WILTSHIRE
& GRANNIS LLP

September 26, 2012

Ex Parte

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

Re: **REDACTED – FOR PUBLIC INSPECTION**

Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593

Dear Ms. Dortch:

On behalf of Sprint Nextel Corporation ("Sprint"), please find enclosed an *ex parte* for the above-captioned proceeding.

The filing contains Highly Confidential Information. Highly Confidential Information has been marked with the designation "**[BEGIN HIGHLY CONFIDENTIAL]**" in accordance with the procedures set forth in the Second Protective Order in this proceeding.[1] This information is Highly Confidential Information because it includes, among other things: "[t]he extent to which companies rely on incumbent local exchange carriers ('ILEC') and non-incumbent LEC last-mile facilities and local transport facilities to provide special access-like services and the nature of those inputs" and "[t]he types of customers companies serve and the types of special access-type services demanded by those customers."[2]

This Highly Confidential Information contains sensitive commercial and financial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").[3] Sprint is voluntarily providing this information, "of a kind that would customarily not be released to the public"; therefore, this information is "confidential" under FOIA.[4] Moreover, Sprint would suffer substantial competitive harm if this information were disclosed.[5]

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[1] *See Special Access for Price Cap Local Exchange Carriers,* Second Protective Order, 25 FCC Rcd. 17725 (2010) *("Second Protective Order").*

[2] *Second Protective Order* at ¶ 6.

[3] *See* 5 U.S.C. § 552(b)(4).

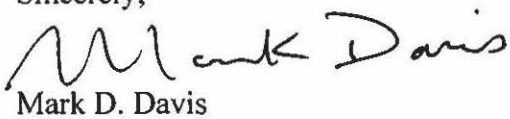
[4] *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

[5] *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 768 (D.C. Cir. 1974).

One machine-readable copy of the redacted version of the *ex parte* filing will be filed electronically via ECFS. Additionally, pursuant to the *Modified Protective Order*[6] and *Second Protective Order*,[7] as modified by the instructions in the FCC's voluntary data request,[8] one unredacted and two redacted versions of the *ex parte* are being filing with the Secretary's Office under separate cover, and two copies of the highly confidential version of the *ex parte* filing will be delivered to Andrew Multiz of the Pricing Policy Division of the Wireline Competition Bureau. An additional copy will be provided to Derian Jones of the Pricing Policy Division of the Wireline Competition Bureau.

Thank you for your assistance in this matter. Please contact me at 202-730-1336 if you have any questions regarding this filing.

Sincerely,



Mark D. Davis
Counsel to Sprint Nextel Corporation

cc: Andrew Mulitz (highly confidential version)
Derian Jones (highly confidential version)

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[6] *In the Matter of Special Access for Price Cap Local Exchange Carriers,* Modified Protective Order, 25 FCC Rcd. 15168 (2010).

[7] *Second Protective Order* at ¶ 15.

[8] FCC Public Notice, *Competition Data Requested in Special Access NPRM,* DA 11-1576 at 21 (Sept. 19, 2011).

WILTSHIRE & GRANNIS LLP

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September 26, 2012

Via Electronic Filing

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

Re: *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 September 12, 2012, Verizon submitted an *ex parte* letter on the important topic of special access reform.[1] The letter, through misstatements and mischaracterizations, attempts to deflect the Commission's attention from the core issues in this proceeding. Sprint has worked hard to submit voluminous data and forthright legal and policy arguments in order to assist the FCC as it works to address the special access marketplace. Because Verizon's letter contains serious errors and distortions regarding Sprint's recent investments in its wireless network, this letter serves to correct the record.

"Network Vision" is Sprint's plan to consolidate multiple network technologies into one new, seamless network with the goal of increasing efficiency and enhancing network coverage, call quality, and data speeds for wireless customers across the United States. As part of Network Vision, Sprint issued a Request for Quotes ("RFQ") seeking bids for the provision of high-capacity Ethernet services (100 to 200 Mb circuits) to its macrocells. Based on the responses to this RFQ, Sprint is in the process of awarding contracts for high-capacity Ethernet service.

Verizon argues that the Commission should infer from Sprint's Network Vision experience that there is adequate competition for the nation's entire $18 billion special access marketplace.[2] Verizon's inflated special access rates certainly have led Sprint to seek alternatives wherever it can—and Sprint would like nothing better than to report that the results of its RFQ showed that, across all special access services, there are effective alternatives to the offerings of Verizon and other incumbents throughout the country. But that is just not true. Verizon's argument is built on a series of errors.

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[1] *See* Verizon Ex Parte Letter to Marlene Dortch, Secretary, FCC, WC Docket No. 05-25 at 1, 3 (Sept. 12, 2012) (*"Verizon Ex Parte Letter"*).

[2] *See* Verizon Ex Parte Letter at 1, 3 (Sept. 12, 2012). *See* Comments of Sprint Nextel Corporation, Attachment A, Declaration of Bridger M. Mitchell at 4-5 ¶ 14, WC Docket No. 05-25 (filed Jan. 19, 2010) (*"Mitchell Declaration"*) (noting that as of 2007, the special access market as a whole exceeded $18 billion).

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Verizon improperly assumes that bids for higher-capacity Ethernet connections to macrocell sites shows that there is competition for lower-capacity DS-1 and DS-3-capacity services at all locations nationwide

Verizon's first error is to treat the 100 Mb to 200 Mb high-capacity circuits that were the subject of the Network Vision RFQ as if they were a part of the same product market as much-lower-capacity DSn circuits. Because of the unique demands of Network Vision, the Network Vision RFQ included only higher-capacity circuits and not DSn circuits. Verizon fails to reveal this fact because the only way it can argue that there is special access competition for DSn services is to pretend that if a company is willing to provide 100 Mb to 200 Mb high-capacity services in response to an RFQ covering thousands of cell sites, it is also a viable provider of DS-1 and DS-3 level services to individual locations.

The existence of a company willing to provide Sprint with a high-capacity circuit does not mean that the provider is willing or able to provide Sprint with a stand-alone DS-1 or DS-3 capacity circuit even at another nearby location because the barriers to competitive entry are higher than the revenue opportunity from DSn circuits.[3] The Commission has consistently distinguished between higher- and lower-capacity services.[4] It should continue to do so and separately analyze the troubling state of competition in both product markets in this proceeding, rejecting Verizon's conflation of these product markets once and for all.

It is also notable (and revealing) that, on the one hand, ILECs conflate higher-capacity and lower-capacity services when asserting that competition for one implies competition for the other. Yet, on the other hand, ILECs maintain that Ethernet services are so different from DSn services that the former is crucial for "creating greater network capacity and broadband speeds" while the latter is "a relatively low-speed business service that does not even meet the National Broadband Plan's definition of broadband in the consumer market."[5] Sprint vigorously disputes

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[3] *See, e.g.*, Comments of The NoChokePoints Coalition, WC Docket No. 05-25 (Jan. 19, 2010) ("NoChokePoints 2010 Comments) at 13 ("NoChokePoints 2010 Comments") (quoting Special Access Rates for Price Cap Local Exchange Carriers, *Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 1994, 2004 ¶ 26 (2005)) (noting that the "cost of providing a special access line is in the support structure, *i.e.*, the trenches, manholes, poles and conduits, the rights-of-way, and the access to buildings" does not vary with varying capacity level, making these costs much harder to recoup on lower-capacity circuits and raising the barriers to entry for such circuits); *infra* at 3-4.

[4] *See, e.g.*, NoChokePoints 2010 Comments at 9-10 (citing Access Charge Reform, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14278-79 ¶¶ 101-02 (1999); Unbundled Access to Network Elements, *Order on Remand*, 20 FCC Rcd 2533, 2625, 2627-28 ¶¶ 166, 170-171 (2005)).

[5] *See, e.g.*, AT&T's Statement on FCC's Special Access Order (Aug. 23, 2012), *available at* http://attpublicpolicy.com. *See, also*, Comments of AT&T, WC Docket No. 05-25, 13-14 (Jan. 19, 2010) ("Indeed, the Commission must seriously ask itself whether it makes sense to mount a major agency effort to impose new regulations on the ILECs' legacy DSn-level special access services, when all of the available evidence indicates that those services are going the way of the

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the ILECs' assertion that DSn capacity services are somehow unworthy of the FCC's attention, and the record is clear that DSn capacity services are critical to companies across the country.[6] But it agrees with the ILECs when they argue that higher- and lower-capacity circuits constitute separate products. The ILECs cannot, however, have their cake and eat it too by changing their characterization of these products as it suits their rhetorical needs.

Verizon incorrectly assumes that competition anywhere means competition everywhere

Verizon's second mistake is to argue that Sprint's success in contracting with an alternative vendor for high-capacity service at a specific macrocell location demonstrates that competitive alternatives are also available for every other customer anywhere else in that geographic area. This assumes that the vendor would be willing and able to provide special access service to any other location in the geographic area. This assumption is incorrect.

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dodo and that mandated rate reductions on those services would affirmatively thwart the Commission's goal in its parallel National Broadband Plan proceeding to encourage investment in higher-capacity broadband alternatives. The explosion in demand for wireless data services, for example, has produced corresponding extraordinary increases in demand for very high capacity backhaul facilities, and the industry is virtually unanimous that these increases in wireless traffic cannot be handled by the legacy TDM-based DS1s and DS3s, which were the impetus for this proceeding and the predominant focus of CLEC arguments.")

[6] While the ILECs continue to argue that DS-1s and DS-3s are "going the way of the dodo," the record shows that this is clearly wrong. *See* Comments of AT&T, WC Docket No. 05-25, at 13 (Jan. 19, 2010). As Sprint has repeatedly explained in various FCC filings, "'the vast majority of business broadband services continue to rely on DS1 and DS3 special access facilities' and the excessive rates and onerous terms and conditions for these special access services severely hamper Sprint's ability to provide broadband services to end-user customers." *See* Opposition of Sprint Nextel Corporation, WC Docket No. 12-61, at 3 (Apr. 9, 2012) (quoting Comments of Sprint Nextel Corporation, WC Docket No. 10-188, at 2 (Oct. 15, 2010)). The Commission's review of the data provided in this docket demonstrates that "[c]ompetitive carriers rely heavily on special access to reach customers," and "[e]nterprise customers across the country rely on special access – directly or indirectly – to conduct their business." *Special Access for Price Cap Local Exchange Carriers,* Report and Order, FCC 12-92 (2012) at 2 ¶ 2. Additionally, the Ad Hoc Telecommunications Users Committee, which represents high-volume business customers of communications services and products, reported that they "relied heavily on DS1/DS3 services and planned to do so for the foreseeable future." Ad Hoc Telecommunications Users Committee Ex Parte Letter to Marlene Dortch, Secretary, FCC, WC Docket No. 05-25 at 3-5 (June 15, 2012). Finally, even if some companies are shifting to Ethernet, the FCC's statutory responsibility to ensure that TDM prices, terms, and conditions are just, reasonable, and non-discriminatory remains in place, along with its obligation to ensure that the prices, terms and conditions for Ethernet services also are just and reasonable and non-discriminatory. As a consequence, the Commission must act to reform its special access rules as they relate to DSn services.

In fact, a service provider's willingness to build a particular higher-capacity facility to one location—as part of a bid to win long-term contracts to service multiple high-demand locations—says nothing about its willingness to build a higher-capacity facility to another location, even one relatively close by. Nor would that provider have necessarily been willing to build a lower-capacity facility to the same location, in lieu of building the higher capacity facility. Rather, the likelihood that a vendor will deliver service to a particular building or cell site depends on the economic feasibility of deploying the facilities required to provide the specific service to that location. This deployment is only feasible, and the supplier will only deliver service, where expected revenue will cover the cost of building the new facilities and providing the service, including reasonable return on this investment.[7]

Demonstrating an understanding of this calculus, the Department of Justice recognized when examining the AT&T/SBC and Verizon/MCI mergers, that it is fundamentally uneconomic for competitive providers to offer DS-1 channel terminations, or a single DS-3 channel termination, even if the competitors have existing facilities as close as 1/10th of a mile away.[8] Thus, the presence of a high-capacity circuit serving a Sprint macrocell does not mean that its provider will be willing to construct a DS-1 or DS-3 circuit to provide service to a nearby location.

Verizon mischaracterizes Network Vision and Sprint's purchase of Verizon lines

Verizon's third mistake is that its written *ex parte* focuses exclusively on Sprint's use of higher-capacity Ethernet connections to upgrade its wireless service and ignores the fact that Sprint must continue to purchase thousands of overpriced Verizon DS-1 and DS-3 capacity special access lines for its many wireline service offerings. Verizon attempts to mask this fact by failing to reveal to the Commission the limited nature of Network Vision.

Network Vision was a targeted initiative limited only to obtaining new high-capacity backhaul services for Sprint's network of macrocells. Even after Network Vision, Sprint remains heavily dependent on DS-1 and DS-3 special access links provided by Verizon (and other ILECs) for its wireline business operations, serving small, medium, and large enterprises, government customers, and even for some macrocell sites. In fact, despite Verizon's misleading filing, Sprint purchases [**BEGIN HIGHLY CONFIDENTIAL**]

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[7] *See* Mitchell Declaration at 33-34 ¶ 136.

[8] *See* United States' Notice of Public Filing of Redacted Submission, Redacted Declaration of W. Robert Majure at 11 n.17, *United States v. SBC Commc'ns, Inc.*, Case No 1:05-cv-02102, D.E. #133-2 (D.D.C. Aug. 9, 2006).

[9] This is consistent with the Commission's finding that at least one "large competitive local exchange carrier (LEC) that offers enterprise services to businesses using special access services as a critical input has reported that it purchases [REDACTED] times as many special access as

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Moreover, this figure significantly understates the level of control Verizon exerts over dedicated lines in its incumbent LEC footprint because it does not take into consideration the thousands of interconnection facilities Verizon requires Sprint to lease to exchange traffic with Verizon at Verizon's tandems and end offices, nor does it consider the thousands of 911/PSAP access facilities controlled by Verizon in its ILEC territory. None of these DS-1 and DS-3 circuits are covered by Network Vision.[10]

Furthermore, like most wireless carriers, Sprint is working hard to increase the capacity of its wireless network in urban areas to meet the needs of data-hungry customers by deploying microcells. These microcells allow Sprint to reuse spectrum more efficiently, and maximize data throughput in the high-traffic areas where most Americans live and work. Sprint expects that it will soon have more microcells than macrocells in its network—and that in coming years the number of microcells will dwarf the number of macrocells. Microcells typically require DS-1 level backhaul capacity, far less than the Ethernet circuits that Sprint's Network Vision project delivers to macrocells.

More broadly, as Verizon is well aware, Sprint is only one special access purchaser, and macrocell backhaul is only one segment of the broader marketplace for special access services. Therefore, any assertion that the results of Sprint's RFQ "prove conclusively" that purchasers have adequate competitive choices in all segments of the marketplace for all special access services, everywhere in the country, is meritless. The Commission's review of the vast amount of data provided in this docket also demonstrates that "[c]ompetitive carriers rely heavily on special access to reach customers," and "[e]nterprise customers across the country rely on special access—directly or indirectly—to conduct their business."[11]

Verizon's argument ignores the unique nature of Network Vision

Verizon's fourth mistake is to ignore the fact that Network Vision was a unique bidding opportunity that could not be replicated by any business customer, or even by Sprint, in the near future. The Network Vision RFQ offered the opportunity to build to **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** locations to provide much-

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Ethernet circuits." *Special Access for Price Cap Local Exchange Carriers,* Report and Order, FCC 12-92 (2012) at 2 ¶ 2.

[10] Sprint's inability to find viable alternatives to the incumbent LECs for the provision of DS-1 and DS-3 backhaul facilities is well-documented. *See, e.g.*, Comments of Sprint, WC Docket No. 05-25 (filed Aug. 8, 2007); Reply Comments (filed Aug. 15, 2007); Letter to Marlene Dortch, Secretary, FCC, WC Docket No. 05-25 (Oct. 5, 2007); Comments (filed Jan. 19, 2010); Reply Comments (filed Feb. 24, 2010); *see also*, Comments of Sprint, GN Docket No. 09-51 (filed June 8, 2009); Comments of Sprint, GN Docket No. 09-47, (filed Nov. 4, 2009).

[11] *Special Access for Price Cap Local Exchange Carriers,* Report and Order, FCC 12-92 (2012) at 2 ¶ 2.

higher-priced 200 Mb circuits for lengthy contracts. These unique characteristics were possible because Network Vision is a complete reconstruction of the Sprint network. No ordinary purchaser of special access could repeat this offering. These characteristics make it substantially different from a typical special access purchase. As a result, extrapolating data from Network Vision to make predictions about the larger special access marketplace would be reckless.

Sprint had to design Network Vision to include tens of thousands of lucrative high-capacity lines and multi-year contracts. This was the only way to convince alternative vendors to submit bids in the face of the ILECs' tremendous advantages and anticompetitive conduct. Sprint was particularly well-positioned to issue such an unusual RFQ because it is the largest non-ILEC wireless carrier and requires huge numbers of lines. Network Vision was an event without precedent for Sprint, necessitated by the lack of competition in the special access marketplace. No other special access purchaser in the nation, save possibly T-Mobile, could offer such an attractive package in order to lure competitive bids.

It is therefore no surprise that some competitors were able to place winning bids for a once-in-a-generation RFQ that covered only high-capacity services, and that was specially designed to attract alternative vendors. But there is no reason to believe that Sprint, or any other purchaser, will attract viable offers for service from alternative providers when it seeks to obtain DS-1 or DS-3 capacity services, when it seeks service to one or a handful of locations in the normal course of business, or when it can offer only shorter terms—in other words when Sprint, or another purchaser, buys special access in the typical way.

The typical special access purchase, and even the typical Sprint special access purchase, is far different from Network Vision, and fails to attract even this much competition. Most special access purchases are for one or a few lines at a time. Sprint, like many other companies, does not regularly purchase special access through RFQs. Small- and medium-sized businesses—the heart of the economy—rarely use RFQs because they typically buy small numbers of lines and do so at irregular intervals. The few examples of special access services purchased through RFQs represent only the largest purchases by large enterprises and therefore disproportionately reflect situations where a competitive provider may choose to incur extraordinary expense to build out to a new set of locations to attempt to win a large contract. Network Vision is the most extreme example of these atypical situations.

In the more typical circumstance, Sprint's experience is that alternative vendors will not undertake special builds to reach a new customer, or will demand huge special build charges that make purchasing from the vendor uneconomic. The ILECs far more frequently do not need special builds because they control a nearly ubiquitous network that is already in the ground, born of a century of monopoly, forced building access, and government subsidy. The FCC should focus its inquiry on these more typical types of purchases rather than following Verizon's advice to use extraordinary events like Network Vision to "conclusively" make sweeping findings about the Nation's special access marketplace.

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Pursuant to the Commission's rules, a copy of this notice is being filed electronically in the above-referenced docket. If you require any additional information please contact the undersigned.

Sincerely yours,

Paul Margie
Rachel W. Petty
Counsel for Sprint Nextel

cc: Andrew Mulitz
Derian Jones