

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of Section 6002(b) of the)	WC Docket No. 09-66
Omnibus Budget Reconciliation Act of 1993)	
)	
Annual Report and Analysis of Competitive Market)	
Conditions with Respect to Mobile Wireless)	
Including Commercial Mobile Services)	

**REPLY COMMENTS
OF
SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”) hereby respectfully submits its reply to comments filed on September 30, 2009, in the above-captioned Notice of Inquiry (“NOI”). As Sprint and numerous other parties demonstrated, the retail market for wireless services is vigorously competitive. The number of service providers, offering a vast array of devices, applications, service plans and price points; declining retail rates; rising measures of consumer satisfaction; and the significant investments carriers are making in their wireless networks, are all evidence of the extent of competition in the retail portion of the wireless ecosystem.¹

Unfortunately, the same cannot be said about the market for another part of the wireless ecosystem: special access backhaul facilities used to transport traffic from cell sites to the Internet backbone network. The market for special access backhaul is overwhelmingly dominated by incumbent local exchange carriers such as AT&T and

¹ See, e.g., comments of Sprint, pp. 2-11; AT&T, pp. 8-74; Verizon Wireless, pp. 3-93; T-Mobile, pp. 2-15; CTIA, pp. 4-55.

Verizon (in their respective service territories), who continue to extract monopoly rents from their provision of this critical input. Although both Verizon Wireless and AT&T insist that the special access backhaul market is “competitive and growing,”² they fail to explain why the purportedly competitive market has to date proven unable to prevent their incumbent LEC affiliates from behaving like carriers with market power -- most notably, by charging rates far in excess of cost, and imposing onerous, anti-competitive terms and conditions of service.

In support of their claim that the wireless backhaul market is competitive, Verizon Wireless and AT&T both cite news releases and comments made by alternative backhaul providers describing their deployment plans. For example, Verizon Wireless and AT&T quote FiberTower’s Congressional testimony that it provides backhaul service to over 6000 cell sites in 13 markets; point out that Clearwire is aggressively deploying an extensive fixed wireless network which will rely extensively on microwave backhaul links; and note that cable companies consider wireless broadband as a growth opportunity for providing backhaul.³ AT&T also asserts that wireless competitors such as T-Mobile and Sprint would not be investing in their 3G and 4G networks unless they were confident that “any inputs to those networks can be obtained on reasonable terms.”⁴

Sprint applauds and encourages the successes of FiberTower and other alternative providers of special access, and continues to purchase backhaul services from these carriers to the maximum extent financially, technologically and administratively feasible. Ultimately, competition is the best means of ensuring just and reasonable rates, terms and

² See, e.g., Verizon Wireless, p. 95; AT&T, p. 75.

³ See Verizon Wireless, pp. 97-98; AT&T, pp. 85-87.

⁴ See AT&T, pp. 84-85.

conditions. However, press releases aimed at Wall Street and at potential customers notwithstanding, full and vigorous competition in the special access market has not yet been achieved, and the accomplishments of alternative service providers must be taken in context. For example:

- FiberTower provides backhaul service at only 2.4% of the estimated 245,912 cell sites in the United States,⁵ and its 13 markets are a tiny fraction of the thousands of “markets” in the United States;⁶
- While Clearwire may be required to rely upon microwave backhaul because of the inflated costs of wireline special access, that does not mean that ILEC monopoly rents are not artificially inflating the cost of broadband services to consumers. If special access services were being provided at cost-based rates, Clearwire would have more funds available for deployment and could provide services for lower rates.
- Moreover, microwave is not and will not ever be a complete substitute for wireline backhaul. There are numerous situations in which microwave backhaul is not economically attractive or topologically feasible -- for example, where there are line of sight limitations; where microwave’s limited range is problematic; where traffic volumes are too low to justify deployment of microwave facilities; or where zoning/right of way issues result in unacceptable costs or delays. A Verizon Wireless executive recently acknowledged that wireless backhaul does not address all competition concerns, stating, “And if you have to use wireless microwave to get there [*i.e.*, as backhaul], do it, but do it in the most expeditious manner because that's the most unstable part of your entire system. That's what causes the problems and that's what limits your bandwidth as well.”⁷
- Level 3 Communications and Global Crossing, two “traditional fiber providers...[that] offer competing backhaul services” (Verizon Wireless, p. 96) had 2008 total revenues of \$4.3 billion (\$290 million net loss) and \$2.6 billion (\$281 million net loss) respectively. Verizon, in contrast, had 2008 total revenues of \$97.3 billion (\$6.4 billion in net income) and AT&T had 2008 total revenues of

⁵ CTIA, *Wireless Quick Facts*, cell site count as of June 2009. See <<http://www.ctia.org/advocacy/research/index.cfm/AID/10323>>

⁶ According to the U.S. Census Bureau, there were 19,498 “incorporated places” in the United States (including the District of Columbia) in 2008. See <www.census.gov/popest/cities/SUB-EST2008-4.html> Of course, there may be multiple “markets” in a given “incorporated place.”

⁷ Tom Swanobori, VP of Network and Technology Strategy, Verizon Wireless, at FCC Workshop on Deployment-Wireless-General (August 12, 2009), transcript, p. 48.

\$124.0 billion (\$12.9 billion in net income).⁸ The disparity in size and resources between AT&T and Verizon on the one hand, and alternative backhaul providers on the other, is striking.

- While cable companies may indeed be interested in offering alternative backhaul facilities, interest does not constitute actual sales, and cable companies' market share appears to be tiny. For example, Sprint's current and projected⁹ use of backhaul facilities from cable companies involves approximately one-half of one percent of our cell sites. Many of the nation's hundreds of thousands of cell sites are in areas not passed by cable company plant and equipment, and it is quite unlikely that a cable company will find it economic to extend its facilities to reach distant cell sites simply in order to provide backhaul service. Even where a wireless carrier cell site is roughly proximate to the cable plant, there is no guarantee that the cable company will agree to extend a spur off its network to connect to the cell site, or that the wireless provider will select the cable company as its backhaul provider. In any event, even if cable companies' "significant new opportunities" (AT&T, p. 86) do eventually materialize, Verizon Wireless' and AT&T's optimistic projections of cable company success in the backhaul market are just that – vague projections, not factual descriptions of current market conditions.
- Even where there are competitive alternatives to incumbent LEC-provided backhaul, Sprint frequently finds itself unable to avail itself of such opportunities because of onerous terms and conditions imposed by incumbent LECs. In order to obtain special access at rates less than the extraordinarily priced special access "rack" (non-discounted, month-to-month) rates, Sprint must accept a multi-year package with commitment levels set at up to 100% of its current demand; severe shortfall penalties; termination liabilities; and restrictive circuit migration charges and restrictions. Such terms are effective deterrents against using an alternative access vendor to meet even a small portion of a carrier's backhaul needs.

These factors have placed Sprint in the position of continuing to be a major, if reluctant, purchaser of incumbent LEC-provided special access facilities. Nor is Sprint alone in its competitive assessment. Numerous panelists at the Commission's broadband workshops asserted that widespread competitive alternatives to incumbent LEC-provided

⁸ Revenue and net income data from companies' respective 2008 annual reports. Even if all of Level 3's and Global Crossing's 2008 total revenues were attributable to backhaul sales (which they were not), they still would be far less than Verizon's and AT&T's 2007 special access revenues of \$7 billion and \$7.7 billion respectively (see FCC ARMIS Report 43.01 for 2007). More recent data on AT&T's and Verizon's special access revenues are not publicly available because these carriers have ceased filing the ARMIS reports containing such information.

⁹ Cable facilities not yet active, but for which agreements have been executed.

backhaul just are not available. For example, when asked whether “backhaul is a problem,” Hunter Newby, CEO of Allied Fiber, responded, “Yes, clearly it is.... [Wireless carriers, rural LECs, etc.] have a hard time connecting to themselves without gaining access to, you know, incumbent special services, which cost a lot of money because, in many cases, they're the only thing that's there.”¹⁰ P. Kelley Dunne, CEO of Digital Bridge, similarly stated, “I agree with Barry West and several of the panelists here that we have had to turn down deploying into markets that did not have cost-effective backhaul. I think it is the biggest single challenge.”¹¹ And Brett Glass of Lariat.com emphasized that “we have problems with getting reasonably priced Internet bandwidth because of the problems with special access and the very high price of back haul.”¹²

In an attempt to counter arguments that their T-1 rates are excessive, Verizon Wireless and AT&T have again cited a statement attributed to a former Sprint executive that T-1s are “relatively abundant and inexpensive” in the United States.¹³ Verizon’s and AT&T’s creative interpretation of this “quote” is clearly wrong. It is true that compared to constructing a microwave network to provide DS1 level service, special access is “relatively” less expensive. This speaks more to the cost of microwave, however, than to the appropriateness of current rate levels for DS1 services. Only when constructing high volume connections can microwave services be economically justified. This does not

¹⁰ FCC Workshop on Deployment-Wired-General (August 12, 2009), transcript, pp. 23-24.

¹¹ FCC Workshop on Technology/Wireless (August 13, 2009), transcript, p. 109.

¹² FCC Workshop on Deployment-Unserved and Underserved (August 12, 2009), transcript, p. 41. *See also* Dave Burstein, editor and publisher of DSL Prime (“So, the middle mile is a real problem. You can throw a pile of government money at it somehow. You can turn around and say it really is a monopoly, and that's what we have regulation for”) (*id.*, p. 58).

¹³ Verizon Wireless, pp. 98-99, and AT&T, pp. 88, referring to a comment attributed to (although not quoted from) Barry West, Sprint’s then-Chief Technology Officer, in 2008.

mean, however, that the rates charged for T-1s are *just and reasonable*, as required under Section 201 of the Act.

Verizon further claims (p. 99) that “the real prices customers pay to Verizon Communications for these services [DS1 and DS3s] have declined by approximately 24% between 2002 and 2008.” Although Verizon did not provide the data or details behind its claimed 24% price decrease, it presumably achieved this result in large part by factoring in an inflation adjustment, reflecting the 30-month freeze on its DS1, DS3 and OCN interstate tariffed rates required under the Verizon-MCI merger order,¹⁴ calculating rates on a DS1-equivalent basis (reflecting the shift among larger users to higher capacity circuits, which offer a lower rate per DS1 equivalent), and incorporating (through June 2005) the productivity factor as mandated under the CALLS plan. In other words, none of the claimed “real price” decrease was attributable to competitive pressures exerted by alternative access providers.

Sprint has seen no evidence of a price decline. But even if Verizon’s “real prices” had declined, this would not mean that its rates are just and reasonable as required under the Act. To the contrary, available evidence suggests that the rates charged by Verizon, AT&T and other incumbent LECs are extremely overpriced. Certainly the reported rate of return on special access services,¹⁵ and the rates assessed for special access services compared to the rates charged for high-speed Internet access services (some of which

¹⁴ *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18561 (2005).

¹⁵ According to ARMIS, AT&T and Verizon’s earned rate of return on their interstate special access services has been growing steadily over the past several years, and reached 137.6% and 62% respectively in 2007, the last year in which they filed such data.

provide speeds significantly higher than a DS1) and for comparable UNEs,¹⁶ all suggest that incumbent LECs' special access rates bear little if any relationship to cost.

Finally, Verizon Wireless asserts (p. 96) that “where higher-capacity facilities must be constructed in the first instance, no backhaul provider has any inherent advantage.” While Verizon Wireless' assertion here begs the question of the inherent advantages the incumbent LEC has for existing backhaul facilities, reasonable parties may question its assertion about new facilities for several reasons. First, the incumbent LEC may well already have access to rights of way and building access (even if it does not yet have the new physical facilities in place) that a new entrant does not have. Second, it is unclear whether Verizon Wireless is referring here to entirely new facilities (plant deployed by a carrier with no existing facilities in the service area), or to facilities that replace, supplement, or are built using plant (subsidized over decades by hundreds of millions of USF dollars and, for at least some period of time, cost-plus rate of return regulation) already in place.¹⁷ Certainly, the latter involves potentially significant advantages. Third, as described above, the onerous terms and conditions imposed by AT&T, Verizon, and other incumbent LECs impede or effectively prevent their special access customers from using alternative providers for even a portion of their special access needs.

AT&T raises the issue of investment incentives to attempt to justify its exorbitant special access rates. For example, it states (p. 88) that “[a]rtificially reducing ILEC special access rates would minimize the incentive for any company to expand its

¹⁶ See comments filed by Sprint in GN Docket No. 09-51 on June 8, 2009, pp. 20-22.

¹⁷ For example, if a “higher capacity” facility is brought on-line by adding new electronics to an existing unlit facility, the incumbent will obviously enjoy significant advantages over new entrants.

networks, by reducing the returns that either incumbents or new entrants could expect from continuing the deployment of next-generation infrastructure.” While it is true that incumbent LECs would indeed experience a reduction in their special access returns if their special access rates were reduced, this does not equate to a net public interest loss.

First of all, no party (certainly not Sprint) has suggested that incumbent LEC special access rates be reduced to confiscatory levels; rather, the recommendation has been to adjust rates to just and reasonable levels (which of course would include a reasonable return on investment), as is required under the Act.¹⁸ The “artificial” rate reduction about which AT&T complains is “artificial” only in the sense that it occurs as the result of regulatory controls rather than of market forces that have proven inadequate to discipline the incumbents’ rates.

Second, AT&T’s comments here ignore the impact of lower special access rates on customers – independent wireless carriers such as Sprint would have hundreds of millions of dollars more to invest in their own networks and service offerings, and enterprise customers who rely upon special access facilities would have more cash available to invest in their businesses and to purchase additional broadband services.

Third, just and reasonable special access rates will enhance retail wireless competition even more, as such rates would vastly reduce the subsidy flow from independent wireless carriers to the incumbent LEC affiliates of other wireless carriers.

AT&T further suggests (pp. 84-85) that carriers such as Sprint would not invest in their wireless networks unless they had “confidence that any inputs to these networks can be obtained on reasonable terms.” In fact, Sprint invests in its network to ensure that it is

¹⁸ Undue enrichment to an individual entity as the result of abuse of market power generally does not promote the public good.

able to provide the best possible service to its customers and to maximize potential revenues, manages its input expenses as best it can, and then sets its prices at levels intended to recover its total costs (whether reasonable or not). AT&T is correct, however, that network investment projects are far more likely to be approved where input costs are reasonable. Thus, particularly in rural and low-volume areas where potential revenues are low, it is critical that special access backhaul rates be set at just and reasonable levels to encourage wireless network build-out and broadband deployment.

CONCLUSION

The retail portion of the wireless ecosystem is undeniably competitive. The same cannot be said for the backhaul portion of the wireless ecosystem, which remains dominated by incumbent LECs such as AT&T and Verizon. Reform of incumbent LECs' special access rates, terms and conditions is critical to the deployment and use of broadband services, and should be implemented expeditiously.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

/s/ Charles W. McKee _____

Charles W. McKee
*Vice President, Government Affairs
Federal and State Regulatory*

Norina T. Moy
Director, Government Affairs

2001 Edmund Halley Drive
Reston, VA 20191
(703) 433-4503

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Sprint Nextel Corporation was filed electronically or via US Mail on this 22nd day of October, 2009 to the parties listed below.

/s/ Norina T. Moy

Norina T. Moy

Chelsea Fallon
Spectrum & Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Chelsea.Fallon@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th St., SW, Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com