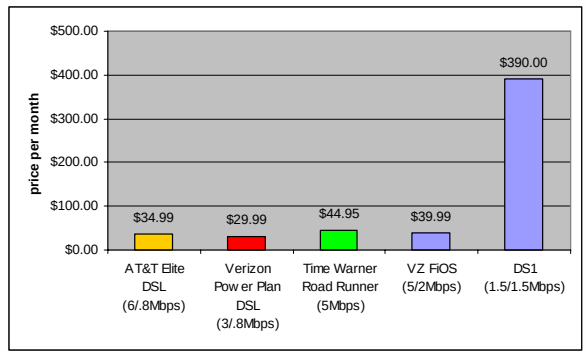
Inflated Prices: Prices for similar capacity in markets with competition are priced significantly lower



DS1 Price = Average Price of 5 Year Term Plan for 2 Channel Terminations and 10 Miles of Transport

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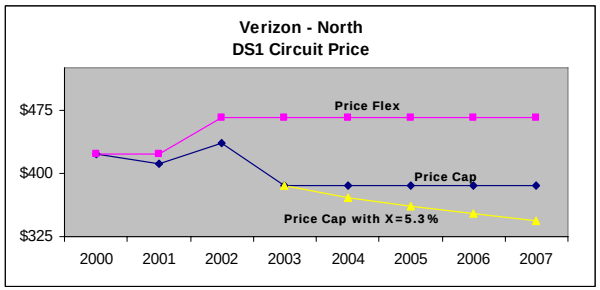
Inflated Prices: Flexibility has been used to ***raise prices*** that were already well above economically efficient levels and are ***highest in areas predicted to be competitive***



DS1 Circuit Price Comparison (5 Yr Term Rates)
2 channel terminations and 10 miles of transport

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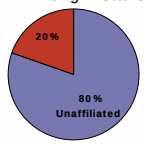
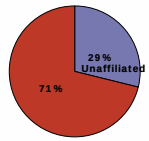
Significant Consumer Harm: Creation of "megaBOCs" has Fundamentally Changed the Structure of Competition in the Industry

National Long Distance & Wireless Competitors (i.e., purchasers of special access) Unaffiliated w/ BOCs	
1999	**2007**
AT&T	Sprint Nextel
MCI	T-Mobile
Sprint	
AT&T Wireless	
Nextel	
T-Mobile	

Long Distance and Wireless Revenue Share





Sources: 1999 based on SEC 10-K Filings, 2007 based on SEC 2Q07 10-Q Filings

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HOW IS THIS MARKET FAILURE HARMING CONSUMERS?

- Overcharges are **$8.3 Billion per year**
  - 67% increase since 2001, when AT&T first urged the FCC to start this proceeding
- **$34 Billion** in AT&T and VZ overcharges since 1999, when flex adopted
- **For consumers**, this is **$34 Billion**:
  - Diverted from construction, deployment, and expansion of competitive networks
  - Inflating the cost of providing consumers services (e.g., wireless phone calls)
  - Inflating the cost underlying government agency telecommunications needs
  - Inflating the cost of all businesses (e.g. banking, grocery stores)
- **For the U.S. Economy** over the next 3 years, overcharges would cost:
  - 234,000 jobs
  - $66 Billion in economic output

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Why are the ILECs Wrong?

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AT&T and Verizon's unsubstantiated claims are without merit

AT&T/VZ Claim	Facts
The long list of companies that offer service proves the market is competitive	Actual market shares show competition is minimal.
Prices have fallen	Prices have risen in areas with pricing flexibility. AT&T and Verizon use flawed average revenue measure, take credit for inflation, and include factors that have nothing to do with price competition.
Discount plans are providing major benefits	Plans are tools to thwart competitive entry, not responses to competition. "Discounts" are based on inflated month-to-month rates that are multiples of cost. Touted "big savings" are a small fraction of special access revenue and any "breaks" are coupled with severe penalty provisions.
Alternative technologies are available	Alternative technologies are not ubiquitously available and use is limited
Current retail competition and broadband investment mean there is no problem	By controlling key inputs, AT&T and VZ exert sizable control over the pace of retail competition and competitive network expansion.

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The Commission Must Act To Constrain Monopoly-Priced Special Access Services

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BY JULY 1, 2008 THE FCC SHOULD:

- Require the two largest BOCs to file tariffs reflecting special access rates for all services that reflect economically efficient prices:
  - the forward-looking economic cost of providing the service, or alternatively
  - targeted to earn an 11.25% rate of return
- Once reset to these just and reasonable levels, the Commission should impose effective incentive regulation on special access prices, including the continued application of a 5.3% X-Factor pending the Commission's adoption of an updated adjustment factor.

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FCC SHOULD IMMEDIATELY:

- ***Reduce rates*** for the largest BOCs' from Phase II pricing flexibility levels to rates no higher than their price cap tariffed rates;
- ***Eliminate Phase II pricing flexibility*** for the largest BOCs and place all of their special access services under price caps, pending the adoption of new "triggers" for the grant of pricing flexibility;
- ***Restate special access price cap indices*** for the largest BOCs at levels that would have resulted if those BOCs had applied an X-Factor of 5.3% to those indices in July of 2004, 2005, 2006, and 2007; and
- ***Apply an X-Factor of 5.3%*** for special access services for the 2008 and subsequent annual access tariff filings by the largest BOCs, pending the Commission's adoption of an updated adjustment factor.

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THE TIME IS NOW!

- The record ***evidence*** overwhelmingly ***favors action***
- A broad array of ***parties*** (consumers, businesses, AT&T and Verizon competitors) ***favor action***

Now – in 2007 – is the time carriers are building their competitive broadband networks

- **Now – in 2007 – is the time** consumers are ready for competitive alternatives to the ever-consolidating, ever-more-powerful AT&T and Verizon
- **Now – in 2007 – is the time to <u>ACT</u>**

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