

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

<b>In the Matter Of</b>	)	
	)	
<b>Ameritech Operating Companies</b>	)	<b>Transmittal No. 1666</b>
<b>Tariff F.C.C. No. 2</b>	)	
	)	
<b>BellSouth Telecommunications, Inc.</b>	)	<b>Transmittal No. 1121</b>
<b>Tariff F.C.C. No. 1</b>	)	
	)	
<b>Nevada Bell Telephone Company</b>	)	<b>Transmittal No. 176</b>
<b>Tariff F.C.C. No. 1</b>	)	
	)	
<b>Pacific Bell Telephone Company</b>	)	<b>Transmittal No. 385</b>
<b>Tariff F.C.C. No. 1</b>	)	
	)	
<b>Southern New England Telephone Company</b>	)	<b>Transmittal No. 965</b>
<b>Tariff F.C.C. No. 39</b>	)	
	)	
<b>Southwestern Bell Telephone Company</b>	)	<b>Transmittal No. 3251</b>
<b>Tariff F.C.C. No. 73</b>	)	

**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 AT&T's access tariffs. AT&T filed the proposed revisions 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 24, 2008. The Commission must reject or suspend and investigate the proposed revisions because the changes conflict with the Commission's order granting AT&T forbearance from enforcement of certain statutory and Commission requirements regarding certain special access services,<sup>1</sup> as well as with the significant commitments to which AT&T agreed and upon which the Commission conditioned its approval of AT&T's merger with BellSouth.<sup>2</sup> AT&T has also violated the Commission's rules and the Communications Act's tariffing requirements. 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.<sup>3</sup>

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<sup>1</sup> *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*").

<sup>2</sup> *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*")

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

And, in each Transmittal Letter, AT&T asserts that “[t]his filing proposes to implement the relief granted by the *Order*.”<sup>4</sup>

The Commission must reject AT&T’s proposed changes to its access tariffs because those changes, if permitted to become effective, 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*.”<sup>5</sup> 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. This conclusion is consistent with Commissioner McDowell’s statement: “Upon the expiration of the voluntary merger conditions agreed to by AT&T as a result of its merger with BellSouth, after December 29, 2010, AT&T will be relieved from existing tariffing, price freeze and facilities discontinuance for non-TDM-based business broadband services.”<sup>6</sup>

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,

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<sup>4</sup> *Id.*

<sup>5</sup> *AT&T Forbearance Order* at para. 2.

<sup>6</sup> *AT&T Forbearance Order* at page 45.

(2) several of the Special Access 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 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.<sup>7</sup>

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. Without tariff information, the Commission and AT&T's competitors will have virtually no visibility to the rates, terms and conditions AT&T is offering to other customers. While AT&T may post certain rate information on its website, it may exclude other important terms and conditions that would be included in the tariff and that affect the overall cost of service. Any complaint about unjust and unreasonable rates, terms and conditions or about unjust and reasonable discrimination that a competitor may seek to file will be stymied by the lack of information. Thus, 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"; AT&T has failed to demonstrate to the contrary.

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

Without tariffs, AT&T cannot comply with other tariff filing requirements. 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*.<sup>8</sup>

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 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

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

- (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.

AT&T's removal of certain broadband services for which the FCC granted forbearance from its Managed Value Plan ("MVP"), an access volume discount offering, violates Special Access Merger Commitment #5 which requires AT&T to maintain or reduce its rates for DS1 and DS3 services. Customers who subscribe to AT&T's MVPs receive a discount if they meet certain criteria, including "maintain[ing] recurring qualified access billed revenue equal to or greater than the MARC [Minimum Annual Revenue Commitment] during the MVP Agreement period."<sup>9</sup> The customer's MARC must be based solely on services set forth in the tariff; to do otherwise would violate Section 61.54(j) of the Commission's rules, 47 C.F.R § 61.54(j), which requires that all rates, terms and conditions of the tariffed service be included in the tariffs:

*Rates and general rules, regulations, exceptions and conditions.*

The general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitely. All general rules, regulations, exceptions or conditions which in any way affect the rates named in the tariff must be specified... Rates must be expressed in United States currency, per chargeable unit of service for all communications services... and no rate, rule, regulation, exception or condition shall be included which in any way attempts to substitute a rate, rule, regulation, exception or condition named in any other tariff.

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<sup>9</sup> See, Ameritech Operating Companies, Tariff F.C.C. No. 2, Section 19; Pacific Bell Telephone Company, Tariff F.C.C. No. 1, Section 22; and Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Section 38.

Thus, AT&T cannot base the MVP MARC on services that are not included in its tariffs.<sup>10</sup> A customer whose MARC is based on services AT&T is proposing to withdraw will be unlikely to meet its commitment if the services are withdrawn, and thus will lose impermissibly the discount on its DS1s and DS3s associated with its MVP.

In addition, the MVP customer must maintain an "Access Service Ratio" of at least 95% on each anniversary of the MVP agreement in order to qualify for the MVP discounts. The Access Service Ratio is defined as "the total qualified access service billed revenue minus the adjusted revenue for the associated rate elements not included in the interstate tariff divided by the total qualified access service bill revenue." *Id.* The withdrawal of the OC-3, OC-12 and OC-48 rate elements from the MVP, which cannot be included in the Access Service Ratio without violating Section 61.54(j) of the Commission's rules, may result in a ratio of less than 95%, at which point the customer loses its MVP discount. Thus, AT&T's withdrawal of services from the MVP will result in reduced rates, violating Commitment #5.

Also affecting DS1 and DS3 rates in violation of Special Access Merger Commitment #5 is AT&T's proposed withdrawal of its Dedicated SONET Ring Service (DSRS). The DSRS service includes DS1 and DS3 port connections. Southwestern Bell Telephone Company, for example, identified in its tariff DS1 Ports and DS3 Ports as

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<sup>10</sup> The Commission did not grant AT&T forbearance from this requirement nor could it have done so, as Section 61.54(j) applies to the services that remain under tariff (not the services for which the Commission granted forbearance).

“Accepted interfaces” for DSRS, and the DSRS Rates and Charges provide rates for DS1 and DS3 ports.<sup>11</sup> The tariff also describes Transmux Ports for DSRS service as follows:

DS3 Transmux is available on all speeds and provides the ability to aggregate multiple DS1s to a DS3 within the SONET Ring and also on a single card. DS1s are aggregated across the SONET network and terminated into a single DS3 card at a ring node. The hand-off will be a channelized DS3. Aggregation of DS1s can occur across multiple DS3/STSs.

Clearly, by removing the entire Dedicated SONET Ring Service, these DS1 and DS3 rate elements have been eliminated. Because the FCC explicitly declined to grant AT&T forbearance for DS1s and DS3s, including existing DS1s and DS3s in the material AT&T proposes to withdraw thus violates the statute’s tariffing requirements, 47 U.S.C. § 203. Moreover, because AT&T has failed to demonstrate that such facilities will be provided at the same or at a lower price, the proposed tariff changes fail to comply with AT&T’s Merger Commitment #5.

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.”<sup>12</sup> As demonstrated above, AT&T’s proposed tariff withdrawal “diminishes or supersedes the merged entity’s obligations or

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<sup>11</sup> Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Section 29 at 29-9. *See*, also, Nevada Bell Telephone Company, Tariff F.C.C. No. 1, Section 26; Pacific Bell Telephone Company, Tariff F.C.C. No. 1, Section 29; and The Southern New England Telephone Company, Tariff F.C.C. No. 39, Section 20. Similarly, *see*, Ameritech Operating Companies, Tariff F.C.C. No. 2, Section 7.2.1, OC-3, OC-12, OC-48 and OC-192 Dedicated Ring; and Nevada Bell Telephone Company, Tariff F.C.C. No. 1, Section 27, OC-192 Dedicated SONET Ring Service.

<sup>12</sup> *Id.* at 5815.

responsibilities under [the] merger commitments.” Thus, the proposed withdrawal of special access services violates the language of this merger commitment. Any interpretation put forth by AT&T to the contrary to justify detariffing of these services cannot be found to be consistent with its merger commitments.

In this filing, AT&T seeks to assure the Commission that the withdrawal of its special access services from its access tariffs is not inconsistent with its merger commitments, stating:

When offering these services through non-tariffed arrangements, the Telephone Company will abide by all of the special access merger commitments set forth in the *Order*, including but not limited to commitments that contain references to “tariffs,” such as those addressing pricing, dispute resolution, and access service ratio terms. The detariffing of the services does not diminish or supersede any of those special access merger commitments.<sup>13</sup>

The merger commitments cannot be lifted based on a simple two-sentence assurance of proper behavior provided in the context of a tariff filing related to special access services, the prices of which Sprint believes to be inflated by hundreds of millions of dollars. In fact, AT&T’s statement is simply incorrect: by detariffing its services AT&T is in fact diminishing the protections embodied in the conditions that the Commission considered necessary to authorize AT&T’s merger.

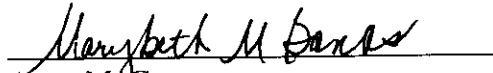
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<sup>13</sup> See, e.g., Ameritech Operating Companies, Transmittal No. 1666, Description and Justification at page 2.

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

Respectfully submitted,

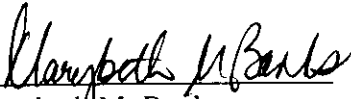
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January 31, 2008

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 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.

  
Marybeth M. Banks

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