Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of BellSouth Telecommunications,	)	
Inc. for Pricing Flexibility Under	)	
Section69.727 of the Commission's	)	WCB/Pricing No. 08-02
Rules for the Specific MSAs	)	

REPLY OF AT&T INC.

AT&T Inc. ("AT&T") on behalf of BellSouth Telecommunications, Inc. hereby files this reply in response to the Oppositions filed by Sprint Nextel Corporation's (Sprint") and Southern Communications Services ("Southern") to AT&T's Petition for Pricing Flexibility filed in the above-captioned proceeding. Sprint and Southern raise no issues warranting denial of AT&T's Petition. Rather their assertions amount to collateral attacks on the Commission's rules and unfounded and unsupported allegations regarding AT&T's prices for special access services.

Sprint and Southern first challenge the meritocracy of the Commission's existing pricing flexibility rules. Specifically, they argue that the record generated in the pending *Special Access Rulemaking Proceeding*[1] demonstrates that the Commission's existing collocation and revenue triggers are inadequate to measure meaningful competition in the special access and dedicated transport markets.[2] According to Sprint and Southern, granting AT&T additional pricing flexibility based on "flawed" triggers would exacerbate the allegedly noncompetitive state of the

[1] *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005).

[2] Southern Comments at 3-4; Sprint Comments at 1-2.

special access market.[3] They thus urge the Commission to, in effect, impose a moratorium on pricing flexibility petitions, pending completion of the *Special Access Rulemaking Proceeding*.

These arguments represent merely another collateral attack on the *Pricing Flexibility Order*.[4] Sprint, Southern and other commenters have raised these identical arguments in opposing AT&T's Petitions for Pricing Relief in 2002, 2003 (then SBC Communications Inc.)[5] and 2007. In rejecting those arguments, the Commission held that petitions challenging prior Commission decisions are impermissible collateral attacks.[6] Specifically, the Commission concluded that the *only* issue appropriate for resolution in a pricing flexibility proceeding is whether the petitioner has satisfied the requirements for pricing flexibility, nothing more.[7] To the extent revised triggers are warranted for the special access market, the Commission will revise its rules in the *Special Access Rulemaking Proceeding.* But unless and until the Commission takes such action, AT&T need only show that it has met the *existing* pricing flexibility triggers to obtain additional pricing relief. Moreover, the fact that the Commission has

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[3] *Id.* at 4.

[4] *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking CC Docket No. 96-262 (1999).

[5] *AT&T Pricing Flexibility Relief Order*, ¶ 13 n.38; *AT&T Second Pricing Flexibility Order*, ¶ (2002).

[6] *See In the Matter of Petition of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin for Pricing Flexibility, Petition of Pacific Bell Telephone Company to Pricing Flexibility, and Petition of Southwestern Bell Telephone Company for Pricing Flexibility*, CCB/CPD Nos. 00-26, 00-23, 00-25, *Memorandum Opinion and Order* (2001); *In the Matter of BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD no. 00-20, *Memorandum Opinion and Order* (2000) (*BellSouth Pricing Flexibility Proceeding*); *In the Matter of Association of Public Safety Communications Officials International, Inc., Emergency Petition for Clarification, et al.*, 14 FCC Rcd 4339, ¶ 10 (1999) (stating that to the extent a petition challenges earlier Commission decisions, the petition is "procedurally flawed because it effectively is an impermissible collateral attack.").

[7] *Id.*, ¶ 13 ("The only issue before the Bureau in these proceedings, however, is whether the petitions satisfy the requirements for pricing flexibility for special access and dedicated transport services set forth in the Commission's rules."); Petition of Indiana Bell Telephone Company Incorporated and the Ohio Bell Telephone Company for Pricing Flexibility Relief Under Section 69.727 of the Commission's Rules for the Specific MSAs, WCB/Pricing File No. 07-07, ¶ 15 (rel. May 18, 2007).

granted multiple AT&T Petitions for Pricing Flexibility,[8] *after initiation of the Special Access Rulemaking Proceeding*, belies Sprint and Southern's claims that the mere pendency of that proceeding warrants a rejection of AT&T's Petitions.

As an alternative, Southern argues that AT&T should, at a minimum, be required to submit evidence demonstrating that grant of its petitions will serve the public interest. AT&T has done so. It has supplied the requisite information demonstrating that it has satisfied the existing Commission requirements for pricing flexibility relief, requirements intended to ensure that any requested pricing relief is appropriate and consistent with the public interest. A grant of AT&T's Petition based on the data it has *already* provided would, therefore, be in the public interest.

Sprint further argues that AT&T's rates for its special access services are unreasonably high and well above cost, as evidenced by AT&T's high returns for its special access services. AT&T's returns are wholly irrelevant. What is determinative here is whether AT&T's special access rates comply with the *existing* price cap rules. They do, a fact Sprint does not attempt to refute. Moreover, because price cap regulation is an incentive-based, *not cost-based*, form of regulation and because these returns are calculated using flawed data, carrier returns are in no way indicative of the reasonableness of carrier rates. AT&T has consistently demonstrated that carrier returns calculated using allocated costs found in ARMIS produces meaningless results. In any event, as AT&T fully demonstrated in its comments in the *Special Access Rulemaking Proceeding*, there is increasing competition in the special access marketplace, which has resulted

[8] *See Petition of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin for Pricing Flexibility, Petition of Pacific Bell Telephone Company to Pricing Flexibility, and Petition of Southwestern Bell Telephone Company for Pricing Flexibility*, CCB/CPD Nos. 05-14, 05-15, 05-16, Order (2005*); Verizon Petition for Pricing Flexibility for Special Access Services*, 20 FCC Rcd 9809 (2005).

in *reduced* special access prices and new and innovative services for customers.[9] Thus, contrary to Sprint's claims, less, not more, regulation is appropriate for these services.

Finally, Sprint avers that AT&T has, prior to the AT&T/BellSouth merger, substantially increased it special access rates in areas where it has received pricing flexibility. To the contrary, AT&T has generally not increased its special access rates. Rather, it has not *reduced* its rates in pricing flexibility areas to mirror rate reductions in price cap areas, an action fully consistent with the Commission's pricing rules. In any event, even where AT&T has raised its prices, such action was appropriate given the market conditions in those particular areas. The Commission itself has, in fact, concluded that price increases in areas where pricing flexibility has been granted may be justifiable.[10] Accordingly, Sprint's baseless attacks on AT&T's special access prices should be rejected.

Conclusion

For the foregoing reasons, the Commission should reject Sprint's and Southern's claims and grant AT&T the pricing flexibility it seeks.

Respectfully Submitted,

/s/ Davida Grant
Davida Grant
Gary L. Phillips
Paul K. Mancini

AT&T Inc.
1401 I Street NW 4th Floor
Washington, D.C. 20005
Phone: 202-326-8903

Its Attorneys

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[9] *See* Supplemental Comments of AT&T Inc., Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 (filed August 8, 2007); Supplemental Reply comments of AT&T Inc., Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 (filed August 15, 2007).

[10] *Pricing Flexibility Order*, ¶155.