

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter Of)	
)	
Ameritech Operating Companies Tariff F.C.C. No. 2)	Transmittal No. 1664
)	
BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1)	Transmittal No. 1119
)	
Nevada Bell Telephone Company Tariff F.C.C. No. 1)	Transmittal No. 174
)	
Pacific Bell Telephone Company Tariff F.C.C. No. 1)	Transmittal No. 383
)	
Southern New England Telephone Company Tariff F.C.C. No. 39)	Transmittal No. 963
)	
Southwestern Bell Telephone Company Tariff F.C.C. No. 73)	Transmittal No. 3249

**PETITION OF SPRINT NEXTEL CORPORATION TO REJECT
OR ALTERNATIVELY SUSPEND AND INVESTIGATE**

Sprint Nextel Corporation (“Sprint Nextel”), pursuant to §1.773 of the Rules of the Federal Communications Commission (“FCC” or “Commission”), hereby respectfully requests that the Commission reject, or alternatively, suspend for the full five-month period permitted under Section 204(a) of the Act, and institute an investigation of the above-captioned tariff revisions, which seek to withdraw certain special access services from its access tariffs. The proposed revisions were filed by AT&T on behalf of its six operating companies: Ameritech Operating Companies, BellSouth Telecommunications, Inc., Nevada Bell Telephone Company, Pacific Bell

Telephone Company, Southern New England Telephone Company and Southwestern Bell Telephone Company, on January 7, 2008. The Commission must reject or suspend and investigate the proposed revisions because the changes conflict with Commission's order granting AT&T forbearance from enforcement of certain statutory and Commission requirements regarding certain special access services,¹ as well as with the commitments to which AT&T agreed and upon which the Commission conditioned its approval of AT&T's merger with BellSouth.² In support thereof, Sprint Nextel states as follows.

AT&T bases its proposal to withdraw certain broadband transmission services from its access tariffs on the forbearance it obtained in the *AT&T Forbearance Order*. In both the Transmittal Letter and the Description and Justification for each operating company, AT&T describes the forbearance granted there as follows:

The *Order* granted relief for all of the optical and packet switched broadband transmission services currently offered by the AT&T Operating Companies (e.g., Frame Relay, ATM, Ethernet, Remote Network Access, SONET, Optical Network and Wave-Based services), with the exception of certain Frame Relay and ATM services operating below 200 Kbps in each direction.³

And, in each Transmittal Letter, AT&T asserts that "[t]his filing proposes to implement the relief granted by the *Order*."⁴

¹ *In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 (rel. October 12, 2007), review pending sub nom. Sprint Nextel Corporation v. FCC, Case No. 07-1431, D.C. Circuit, filed October 22, 2007 ("*AT&T Forbearance Order*").

² *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) ("*AT&T/BellSouth Order*")

³ See, e.g., Ameritech Operating Companies, Transmittal No. 1664, Transmittal Letter at page 2 and Description and Justification at page 1.

⁴ *Id.*

The Commission must reject AT&T's proposed changes to its access tariffs because those changes would violate the requirements of the *AT&T Forbearance Order* and the *AT&T/BellSouth Order*. In the *AT&T Forbearance Order*, the Commission conditioned its grant of forbearance on AT&T's compliance with the merger conditions adopted in the *AT&T/BellSouth Order*, stating: "The limited forbearance relief granted herein does not affect in any way the full force and effect of the merger conditions adopted in the *AT&T/BellSouth Order*."⁵ Thus, AT&T cannot give effect to any forbearance granted in the *AT&T Forbearance Order* that conflicts with the merger conditions until its merger conditions terminate in 2010.⁶

Withdrawal of AT&T's access tariffs for special access services and Ethernet services must be found to "affect...the full force and effect of the merger conditions" because (1) the Commission and interested parties will be unable to evaluate AT&T's compliance with several Special Access Merger Commitments; and, more specifically, (2) several of the merger conditions specifically require that AT&T maintain tariffs. For example, Special Access Merger Commitment #4 requires that AT&T file contract tariffs to protect against discrimination:

To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified *contract tariffed* service under

⁵ *AT&T Forbearance Order* at para. 2.

⁶ AT&T also proposes to remove high capacity Interconnect Cross Connect services (*see, e.g.*, Ameritech Operating Companies, Tariff F.C.C. No. 2, 4th Revised Page 615.1 and 13th Revised Page 623.1). Such services, which are used in central offices to efficiently connect switched and special access (*i.e.*, DS1 and DS3) facilities with the customer's own facilities, are not included in the services from which the Commission granted forbearance. Therefore, the Commission also must reject AT&T's proposed removal of them.

section 69.727(a) of the Commission's rules to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that *contract tariff* to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates. AT&T/BellSouth also will not unreasonably discriminate in favor of its affiliates *in establishing the terms and conditions* for grooming special access facilities.⁷

The provision of "contract tariff" information is fundamental to the Commission's ability to ensure that "AT&T/BellSouth...will not unreasonably discriminate in favor of its affiliates" with respect to the terms and conditions of service. Withdrawal of the tariffs, including contract tariffs, will diminish the Commission's ability to protect competitors against unreasonable discrimination, and thereby will affect "the full force and effect of the merger conditions."

Without tariffs, AT&T cannot comply with other tariff filing requirements imposed on it. For example, Special Access Merger Commitment #5 requires:

No AT&T/BellSouth ILEC may increase the rates in its interstate *tariffs*, including *contract tariffs*, for special access services that it provides in the AT&T/BellSouth in-region territory, as set forth in *tariffs* on file at the Commission on the Merger Closing Date, and as set forth in *tariffs amended subsequently to comply with the provisions of these commitments*.⁸

If AT&T withdraws its tariffs for special access services, it cannot comply with this commitment, which is based on the existence of tariffs for special access services. Here again, withdrawal would negate the "full force and effect of the merger conditions."

Further, the Special Access Merger Commitments refer to "contract tariffs" for special access services offered by AT&T to individual customers. For example, Special Access Merger Commitment #4 requires AT&T to "certify to the Commission that it

⁷ *AT&T/BellSouth Order* at 5810-5811 (footnote omitted, emphasis added).

⁸ *Id.* at 5811 (emphasis added). The Commission clearly envisioned that AT&T would continue to maintain tariffs during the duration of its merger commitments.

provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates.” If AT&T is permitted to withdraw its tariffs for special access service, it will not file contract tariffs associated with special access services. Contract tariffs provide important information concerning the terms and conditions of service offered by the carrier to individual customers. Specifically, Section 61.55 of the Commission’s rules, 47 C.F.R. §61.55, specifies that contract tariffs must include:

- (1) The term of the contract, including any renewal options;
- (2) A brief description of each of the services provided under the contract;
- (3) Minimum volume commitments for each service;
- (4) The contract price for service or services at the volume levels committed to by the customers;
- (5) A general description of any volume discounts built into the contract rate structure; and
- (6) A general description of other classifications, practices, and regulations affecting the contract rate.

Elimination of this relevant information pertaining to AT&T’s contracts for special access services effectively precludes any evaluation of the just and reasonableness of the rates, terms and conditions of such services by either the Commission or interested parties, as well as any evaluation of whether AT&T is discriminating in favor of its own affiliates.

Finally, AT&T’s proposed withdrawal of special access services violates its Forbearance Merger Commitment #2 which states: “AT&T/BellSouth will not seek or give effect to any future grant of forbearance that diminishes or supersedes the merged entity’s obligations or responsibilities under these merger commitments during the period in which those obligations are in effect.”⁹ As demonstrated above, AT&T’s proposed

⁹ *Id.* at 5815.

tariff withdrawal “diminishes or supersedes the merged entity’s obligations or responsibilities under [the] merger commitments.”

For the above reasons, AT&T’s proposed withdrawal of its special access services from its access tariffs violates the *AT&T Forbearance Order* and the *AT&T/BellSouth Order*. Thus, Sprint Nextel urges the Commission to reject, or alternatively suspend for the full statutory period, AT&T’s proposed tariff changes.

Respectfully submitted,

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January 14, 2008

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2008, a copy of the foregoing "Petition to Reject" of Sprint Nextel Corporation was sent to the parties listed below by electronic mail or by facsimile and U.S. first-class mail.


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