



June 19, 2012

*Via Electronic Filing*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: *Ex Parte Notice*  
*Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for*  
*Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for*  
*Interstate Special Access Services, WC Docket No. 05-25; RM-10593*

Dear Ms. Dortch:

On June 15, 2012, Charles McKee of Sprint Nextel Corporation (“Sprint”) and I met with Priscilla Argeris and Paul Murray, Commissioner Rosenworcel’s Legal Advisors. Sprint explained that: (1) the current pricing flexibility triggers have never measured last-mile competition effectively; and (2) suspending any new grants of pricing flexibility until the Commission establishes a new, more effective, framework for evaluating competition for channel termination services would be a positive first step toward special access reform.<sup>1</sup>

Sprint also discussed its Network Vision initiative and explained that notwithstanding the initiative lower-capacity services, such as DS1 and DS3 level services, will continue to be critical to Sprint’s wireline and wireless operations. Sprint noted that incumbent local exchange carriers (“LECs”) continue to dominate the marketplace for DS1 and DS3 services and have taken advantage of pricing flexibility to raise their rates for those services, without any apparent concern that their unilateral price increases would cause the incumbent LECs to lose customers to competitors.<sup>2</sup> In short, there are very few competitive alternatives for lower-capacity channel termination services, and the current pricing flexibility triggers are defective because they erroneously predict the existence of competitive options that have not materialized.

In addition, Sprint pointed out that the Commission has already assembled an extensive record demonstrating the lack of competition in the special access marketplace. Nonetheless, Sprint expressed its willingness to provide any additional data that the Commission feels it needs to collect before reforming its special access regulations. However, it is clear that additional

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<sup>1</sup> See letter from R. Paul Margie, Wiltshire & Grannis, Counsel to Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (May 23, 2012) (explaining that the current pricing flexibility triggers do not provide a reliable assessment of competition and urging the Commission to repeal the triggers and to reject pending and future pricing flexibility petitions that rely on the current triggers).

<sup>2</sup> See, e.g., *id.* at 2 (explaining that the special access marketplace remains highly concentrated and discussing recent price increases by the incumbent LECs).

evidence is not needed for the Commission to conclude that the current pricing flexibility triggers are should be suspended while the Commission develops a new pricing flexibility framework.

Finally, Sprint showed that there is no merit to AT&T's argument that it would be procedurally improper for the Commission to deny the pending requests for pricing flexibility after concluding that the triggers are flawed.<sup>3</sup> AT&T's argument ultimately amounts to a claim that the triggers are not flawed: AT&T argues that "until such time as the Commission finds ... that the existing pricing flexibility rules (including the triggers) are inadequate and should be changed, its review of pricing flexibility rules is properly confined to determining whether the applicable triggers are met."<sup>4</sup> As that suggests, once the Commission determines that the triggers are flawed it necessarily follows that it may not grant pricing flexibility petitions on the basis of the flawed triggers. The Commission has a duty under 47 U.S.C. § 201 to ensure that carriers charge just and reasonable rates, and it plainly would be arbitrary and capricious for the Commission to conclude that the triggers are flawed and nevertheless grant petitions for pricing flexibility on the basis of those flawed triggers.

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record of the above-referenced proceedings.

Sincerely,

/s/

Christopher J. Wright

cc: Priscilla Argeris  
Paul Murray

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<sup>3</sup> AT&T Motion to Strike and Reply to Sprint's Late- Filed Opposition to Petitions for Pricing Flexibility, WC Dockets, 05-25, 12-04, and 12-05 (June 1, 2012).

<sup>4</sup> *Id.* at 7-8.