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Anna M. Gomez
Vice President
Government Affairs

May 27, 2008

Via Electronic Submission

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Written Ex Parte Communications
In the Matter of AT&T ILECs Petition for Declaratory Ruling, WC Docket No. 08-23.

Dear Ms. Dortch:

On May 23, 2008, I spoke with Scott Bergmann, Senior Legal Advisor to Commissioner Adelstein, regarding issues related to the above-referenced docket. The discussion was consistent with Sprint Nextel's previously filed Comments and with the attached presentation. In addition, I urged the Commission not to permit AT&T to use the regulatory processes to run the clock out on the merger conditions.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office. Please let me know if you have any questions regarding this filing.

Respectfully submitted,

/s/ Anna M. Gomez
Anna M. Gomez

cc: Scott Bergmann

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Enforcement of the AT&T Merger Conditions

Interconnection Agreements
5/20/2008

Merger Conditions 7.1 & 7.4

- The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility. . . . and is consistent with the laws and regulatory requirements of, the state for which the request is made.

- The AT&T/BellSouth ILEC shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years. . . .

Sprint/BellSouth Interconnection Agreement

•The Sprint/BellSouth Interconnection agreement provided the terms and conditions under which all Sprint wireless and CLEC operations would exchange traffic with all BellSouth operating companies/territories.

The agreement provided that the companies would not seek compensation from one another for the exchange traffic but would instead exchange traffic on a "bill-and-keep" basis, recovering the cost of traffic exchange from their own customers:

- "The Parties hereby agree to a bill-and-keep *arrangement* for usage on CLEC Local Traffic, ISP-bound traffic, and Wireless Local Traffic."

•The agreement also provided that the companies would share the **cost** of interconnecting facilities (regardless of the **state-specific price** for such facilities) on a 50/50 sharing basis.

•The agreement also contained in the attachments, **state-specific pricing** information related to those items Sprint might purchase from BellSouth in specific territories.

Bill-and-Keep is Not a Price

•Bill-and-keep is a methodology by which each carrier agrees to **forego** a price or rate for exchanging traffic. The **cost** of exchanging traffic is recovered from each carrier's own end users.

•Rule 51.713(a) acknowledges that bill-and-keep is an arrangement by which neither party charges the other.

•AT&T argues that bill-and-keep is a "rate of zero" and is therefore dependent upon a corresponding agreement that traffic exchange must be balanced and must remain balanced.

•The contract contains no provisions that indicate the parties agreed to a rate of zero and nothing in the contract imposes a balance-of-traffic requirement or re-instatement of billing if traffic exchange falls "out-of-balance."

Bill-and-Keep is Not a Rate of Zero

- Bill-and-keep is a methodology for recovering costs, not a rate, just as Calling Party Network Pays or CPNP is a methodology for recovering costs.

- As AT&T and SBC explained as members of the Intercarrier Compensation Forum:

  "The Supreme Court held in *Iowa Utilities Board* that the Commission has broad authority to specify the methodology from a "range of compensation schemes" to be used in implementing 251. **Bill and keep is a methodology, not a "rate," just as CPNP is a methodology**. The bill and keep methodology requires carriers to recover their termination costs from their end users, whereas the CPNP methodology requires carriers to recover termination costs from another carrier."

  Reply Comments of the Intercarrier Compensation Forum, *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket 01-92, p.55 (July 20, 2005).

- And as SBC stated in its own comments in an earlier docket:

  "As previously discussed, bill and keep is a set of cost recovery rules that shifts the primary source of cost recovery from carriers to end users. ***Bill and keep does not set carrier recovery for transport and termination costs at zero,*** it merely prohibits carriers from unilaterally shifting such costs to other carriers."

  SBC Reply Comments, CC Docket No. 01-92, at 25 (Nov. 5, 2001).

AT&T Cannot be Permitted to Insert a Balance of Traffic Condition

•BellSouth inserted no "balance-of-traffic" provision in the contract and cannot ask the Commission amend its contract to insert one now.

•AT&T's repeated assertions that BellSouth entered the interconnection agreements based upon an assumption of a balance of traffic is both irrelevant and inconsistent with the evidence submitted to the Commission.

•AT&T now acknowledges that balance of traffic is not required in the context of a bill-and-keep regime.

•In a recent ex parte discussing the ISP Remand Order, AT&T argues that bill-and-keep is an optimally efficient arrangement where traffic is 100% outbound to a CLEC serving an ISP. Letter from Gary Phillips, *Developing a Unified Intercarrier Compensation Regime,* CC Docket 01-92, (May 9, 2008)

•Rejecting the balance of traffic argument, AT&T notes:

> On its face, section 252(d)(2)(B)(i) permits, without limitation any compensation regime that "*"waive[s]* mutual recovery" of costs between carriers. And although the statute provides that each carrier will have the opportunity to "recover" its "costs," it does not entitle each carrier to recover those costs *from another carrier,* so long as it can recover those costs from *its own end users,* as any bill-and-keep rule anticipates. *Id.* at 7 (emphasis in original).

The Bill-and-Keep Arrangement is not "State Specific"

- Sprint and BellSouth agreed, through free negotiations, to a bill-and-keep arrangement for all BellSouth operating territories without a balance of traffic requirement.

- The general terms and conditions contained in the contracts for all nine BellSouth states are identical (including the bill-and-keep methodology).

- Sprint Nextel is not attempting to port those provisions within the contracts that contain state-specific pricing.

- AT&T's citation to Section 252(d)(2) and Rule 51.711(b) are inapposite. This agreement was not imposed by a state commission, this was a negotiated arrangement as permitted under 252(a) and thus subject to a different standard of review under Section 252(e)(2)(A), which, unlike 252(e)(2)(B), does not include a reference to Section 252(d).

The Facilities Cost Sharing Arrangement Is Not a Price or Rate

- The facilities sharing arrangement provides that the **cost** of interconnection facilities between the two parties would be shared on a 50/50 basis.

- The **price** of these facilities remained subject to state-specific and even route-specific pricing.

- Any porting of the interconnection agreement will thus continue to be subject to the state-specific **price** for interconnection facilities, but the **cost** of the facilities will be shared equally between the parties.

- AT&T provides no explanation why it believes this arrangement should be considered “unfair” or “arbitrage.”

Section 51.809(b) Does not Bar Adoption of the BellSouth ICA

- Section 51.809(b) is not relevant to enforcement of the Merger Conditions.
- Even if 51.809(b) is relevant, it does not bar adoption of the BellSouth ICA:
  - AT&T's attempt to insert a "similarly situated" condition has been expressly rejected by the Commission in a discussion of this very type of arrangement.
  - AT&T's argument is based on lost revenue, not additional cost.

Arbitrage:
Anything that Reduces AT&T's Revenue

- The merger conditions were designed to ensure the spread of best practices, not to ensure that only those contracts favorable to AT&T would be ported.

- Every aspect of a contract has financial implications that make it more or less favorable toward one party.

- AT&T's claim of arbitrage is belied by its own support for bill-and-keep arrangements in the past and its continued refusal to compensate Sprint Nextel for any traffic delivered by its IXC on the grounds that bill-and-keep is the most appropriate arrangement for such traffic, despite being 100% one-way.