

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

Information Collection Being)
Submitted for Review and Approval to) OMB Control Number: 3060–XXXX
the Office of Management and Budget)
(OMB))

COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”) submits the following comments to the Federal Communications Commission (“FCC” or “Commission”) and the Office of Management and Budget (“OMB”). These comments respond to the Commission’s December 9, 2013, Federal Register Notice of the Commission’s Comprehensive Market Data Collection for Interstate Special Access Services (“Data Request”) filed pursuant to the Paperwork Reduction Act (“PRA”).¹

The FR Notice requests comments concerning: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission’s burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information

¹ *Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB)*, 78 Fed. Reg. 73861-62 (Dec. 9, 2013) (“FR Notice”).

technology; and (5) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.² Sprint's responses are below.

(1) The proposed collection of information is necessary for the proper performance of the functions of the Commission and has practical utility.

The Data Request is necessary for the proper performance of the Commission's functions. Congress requires the FCC to "execute and enforce the provisions" of the Communications Act,³ which requires that the FCC ensure that all "charges" and "practices" of telecommunications carriers are "just and reasonable."⁴ The Commission has explained correctly that, in order to determine whether current special access charges and practices are just and reasonable, it must study whether (1) current pricing flexibility triggers accurately predict areas where competition disciplines incumbent anticompetitive behavior; (2) current price caps are proper; and (3) incumbent LEC terms and conditions undermine competition. The Data Request will have significant practical utility, as it will enable the Commission to conduct the analysis necessary to fulfill its statutorily mandated duties.

The Commission plans to use this "comprehensive data collection" to "evaluate competition in the market for special access services,"⁵ an evaluation that is long overdue. Special access circuits are critical to Fortune 500 companies, small employers, hospitals, schools, technology innovators, and wireless facilities. These special access purchasers have suffered from supra-competitive prices and anticompetitive terms and conditions for years as incumbent

² *Id.*

³ 47 U.S.C. § 151.

⁴ *Id.* § 201(b).

⁵ *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-153, 27 FCC Rcd. 16,318, 16,319 ¶ 1 (2012) ("*Data Collection Order*").

price-cap LECs have taken advantage of the Commission’s ineffective rules. In reforming its special access rules, the Commission proposes to use the information it collects pursuant to the Data Request to analyze whether competitive entry has disciplined incumbent LEC behavior in any particular geographic areas or for any product markets, whether special access prices fluctuate between different geographic areas, and whether anticompetitive terms and conditions imposed by LECs undermine competitive entry.⁶ This information is at the heart of the FCC’s long-standing competition analysis methodology, and the Data Request will facilitate the FCC’s ability to perform the “multi-faceted market analysis of the special access market” that it has set out to undertake.⁷

Consequently, a wide variety of parties—buyers, sellers, incumbents, and competitors alike—agree that the Data Request will provide information that will help the FCC resolve this long-running proceeding, even if gathering this data will cause them to incur expense.⁸

⁶ See *Data Collection Order* at 16,346 ¶ 67 (“We propose to perform a one-time, multi-faceted market analysis of the special access market designed to determine where and when special access prices are just and reasonable, and whether our current special access regulations help or hinder this desired outcome. We do not propose to conduct a simple market share or market concentration analysis. Rather, we will use the data we are collecting in this Report and Order to identify measures of actual and potential competition that are good predictors of competitive behavior, for example, by demonstrating that prices tend to decline with increases in the intensity of various competition measures, holding other things constant.”). See also U.S. Dep’t of Justice & Fed. Trade Comm’n, *Horizontal Merger Guidelines*, § 1 (2010) (“A merger enhances market power if it is likely to encourage one or more firms to raise price, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.”); *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, FCC 10-113, 25 FCC Rcd. 8622, 8623 ¶ 1 (2010) (summarizing that a market power analysis commonly evaluates separately “competition for distinct services, for example differentiating among the various retail services purchased by residential and small, medium, and large business customers, and the various wholesale services purchased by other carriers” in a distinct geographic area).

⁷ *Data Collection Order* at 16,346 ¶ 67.

⁸ See, e.g., Comments of Sprint Nextel Corporation at 2, WC Docket No. 05-25, RM-10593 (filed Feb. 11, 2013) (“The FNPRM, along with the accompanying Report and Order and

(2) The Commission’s burden estimates are accurate.

The Commission estimates that the average annual burden of the Data Request will be 146 hours⁹ per respondent—an increase from the Commission’s initial estimate of 134 hours.¹⁰ As Sprint has indicated previously, these estimates are reasonable, and for the vast majority of respondents the burden will likely fall well below the estimated average.¹¹

Some parties have argued that the FCC’s estimate is too low because a set of large companies will expend more than 146 hours to comply with the data request. But this argument fails to recognize that the FCC’s estimate is an average that properly considers all types of respondents—large and small. A handful of very large companies, like Sprint, will need additional time because their responses will require them to analyze a larger number of special access lines and report on purchases from a larger group of vendors,¹² under a wide variety of tariffs and plans. Conversely, the vast majority of potential respondents will file responses related to only a relatively small number of special access circuits, purchased from only one or two vendors, under only one or two tariffs or plans. In fact, in the case of special access sellers,

mandatory data request . . . will, hopefully, lead to much needed reform of special access regulation”); Comments of AT&T Inc. at 10, WC Docket No. 05-25, RM-10593 (filed Feb. 11, 2013) (“In the *Notice*, the Commission properly determined that it will gather the full range of facilities data necessary for a rigorous evaluation of its pricing flexibility rules . . .”); Comments of Verizon and Verizon Wireless at 9, WC Docket No. 05-25, RM-10593 (filed Feb. 11, 2013) (“[T]he Commission has asked for data that will help it to analyze the competitive dynamics of the high-capacity marketplace . . .”).

⁹ FR Notice.

¹⁰ *Information Collection(s) Being Reviewed by the Federal Communications Commission*, 78 Fed. Reg. 9911-12 (Feb. 12, 2013).

¹¹ Paperwork Reduction Act Comments of Sprint Nextel Corporation at 2, WC Docket No. 05-25, 78 Fed. Reg. 9911 (filed Apr. 15, 2013).

¹² While Sprint purchases the vast majority of its DS-1 and DS-3 circuits from incumbent LECs, it also purchases some lines from a set of smaller providers in the few areas where those providers offer service.

other than the top twenty U.S. sellers in terms of on-net buildings, it is unlikely that any vendor has even 1,000 total owned-and-operated circuits to report to the FCC.¹³ Thus, the Commission's burden estimate is reasonable, especially considering that the vast majority of respondents will not even approach the estimated average of 146 hours.

(3) Ways to enhance the quality, utility, and clarity of the information collected.

Allowing the Data Request to proceed swiftly will enhance the quality, utility, and clarity of the information collected. As described above, the Data Request will allow the Commission to conclude this proceeding and meet its statutorily mandated requirements. Delays to the Data Request will only serve to prolong the anticompetitive harms that have long existed in the special access market.

Time is of the essence because the Data Request seeks data for calendar years 2010 and 2012. The Commission requested data from calendar year 2012 because it will be “the most recent calendar year for which data will be available once Paperwork Reduction Act approval is obtained for the information collection” By collecting 2012 data, the Commission recognized it will “obtain the most up-to-date data available while still providing respondents a reasonable time to gather and submit their data.”¹⁴ Likewise, the Commission requested data from 2010 because a “two year period between observations is more likely to include changes in the relevant variables than a one year period.”¹⁵ Some parties opposed the lag in time, but the Commission noted that these parties had “not proposed a method of instantaneous data

¹³ See *Metro Fiber and On-Net Buildings List*, TELECOM RAMBLINGS (July 2013), <http://www.telecomramblings.com/metro-fiber-provider-list/> (listing the number of on-net buildings per vendor).

¹⁴ *Data Collection Order* at 16,330 ¶ 27.

¹⁵ *Id.*

submission” and that “proper analysis naturally takes some time to perform.”¹⁶ There is a link, however, between the timeliness of the data submitted to the Commission and the quality of the analysis the Commission seeks to perform. Like Sprint, many parties recognize that the earlier the data is submitted the more useful it will be to the Commission’s analysis.¹⁷ These and other parties are actively gathering the data from 2010 and 2012 so they can respond to the Data Request as quickly as possible according to the schedule the FCC sets.¹⁸

In addition, incumbent price-cap LECs have relied on the Commission’s inaction to justify unreasonable special access rates. Indeed, AT&T has described its special access rates as “presumptively reasonable” and asserted that the Commission has found “the record inadequate” to suspend them under Section 201(b).¹⁹ The Commission must expeditiously complete its analysis of special access competition in order to prevent LECs like AT&T from continuing to exploit the absence of Commission action to extract monopoly rents from special access purchasers.

¹⁶ *Id.* at ¶ 27, n.61.

¹⁷ *See, e.g.*, Letter from CALTEL, et al, to Chairman Thomas E. Wheeler, WC Docket No. 05-25, RM-10593, at 2 (filed Nov. 7, 2013) (“[A]ll segments of the communications industry will benefit from a speedy resolution of the issues raised in the special access docket”); Opposition of Cbeyond, Earthlink, Integra, Level 3, and tw telecom, WC Docket No. 05-25, RM-10593, at 1-2 (filed Nov. 6, 2013) (urging the Commission to complete the Data Request process “as soon as possible”); Comments of Level 3 Communications, LLC, WC Docket No. 05-25, RM-10593, at 8 (filed Feb. 11, 2013) (“Delay is costly on a number of levels”).

¹⁸ *See, e.g.*, Letter from Windstream Corporation to Marlene H. Dortch, Secretary, FCC (filed Jul. 23, 2013) (“Windstream... has already begun identifying information responsive to the data request and it would prefer that the Commission no change the timeframe of data sought from 2010 and 2012 to 2011 and 2013 if such a change would result in any delays to the data gathering process”).

¹⁹ *See* Reply of AT&T Services Inc. to Petitions to Suspend and Investigate, Docket No. 13-299, at 9, 11 (filed Dec. 6, 2013).

(4) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Respondents will utilize a Special Access Web Portal for the electronic submission of responses to the Data Request.²⁰ Respondents can use the web portal to access a data container with record specifications for compiling data responses and software tools to verify that data is submitted in the appropriate format. The use of this information technology will minimize the burden of the Data Request on all respondents.

If further reductions of the compliance burden of the Data Request are necessary, there is one element of the Data Request that could be removed. The FCC seeks data on “best efforts broadband” services. Sprint has explained that best efforts broadband services are in a market distinct from the dedicated special access services provided by incumbent LECs and do not act in any way to constrain the prices for such services.²¹ Sprint and others have made clear that business customers do not view best efforts services as substitutes for special access service.²² In particular, best efforts services provided over hybrid fiber coaxial (“HFC”) cable networks generally are not a realistic alternative to incumbent LEC special access service. These services

²⁰ See *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order, WC Docket No. 05-25, RM-10593, 2013 WL 5295091 (rel. Sept. 18, 2013), at Appendix A p. 4, *Instructions for Data Collection for Special Access Proceeding*, WC Docket No. 05-25, RM -10593.

²¹ See Comments of Sprint Nextel Corporation at 20-23, WC Docket No. 05-25, RM-10593 (filed Feb. 11, 2013).

²² See, e.g., *id.* at 20-21; Comments of BT Americas Inc., Cbeyond Communications, LLC, EarthLink, Inc., Integra Telecom, Inc., Level 3 Communications, LLC and tw telecom inc. at 50-57, WC Docket No. 05-25, RM-10593 (filed Feb. 11, 2013); Comments of XO Communications, LLC at 6, Anderson Declaration at 4, WC Docket No. 05-25, RM-10593 (filed Feb. 11, 2013); Comments of Ad Hoc Telecommunications Users Committee at 11-13, WC Docket No. 05-25, RM-10593 (filed Feb. 11, 2013); Reply Declaration of Carlton, *et al.* on behalf of AT&T, attached as Exhibit A to Reply Comments of AT&T, WC Docket No. 05-25, ¶ 24 (Feb. 24, 2010) (explaining the numerous, significant, differences between special access and best efforts services).

do not have the bandwidth, performance guarantees, reliability, security and other technical requirements that are necessary to meet Sprint's macro cellular backhaul and core enterprise business services demands. Accordingly, data on best-efforts broadband services is not necessary for the Commission to conduct its competition analysis. If OMB finds that it must reduce the filing burden, it could eliminate this portion of the Data Request without undermining the ability of the FCC to resolve the pending special access proceeding effectively.

(5) Ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

As Sprint described above, the data request creates a larger burden for large companies and a smaller burden for small companies. These smaller respondents will file responses related to only a relatively small number of special access circuits.

Furthermore, small businesses in the context of interstate special access services are likely larger than the very small companies discussed in the FR Notice—respondents are unlikely to have fewer than 25 employees. The Commission's Regulatory Flexibility Analysis required by the Regulatory Flexibility Act evaluates the small business impact of the Data Request in terms of applicable size standards under the Small Business Act ("SBA"). In this context, the categories of companies impacted by the Data Request generally must have 1,500 or fewer employees to meet the SBA small business size standard.²³ Few, if any, businesses with less than 25 employees will be impacted by the Data Request and, therefore, no additional steps are necessary to reduce the burden on small businesses.

This is because the Wireline Competition Bureau excluded from the Data Request many smaller respondents when it limited the category of special access purchasers subject to the

²³ See *Data Collection Order*, Appendix B at 16,386 ¶ 7.

collection.²⁴ Moreover, “mindful of the importance of seeking to reduce information collection burdens for small business concerns, and in particular those ‘with fewer than 25 employees . . .’” the Commission excluded “entities with fewer than 15,000 customers and fewer than 1,500 business broadband customers” from the requirement to provide data regarding best efforts broadband Internet access service.²⁵

* * *

For the reasons stated herein, OMB should approve the information collection as submitted.

Respectfully submitted,

/s/ Paul Margie

Paul Margie
Jennifer P. Bagg
Walter E. Anderson
WILTSHIRE & GRANNIS LLP
1200 Eighteenth St., NW
Washington, D.C. 20036
(202) 730-1300

Counsel to Sprint Nextel Corporation

January 8, 2014

²⁴ See *supra* note 14.

²⁵ *Data Collection Order* at 16,327-28 ¶ 22.