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Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25; Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65

Dear Ms. Dortch:

In the AT&T/T-Mobile merger proceeding, both before the Commission and the United States District Court, as in the pending special access rulemaking proceeding, Sprint has claimed that it must rely virtually entirely on Incumbent LECs for backhaul services because of the dearth of competitive alternatives. Indeed, Sprint claims “[o]ver 90 percent of special access sold to other carriers, including backhaul services, is provided by LECs, primarily AT&T and Verizon.”¹ According to Sprint, competition for backhaul services is so fragile that the loss of T-Mobile as a potential purchaser of competitive backhaul services would “substantially diminish any prospect that alternative backhaul providers will emerge to compete with AT&T and Verizon in their incumbent wireline service areas.”² As a result, Sprint claims, the merger will enable AT&T and Verizon to “impose unreasonable rates, terms, and conditions on its wireless rivals in [their] incumbent service territory.”³

The United States District Court dismissed this claim because Sprint had “allege[d] no facts to support its theory that the elimination of T-Mobile as a purchaser of backhaul will increase concentration among backhaul sellers by putting the independent providers out of

¹ Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, Sprint Petition to Deny, May 31, 2011, at 39. Sprint made the same claim in its Complaint in the United States District Court seeking to block the merger. *See Memorandum Opinion*, Sprint Nextel Corp. v. AT&T, Civil Action No. 11-1600 (ESH) at 40.

² Sprint Petition to Deny, *supra* at 41.

³ *Id.*

business.”⁴ A recent Sprint announcement only underscores that this claim lacks any credibility whatsoever.

Specifically, Sprint announced that on October 7, it would be awarding contracts for fiber-based backhaul at 15,000 cell sites (it already had awarded contracts for 10,000 sites), and that it would be announcing a third round of awards for another 15,000 sites in mid-2012 – many of which are in less populated areas.⁵ Sprint stated that it “will end up with ‘25 to 30 significant backhaul providers’ that will likely be a mix of incumbent LECs, cable MSOs, and alternative carriers, all of whom will be expected to deliver Ethernet predominantly over fiber for Sprint’s new multi-node network, which will combine the CDMA, IDEN and WiMax networks it uses today.”⁶ Sprint added that it “could still build its own backhaul facilities, where the alternatives presented don’t meet its requirements, including in less populated markets,” “[b]ut to date . . . [was] pleased with the way the industry has stepped up.” Sprint further noted that “[b]eing first to a given set of towers with fiber is great . . . but won’t guarantee selection.”⁷ By mid-2012, Sprint thus will have put out for competitive bid, and awarded to dozens of different providers, contracts to provide backhaul to 40,000 of its approximately 45,000 cell sites.⁸

Sprint has credited this growth in alternatives and “backhaul flexibility” with reducing significantly its backhaul costs.⁹ Indeed, on the same day in which it announced these backhaul contracts, it told investors that, while it previously was “basically a T1 organization,” “[n]ow we’ve got the opportunity to use fiber or microwave and we choose site by site, and it’s an economic decision and at times has to be a technology decision.”¹⁰ And this flexibility has given Sprint “a very much improved cost structure.”¹¹

Sprint’s announcement refutes its oft-repeated claims to regulators and other policy makers that: (1) it lacks any meaningful backhaul alternatives to ILEC special access services, (2) purportedly anticompetitive ILEC special access terms and conditions prevent Sprint from

⁴ *Memorandum Opinion supra* at 42

⁵ Carol Wilson, Light Reading, *Sprint to Reveal Backhaul Contract Winners Friday* (Oct. 5, 2011), available at: http://www.lightreading.com/document.asp?doc_id=213050 (last checked Oct. 11, 2011).

⁶ *Id.*

⁷ *Id.*

⁸ See Credit Suisse, *Sprint, Network Sharing Deals Imminent* (rel. Apr. 5, 2011) (noting that Sprint has 45,000 base stations), available at: http://doc.research-and-analytics.csfb.com/docView?language=ENG&format=PDF&source=em&document_id=873359241&serialid=7Dhw8bPqCoevFhjAWEcScrHE9GzS9jAR0cZLXo%2fqz%2bE%3d (last checked Oct. 19, 2011).

⁹ Thomson StreetEvents, Final Transcript, S-Sprint 4G Strategy/Network Update, at 8 (Event Date/Time: Oct. 07, 2011/1:30PM GMT).

¹⁰ *Id.*

¹¹ *Id.*

taking advantage of the limited competitive alternatives that do exist, (3) Sprint cannot economically deploy its own backhaul facilities, (4) ILECs have an insurmountable first mover advantage in the provision of fiber-based transmission services, and (5) operational and economic considerations inhibit its ability to use the backhaul services of multiple providers. Indeed, Sprint's announcement confirms what we have maintained all along and repeatedly documented -- the market for high capacity transmission services, including fiber-based services, is awash in competitive alternatives and that Sprint's claims for re-regulation are wholly unwarranted.

This announcement also unmask's Sprint's lack of credibility in asserting that the AT&T/T-Mobile merger will "substantially diminish any prospect that alternative backhaul providers will emerge to compete with AT&T and Verizon in their incumbent wireline service areas."¹² Those backhaul providers do not need to "emerge;" they are already competing vigorously in the marketplace, and they are winning more and more business as a result of the explosive growth of mobile broadband services.¹³ The merger of AT&T and T-Mobile, which is not a supplier of backhaul services, will in no way diminish this vigorous competition. Indeed, Sprint fails to offer a shred of evidence linking T-Mobile's backhaul purchases to the survival of even one of these 25-30 significant providers with which Sprint has recently signed backhaul contracts. And as Sprint and others continue to migrate from T-1 services to fiber and microwave, the business opportunities for these alternative providers will only increase with or without the merger.

In short, there is good reason why Sprint's backhaul claims could not survive a motion to dismiss in the United States District Court. These claims could not be supported because they are not serious claims. They should be summarily rejected by the Commission as well.

Respectfully submitted,

/s/ Gary L. Phillips

¹² Sprint Petition to Deny at 41.

¹³ Statements by Amanda Tierney, Vice President-Wholesale Market Management for Level 3, in an unusually candid interview at a recent conference on mobile backhaul services at Comptel further document the prevalence of competitive alternatives to ILEC special access services. There, she stated that "4G is really the catalyst for the ubiquity of Ethernet and the ubiquity of fiber to the tower. I think we have been seeing that, that shift and we are still fairly early in that shift, but with the vast number of towers that have been awarded and that are going to be awarded really in the next 6 to 12 months, I think we are going to see that shift happen really fast in the next 1 to 2 years, where, where fiber and Ethernet will become the vast majority of the connectivity to towers." She further stated that, "[I]t's a very competitive space. We've seen, we've actually seen the competition really, really increase over the past 12 months, pretty dramatically. I think there are, the MSOs seem to have really gotten into that space in earnest, [and] CLECs are becoming really competitive." Available at http://www.lightreading.com/video.asp?doc_id=213138&f_src=lrailynewsletter (last checked Nov. 8, 2011).

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