

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

In the Matter of)	
Petition of BellSouth Telecommunications)	
Inc. ("BellSouth") for Pricing Flexibility)	WCB/Pricing No. 08-02
Under § 69.727 of the Commission's Rules)	
For the Specific MSAs)	

OPPOSITION TO PETITION FOR PRICING FLEXIBILITY

Pursuant to Section 1.774 of the Federal Communications Commission's Rules¹ and its Public Notice DA 08-269,² Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless"),³ through its attorneys, opposes the petition filed by BellSouth Telecommunications, Inc. ("BellSouth") seeking pricing flexibility for certain special access and dedicated transport services in specified Metropolitan Statistical Areas ("MSAs") in Georgia, Louisiana, Mississippi, and South Carolina (the "Petition").⁴ SouthernLINC Wireless respectfully urges the Commission to defer consideration of BellSouth's Petition until it takes prompt and decisive action to address the marked failure in the special access marketplace. At a minimum, the Commission should require BellSouth to submit record evidence demonstrating that grant of its Petition will serve the public interest and not, in fact, harm the special access marketplace.

¹ 47 C.F.R. §1.774.

² *Pleading Cycle Established for BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, Public Notice, DA 08-269, WCB Pricing No. 08-02 (rel. Jan. 31, 2008).

³ SouthernLINC is an independent wireless carrier licensed by the Commission to provide cellular communications in Alabama, Florida, Georgia, and Mississippi. SouthernLINC relies on special access and dedicated transport services to provide wireless communications to over 300,000 consumers throughout the Southeast.

⁴ Petition of BellSouth for Pricing Flexibility, WCB Docket No. 08-02 (fil. Jan. 25, 2008) ("Petition").

In January 2005, the Commission released its *Special Access NPRM* to institute a proceeding to investigate whether the pricing flexibility regime was working as originally intended.⁵ Despite receiving comments from all segments of the industry and record evidence of the ineffectiveness of the special access pricing flexibility regime, the Commission did not release any orders to address the failure in the special access marketplace.⁶ In 2007, the Commission asked the parties to refresh the record.⁷ In response to the Commission's request, parties from all industry segments, including SouthernLINC Wireless,⁸ commented and submitted record evidence regarding the pricing flexibility regime and the marketplace for special access services.⁹ As a result, the record now clearly demonstrates, in great detail, that there is a marked failure in the special access marketplace, and that the pricing flexibility regime is ineffective.¹⁰ The

⁵ *Special Access Rates 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*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, WC Dkt. No. 05-25 (2005) (“*Special Access NPRM*”). The *Special Access NPRM* stated that “[t]he overall (i.e., not compounded annually) BOC interstate special access accounting rates of return were approximately 38%, 40% and 44% in 2001, 2002, and 2003, respectively.” *Id.* ¶ 27. These returns were significantly higher than 11.25%, which was the rate of return the Commission found just and reasonable for dominant ILEC services in 1990.

⁶ See, e.g., Reply Comments of the New Jersey Division of the Ratepayer Advocate, WC Docket No. 05-25 at 2 (July 29, 2005) (“Many commenters in this proceeding have submitted evidence to the Commission that the special access market is not competitive and that the price cap local exchange carriers (“LECs”) are able to exercise market power.”).

⁷ *Parties Asked to Refresh Record in the Special Access Notice of Proposed Rulemaking*, Public Notice, WC Dkt. No. 05-25, FCC 07-123 (rel. Jul. 9, 2007).

⁸ See Letter from Todd D. Daubert, Counsel for SouthernLINC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Oct. 22, 2007).

⁹ See, e.g., Ex Parte Letter from Kathleen O’Brien Ham, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25, at 1 (filed Oct. 11, 2007) (“T-Mobile Ex Parte”); see *Special Access Pricing* at 1-3, attached to Ex Parte Letter from Gil Strobel, Counsel, Sprint Nextel Corp., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25 (Oct. 5, 2007) (“Sprint Ex Parte Attachment”). See also, e.g., Comments of Sprint Nextel Corp. at 29-33 (filed Aug. 8, 2007); Ex Parte Letter from Gil Strobel, Counsel to Sprint Nextel Corp., to Marlene H. Dortch, Secretary, FCC, WC Dkt. 05-25, at 3 (filed Oct. 10, 2007).

¹⁰ See, e.g., Ex Parte Communication of T-Mobile (filed Oct. 11, 2007); Reply Comments of Sprint Nextel Corp. at 6-11 (filed Aug. 15, 2007); Reply Comments of PAETEC Communications, Inc. and US LEC Corp. at 4-5 (filed Aug. 15, 2007).

Commission can and should act now upon the current record to reform the pricing flexibility regime.¹¹

Shortly after the Commission adopted its *Special Access NPRM* in 2005, Verizon filed a petition with the Commission seeking pricing flexibility for special access services.¹² In response, AT&T argued that the Commission should “not award Verizon any additional pricing flexibility at that time, and defer consideration of the petition until its interim order in the *Special Access NPRM* is released.”¹³ AT&T argued that “the ‘triggers’ for pricing flexibility simply do not measure whether meaningful competition exists for the relevant services.”¹⁴ In denying AT&T’s request, the Commission observed that it had already declined to impose a moratorium on pricing flexibility applications in its *Special Access NPRM*, because “[o]ne year’s data are insufficient to support conclusions about the relationship between pricing flexibility and high rates of return.”¹⁵

Over three years later, the record in the special access proceeding now demonstrates that there is a marked failure in the special access marketplace and that the pricing flexibility regime is ineffective.¹⁶ Under these circumstances, granting additional pricing flexibility under the current pricing flexibility regime would merely exacerbate

¹¹ See, e.g., T-Mobile Ex Parte at 2 (urging the Commission to reform the pricing flexibility regime); Reply Comments of Sprint Nextel Corp. at 5-6 (filed Aug. 15, 2007) (same); Comments of PAETEC Communications, Inc. and US LEC Corp., WC Dkt. No. 05-25, at 17-18 (filed Aug. 8, 2007) (“PAETEC Comments”) (same).

¹² Verizon Petition for Pricing Flexibility For Special Access Services (fil. Jan. 28, 2005).

¹³ AT&T Opposition to Verizon Petition for Pricing Flexibility for Special Access Services, at 3 (fil. Feb. 14, 2005) (“AT&T Opposition”).

¹⁴ *Id.*

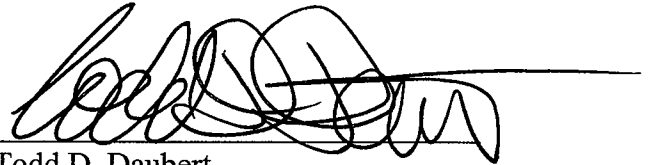
¹⁵ *Special Access NPRM* ¶ 129.

¹⁶ See, e.g., Comments of PAETEC Communications, Inc. and US LEC Corp., at 5 (filed Aug. 8, 2007) (noting that “in 2005, PAETEC informed the Commission that rather than being able to obtain alternative means of special access to reach its customers, it was dependent on ILECs for 95 percent of its special access service lines in markets where Phase II pricing flexibility had been implemented.”).

the failure in the special access marketplace. Therefore, SouthernLINC Wireless respectfully urges the Commission to defer consideration of BellSouth's Petition until it takes prompt and decisive action to address the marked failure in the special access marketplace. At a minimum, in light of the evidence on the record in the *Special Access NPRM* proceeding,¹⁷ the Commission should require BellSouth to submit record evidence demonstrating that grant of its Petition will serve the public interest. Specifically, the Commission should require BellSouth to submit record evidence demonstrating that grant of its Petition will not in fact harm the special access marketplace rather than permitting BellSouth merely to demonstrate that its Petition has satisfied the requirements of the current pricing flexibility regime.

Respectfully submitted,

By: _____



Todd D. Daubert

Devin Crock

Kelley Drye & Warren LLP

3050 K Street, N.W.

Washington, D.C. 20007

(202) 342-8602

tdaubert@kelleydrye.com

Counsel to SouthernLINC Wireless

Michael D. Rosenthal
Director of Legal and External Affairs
Holly Henderson
External Affairs Manager
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
(687) 443-1500

Dated: February 15, 2008

¹⁷ *Special Access Rates 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*, 20 FCC Rcd 1994 (2005) ("Special Access Reform Rulemaking").