

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
In the Matter of	)	
Petition of BellSouth Telecommunications, Inc. (BellSouth) for Pricing Flexibility Under §69.727 of the Commission's Rules for the Specific MSAs	)	WCB/Pricing 08-02
	)	
	)	

**COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint Nextel”), pursuant to the Public Notice released on January 31, 2008 (DA 08-269), hereby respectfully submits its comments on the BellSouth Telecommunications, Inc. (“BellSouth”) petition for Phase I and II pricing flexibility for certain special access and dedicated transport services in the Albany, GA, Athens, GA, Macon-Warner Robins, GA, Pascagoula, MS, Alexandria, LA, Anderson, SC, Charleston-North Charleston, SC and Florence, SC Metropolitan Statistical Areas (MSAs). While BellSouth may technically have satisfied the triggers that allow pricing flexibility, the record in the special access pricing docket is clear that these triggers fail to measure accurately the true state of competition in the special access and dedicated transport markets.<sup>1</sup> In the past few years, the Federal Communications Commission (“Commission”) has used the triggers to grant pricing flexibility to incumbent local exchange carriers (“ILECs”) in locations where they do not face sufficient competition to discipline their pricing practices. To grant the instant petition based on these flawed triggers would only exacerbate the situation, and cause further pricing anomalies in these markets. Therefore, the Commission should deny BellSouth’s petition for pricing flexibility pending its

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<sup>1</sup> See, e.g., Comments of Sprint Nextel Corporation, WC Docket No. 05-25, filed August 8, 2007.

adoption of new pricing flexibility triggers that better reflect competitive conditions in the special access and dedicated transport markets.<sup>2</sup>

When the Commission adopted the currently effective pricing flexibility triggers in 1999, it anticipated that the presence of alternative providers (as measured by independent competitors collocated in a certain percentage of the ILEC's wire centers in a MSA) would "ensure that rates [for the special access and dedicated transport services at issue] are just and reasonable."<sup>3</sup>

Unfortunately, the triggers measure potential, not actual, competition, and the Commission's expected competition has failed to develop. As a result, Sprint Nextel is forced to purchase over 98 percent of its special access facilities from ILECs, which have leveraged their dominance by charging supracompetitive rates along with anticompetitive contract terms and conditions.<sup>4</sup>

BellSouth, like the other ILECs, has retained its market power in the provision of special access and dedicated transport services, as evidenced by its astonishingly high returns and excessively priced interstate rates. Unfortunately, the Commission's current price cap mechanism is permitting ILECs like BellSouth to charge prices significantly above cost. And where granted pricing flexibility, history shows that BellSouth's response has been to raise its prices even further.<sup>5</sup> As Attachment 1 shows, where it already has received pricing flexibility,

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<sup>2</sup> This issue is squarely before the Commission in WC Docket No. 05-25, *Special Access Rates for Price Cap Local Exchange Carriers*. The pleading cycle in this proceeding was completed in July 2005, and the Commission sought and received additional comments to refresh the record in August 2007.

<sup>3</sup> *Access Charge Reform*, 14 FCC Rcd 14221, 14258 (para. 69) (1999) (*Pricing Flexibility Order*).

<sup>4</sup> See Comments of Sprint Nextel Corporation, WC Docket No. 05-25, filed August 8, 2007.

<sup>5</sup> Sprint Nextel notes that, pursuant to the its commitments during the AT&T/BellSouth Merger, which the Commission adopted as conditions to its approval of that merger, BellSouth's tariff reduces pricing flexibility prices to price cap levels. See *infra* notes 8, 9 and 10 and accompanying text. BellSouth's tariff makes it clear that the rates are temporarily in effect from

BellSouth raised its rates for DS1 and DS3 services above price capped rates by up to 114% and 132%, respectively.<sup>6</sup> These rates helped BellSouth enjoy returns of 56.57% in Georgia, 90.99% in Louisiana and 61.56% in South Carolina on its interstate special access services in 2006,<sup>7</sup> results that are hardly typical of an effectively competitive market.

In 2006, the Commission conditioned its approval of the AT&T/BellSouth merger on AT&T's compliance with certain commitments regarding special access prices,<sup>8</sup> including AT&T's commitment that it would not raise its special access rates,<sup>9</sup> and in fact would lower its pricing flexibility rates to price cap levels.<sup>10</sup> That commitment, which expires in 2010, is the only mechanism keeping BellSouth's special access rates at price cap levels. Although Sprint Nextel is gratified that BellSouth has signaled that it "will continue to adhere to the special access merger commitments,"<sup>11</sup> it is worth noting that, by committing to *reducing* its pricing flexibility rates to price cap levels, AT&T/BellSouth acknowledged that it has in fact raised those rates. Even more worrisome, by its very commitment to comply with the merger conditions, AT&T/BellSouth also is tacitly giving notice that, absent the commitments, it would

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April 5, 2007 through June 30, 2010. BellSouth FCC #1, Section 23.1(C); *see also* BellSouth Telecommunications Inc., Transmittal No. 1074, filed May 18, 2007.

<sup>6</sup> The rates compared are Zone 1 and 61-96-month term plan rates for BellSouth rates in effect in 2006 prior to its merger with AT&T. *See* Attachment 1.

<sup>7</sup> *See* BellSouth Georgia, Louisiana and South Carolina ARMIS Report 43-01 (total special access category).

<sup>8</sup> AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5773 and Appendix F - Merger Commitments (2007) ("*AT&T/BellSouth Order*").

<sup>9</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5810 (Special Access Merger Commitment 2).

<sup>10</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5811 (Special Access Merger Commitment 6).

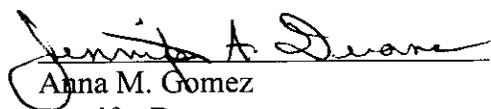
<sup>11</sup> BellSouth Petition at note 2, *citing AT&T/BellSouth Order*, 22 FCC Rcd 5662 (2007), Appendix F - Merger Commitments.

raise its rates above price cap levels and in fact has the ability to do so upon the expiration of the merger commitments.<sup>12</sup> If BellSouth were truly subject to competition in the areas where it has received pricing flexibility, it should have been forced by that very competition, not by promises made in order to gain approval of its merger, to reduce its prices.

The data are clear that the pricing flexibility triggers fail to predict the presence of true competitive alternatives. When a provider has a bottleneck facility, it is able to extract monopoly rents from its customers, which is exactly what the ILECs are doing by charging high special access prices and extracting anticompetitive terms and conditions. To ensure that rates and terms and conditions for such services are truly just and reasonable, the Commission must defer a decision on BellSouth's request for pricing flexibility to such time as the Commission has adopted triggers that more accurately reflect the state of competition in the special access and dedicated transport markets.

Respectfully submitted,

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February 15, 2008

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<sup>12</sup> See BellSouth FCC #1, Section 23.1(C) (“Customers subscribing to or renewing term plans while temporary rate reductions are in effect may experience rate increases as of July 1, 2010, when temporary rate reductions are no longer in effect.”).

# **ATTACHMENT 1**

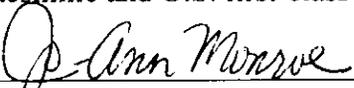
## Comparison of High Cap Service Prices in Bellsouth Service Territory Before and After Temporary Merger Commitments

<u>DS1 Circuit</u>	<u>Price Cap</u>	<u>Price Flex</u>	<u>Price Flex Rate Premium</u>
Before Merger Temporary Commitments	\$ 344.00	\$ 391.00	114%
After Merger Temporary Commitments	\$ 344.00	\$ 344.00	
<u>DS3 Circuit</u>	<u>Price Cap</u>	<u>Price Flex</u>	<u>Price Flex Rate Premium</u>
Before Merger Temporary Commitments	\$ 2,911.25	\$ 3,855.00	132%
After Merger Temporary Commitments	\$ 2,911.25	\$ 2,911.25	

Notes: All rates are Zone 1 and 61-96 month term plan rates  
 Circuit equals 2 Channel Terminations fixed interoffice transport and 10 miles of transport  
 2006 rates in effect before the AT&T/Bellsouth merger commitments  
 The Bellsouth tariff calls those rates temporary through June 30, 2010

## CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2008, a copy of the foregoing Comments of Sprint Nextel Corporation was sent to the parties listed below by facsimile and U.S. first-class mail.

  
Jo Ann Monroe

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