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October 15, 2012

***VIA ELECTRONIC SUBMISSION***

***EX PARTE***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Portals II, Room TW-A325  
Washington, DC 20554

Re: *Special Access Rates For Price Cap Local Exchange Carriers,*  
WC Docket No. 05-25

Dear Ms. Dortch:

AT&T Inc. (“AT&T”) submits this letter in response to the letters submitted by Sprint Nextel (“Sprint”) in the above-referenced docket on September 26, 2012 and October 5, 2012.<sup>1</sup> In the first letter, Sprint asserts that it will lack competitive alternatives to ILEC-provided DS<sub>n</sub> services for backhaul at its microcell sites, even though Sprint is shifting virtually all of its macrocell backhaul to Ethernet services that it purchases from a wide range of non-ILEC providers. In the second letter, Sprint argues that the Commission should not collect building connection and fiber network data from smaller competitors (a so-called “*de minimis* exemption”), even though publicly available data show that such an exemption would exclude a substantial amount of competition from the Commission’s analysis. Both arguments are meritless.

*Backhaul Alternatives.* For years, Sprint has argued that the Commission should increase regulation of special access services because of an asserted lack of competitive alternatives to ILEC-provided DS<sub>n</sub> services for backhaul at Sprint’s cell sites. These claims were always baseless, and, indeed, Sprint and other wireless providers have already or are in the process of swapping out ILEC-provided DS<sub>n</sub> services for Ethernet, wireless, and other alternative services, which they purchase from a wide variety of competing non-ILEC providers. Sprint has admitted that over the past year it has issued Requests for Quotes (“RFQs”) to replace DS<sub>n</sub> backhaul services at virtually all of its macro cell sites, and in response it received bids from numerous non-ILEC suppliers and often chose to obtain service

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<sup>1</sup> Letter from Paul Margie and Rachel W. Petty (“Sprint”) to Marlene H. Dortch (FCC), WT Docket No. 05-25, RM-10593 (September 26, 2012) (“Sprint 9/26 Letter”); Letter from Charles W. McKee (“Sprint”) to Marlene H. Dortch (FCC), WT Docket No. 05-25, RM-10593 (October 5, 2012) (“Sprint 10/5 Letter”).

from those competitive suppliers.<sup>2</sup> Indeed, Verizon recently noted that, as of July 2012, “Sprint had awarded Verizon the backhaul business at only . . . *six percent* of the total number of sites in the Verizon incumbent footprint.”<sup>3</sup>

These marketplace developments have so thoroughly disproven Sprint’s claims that even Sprint appears to have abandoned them.<sup>4</sup> But having failed to demonstrate a lack of competitive alternatives for its “macro” network, Sprint has shifted gears to advance a new, and equally baseless, argument: it now claims that it will lack competitive alternatives at *microcell* sites. That is, Sprint asserts that it will be “deploying microcells,”<sup>5</sup> separately noting that “[m]icrocells typically require DS1 level backhaul capacity, far less than the Ethernet circuits that Sprint’s Network Vision project delivers to macrocells.”<sup>6</sup>

As an initial matter, Sprint’s argument is carefully worded to avoid stating that Sprint will actually deploy DS1 circuits for backhaul at its microcell sites. “Small cells” do not mean small bandwidth. To the contrary, microcells are typically used to offload traffic from capacity-constrained macrocells, which means that microcells are generally located in high-traffic areas. Moreover, traffic for multiple microcells will often be aggregated onto a single backhaul facility. In a recent survey, 80 network operators were asked about their expected backhaul capacity requirements for small cells during the next few years. Of the 76 network

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<sup>2</sup> Sprint has made clear that it “will end up with 25 to 30 significant backhaul providers that will likely be a mix of incumbent LECs, cable MSOs, and alternative carriers, all of whom will be expected to deliver Ethernet predominantly over fiber for Sprint’s new multi-node network.” Carol Wilson, *Sprint to Reveal Backhaul Contract Winners Friday*, Light Reading, (Oct. 5, 2011), *available at* [http://www.lightreading.com/document.asp?doc\\_id=213050](http://www.lightreading.com/document.asp?doc_id=213050).

<sup>3</sup> Letter from Kathleen Grillo (Verizon) to Marlene H. Dortch (FCC), WT Docket No. 05-25, RM-10593 (September 12, 2012) (“Verizon Letter”).

<sup>4</sup> T-Mobile has likewise publicly announced that it is committed to using Ethernet backhaul for all of its 3G and 4G cell sites and has largely completed this transition. *See, e.g.*, Dave Mayo (T-Mobile Senior Vice President of Technology Strategy, Finance & Development), T-Mobile Issues & Insights Blog, The Official Blog of T-Mobile USA (Aug. 1, 2012), *available at* <http://blog.t-mobile.com/2012/08/01/t-mobiles-backhaul-strategy-key-to-competitive-4g-experience>. MetroPCS has entered into agreements with multiple alternative providers for Ethernet (both wireline and wireless) backhaul. *See, e.g.*, Mike Robuck, *Brighthouse signs backhaul deal with MetroPCS*, CED (March 8, 2011), *available at* <http://www.cedmagazine.com/news/2011/03/bright-house-signs-backhaul-deal-with-metropcs>; FiberTower News Release, *FiberTower Supports METroPCS Backhaul Network Evolution To Ethernet* (April 21, 2012), *available at* [http://www.fibertower.com/corp/downloads/press\\_releases/10-04-21\\_FiberTower\\_MetroPCS\\_Ethernet\\_final.pdf](http://www.fibertower.com/corp/downloads/press_releases/10-04-21_FiberTower_MetroPCS_Ethernet_final.pdf); Press Release Ericsson, *MetroPCS selects Ericsson as primary Microwave backhaul equipment provider* (January 30, 2012), *available at* <http://www.ericsson.com/news/1580968>. Leap’s Vice President for LTE has explained “that the deployment of Ethernet backhaul remains a big piece of its LTE rollout and support.” Dan Meyer, *CTIA 2012: Leap remains focused on smartphones, eyes on LTE*, RCR Wireless (May 14, 2012), *available at* <http://www.rcrwireless.com/article/20120514/carriers/ctia-2012-leap-remains-focused-on-smartphones-eye-on-lte/>. And, according to Eric Hollingsworth, vice president of Network Operations for C-Spire Wireless, its LTE network uses “state-of-the-art design and solutions, such as fiber and Ethernet backhaul, at every site.” C-Spire Wireless News, *C Spire Wireless Using Alcatel-Lucent To Deploy Next-Generation High-Speed 4G LTE Broadband Network* (July 2, 2012), *available at* [http://www.cspire.com/company\\_info/about/news\\_detail.jsp?entryId=14500004](http://www.cspire.com/company_info/about/news_detail.jsp?entryId=14500004).

<sup>5</sup> Sprint 9/26 Letter, at 5.

<sup>6</sup> *Id.*

operators that provided estimates, about half reported that they anticipate that the backhaul bandwidth required to support a typical small cell site in their network would equal or exceed 100 Mbps.<sup>7</sup> Sprint itself admits that its microcells will be located in “high-traffic” “urban areas” where demand for bandwidth is very high.<sup>8</sup> At the same time, Sprint is promising its customers “real world average downlink speeds [for its LTE network] of 6-8 Mbps with peak speeds of up to 25 Mbps.”<sup>9</sup> Given that microcells can serve dozens of users,<sup>10</sup> it is likely that Sprint will frequently require at least 100 Mbps in backhaul bandwidth at its microcells to come remotely close to its promised average and peak throughput levels, especially to the extent multiple microcells share a single backhaul facility. Based on Sprint’s success in finding competitive suppliers of 100 Mbps and higher capacity for its macrocell sites, there is every reason to believe that Sprint will have similar success when seeking bids for its microcells, particularly given Sprint’s admission that it will “soon have more microcells than macrocells in its network” and thus will be seeking bids for even greater volumes.<sup>11</sup> In any event, Sprint’s suggestion that it might use TDM-based DS-1 circuits, with bandwidth limited to 1.5 Mbps, is not at all credible.

But even if some of Sprint’s microcells could be adequately served by lower bandwidth backhaul circuits, it is not true that ILECs have an advantage over other competitors in providing such circuits. Microcells are generally deployed in high-traffic urban areas and must be placed relatively close to the ground – for example, on stoplights, street lights, and other “street furniture.”<sup>12</sup> ILECs do not typically have facilities at these

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<sup>7</sup> Heavy Reading’s Small Cell & Small Cell Backhaul Operator Survey, April 2012, at 42 (noting that “Survey respondents are split roughly evenly as to whether public access small cells will require more or less than 100 Mbit/s of backhaul bandwidth at each site.”) The survey further showed that about two-thirds of those surveyed expected small cells to require backhaul capacity of more than 50 Mbps. *Id.*

<sup>8</sup> Sprint 9/26 Letter, at 5.

<sup>9</sup> Phil Goldstein, Sprint Launches LTE, promises average speeds of 6-8 Mbps, FierceWireless (July 16, 2012), available at <http://www.fiercewireless.com/story/sprint-launches-lte-promises-average-speeds-6-8-mbps/2012-07-16>.

<sup>10</sup> Small Cells 2012 Integration and Optimization, Mobile Europe Insight Report, Sponsored by Alcatel Lucent, Contributors: Richard Webb, Infonetix Research, Thomas Wehmeier, Informa Telecoms and Media, and Keith Dyer, Mobile Europe, Table 1 (2012), available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&ved=0CDMOFjAC&url=http://www.alcatel-lucent.com/2Fwps/2FDocumentStreamerServlet%3FLMSG\\_CABINET%3DDocs\\_and\\_Resource\\_Ctr%26LM\\_SG\\_CONTENT\\_FILE%3DBrochures%2FME-Insight-report\\_Alcatel-Lucent\\_Lores.pdf&ei=b1x0UP-XMsviyAG2p4HoCQ&usq=AFOjCNHWbRB-dh4LFLyZhd7o9SyBdbnm\\_A&sig2=oL-aBNoLq3XIs-KBmrDOEw](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&ved=0CDMOFjAC&url=http://www.alcatel-lucent.com/2Fwps/2FDocumentStreamerServlet%3FLMSG_CABINET%3DDocs_and_Resource_Ctr%26LM_SG_CONTENT_FILE%3DBrochures%2FME-Insight-report_Alcatel-Lucent_Lores.pdf&ei=b1x0UP-XMsviyAG2p4HoCQ&usq=AFOjCNHWbRB-dh4LFLyZhd7o9SyBdbnm_A&sig2=oL-aBNoLq3XIs-KBmrDOEw).

<sup>11</sup> Sprint Letter, at 5; *see also, e.g.*, Uday Mudio, Understanding Small-Cell Unification’s Vital Role In LTE And 4G, Electronic Design (August 2, 2012), available at <http://electronicdesign.com/article/communications/understanding-smallcell-unifications-vital-role-lte-4g-74254> (“ABI Research estimates that by 2015, there will be 5.8 million small-cell deployments compared to less than 1 million macrocells”).

<sup>12</sup> *See, e.g.*, Uday Mudio, Understanding Small-Cell Unification’s Vital Role In LTE And 4G, Electronic Design (August 2, 2012), available at <http://electronicdesign.com/article/communications/understanding-smallcell-unifications-vital-role-lte-4g-74254> (explaining that “[s]mall cells must be deployed as close to street level as possible” and that they will be “positioned on telephone poles, lamp posts, traffic signals, and the sides of buildings”); Small Cell Backhaul Requirements, A White Paper by the NGMN (Next Generation Mobile Networks) Alliance, Contributors: Orange, Alcatel Lucent, Nokia Siemens Networks, NEC, Huawei, Cisco, Everything Everywhere, at 13 (June 4, 2012) (“the most common locations are likely to be street furniture such

locations. Consequently, ILECs are in the same position as other competitors; they would have to extend facilities to these locations just as competitors would. In fact, due to the general lack of wireline facilities at these locations, industry analysts predict that carriers are much more likely to use *wireless* backhaul facilities for the vast majority of their microcell sites.<sup>13</sup>

*De Minimis Exception.* Sprint also supports proposals by Comptel and others for a *de minimis* exemption that would exempt scores of providers from submitting information that identifies their fiber-connected buildings, the locations of their networks, and their responses to RFPs in response to the Commission's upcoming mandatory data request. Sprint's support for a *de minimis* exemption is almost certainly not born of an altruistic concern for smaller providers. Rather, Sprint likely understands that a "*de minimis*" exception would seriously understate the true extent of special access competition and thus bolster its arguments for regulatory-mandated rate decreases.

Preliminarily, proposals for a *de minimis* exemption are premature, for two reasons. First, until the commission collects data from all providers, it has no non-arbitrary basis for constructing a *de minimis* exemption that would not severely skew its competitive analysis. Second, until the Commission has determined the relevant geographic market for its competitive analysis, there is no non-arbitrary basis for it to conclude that excluding even a single building connection would not substantially skew its competitive analysis. For example, Comptel and others have argued that the geographic market is the *building* level. If the Commission were to adopt that geographic market (or any similarly small geographic market), not even a single building connection could be *de minimis*, because it would clearly be a critically relevant connection given the chosen geographic market.

Moreover, both common sense and publicly available data confirm that a *de minimis* exemption would substantially skew the Commission's competitive analysis. As AT&T has demonstrated, demand for special access services tends to be concentrated in a small percentage of locations, and therefore even competitors that today serve a small number of buildings compete for a disproportionately large amount of special access demand.<sup>14</sup> Excluding them from the analysis would thus severely understate competition. In addition,

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as lamp-posts, bus shelters and sides of buildings.”), *available at* [http://www.ngmn.org/fileadmin/user\\_upload/Downloads/Technical/NGMN\\_Whitepaper\\_Small\\_Cell\\_Backhaul\\_Requirements.pdf](http://www.ngmn.org/fileadmin/user_upload/Downloads/Technical/NGMN_Whitepaper_Small_Cell_Backhaul_Requirements.pdf).

<sup>13</sup> See, e.g., Sue Marek, *Wireless the likely winner in small cell backhaul*, FierceWireless (June 22, 2012) (According to the co-founder and principal analyst at Infonetics, “[t]he operators we have spoken with said that about 80 percent of their small cells will be connected using three types of wireless backhaul--microwave, millimeter wave and licensed non-line of sight.”), *available at* <http://www.fiercewireless.com/story/wireless-likely-winner-small-cell-backhaul/2012-06-22>; Cambridge Broadband Networks, White Paper, Small Cell deployment strategies and best practice backhaul, at 3 (August 2012), *available at* <http://cbn.com/sites/all/files/userfiles/files/Small%20cell%20deployment%20strategies%20and%20best%20practice%20backhaul.pdf>; Uday Mudio, Understanding Small-Cell Unification's Vital Role In LTE And 4G, Electronic Design (August 2, 2012) (“in small cells, many of these [wireline] options are unavailable due to the street-level location of the cell sites”; “[a]s a result, look for microwave (MW) and millimeter-wave (MMW) backhaul to dominate in small-cell markets because many street lights and traffic lights don't have wireline”), *available at* <http://electronicdesign.com/article/communications/understanding-smallcell-unifications-vital-role-lte-4g-74254>.

<sup>14</sup> Letter from Frank S. Simone (AT&T) to Marlene H. Dortch, WC Docket No. 05-25 (September 25, 2012) (“AT&T 9/25 Letter”).

excluding small CLECs would fail to capture substantial fiber networks that can serve nearby buildings.<sup>15</sup> These concerns were confirmed by GeoTel data, which shows that even a ten-building-connection exemption would likely exclude scores of CLECs, thousands of building connections, and tens of thousands of fiber miles.<sup>16</sup>

Sprint's principal argument in support of a *de minimis* exemption assumes its conclusions. Sprint asserts that ILECs "control over 90% of the DS1 and DS3 channel terminations" and that the cumulative deployments of smaller providers "would not have significant impact on those numbers."<sup>17</sup> The whole point of the data collection effort, however, is that the Commission does not have enough data to reach any such conclusion. Sprint also has no answer to the critical point that because special access demand is concentrated in only a relatively small number of buildings, excluding even a small number of competitors (and their respective building connections and fiber networks) can significantly undermine any competitive analyses by vastly understating the availability of competitive alternatives in those buildings.

Sprint complains that AT&T did not submit the GeoTel data and that the GeoTel data are not perfect and should be ignored. The GeoTel data are available for purchase, and Sprint certainly has the means to obtain it if it wishes to verify AT&T's analysis. To be sure, until the Commission performs its own, more comprehensive data collection, it will not be possible to know the precise impact of a *de minimis* exemption. At this stage, however, the GeoTel data, while not without flaws, is still highly probative, and it shows beyond any reasonable dispute that such an exemption would result in a Commission analysis that misses much of the real competitive activity in this marketplace. Indeed, whatever flaws exist in the GeoTel data generally tend to *understate* how much competition a *de minimis* exemption would miss.<sup>18</sup>

Sprint argues that the fiber networks of smaller carriers can be ignored because "it would be a mistake . . . to assume that competitive carriers can connect to a building simply because it is 'near' their fiber networks."<sup>19</sup> But in the very next sentence, Sprint concedes that the Commission and the DOJ have repeatedly found that competitors compete for customers in buildings nearby, but not yet connected to, their fiber networks.<sup>20</sup>

Sprint's assertion that the Commission's competitive analysis need not be forward looking is particularly startling.<sup>21</sup> According to Sprint, the "focus of this proceeding" is on DS<sub>n</sub> connections, and there have been "no new developments that would somehow cause a

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Sprint 10/05 Letter, at 3.

<sup>18</sup> AT&T 9/25 Letter, at 2-3.

<sup>19</sup> Sprint 10/5 Letter, at 5.

<sup>20</sup> *Id.* See, also, e.g., AT&T 9/25 Letter, at 3-4; *WorldCom v. FCC*, 238 F.3d 449, 458 (D.C. Cir. 2001) ("the presence of substantial sunk investment, and the resulting potential for entry into the market, can limit anticompetitive behavior by LECs"); *AT&T-BellSouth Merger Order*, 22 FCC Red. 5662, ¶¶ 41-42, 46 & nn.111-14 (2007) (describing and adopting "screens" employed by DOJ to determine whether a building could be served by alternative facilities, which recognize that competitors with facilities near a building can and do compete for customers in that building).

<sup>21</sup> Sprint 10/5 Letter, at 6.

new competitor to enter the marketplace now or in the near future” to compete for such connections.<sup>22</sup> Sprint again assumes its conclusions: there is no reason to look at competition, because there is no competition. In any event, Sprint’s assertions are factually incorrect. The record shows that ILECs face intense competition from CLECs, cable companies, and fixed wireless providers for DSn level services.<sup>23</sup>

On the current record, it is clear that any *de minimis* exemption would substantially undermine the Commission’s efforts to collect meaningful data about the special access marketplace, and Sprint has offered no defensible justification for such an exemption. Sprint merely asserts that it will be a burden for carriers to have to locate and submit the requested data. Any provider can produce these types of data; competitive special access providers already maintain databases, lists, and maps that contain the relevant information in the ordinary course of marketing and provisioning their services, and they routinely provide lists of buildings they can serve to their customers and prospective customers. And if, as Sprint assumes, small carriers have a legitimate gripe that they do not all keep their data in the same formats, the solution is to provide flexibility in the manner in which essential building connection and fiber route data is provided, not to exempt providers from providing any data at all. The Commission should therefore reject these calls for a *de minimis* exemption.

Pursuant to section 1.1206 of the Commission’s rules, this *ex parte* letter is being filed electronically for inclusion in the record of the above-referenced proceeding.

Respectfully submitted,



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<sup>22</sup> *Id.*

<sup>23</sup> *See, e.g.*, AT&T 9/25 Letter, at 3 (documenting intra- and inter-modal competition); Letter from Robert W. Quinn (AT&T) to Marlene H. Dortch, WC Docket No. 05-25, Attachment 1, at 1-2 (June 7, 2012) (same); Letter from David L. Lawson (AT&T) to Marlene H. Dortch (FCC), WC Docket No. 05-25, (March 28, 2012) (same).