BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

MISSOURI NETWORK ALLIANCE, LLC
2005 W. Broadway
Building A, Suite 215
Columbia, MO 65203
(573) 777-4200

Complainant,

v.

SPRINT COMMUNICATIONS COMPANY, L.P.
6450 Sprint Parkway
Overland Park, KS 66251
(202) 730-1328

Defendant.

File No. _____

FORMAL COMPLAINT OF
MISSOURI NETWORK ALLIANCE, LLC

Bennett L. Ross
Christopher Huther
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
202-719-7000

Counsel for Missouri Network Alliance, LLC

August 1, 2018

FCC 485
November
2014

Federal Communications Commission
Washington, D.C. 20554

OMB Control Number
3060-0411

SECTION 208 FORMAL COMPLAINT INTAKE FORM

1. Case Name: Missouri Network Alliance, LLC v. Sprint Communications Company, L.P.

2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable):
Missouri Network Alliance, LLC, 2005 W. Broadway, Bldg. A, Suite 215, Columbia, MO 65203, 573-777-4200

3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable):
Sprint Communications Company, L.P., 6450 Sprint Parkway, Overland Park, KS 66251, 202-730-1328

4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended:
47 U.S.C. Section 201(b), 47 U.S.C. Section 251(b)(5)

Answer (Y)es, (N)o or N/A to the following:

Y 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.

Y 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.

Y 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:

Y a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.

(1) b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint. (1) legal analysis is included; other requirements waived

Y c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).

N/A d. Complaint contains a certification that complies with 47 C.F.R Section 1.721(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.

Y e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:
Sprint filed an action in U.S. District Court for the Western District of Missouri on July 19, 2017

N f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:

N/A g. Complaint includes an information designation that contains:

_____ (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and

_____ (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and

_____ (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations. and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.

Y h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.

Y i. Certificate of service is attached and conforms to the specifications prescribed by 47 C.F.R. Sections 1.47(g) and 1.735(f).

j. Verification of payment of filing fee in accordance with 47 C.F.R. Sections 1.721(13) and 1.1106 is attached.

N/A 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.

Y 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).

Y 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47(e) and 47 C.F.R. Section 1.735(c).

Y 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).

Y 12. The correct number of copies required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.

Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).

N/A 14. If Complaint is by multiple complainants, it complies with the requirements of 47 C.F.R. Section 1.723(a).

Y 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).

N/A 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).

Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.

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Counsel for Missouri Network Alliance, LLC

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FORMAL COMPLAINT OF MISSOURI NETWORK ALLIANCE LLC

1. Pursuant to Sections 201, 206, and 208 of the Communications Act ("Act"), 47 U.S.C. §§ 201, 206, 208, and Sections 1.718 and 1.720 *et seq.* of the rules of the Federal Communications Commission ("Commission"), 47 C.F.R. §§ 1.720 *et seq.*, and in accordance with the Commission's Letter Ruling,[1] Complainant Missouri Network Alliance, LLC ("MNA") hereby brings this Formal Complaint against Defendant Sprint Communications Company, L.P. ("Sprint"), and states in support as follows:

[1] Ex. 1: Letter from Lisa B. Griffin, FCC Enforcement Bureau – Market Disputes Resolution Division, to Bennett L. Ross, Counsel to Missouri Network Alliance LLC, and Jared P. Marx, Counsel to Sprint Communications Co., LP (July 19, 2018) ("Letter Ruling").

2. As part of its comprehensive reforms to the intercarrier compensation system and its adoption of a uniform federal transition to bill-and-keep, the Commission imposed obligations on carriers to charge – and a corresponding obligation on carriers to pay – rates for tandem switching and transport services consistent with the Commission's rules and transition plan.[2] This dispute concerns Sprint's disregard of its payment obligations in violation of 47 U.S.C. § 251(b)(5) as well as the Commission's *USF/ICC Transformation Order* and implementing rules.

3. By withholding payment of MNA's lawfully tariffed tandem charges that comply fully with federal law, Sprint violated its legal obligations under the Act and the Commission's rules. Consistent with Supreme Court and Commission precedent, Sprint's violations constitute an unjust and unreasonable practice for which Sprint is liable under 47 U.S.C. § 201(b).

4. Sprint also violated Section 201(b) by withholding payment on MNA invoices in an attempt to help itself to a retroactive refund of amounts that Sprint paid MNA and only disputed after the fact. Sprint's "claw back" tactic constitute an unjust and unreasonable practice in violation of Section 201(b), as two federal courts have held previously.

JURISDICTION

5. The Commission has jurisdiction over this Complaint under Section 208 of the Act, 47 U.S.C. § 208, and pursuant to the *Modified Referral Order*.[3] Sprint is a common carrier subject to Title II of the Act, including Sections 201, 206, and 208.

6. MNA requests damages for Sprint's unlawful and unreasonable conduct, including, but not limited to, interest and attorneys' fees. However, pursuant to the

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[2] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ("*USF/ICC Transformation Order*"), *aff'd Direct Communs Cedar Valley v. FCC*, 753 F.3d 1015 (10th Cir. 2014).

[3] Ex. 2: Order Modifying Primary Jurisdiction Referral, *Sprint Communs Co. L.P. v. Missouri Network Alliance, LLC*, No. 4:17-CV-00597-DGK (W.D. Mo. May 1, 2018) ("*Modified Referral Order*").

Commission's rules (47 C.F.R. § 1.722(d)), MNA requests that the Commission first determine the issues in this Complaint relating to liability and defer issues regarding MNA's damages in a separate and subsequent proceeding.

STATEMENT REGARDING SUPPORTING MATERIAL

7. As part of this Complaint, MNA provides a complete statement of facts establishing that Sprint has violated the Communications Act of 1934 ("Act") and the Commission's implementing rules. In addition to its Complaint, MNA also submits: (i) a Legal Analysis that explains why Sprint's misconduct constitutes an unjust and unreasonable practice in violation of 47 U.S.C. § 201(b); (ii) supporting declaration by Chris Bach; and (iii) other forms and certifications required by the Commission's rules, 47 C.F.R. §1.721(a).

REQUIRED CERTIFICATIONS

8. Pursuant to the Commission's rules regarding separate actions (47 C.F.R. § 1.721(a)(9)), MNA states that Sprint filed a collection action in the U.S. District Court for the Western District of Missouri ("District Court action") on July 19, 2017, and that MNA's Complaint originates from the *Modified Referral Order* in that action. Accordingly, the Complaint is based on the same facts underlying the District Court action.

THE PARTIES

9. Complainant MNA is a Missouri limited liability company with its principal place of business in Missouri.

10. Defendant Sprint is a Delaware limited partnership. Sprint's general and limited partners are: US Telecom, Inc., a Kansas corporation with its principal place of business in Kansas; UCOM, Inc., a Missouri Corporation with its principal place of business in Kansas; Utelcom, Inc., a Kansas Corporation with its principal place of business in Kansas; and, Sprint

International Communications Corporation, a Delaware corporation with its principal place of business in Kansas. For purposes of this Complaint, Sprint is operating as a common carrier, and specifically as an interexchange carrier ("IXC") subject to the Act.

FACTS IN SUPPORT OF COMPLAINT

I. BACKGROUND

A. Relationship Between the Parties

11. Owned in part by 13 independent telephone companies in Missouri, MNA was established in 1999 to leverage and combine the fiber optic networks of MNA's member companies. MNA is part of Bluebird Network LLC, which has over 6,000 miles of fiber optic cable routes providing service throughout the Midwest and United States and which owns 50 percent of MNA.[4]

12. MNA currently operates a fiber optic transport network in Missouri. MNA also offers competitive tandem switching and transport services to IXCs such as Sprint serving rural customers in Missouri. Bach Decl. ¶ 4.

13. As a competitive tandem provider, MNA is an intermediate carrier that offers tandem switching and transport on a competitive basis but that does not: (i) own any end offices (either directly or indirectly through an affiliate); or (ii) offer telecommunications services to end users. MNA is not engaged in – and has never been engaged in – "access stimulation" within the meaning of the Commission's rules. Bach Decl. ¶ 5.

14. MNA's interstate and intrastate rates for its tandem switching and transport services are set forth in tariffs on file with the Commission and the Missouri Public Service Commission, respectively. Bach Decl. ¶ 4. MNA's federal and state tariffs comply fully with all applicable federal and state laws.

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[4] Declaration of Chris Bach ("Bach Decl.") ¶ 3.

15. As an IXC, Sprint receives interexchange traffic from an originating local exchange carrier ("LEC") and then transports the call to the terminating LEC, which will deliver the call to the called party. For interexchange traffic originated or terminated by MNA's member companies, Sprint can interconnect with each independent telephone company to exchange traffic directly. Sprint also can exchange traffic with MNA's member companies indirectly by purchasing tandem switching and transport services from MNA, which allows Sprint to avoid the cost of direct interconnection. Bach Decl. ¶ 7.

16. For nearly a decade, Sprint or its predecessors purchased tandem switching and transport services from MNA pursuant to MNA's interstate and intrastate tariffs. MNA invoiced Sprint for the tandem switching and services provided to Sprint consistent with the tandem rates in MNA's interstate and intrastate tariffs. Bach Decl. ¶ 8.

17. In early 2017, Sprint began moving its interexchange traffic from MNA's tandem. Bach Decl. ¶ 20. In May 2018, Sprint ceased purchasing tandem services from MNA, disconnecting the circuits interconnecting its network to MNA's tandem. Bach Decl. ¶ 24.

B. Sprint's Violations of the Commission's Rules and the Act.

18. In 2011, the Commission issued its *USF/ICC Transformation Order*, which overhauled the historical intercarrier compensation system by adopting a "uniform national bill-and-keep framework ... for all telecommunications traffic exchanged with a LEC." *Id.* ¶ 34.

19. In the *USF/ICC Transformation Order*, the Commission also put into place a series of rules designed to facilitate the transition to bill-and-keep. *Id.* ¶¶ 736–39, 798–808. To that end, it capped "all interstate switched access rates in effect on the effective date of the rules" (which was December 29, 2011), "including originating access and all transport rates." *Id.* ¶ 800. The Commission also addressed intrastate rates, concluding that certain intrastate rates would be

capped, and that intrastate terminating rates would be reduced to parity with interstate access rates. *Id.* ¶ 801.

20. The rate reductions required under the Commission's transition plan to bill-and-keep applied only to terminating end office switching rates and transport rates of the terminating carrier that also owns the tandem. *Id.* ¶ 798. The Commission's bill-and-keep transition plan focused first on terminating traffic because "limiting reductions at this time to terminating access rates will help address the majority of arbitrage and manage the size of the access replacement mechanism." *Id.* ¶ 819. The Commission sought comment on the appropriate transition plan for all other rate elements, including tandem switching and transport from competitive tandem providers like MNA that do not own the end office. *Id.* ¶¶ 800, 1297 & 1306. That proceeding remains pending before the Commission.[5]

21. As required by the *USF/ICC Transformation Order*, MNA capped its interstate tandem switching and transport rates, and it also has not increased its intrastate tandem switching and transport rates since the Commission's rules took effect. Bach Decl. ¶ 6. MNA's interstate and intrastate tandem switching and transport rates comply fully with the requirements of the *USF/ICC Transformation Order* and the Commission's implementing rules.

22. For approximately two and half years after release of the *USF/ICC Transformation Order*, Sprint paid without dispute MNA's invoices for the tandem services MNA provided. During this time period – November 2011 through May 2014 – Sprint never disputed any MNA charge based on the allegation that MNA's interstate or intrastate tandem switching or transport rates failed to comply with Commission rules. Bach Decl. ¶ 9.

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[5] *See, e.g.,* Public Notice, *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, at 2 (Sept. 8, 2017).

23. By letter dated June 13, 2014, Summar Dunnill with TEOCO Corporation wrote MNA in which it claimed to identify "an incorrect billing issue on behalf of Sprint."[6] TEOCO conducts audits for carrier clients to identify allegedly inaccurate network access charges, and it is MNA's understanding that TEOCO is compensated based on the percentage of inaccurate charges allegedly identified. Bach Decl. ¶ 10.

24. The June 2014 Dispute Letter, which was the first time that Sprint complained to MNA about MNA's tandem rates not complying with Commission rules, states as follows:

> "Missouri Network Alliance (MNA) incorrectly billed the following: Per the FCC ICC reform (FCC 11-161) all rates were capped as of the end of 2011. Terminating IntraState rates were to be reduced to half the difference between Intrastate and Interstate rates beginning on July 1, 2012. The IntraState terminating rates were to be further reduced to parity with FCC rates beginning on July 1, 2013. The IntraState terminating transport rates invoiced by MNA were neither reduced by half the difference beginning in July 2012, nor to parity with FCC rates beginning in July 2013. Sprint disputes the difference between the invoiced rates and the calculated rates for the mandated reductions."[7]

25. The June 2014 Dispute Letter requested a refund of $10,296.33. This amount purported to represent the difference in the intrastate tandem rates charged by MNA and the intrastate tandem rates TEOCO asserted MNA should have charged from June 21, 2012 through April 20, 2014, as reflected in MNA's invoices dated July 1, 2012 through May 1, 2014. Bach Decl. ¶ 12.

26. MNA denied Sprint's dispute. Because MNA is not a terminating carrier and does not own any end offices, MNA was not required to reduce its intrastate tandem rates to "parity" with its interstate tandem rates under the plain language of the *USF/ICC Transformation Order* and the Commission's implementing rules. Nor is MNA a LEC to which the Commission's parity rule applies. Bach Decl. ¶ 13.

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[6] Ex. 3: Letter from Summar Dunnill, TEOCO, to Jesse Goble, MNA (June 13, 2014) ("June 2014 Dispute Letter") (without attachments).

[7] Ex. 3 at 1; Bach Decl. ¶ 11.

27. After MNA denied the dispute in the June 2014 Dispute Letter, Sprint did not commence a lawsuit in court, file a complaint with the Commission, or otherwise take any action to seek regulatory review of MNA's rates. Instead, Sprint withheld payment of $10,296.29 from MNA's invoice dated December 1, 2014. Bach Decl. ¶ 14.

28. Sprint also withheld payment of $2,947.36 from MNA's invoice dated January 1, 2015. Sprint did not explain how this withheld amount was calculated, although Sprint attempted to justify its withholding by claiming that it was associated with the dispute raised in the June 14 Dispute Letter. Bach Decl. ¶ 15.

29. After withholding partial payment of MNA's December 1, 2014 and January 1, 2015 invoices, Sprint resumed paying MNA's invoices for tandem services. Sprint paid MNA's invoices in full for approximately three years. During this time period – from February 2014 through February 2017 – Sprint did not withhold payment of MNA's invoices or assert a dispute about MNA's interstate or intrastate tandem switching or transport rates. Bach Decl. ¶ 16.

30. On or about March 30, 2017, Sprint sent MNA more than 100 dispute letters disputing MNA's invoices for the preceding eight years. Bach Decl. ¶ 17. Each letter, a sample of which is attached as Exhibit 4, claimed that the "incorrect rate" had been "applied to specific usage type" and sought refunds of the amounts Sprint had previously paid.[8]

31. In the details of each dispute subject to the March 2017 Dispute Letters, Sprint provided the following explanation: "Disputing invalid invoiced charges. In letter sent on 3/10/2017, Sprint notified MNA that they do not have a valid tariff for the charges it has imposed upon Sprint due to non-compliance of the FCC s benchmarking and parity obligations. As stated in the Great Lakes Comnet Case, carriers such as MNA are subject to benchmarking rules. The

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[8] Ex. 4: Sample Letter from Norra Basore, Sprint, to Cassandra Webb, MNA, re: CCSPC315235 (March 30, 2017) (without attachments). All dispute letters from Sprint dated March 30, 2017 are collectively referred to as "March 2017 Dispute Letters."

Great Lakes Comnet case demonstrates that MNA is a CLEC subject to the application of the benchmarking rule. In the absence of a valid tariff, MNA s charges are invalid."[9]

32. Even though the Commission adopted the benchmarking rule in 2001, Sprint had not previously disputed any MNA invoice based on MNA's alleged failure to comply with this rule. Indeed, Sprint had never even asserted that MNA was a competitive LEC subject to the benchmarking rule prior to March 2017. Bach Decl. ¶ 19.

33. Coincident with the March 2017 Dispute Letters, Sprint effectively stopped paying MNA's invoices for the tandem services MNA provided to Sprint. For invoices dated March 1, 2017 through April 1, 2018, Sprint paid on average less than two percent of the invoiced amount, withholding payment of approximately 98 percent of MNA's invoices. Bach Decl. ¶¶ 20-21. By comparison, for MNA's invoices dated January 1, 2011 through February 1, 2017, Sprint withheld payment of approximately 1 percent of MNA's invoices. Bach Decl. ¶ 22.

C. The Parties' Dealings and the Ensuing District Court Litigation.

34. On July 17, 2017, Sprint filed the District Court action suit against MNA, alleging in six counts that MNA had violated federal and state law by charging tandem rates that were not in compliance with the *USF/ICC Transformation Order* and the Commission's implementing rules. Sprint filed an amended complaint on August 25, 2017, asserting an additional state-law claim. On September 25, 2017, MNA filed its Answer denying Sprint's allegations, raising various affirmative defenses, and asserting Counterclaims for damages arising from Sprint's unlawful withholding of payment to MNA for tandem switching and transport services provided to Sprint pursuant to lawful federal and state tariffs. One of MNA's counterclaims was Sprint's violation of Section 201(b) of the Act.

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9 Ex. 4, at 1; Bach Decl. ¶ 18.

35. By order dated May 1, 2018, the District Court stayed the case and referred issues related to whether MNA's interstate and intrastate tandem rates comply with federal law to the Commission under the primary jurisdiction doctrine. See Ex. 2, Modified Referral Order, at 1–2. The District Court also expanded the jurisdictional referral to the Commission to include MNA's counterclaim that Sprint violated 47 U.S.C. § 201(b) by withholding payment of MNA's invoices. *Id.* at 3.

II. SPRINT HAS VIOLATED 47 U.S.C. § 251(B)(5) AS WELL AS THE *USF/ICC TRANSFORMATION ORDER* AND THE COMMISSION'S IMPLEMENTING RULES.

36. The Commission's intercarrier compensation reforms were predicated largely on 47 U.S.C. § 251(b)(5), in which Congress directed that LECs "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The Commission concluded that this language gave the agency jurisdiction over all traffic exchanged between LECs and IXCs. *USF/ICC Transformation Order,* ¶¶ 760-62, ¶¶ 771-72.

37. To implement Congress's directive in Section 251(b)(5), the Commission relied on its authority under Section 201(b) to adopt rules that: (1) adopted bill-and-keep as the ultimate end state for all telecommunications traffic subject to Section 251(b)(5); (2) established a multi-year transition plan under which rates for all interstate switched access rates were capped and rates for terminating switched access and some transport services were reduced; and (3) initiated a proceeding to establish the plan for transitioning all remaining rate elements – including the tandem switching and transport charges of competitive tandem providers such as MNA – to bill-and-keep. *USF/ICC Transformation Order* ¶¶ 34-35, ¶¶ 760-62, ¶ 1297, ¶ 1306.

38. Under the Section 251(b)(5) reciprocal compensation framework, carriers collaborate in jointly serving a customer making or receiving an interexchange call. And, pursuant to Section 251(b)(5), collaborating carriers are entitled to receive and are obligated to

pay reciprocal compensation consistent with the Commission's rules for their services. Section 251(b)(5) obligates an IXC like Sprint to pay a tandem provider like MNA when they collaborate in handling an interexchange call terminated to a LEC. Sprint violated its payment obligations under Section 251(b)(5) by withholding payment of MNA's lawfully tariffed tandem rates.

39. Consistent with the *USF/ICC Transformation Order*, the Commission's rules governing the transition to bill-and keep incorporate the requirements of Section 251(b)(5). *See* 47 C.F.R. § 51.901(b). By subjecting all telecommunications traffic exchanged with a LEC to the Section 251(b)(5) framework, the Commission's rules obligate an IXC like Sprint to pay a tandem provider like MNA when they collaborate in handling an interexchange call terminated to a LEC. Sprint violated its payment obligations under the Commission's rules by withholding payment of MNA's lawfully tariffed tandem rates.

40. The Commission established a detailed and uniform transition plan to achieve its end goal of bill-and-keep for all telecommunications traffic. In doing so, however, the Commission deliberately confined that plan to terminating end office switching rates and transport rates of terminating carriers that also own the tandem. *USF/ICC Transformation Order* ¶ 819. The Commission has not yet established the mechanism for reducing to bill-and-keep the tandem switching and transport rates of competitive tandem providers like MNA that do not own the end office or the timeframe by which competitive tandem providers like MNA must implement such reductions. The Commission is addressing these issues in a rulemaking that remains pending before the agency.

41. Sprint has decided not to wait for the Commission to conclude its rulemaking proceeding or to establish an appropriate bill-and-keep transition plan for competitive tandem switching and transport rates. Instead, Sprint effectively helped itself to bill-and-keep by withholding payment of nearly all of MNA's invoices dated March 1, 2017 through April 1,

2018, after which Sprint ceased purchasing tandem services from MNA. Sprint's conduct violated the *USF/ICC Transformation Order* and the Commission's implementing rules.

42. Sprint also did not merely withhold payment of disputed amounts invoiced by MNA but clawed back amounts already paid to MNA. In effect, Sprint has helped itself to a retroactive refund by withholding payments on invoices that Sprint paid and did not dispute at the time of its payment.

COUNT I

Section 201(B), 47 U.S.C. § 201(B), (Unjust and Unreasonable Practice)

43. MNA repeats and re-alleges each and every allegation contained in paragraphs 1 to 42 of this Formal Complaint as if set forth fully herein.

44. Under Section 201(b) of the Act, "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful." 47 U.S.C. § 201(b).

45. Sprint is legally obligated under Section 251(b)(5) as well as the Commission's *USF/ICC Transformation Order* and implementing rules to pay MNA's tariffed rates for the tandem services Sprint purchased from MNA. Sprint's failure to pay MNA's tariffed rates in violation of federal law requiring such payment is an unjust and unreasonable practice that violates Section 201(b).

COUNT II

Section 201(B), 47 U.S.C. § 201(B) (Unjust and Unreasonable Practice)

46. MNA repeats and re-alleges each and every allegation contained in paragraphs 1 to 45 of this Formal Complaint as if set forth fully herein.

47. Sprint has helped itself to a retroactive refund when it effectively stopped paying MNA's invoices from March 2017 until it discontinued using MNA's tandem in May 2018. This tactic allowed Sprint to recoup charges that Sprint belatedly disputed but nonetheless paid to MNA.

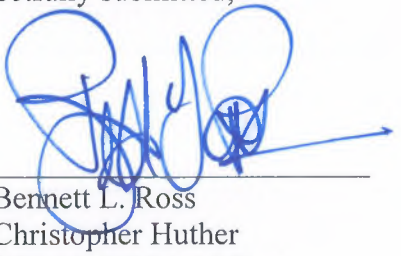
48. Sprint's "claw back" tactic to obtain a retroactive refund on amounts previously paid to MNA is an unjust and unreasonable practice that violates Section 201(b).

PRAYER FOR RELIEF

49. Wherefore, and pursuant to Section 1.721(a)(7) of the Commission's rules, 47 C.F.R. § 1.721(a)(7), Complainant MNA requests that the Commission find that Defendant Sprint has violated Section 201(b) of the Act, 47 U.S.C. § 201(b).

August 1, 2018

Respectfully submitted,



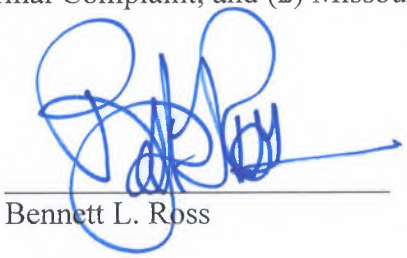
By: _____

Bennett L. Ross
Christopher Huther
WILEY REIN, LLP
1776 K Street, N.W.
Washington, D.C. 20006

Counsel to Missouri Network Alliance LLC

CERTIFICATE OF FEE PAYMENT

I hereby declare under penalty of perjury that (1) Missouri Network Alliance LLC paid the $230 filing fee for the Formal Complaint (pursuant to Commission Rule 1.1106, 47 C.F.R. § 1.1106) by credit card simultaneously with the Formal Complaint, and (2) Missouri Network Alliance LLC's FRN is 0015540669.



Bennett L. Ross

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2018, I caused a copy of the foregoing Formal Complaint, as well as all accompanying materials, to be served by hand delivery (*) or electronic mail (+) to the following:

Marlene H. Dortch*
Office of the Secretary
Market Disputes and Resolution Division
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Lisa Griffin+
Anthony DeLaurentis+
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
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Jared Paul Marx*
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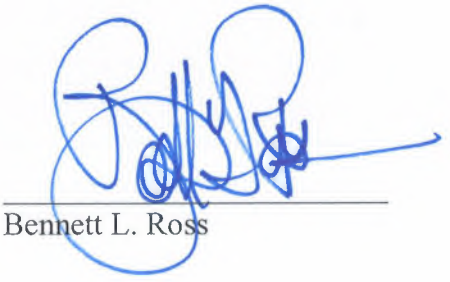

Bennett L. Ross

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

MISSOURI NETWORK ALLIANCE, LLC
2005 W. Broadway
Building A, Suite 215
Columbia, MO 65203
(573) 777-4200

Complainant,

v.

SPRINT COMMUNICATIONS COMPANY, L.P.
6450 Sprint Parkway
Overland Park, KS 66251
(202) 730-1328

Defendant.

File No. _____

LEGAL ANALYSIS IN SUPPORT OF FORMAL COMPLAINT OF MISSOURI NETWORK ALLIANCE, LLC

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INTRODUCTION

Missouri Network Alliance, LLC ("MNA") respectfully submits this Legal Analysis in support of its Formal Complaint against Sprint Communications Company, L.P. ("Sprint") to explain in more detail the legal basis for its claim that Sprint has violated Section 201(b) of the Communications Act of 1934 ("Act").

MNA is a competitive tandem provider that does not own any end offices directly or indirectly or serve end users. MNA's Formal Complaint alleges that Sprint violated federal law by wrongfully withholding payment of MNA's invoices for tandem switching and transport services MNA provided to Sprint. MNA's charges, set forth in its interstate and intrastate tariffs, comply fully with the Commission's intercarrier compensation reforms and its rules adopting "a uniform federal transition to bill-and-keep."[1]

In reforming the historical intercarrier compensation system, the Commission brought all telecommunications traffic exchanged with a local exchange carrier ("LEC") within the reciprocal compensation framework of Section 251(b)(5). Under this framework, carriers collaborate in jointly serving a customer making interexchange calls. Section 251(b)(5) entitles collaborating carriers to receive and obligates them to pay reciprocal compensation for such calls consistent with the Commission's rules. Sprint violated Section 251(b)(5) when it withheld payment for the tandem services provided by MNA.[2]

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[1] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 798 (2011) ("*USF/ICC Transformation Order*"), *aff'd Direct Communs Cedar Valley v. FCC*, 753 F.3d 1015 (10th Cir. 2014).

[2] MNA's references to Section 251(b)(5) should not be construed – and are not intended – as a concession that MNA is a LEC, which is not the case. By virtue of a LEC being "a party to the transport and termination of access traffic," the exchange of all traffic, including traffic exchanged with a competitive tandem provider like MNA, "is subject to regulation under [Section 251(b)(5)]." *USF/ICC Transformation Order* ¶ 762; *see also id.* ¶ 764.

Sprint also violated the Commission's rules implementing its intercarrier compensation reforms and establishing the transition to bill-and-keep. Those rules incorporate by reference the obligations under Section 251(b)(5), including the obligation to pay compensation consistent with the Commission's requirements. And, while capping all interstate switched access rates and reducing rates for terminating switched access and some transport services, the Commission deferred establishment of a transition plan for all remaining rate elements, including the tandem switching and transport charges of competitive tandem providers such as MNA. By withholding payment for MNA's tandem services, Sprint effectively helped itself to the benefit of bill-and-keep, even though the Commission has not yet established the mechanism or timeframe for transitioning the services provided by MNA to bill-and-keep.

In short, Sprint has violated its legal obligations under 47 U.S.C. § 251(b)(5) as well as the *USF/ICC Transformation Order* and the Commission's implementing rules. These violations contravene Section 201(b). As the Supreme Court and the Commission have found in the payphone context, a carrier's failure to pay compensation in violation of Commission rules requiring such payment constitutes an unjust and unreasonable practice cognizable under Section 201(b). The reasoning of these decisions applies equally here and supports a finding that Sprint has violated Section 201(b).

Sprint also withheld payments on MNA invoices in an attempt to help itself to a retroactive refund of amounts that Sprint paid MNA and only disputed after the fact. Sprint has employed this "claw back" tactic previously with other carriers, and at least two federal courts have held that Sprint violated Section 201(b) in so doing. The same is true here.

MNA's complaint is not, as Sprint undoubtedly will assert, a "collection action" foreclosed by *All American Telephone*.[3] Under the Section 251(b)(5) reciprocal compensation arrangements underlying the Commission's intercarrier compensation reforms, Sprint and MNA are collaborating carriers in jointly handling an interexchange call that terminates to a LEC. Thus, in contrast to the facts in *All American Telephone*, Sprint is not acting as a "customer" when purchasing tandem services from MNA.

Furthermore, in contrast to *All American Telephone*, which was decided before the Commission's *USF/ICC Transformation Order*, MNA is not "solely" asserting that Sprint failed to pay MNA's tariffed access charges. Rather, MNA alleges that Sprint violated Section 201(b) by failing to pay charges that Sprint is legally obligated to pay under Section 251(b)(5) as well as the Commission's *USF/ICC Transformation Order* and implementing rules. Sprint's decision to take the law into its own hands by withholding payment of charges that Sprint was legally required to pay – based solely on its unilateral decision not to pay them – was both "unjust" and "unreasonable" under any definition of those words.

BACKGROUND

Exercising its rulemaking authority under the Act and implementing the requirements of the Telecommunications Act of 1996, the Commission overhauled the intercarrier compensation system in 2011, adopting a "uniform national bill-and-keep framework ... for all telecommunications traffic exchanged with a [local exchange carrier]."[4] To ease the transition to

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[3] *All American Telephone Co., e-Pinnacle Comm'ns, Inc., and ChaseCom v. AT&T Corp.*, Memorandum Opinion and Order, 26 FCC Rcd. 723 (2011).

[4] *USF/ICC Transformation Order* ¶ 34.

bill-and-keep, however, the Commission adopted a comprehensive plan to phase out traditional intercarrier compensation arrangements.[5]

The historical regime of intercarrier compensation assumed that the calling party should pay for the call. This assumption was based on the view that the callers were the only persons that benefited from the call and should therefore bear all the costs.[6] Thus, callers paid their own carriers, which in turn paid other carriers for access to their networks to reach the person being called.

In the *USF/ICC Transformation Order*, the Commission "abandon[ed] the calling-party-network-pays model," rejecting "the notion that only the calling party benefits from a call and therefore should bear the entire cost of originating, transporting, and terminating a call."[7] The Commission concluded that both the called party and the calling party "generally benefit from participating in a call, and therefore, … both parties should split the cost of the call."[8] Consistent with this conclusion, the Commission adopted bill-and-keep "as a default framework and end state for all intercarrier compensation traffic," concluding that it "brings market discipline to intercarrier compensation" by ensuring "that the customer who chooses a network pays the network for the services the subscriber receives" and giving "carriers appropriate incentives to serve their customers efficiently."[9]

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5 *Id.* ¶ 35; *see also id.* ¶¶ 798-821; 47 C.F.R. §§ 51.700 *et seq.*; 47 C.F.R. §§ 51.901 *et seq.*

6 *USF/ICC Transformation Order* ¶ 744.

7 *Id.* ¶ 34.

8 *Id.* ¶¶ 744, 756; *see also* n.1409 ("Under the bill-and-keep methodology the economic premise is that both the calling and the called party benefit from the ability to exchange traffic, i.e., being interconnected").

9 *Id.* ¶¶ 741-42.

The Commission's reforms were predicated largely upon Section 251(b)(5), which the Commission concluded – and the Tenth Circuit agreed – gives the agency jurisdiction over all traffic exchanged between LECs and interexchange carriers ("IXCs").[10] This conclusion flowed from the language in Section 251(b)(5), which requires that each LEC must "establish reciprocal compensation arrangements for the transport and termination of telecommunications" – a term defined to encompass "communications traffic of any geographic scope ... or regulatory classification."[11] "Because the term is untethered to geographic or regulatory limits," the Tenth Circuit upheld the Commission's decision that its authority under Section 251(b)(5) covers "all traffic regardless of geography or regulatory classification."[12]

Based on its expansive reading of Section 251(b)(5), the Commission's intercarrier compensation reforms "supersede the preexisting access charge regime, bringing that traffic into the section 251(b)(5) reciprocal compensation framework ...."[13] These reforms extend to "all intercarrier compensation traffic," even tandem traffic for which the Commission has not yet established a bill-and-keep transition plan.[14]

Under the Section 251(b)(5) framework, carriers "collaborate" in jointly serving a customer.[15] And, pursuant to Section 251(b)(5), collaborating carriers are entitled to receive and

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10 *Id.* ¶¶ 760-62, ¶¶ 771-72; *see also Direct Comms Cedar Valley,* 753 F.3d at 1059.

11 *Direct Communs Cedar Valley*, 753 F.3d at 1115-1116 (citing 47 U.S.C. § 153(50)).

12 *Id.* (citing *USF/ICC Transformation Order* ¶ 761).

13 *USF/ICC Transformation Order* ¶ 828.

14 *Id.* ¶ 764.

15 *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd 15499, ¶ 1034 (1996) ("reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a [] call") ("*Local Competition First Report and Order*") (subsequent history omitted); *Southwestern Bell Tele. Co. v. Public Utility Commission of Texas*, 208 F.3d 475, 477 (11th Cir. 2002) ("The Act requires ILECs to negotiate reciprocal compensation arrangements or interconnection agreements with CLECs to establish the terms by which they will compensate

are *obligated to pay* reciprocal compensation consistent with the Commission's rules.[16] As the Commission has explained, Section 251(b)(5) entitles carriers to "receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers" and obligates carriers to "pay such compensation for certain traffic that they transmit and terminate to other carriers."[17] The courts have agreed with this interpretation, finding the payment obligation to be a critical component of Section 251(b)(5).[18]

Recognizing that the changes to the traditional intercarrier compensation system would disrupt the market, the Commission opted to transition gradually to bill-and-keep. Under its transition plan, *all* interstate switched access rates, as well as many intrastate rates, were

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(footnote cont'd.)
each other for the use of the other's networks"); *SBC Inc. v. FCC*, 414 F.3d 486, 490 (3rd Cir. 2005); *New Cingular Wireless PCS LLC v. Finley*, 674 F.3d 225, 232 (4th Cir. 2012). Many of the Commission and court decisions construing Section 251(b)(5) were rendered based on the Commission's prior reading of the statute as limited to "local" traffic. That the Commission subsequently determined that this reading was "inconsistent" with the statutory text does not affect the validity of these decisions defining the scope of Section 251(b)(5) obligations. *See USF/ICC Transformation Order* ¶ 761.

16 *See Local Competition First Report and Order*, ¶ 1034 (noting that under reciprocal compensation arrangements, the "caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call").

17 *Id.* ¶ 1045; *see also id.* ¶ 1087 (justifying the use of symmetrical rates in reciprocal compensation arrangements by noting that such "rates largely eliminate such advantages because they require incumbent LECs, as well as competing carriers, to pay the same rate for reciprocal compensation").

18 *See, e.g., Southwestern Bell Tele.*, 208 F.3d at 477 ("When an LEC's customer places a [] call to a customer of another LEC, the LEC whose customer initiated the call compensates the receiving LEC for transporting and terminating the call through its network"); *SBC Inc.*, 414 F.3d at 490 (under Section 251(b)(5), "[w]hen a customer of carrier A makes a [] call to a customer of carrier B, and carrier B uses its facilities to connect, or 'terminate,' that call to its own customer, the 'originating' carrier A is ordinarily required to compensate the 'terminating' carrier B for the use of carrier B's facilities"); *New Cingular Wireless PCS*, 674 F.3d at 232 ("Under a typical reciprocal compensation agreement between two carriers, the carrier on whose network the call originates bears the cost of transporting the telecommunications traffic to the point of interconnection with the carrier on whose network the call terminates. Having been compensated by its customer, the originating network in turn compensates the terminating carrier for completing the call.") (internal citations omitted).

immediately capped effective as of the date of the rules,[19] and the Commission mandated that LECs reduce their terminating intrastate access rates to the level of their interstate rates.[20] The Commission also established a schedule by which interstate and intrastate terminating access rates would be reduced to bill-and-keep.[21]

The rate reductions required under the Commission's transition plan to bill-and-keep apply only to "terminating end office switching and certain transport rates."[22] As the Commission explained, its bill-and-keep transition plan focused first on "terminating traffic" because "limiting reductions at this time to terminating access rates will help address the majority of arbitrage and manage the size of the access replacement mechanism."[23]

Consistent with this approach, the only tandem rates subject to mandated rate reductions are those of the terminating carrier that also owns the tandem.[24] As the Commission made clear, "transport charges in other instances, i.e., where the terminating carrier does not own the tandem,

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19 *USF/ICC Transformation Order* ¶ 798; *see also id.* ¶ 800 (noting that it was "capping all interstate switched access rates in effect as of the effective date of the rules, including originating access and all transport rates").

20 *Id.* ¶ 805 ("The transition imposes a cap on all intrastate rates for price cap carriers [and CLECS that benchmark access rates to price cap carriers], and all terminating intrastate access rates for rate-of-return carriers [and CLECS that benchmark access rates to rate-of-return carriers]).

21 *Id.* ¶ 801, Figure 9.

22 *Id.* ¶ 798.

23 *Id.* ¶ 800 ("we do not specify the transition to reduce [originating access and all transport] rates further at this time. Instead, we seek comment regarding the transition and recovery for such other rate elements in the [*Further Notice*].").

24 *See, e.g.,* Public Notice, *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, at 2 (Sept. 8, 2017) ("The rate transition adopted in the *USF/ICC Transformation Order* reduced tandem switching and transport charges only when the terminating price cap carrier also owns the tandem in the serving area") ("*Refresh Public Notice*").

are not addressed at this time."[25] Instead, the Commission sought comment on the "proper transition" for all tandem switching and transport rates in its *Further Notice* – a proceeding that remains pending before the agency.[26]

As a competitive tandem provider that does not own any end offices directly or indirectly or serve any end users, MNA does not provide terminating switching and thus is not a "terminating carrier." As a result, while its interstate rates are capped, MNA is not obligated to reduce either its interstate or intrastate tandem switching and transport rates under the plain terms of the *USF/ICC Transformation Order*. Indeed, the Commission will not establish the mechanism for competitive tandem providers such as MNA to reduce their tandem rates or the timeframe by which such reductions must be implemented until the Commission concludes its *Further Notice*.[27]

Consistent with the *USF/ICC Transformation Order*, MNA has not increased its interstate tandem switching and transport rates since the effective date of the Commission's rules. Nor has MNA increased its intrastate tandem switching and transport rates since those rates took effect more than a decade ago. In short, MNA's interstate and intrastate tariffs comply fully with the *USF/ICC Transformation Order* and the Commission's implementing rules.

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25 *USF/ICC Transformation Order* ¶ 819.

26 *Id.* ¶ 1306; *id.* ¶ 1297 ("Although we specify the implementation of the transition for certain terminating access rates in the Order, we did not do the same for other rate elements, including … tandem transport in some circumstances [i.e., 'where the terminating carrier does not own the tandem'] …"); *see also Refresh Public Notice*, at 1.

27 The Commission's decision to exempt competitive tandem providers from the rate reductions under its bill-and-keep transition plan was entirely sensible given the Commission's view that carriers should look to their "*end-users*—which are the entities and individuals making the choice to subscribe to that network—rather than looking to *other carriers* and their customers to pay for the costs of its network." *USF/ICC Transformation Order* ¶ 737 (emphasis added). The Commission repeatedly emphasized a carrier's ability to recover its costs from its end users as the justification for bill-and-keep. *See, e.g., id.* ¶ 742. However, competitive tandem providers like MNA have no end users; thus, they have no choice but to seek cost recovery from those carriers like Sprint that opt to utilize MNA's tandem services.

I. SPRINT VIOLATED SECTION 201(B) OF THE ACT WHEN IT BREACHED ITS COMPENSATION OBLIGATIONS UNDER SECTION 251(B)(5) AND THE COMMISSION'S RULES IN WITHHOLDING PAYMENT OF MNA'S TARIFFED TANDEM CHARGES.

There is no dispute that a carrier's violation of the Act or the Commission's rules can constitute an unjust and unreasonable practice under Section 201(b).[28] And, both the Commission and the courts have found that a carrier's failure to pay compensation in violation of Commission rules requiring such payment is cognizable under Section 201(b).[29] Although these findings were made in the context of the Commission's payphone rules, the reasoning applies equally to the Commission's intercarrier compensation reforms.

For example, in *Global Crossing Tele., Inc. v. Metrophones Tele., Inc.,* 550 U.S. 45 (2007), the Supreme Court addressed a challenge to the Commission's decision that a carrier violated Section 201(b) by failing to pay per-call compensation to payphone service providers in accordance with the Commission's payphone compensation rules adopted to implement the requirements of 47 U.S.C. § 276. The Court found that the Commission's application of Section 201(b) to a carrier's refusal to pay per-call compensation required by its rules was a reasonable interpretation of the statute.[30]

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[28] *See, e.g., AT&T Services, Inc. and AT&T Corp. v. Great Lakes Comnet, Inc. and Westphalia Tel. Co.*, Memorandum Opinion and Order, 30 FCC Rcd. 2586 (2015), *petition for review affirmed in part, remanded in part, Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998 (D.C. Cir. 2016); *AT&T Corp. v. Iowa Network Services, Inc., d/b/a Aureon Network Services*, 32 FCC Rcd 9677 (2017).

[29] *See, e.g., APCC Services, Inc. v. NetworkIP, LLC*, Order on Review, 21 FCC Rcd 10488 (2006), *aff'd in relevant part and remanded in part sub nom., NetworkIP, LLC v. FCC*, 548 F.3d 116 (2008); *Contel of the South, Inc. d/b/a Verizon Mid-States v. Operator Communs, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 548 (2008).

[30] *Metrophones,* 550 U.S. at 57-58.

The Supreme Court's reasoning in *Metrophones* fully supports a finding that Sprint's failure to pay MNA's tandem charges is an unjust and unreasonable practice in violation of Section 201(b).[31] Similar to Section 276's requirement that the Commission establish a plan to ensure fair compensation of payphone service providers, Congress directed in Section 251(b)(5) that telecommunications carriers establish arrangements for "reciprocal compensation" in the "transport and termination of telecommunications," which the Commission interpreted to cover all telecommunications traffic. To implement Congress's directive, the Commission relied on its authority under Section 201(b) to adopt rules that: (1) brought all telecommunications traffic exchanged with a LEC within the reciprocal compensation framework of Section 251(b)(5); (2) adopted bill-and-keep as the ultimate end state for all telecommunications traffic subject to Section 251(b)(5); (3) established a multi-year transition plan under which rates for all interstate switched access rates were capped and rates for terminating switched access and some transport services were reduced; and (4) initiated a proceeding to determine the plan for transitioning all remaining rate elements – including the tandem switching and transport charges of competitive tandem providers such as MNA – to bill-and-keep.[32]

Consistent with the *USF/ICC Transformation Order*, the Commission's rules governing the transition to bill-and-keep incorporate the requirements of Section 251(b)(5).[33] By subjecting all telecommunications traffic exchanged with a LEC to the Section 251(b)(5) framework, the

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31 That Section 276 is directed at the Commission, while Section 251(b)(5) is directed at telecommunications carriers is a distinction without a difference. In implementing both statutes, the Commission lawfully adopted rules requiring payment of compensation, the violation of which constitutes an unjust and unreasonable practice.

32 *USF/ICC Transformation Order* ¶¶ 34-35, ¶¶ 760-62, ¶¶ 771-72, ¶ 819, ¶ 1297, ¶ 1306.

33 *See* 47 C.F.R. § 51.901(b) (noting that the rules "apply to reciprocal compensation for telecommunications traffic exchanged between telecommunications providers that is interstate or intrastate exchange access, information access, or exchange services for such access").

Commission necessarily imposed a payment obligation on an IXC like Sprint when collaborating with a tandem provider like MNA in handling an interexchange call terminated by a LEC.[34]

For the same reasons that a carrier violates Section 201(b) when it fails to compensate a payphone operator as required by the Commission's payphone rules, Sprint violated Section 201(b) by failing to pay MNA's tandem switching and transport charges as required by Section 251(b)(5) and the Commission's rules. A payphone operator and a tandem provider both facilitate the completion of an interexchange call for which they are entitled to payment under the Commission's rules. And, as the Commission has found in the payphone context, a carrier's failure to pay reciprocal compensation "in accordance with the Commission's rules is, within the meaning of section 201(b), a (i) 'practice in connection with' (ii) 'communication service' (iii) that is 'unjust and unreasonable.'"[35]

According to the Commission, a carrier's failure to pay payphone compensation rises to the level of unjust and unreasonable "misconduct" because: (1) such a failure is "a direct violation of Commission rules"; and (2) "undermines the attainment of an express Congressional goal to "promote the widespread deployment of payphone services to the benefit of the general public ...."[36] The same is true here. Sprint's failure to pay compensation consistent with the Commission's transition plan is a direct violation of Sprint's obligations under Section 251(b)(5) and Commission rules, which undermines the Commission's goals in reforming the intercarrier compensation system. Accordingly, Sprint's misconduct constitutes an unjust and unreasonable practice under Section 201(b).

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34 *See, e.g., Local Competition First Report and Order*, ¶ 1034.

35 *See APCC Services,* ¶ 12 (quoting 47 U.S.C. § 201(b)).

36 *See id.,* ¶ 12 (quoting 47 U.S.C. § 276(b)(1)).

Furthermore, like the carriers at issue in *Metrophones*, Sprint is "refus[ing] to pay Commission-ordered compensation despite having received a benefit from" MNA, and the service MNA provides "constitutes an integral part of the total long-distance service the [tandem provider] and the long-distance carrier together provide to the caller, with respect to the carriage of his or her particular call."[37] Thus, as in *Metrophones*, Sprint's "refusal to divide the revenues it receives from the caller with its collaborator, the [tandem provider], despite the FCC's regulation requiring it to do so, can reasonably be called a 'practice' 'in connection with' the provision of that service that is 'unreasonable.'"[38]

To be sure, the Commission is not "required to find carriers' failures to divide revenues to be §201(b) violations in every instance," nor is "every violation of FCC regulations … an unjust and unreasonable practice."[39] However, just as is the case with payphone compensation under Section 276, Section 251(b)(5) is "an explicit statutory scheme" governing the Commission's intercarrier compensation reforms, and the payment of compensation to telecommunications carriers consistent with the Commission's rules adopted pursuant to – and that incorporate by reference the payment obligations under – Section 251(b)(5) "is necessary to the proper implementation of that scheme."[40]

In short, by electing to use MNA's tandem in handling interexchange calls terminated to a LEC, Sprint was obligated under Section 251(b)(5) and the Commission's rules to pay MNA's tariffed rates for the tandem services MNA provided. As alleged in MNA's Formal Complaint,

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37 *Metrophones,* 550 U.S. at 55

38 *Id.*

39 *Id.* at 56.

40 *Id.*

Sprint violated its legal obligations when it withheld payment of MNA's invoices, which constitutes an unjust and unreasonable practice under Section 201(b).[41]

Likewise, even though the Commission established a detailed transition plan to achieve its end goal of bill-and-keep for all telecommunications traffic, that plan currently does not address the rates of competitive tandem providers like MNA that do not own the end office. Nevertheless, Sprint effectively helped itself to bill-and-keep by withholding payment of nearly all of MNA's invoices dated March 1, 2017 through April 1, 2018, after which Sprint ceased buying tandem services from MNA. Sprint's conduct violated the *USF/ICC Transformation Order* and the Commission's implementing rules, which constitutes an unjust and unreasonable practice under Section 201(b).

II. SPRINT'S TACTIC OF CLAWING BACK DISPUTED AMOUNTS BY RETROACTIVELY WITHHOLDING PAYMENT VIOLATES SECTION 201(B), AS TWO FEDERAL COURTS HAVE HELD.

Sprint's conduct goes beyond withholding payment of disputed amounts invoiced by MNA. Rather, Sprint has helped itself to a retroactive refund by withholding payments on invoices from MNA to recoup charges that Sprint belatedly disputed but nonetheless paid. Sprint has employed this "claw back" tactic in the past with other carriers, and at least two courts have held that Sprint's withholding payments on a retroactive basis violates Section 201(b). No reason exists for the Commission to reach a contrary result here.

In *Centurytel of Chatham v. Sprint Communs. Co.*, 185 F. Supp. 3d 932 (W.D. La. 2016), various CenturyLink local exchange carriers operating in numerous states brought suit against Sprint seeking damages resulting from Sprint's refusal to pay $8.7 million in access charges associated with VoIP-originated calls terminated by CenturyLink. Prior to July 2009, Sprint paid,

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[41] *See id.* at 61 ("A practice of violating the FCC's order to [compensate carriers involved in completing an interexchange call] would seem fairly characterized in ordinary English as an 'unjust practice,' so why should the FCC not call it the same under §201(b)?")

without dispute, the access charges invoiced by CenturyLink, which included both TDM- and VoIP-originated calls. Beginning in July 2009, however, Sprint began disputing CenturyLink's invoices, specifically the rates applied to VoIP-originated calls. Rather than paying CenturyLink's tariffed charges, Sprint instead paid $0.0007 per minute for VoIP-originated calls. In addition, Sprint retroactively calculated the amount it "overpaid" for VoIP-originated traffic terminated by CenturyLink for the period August 2007 to July 2009 and deducted this "overpayment" from amounts paid to CenturyLink from July 2009 going forward.

CenturyLink alleged that Sprint engaged in an unjust and unreasonable practice in violation of Section 201(b) by engaging in self-help in withholding payments to CenturyLink for tariffed services about which Sprint had raised no dispute. The district court found in CenturyLink's favor, finding that "Sprint unjustly and unreasonably withheld payments due to CenturyLink to reduce its retroactive refund claim" and in doing so violated Section 201(b).[42]

The United States Court of Appeals for the Fifth Circuit affirmed, upholding an award of attorney's fees to CenturyLink.[43] Noting that "[t]he FCC has not squarely addressed the propriety of the claw-back scheme Sprint utilized," the Fifth Circuit found that Sprint's taking "the extraordinary measure of acting on its own to recoup money it had already paid without any judicial or administrative intervention" constituted "unlawful self help, in violation of 47 U.S.C. § 201(b)."[44]

Here, Sprint did not merely withhold payment to MNA of charges subject to a valid dispute. Rather, Sprint effectively stopped paying MNA's invoices altogether in an attempt to

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42 185 F. Supp. 3d at 945.

43 *Centurytel of Chatham v. Sprint Communs. Co.*, 861 F.3d 566, 577 (5th Cir. 2017).

44 *Id.* at 577-78.

help itself to a retroactive refund of amounts previously paid but not disputed at the time – conduct that was both "unjust" and "unreasonable" under any definition of those words.

Sprint's claw-back tactic is evident from a review of MNA's invoices. For invoices rendered by MNA from January 1, 2011 through February 1, 2017, Sprint disputed approximately 53 percent of MNA's invoiced charges, although Sprint raised nearly all of these disputes during this time period in March 2017 after Sprint had already paid MNA. Indeed, Sprint paid in full every MNA invoice during this time period, except for $13,243.65 that Sprint withheld from payment of MNA's invoices dated December 1, 2014 and January 1, 2015. This withheld amount of $13,243.65 represents approximately one percent of the total amount invoiced by MNA during this time period.

By contrast, for invoices dated March 1, 2017 to the present, Sprint disputed nearly every charge invoiced by MNA. And, most importantly, Sprint withheld payment of more than 98 percent of the total amount invoiced by MNA during this time period. It was no coincidence that, by early 2017, Sprint had begun transitioning its traffic from MNA's tandem and stopped using MNA's services altogether in May 2018.

Sprint offered the same reason for disputing MNA's invoices dated prior to March 2017 as it did for invoices dated after March 2017 – namely, MNA's purported lack of a valid tariff. Yet, the disparity in the disputed amounts is telling – Sprint disputed 53 percent of MNA's charges for invoices dated January 1, 2011 through February 1, 2017 as compared to more than 98 percent of MNA's charges that Sprint disputed for invoices dated March 1, 2017 through April 1, 2018.

Sprint's strategy is clear. As it began moving its traffic from MNA's tandem, it stopped paying MNA's bills. And, it withheld payment in order to recoup prior amounts that Sprint had disputed long after the fact but nonetheless had already paid to MNA. This claw-back tactic is

an unjust and unreasonable practice in violation of Section 201(b), consistent with the Fifth Circuit's reasoning in *Centurytel of Chatham*.

III. THE COMMISSION'S DECISION IN *ALL AMERICAN TELEPHONE* IS NOT APPLICABLE TO THIS DISPUTE.

In seeking to avoid liability under Section 201(b), Sprint will undoubtedly point to the Commission's decision in *All American Telephone*. That decision, which merely holds that a tariff technically places obligations on the carrier filing it and not on the customer purchasing services under it, does not shield Sprint from liability for its misconduct.

All American Telephone involved a Section 208 complaint filed by several competitive LECs against AT&T alleging that AT&T violated Sections 201(b) and 203(c) by engaging in unlawful self-help when withholding payment of the competitive LECs' tariffed access charges. The Commission found that it only had authority to adjudicate claims that a carrier has violated the Act, and "collection actions" in which a carrier alleges that its customer refused to pay its tariffed charges failed to give rise to a Section 201(b) claim.[45]

The Commission rejected the competitive LECs' argument that their allegations of AT&T's failure to pay was not a collection action because the action had been filed in district court, and the district court, not the Commission, would determine any damages owed. As the Commission explained, "the reason the Commission does not hear collection actions is that a failure to pay tariffed access charges does not constitute a violation of the Act," and therefore, "the CLECs have no claim in a court or at the Commission that AT&T violated the Act in its role as a customer."[46]

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45 *All American Telephone* ¶ 10.

46 *Id.* ¶ 12.

Importantly, *All American Telephone* was decided in January 2011, months *before* the Commission's *USF/ICC Transformation Order*. Thus, the Commission did not consider the impact of its intercarrier compensation reforms in addressing whether the failure to pay tariffed charges pursuant to those reforms violates Section 201(b). As far as MNA is aware, the Commission has yet to address this specific issue or revisit its reasoning in *All American Telephone* since the seismic changes in the intercarrier compensation landscape.

In any event, *All American Telephone* is factually and legally distinguishable. First, it was predicated on a carrier's allegation "that a *customer* has failed to pay charges specified in the carrier's tariff," an allegation that the Commission found "fails to state a claim for violation of any provision of the Act, including sections 201(b) and 203(c) – even if the carrier's *customer* is another carrier."[47] Here, Sprint is not acting as a "customer" when purchasing tandem services from MNA. Rather, consistent with the Commission's *USF/ICC Transformation Order* and Section 251(b)(5), Sprint and MNA are "collaborating" carriers in jointly handling interexchange calls that terminate to a LEC. This carrier collaboration is the essence of the Section 251(b)(5) framework upon which the Commission's bill-and-keep regime is predicated.

Second, in contrast to *All American Telephone*, MNA's allegations are not based solely on Sprint's failure to pay amounts owed under its tariffs. Rather, MNA is seeking to enforce compensation obligations explicitly imposed on Sprint by Section 251(b)(5) and the Commission's rules, which obligate Sprint to pay for the tandem switching and transport services provided by MNA in handling Sprint's interexchange calls that terminate to a LEC, as explained above.

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47 *Id.* ¶ 10 (emphasis added).

The distinction between obligations under tariffs and those imposed by the Act and Commission rules is critical for Section 201(b) purposes, as the Commission recognized in *Contel of the South*. In that case, Verizon asserted that Operator Communications, Inc. ("OCI") violated Section 201(b) by failing to pay Verizon's tariffed presubscribed interexchange carrier ("PIC") charges on certain payphones and by failing to pay interim period dial-around compensation. The Commission dismissed Verizon's PIC charge claim. According to the Commission, because its rules permit – but do not require – IXCs to assess the PIC charge on payphone lines, Verizon "states only an action for the recovery of charges due under the terms of its tariffs" – an action not cognizable under Section 201(b).[48]

However, the Commission found that OCI's failure to pay interim dial-around compensation to Verizon violated Section 201(b). In rejecting OCI's argument that Verizon was pursuing a collection action, the Commission reasoned:

> The Commission has distinguished between rules that impose an obligation to pay, and rules that permit a carrier to levy a charge. Failure to pay pursuant to the former is actionable under the Act, while failure to pay in the latter instance is not. In the 'collection action' cases on which OCI relies, the complainant sought amounts allegedly owed pursuant to tariff and, for that reason, did not state a claim for violation of the Act or Commission rules. In this case, however, *Verizon seeks to enforce compensation obligations explicitly imposed upon IXCs by Commission rules, and thus may bring the [Section 201(b)] case here.*[49]

Here, as in *Contel of the South*, MNA has asserted a valid Section 201(b) claim against Sprint because it is seeking "to enforce compensation obligations explicitly imposed upon IXCs by Commission rules" as well as Section 251(b)(5).

Likewise, in *In re Empire One Telecommunications, Inc.*, 48 B.R. 692 (Bankr. S.D.N.Y. 2011), the federal court found that *All American Telephone* does not preclude claims under

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48 *Contel of the South* ¶ 19.

49 *Id.* ¶ 7 (emphasis added).

Section 201(b) that include allegations that a carrier failed to fulfill its obligations under the Act or Commission rules in addition to allegations of a carrier's refusal to pay tariffed charges. The court found that the complaint brought by Empire One Telecommunications ("EOT") was "not a straightforward tariff collection case" because EOT also alleged that T-Mobile breached a payment obligation imposed by 47 C.F.R. § 20.11(b)(2).[50] As the court explained, "EOT does not simply allege that T-Mobile failed to pay a governing tariff. Rather, EOT claims that T-Mobile violated an FCC rule that clearly imposes an obligation on T-Mobile to pay EOT 'reasonable compensation' and that its tariffs establish such a 'reasonable' rate.'"[51]

Consistent with the court's holding in *Empire One*, MNA's complaint states a claim under Section 201(b). Specifically, MNA alleges that: (1) Section 251(b)(5) as well as the *USF/ICC Transformation Order* and the Commission's implementing rules obligate Sprint to pay MNA's tariffed tandem charges; and (2) Sprint violated Section 201(b) by failing to comply with those obligations when it unilaterally withheld payment to MNA. Nothing in *All American Telephone* undermines MNA's allegations or forecloses MNA's Section 201(b) claim.[52]

Furthermore, Sprint relied upon *All American Telephone* in seeking to avoid Section 201(b) liability for the claw-back scheme it employed against CenturyLink. The Fifth Circuit

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50 48 B.R. at 700; *see also* 47 C.F.R. § 20.11(b)(2) (2011) ("Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation. … (2) A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial radio service provider.").

51 48 B.R. at 701.

52 That the rates a carrier is obligated by Commission rule to pay may be set forth in a tariff is irrelevant. As the Commission noted in *Contel of the South*, the critical issue is whether a complainant seeks "amounts allegedly owed *solely* pursuant to tariff." *Id.* ¶ 7 (emphasis added); *see also Empire One*, 48 B.R. at 701.

found that such reliance was misplaced, holding that Sprint's conduct was an unjust and unreasonable in violation of Section 201(b).[53] The same is true here.

August 1, 2018

Respectfully submitted,

By: _____

Bennett L. Ross
Christopher Huther
WILEY REIN, LLP
1776 K Street, N.W.
Washington, D.C. 20006

Counsel to Missouri Network Alliance, LLC

53 *Centurytel of Chatham*, 861 F.3d at 577.

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

In the Matter of

MISSOURI NETWORK ALLIANCE, LLC
2005 W. Broadway
Building A, Suite 215
Columbia, MO 65203
(573) 777-4200

Complainant,

v.

SPRINT COMMUNICATIONS COMPANY, L.P.
6450 Sprint Parkway
Overland Park, KS 66251
(202) 730-1328

Defendant.

File No. _____

DECLARATION OF CHRIS BACH

I, Chris Bach, of full age, hereby declare and certify as follows:

1. I am the Chief Financial Officer of the Complainant Missouri Network Alliance, LLC ("MNA"), a position that I have held since March 2011. As Chief Financial Officer, I have overall responsibility for financial matters pertaining to MNA. I am providing this Declaration in support of MNA's Formal Complaint against Sprint Communications Company, L.P., ("Sprint"). The information provided in this Declaration is based on my personal knowledge and

my review of documents and records kept by MNA in the normal course of its business, as well as certain materials provided by or on behalf of Sprint.[1]

2. Based on my responsibilities, I am generally familiar with MNA's invoices to Sprint and Sprint's payment history. I also am generally familiar with the reforms implemented by the Commission in its *USF/ICC Transformation Order*, 26 FCC Rcd. 17663 (2011), as they pertain to interstate and intrastate tandem rates.

3. Owned in part by 13 independent telephone companies in Missouri, MNA was established in 1999 to leverage and combine the fiber optic networks of MNA's member companies. MNA is part of Bluebird Network LLC, which has over 6,000 miles of fiber optic cable routes providing service throughout the Midwest and United States and which owns 50 percent of MNA.

4. MNA currently operates a fiber optic transport network in Missouri. MNA also offers competitive tandem switching and transport services to interexchange carriers ("IXCs") such as Sprint that serve rural customers in Missouri. The interstate and intrastate rates that MNA charges for its tandem switching and transport services are set forth in tariffs on file with the Federal Communications Commission ("Commission") and the Missouri Public Service Commission, respectively.

5. As a competitive tandem provider, MNA is an intermediate carrier that offers tandem switching and transport on a competitive basis but that does not: (i) own any end offices (either directly or indirectly through an affiliate); or (ii) offer telecommunications services to end users. MNA is not engaged in – and has never been engaged in – "access stimulation" within the meaning of the Commission's rules.

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[1] Documents referenced herein that are exhibits to MNA's Formal Complaint are referenced as "Ex.___," with additional page numbering or other citation information as appropriate.

6. As required by the *USF/ICC Transformation Order*, MNA capped its interstate tandem switching and transport rates. MNA also has not increased its intrastate tandem switching and transport rates since the Commission's rules took effect.

7. As an IXC, Sprint receives interexchange traffic from an originating local exchange carrier ("LEC") and then transports the call to the terminating LEC, which will deliver the call to the called party. Sprint has the option to interconnect directly with MNA's member companies to exchange traffic. Sprint also can elect to exchange traffic with MNA's member companies indirectly by purchasing tandem switching and transport services from MNA, which allows Sprint to avoid the cost of direct interconnection.

8. For almost a decade, Sprint or its predecessors purchased tandem switching and transport services from MNA pursuant to MNA's interstate and intrastate tariffs. During the period that Sprint purchased tandem services from MNA, it would send Sprint a monthly invoice for the services MNA provided. Each monthly invoice would contain charges for the traffic exchanged during the period immediately preceding the month in which the invoice was sent. For example, the MNA invoice to Sprint dated March 1, 2017 was for the traffic that Sprint exchanged with MNA for the period January 21, 2017 through February 20, 2017. The charges in MNA's invoices to Sprint were calculated based on the applicable rates in MNA's interstate and intrastate tariffs as applied to the traffic originated by or terminated to Sprint's customers.

9. For approximately two and half years after release of the *USF/ICC Transformation Order*, Sprint paid without dispute MNA's invoices for the tandem services MNA provided. During this time period – November 2011 through May 2014 – Sprint never disputed any MNA charge based on the allegation that MNA's interstate or intrastate tandem switching or transport rates failed to comply with Commission rules.

10. By letter dated June 13, 2014, Summar Dunnill with TEOCO Corporation wrote MNA in which TEOCO claimed to identify "an incorrect billing issue on behalf of Sprint." Ex. 3: June 2014 Dispute Letter. TEOCO conducts audits for carrier clients to identify allegedly inaccurate network access charges, and it is MNA's understanding that TEOCO is compensated based on the percentage of inaccurate charges allegedly identified.

11. As far as I am aware, the June 2014 Dispute Letter was the first time that Sprint complained to MNA about MNA's tandem rates failing to comply with Commission rules. The June 2014 Dispute Letter stated as follows:

> "Missouri Network Alliance (MNA) incorrectly billed the following: Per the FCC ICC reform (FCC 11-161) all rates were capped as of the end of 2011. Terminating IntraState rates were to be reduced to half the difference between Intrastate and Interstate rates beginning on July 1, 2012. The IntraState terminating rates were to be further reduced to parity with FCC rates beginning on July 1, 2013. The IntraState terminating transport rates invoiced by MNA were neither reduced by half the difference beginning in July 2012, nor to parity with FCC rates beginning in July 2013. Sprint disputes the difference between the invoiced rates and the calculated rates for the mandated reductions."

12. The June 2014 Dispute Letter requested a refund of $10,296.33. This amount purported to represent the difference in the intrastate tandem rates charged by MNA and the intrastate tandem rates TEOCO asserted MNA should have charged from June 21, 2012 through April 20, 2014, as reflected in MNA's invoices dated July 1, 2012 through May 1, 2014.

13. MNA denied Sprint's dispute. It is my understanding that MNA was not required to reduce its intrastate tandem rates to "parity" with its interstate tandem rates because MNA is not a terminating carrier and does not own any end offices. Nor is MNA a LEC to which I understand the Commission's parity rule applies.

14. After MNA denied the dispute in the June 2014 Dispute Letter, Sprint did not commence a lawsuit in court, file a complaint with the Commission, or otherwise take any action

to seek regulatory review of MNA's rates. Instead, Sprint withheld payment of $10,296.29 from MNA's invoice dated December 1, 2014.

15. Sprint also withheld payment of $2,947.36 from MNA's invoice dated January 1, 2015. Sprint did not explain how this withheld amount was calculated, although Sprint attempted to justify its withholding by claiming that it was associated with the dispute raised in the June 14 Dispute Letter.

16. After withholding partial payment of MNA's December 1, 2014 and January 1, 2015 invoices, Sprint resumed paying MNA's invoices for tandem services. Sprint paid MNA's invoices in full for approximately three years. During this time period – from February 2014 through February 2017 – Sprint did not withhold payment of MNA's invoices or assert a dispute about MNA's interstate or intrastate tandem switching or transport rates.

17. On or about March 30, 2017, Sprint sent MNA more than 100 dispute letters disputing MNA's invoices for the preceding eight years. Each letter, a sample of which is attached to MNA's Formal Complaint as Exhibit 4, claimed that the "incorrect rate" had been "applied to specific usage type" and sought refunds of amounts Sprint had previously paid but had not previously disputed.

18. In the details of each dispute subject to the March 2017 Dispute Letters, Sprint provided the following explanation: "Disputing invalid invoiced charges. In letter sent on 3/10/2017, Sprint notified MNA that they do not have a valid tariff for the charges it has imposed upon Sprint due to non-compliance of the FCC s benchmarking and parity obligations. As stated in the Great Lakes Comnet Case, carriers such as MNA are subject to benchmarking rules. The Great Lakes Comnet case demonstrates that MNA is a CLEC subject to the application of the benchmarking rule. In the absence of a valid tariff, MNA s charges are invalid."

19. Even though I understand the Commission adopted the benchmarking rule in 2001, Sprint had not previously disputed any MNA invoice based on MNA's alleged failure to comply with this rule. Indeed, Sprint had never even asserted that MNA was a competitive LEC subject to the benchmarking rule prior to March 2017.

20. In early 2017, Sprint began moving its interexchange traffic from MNA's tandem. Coincident with the March 2017 Dispute Letters, Sprint also effectively stopped paying MNA's invoices for the tandem services MNA provided to Sprint.

21. For invoices dated March 1, 2017 through April 1, 2018, Sprint paid on average less than two percent of the invoiced amount, withholding payment of approximately 98 percent of MNA's invoices. The invoice dates and the percentage of each invoice for which Sprint withheld payment during this time period are as follows:

Invoice Date	**Percentage of Invoiced Amount Withheld**
3/1/2017	98.89%
4/1/2017	98.74%
5/1/2017	98.75%
6/1/2017	98.63%
7/1/2017	98.63%
8/1/2017	98.15%
9/1/2017	97.73%
10/1/2017	97.80%
11/1/2017	94.94%
12/1/2017	97.65%
1/1/2018	96.34%
2/1/2018	97.12%
3/1/2018	92.69%
4/1/2018	99.99%

22. By comparison, Sprint disputed approximately 53 percent of MNA's invoiced charges on MNA invoices rendered from January 1, 2011 through February 1, 2017. And, Sprint paid in full every MNA invoice during this time period, except for $13,243.65 that Sprint withheld from payment of MNA's invoices dated December 1, 2014 and January 1, 2015. This withheld amount of $13,243.65 represents approximately one percent of the total amount invoiced by MNA during this time period.

23. Although the total invoiced amount of which Sprint has withheld payment is relatively modest – approximately $28,000 – MNA is a small company. It is financially dependent upon its bills being paid, and MNA would not be in business very long if it provided service for which it was not paid.

24. In May 2018, Sprint ceased purchasing tandem services from MNA, disconnecting the circuits interconnecting Sprint's network to MNA's tandem.

I certify under penalty of perjury that the foregoing is true and correct. Executed on August 1, 2018.

Chris Bach

EXHIBIT 1

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., SW
Washington, DC 20554
Fax No. (202) 418-0435

Via Email and U.S. Mail

July 19, 2018

Bennett L. Ross
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
bross@wileyrein.com

Counsel for Missouri Network Alliance, LLC

Jared Paul Marx
Harris, Wiltshire & Grannis LLP
1919 M St. NW, 8th Floor
Washington, DC 20036
jmarx@hwglaw.com

Counsel for Sprint Communications Co., L.P.

Re: ***Missouri Network Alliance, LLC v. Sprint Communications, Co., L.P.***

Dear Counsel:

On July 17, 2018, Missouri Network Alliance, LLC (MNA) and Sprint Communications, Co., L.P. (Sprint) requested Commission action with respect to several matters relating to MNA's anticipated filing of a formal complaint against Sprint. This letter ruling adopts, with minor modifications, the requests contained in the joint email[1] regarding the waiver of certain procedural rules and a schedule for the submission of pleadings.

Having reviewed the joint request for waiver of certain procedural rules, we hereby grant the parties' request to waive Commission rules 1.721(a)(6), 1.721(a)(8), 1.721(a)(10), 1.721(a)(11), 1.724(c), 1.724(f), 1.724(g), 1.724(h), 1.726(c), 1.726(d), 1.726(e), 1.729, 1.732(g), and 1.735(c). This waiver does not include the portions of rules 1.721(a)(6), 1.724(c), and 1.726(c) that require a complaint, answer, and reply to include "legal analysis relevant to the claims and arguments" set forth in the pleadings, as we find that such analysis enhances the Commission's understanding of the legal bases for claims and defenses. In light of this, we deny the parties' request, at this time, to file separate briefs pursuant to rule 1.732(a).

We also waive the portion of rule 1.726(a) that limits the complainant to addressing, in its reply, only the "specific factual allegations and legal arguments made by the defendant in support of its affirmative defenses." Instead, MNA must file a reply addressing any factual allegation or legal argument in the answer, regardless of whether it purports to support an affirmative defense. We find that waiving this provision encourages joinder of the issues by the parties and results in a more complete record.

We also establish the following schedule for the submission of pleadings in this case consistent with the joint request:

- Answer due 28 days from service of Complaint
- Reply due 10 days from service of Answer

[1] Email from Ross Bennett, Counsel for Sprint, to Anthony DeLaurentis, Special Counsel, FCC, EB, MDRD (July 17, 2018).

We deny the parties' request to waive Commission rule 1.732(f), and retain discretion to modify this schedule and to require additional written submissions as appropriate to meet the needs of this case.

This letter ruling is issued pursuant to Sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, and authority delegated by Sections 0.111, 0.311, 1.720-1.736 of the Commission's rules, 47 CFR §§ 0.111, 0.311, 1.720-1.736.

FEDERAL COMMUNICATIONS COMMISSION

Lisa B. Griffin/ASD

Lisa B. Griffin
Deputy Chief
Enforcement Bureau, Market Disputes Resolution Division
lisa.griffin@fcc.gov

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

SPRINT COMMUNICATIONS COMPANY L.P.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:17-CV-00597-DGK
	)	
MISSOURI NETWORK ALLIANCE, LLC,	)	
	)	
Defendant.	)	

ORDER MODIFYING PRIMARY JURISDICTION REFERRAL

This case arises out of claims that Defendant's price list for certain telecommunication services, an interstate tariff and an intrastate tariff, violate state and federal law. Defendant has filed a counterclaim alleging Plaintiff failed to properly pay lawfully tariffed charges, in violation of 47 U.S.C. § 201(b).

Previously, the Court referred this case to the Federal Communications Commission ("FCC") on the issue of "whether the charges Plaintiff was assessed under Defendant's interstate tariffs are lawful under the FCC's rules" and stayed the case pending resolution of that primary jurisdiction referral.

Now before the Court is the parties' joint, yet partially disputed, motion for modification of primary jurisdiction referral (Doc. 22). The parties agree the Court should expand the referral to address the lawfulness of Defendant's intrastate tariffs under federal law, but disagree as to whether the court should expand the referral to address Defendant's counterclaim.

The motion to expand the referral to include the federal law claims related to Defendant's intrastate tariff is granted. Sprint claims that MNA's intrastate tariff violates federal law, as interpreted and administered by the FCC, while MNA claims otherwise. Because this is an issue

that requires the FCC's technical and policy expertise to resolve on a uniform basis, it is appropriate for referral to the FCC under the primary jurisdiction doctrine. *See e.g., Access Telecomms. v. Sw. Bell Tel. Co.*, 137 F.3d 605, 608 (8th Cir. 1998) (holding that the doctrine of primary jurisdiction "is utilized to coordinate judicial and administrative decision making," and "allows a district court to refer a matter to the appropriate administrative agency for a ruling in the first instance, even when the matter is initially cognizable by the district court.").

Additionally, for the following reasons the Court expands the jurisdictional referral to the FCC to include the Defendant's counterclaim under 47 U.S.C. § 201(b).

Section 201(b) of the Communications Act, 47 U.S.C. § 201, imposes upon common carriers the duty that their practices in connection with communication services be "just and reasonable," and provides that all unjust and unreasonable practices are unlawful. Defendant alleges in count two of its counterclaim that Plaintiff failed and refused to pay for certain tandem switching and transport services Defendant invoiced. In the context of § 201(b), the issue is whether Plaintiff's refusal to pay Defendant was unjust or unreasonable.

Courts have consistently held that claims of unjust and unreasonable practices under 47 U.S.C. § 201(b) fall within the primary jurisdiction of the FCC and that the FCC is in the best position to identify such practices. *Scott v. Pub. Comm. Servs.*, No. 4:11CV01882 ERW, 2012 WL 381780, at *2 (E.D. Mo. Feb. 6, 2012) (collecting cases). Here, whether Plaintiff's action was reasonable involves policy matters requiring the expertise of the FCC. Accordingly, it is hereby:

ORDERED that the Court refers to the FCC the following additional issue pursuant to the doctrine of primary jurisdiction: "whether tandem switching and tandem switched transport rates

in Defendant's intrastate and interstate tariffs are lawful under federal law, and whether Sprint violated Section 201(b) of the Communications Act"; and it is further

ORDERED that, pending resolution of that primary jurisdiction referral, this case continues to be stayed; and it is further

ORDERED that, within thirty days of the date that the FCC resolves the primary jurisdiction referral, the parties are directed to inform the Court in writing as to whether they intend to proceed with the present action.

IT IS SO ORDERED.

Date: May 1, 2018

/s/ Greg Kays
GREG KAYS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT 3

June 13, 2014

Jesse Goble
Missouri Network Alliance

jesse.goble@bluebirdnetwork.com

Subject: CCSPR005544 - INVALID USAGE RATE - Incorrect rate applied to specific usage type

Please find attached the detail of the above referenced claim in the amount of 10,296.33 USD. As a result of TEOCO's audit and analysis, we have identified an incorrect usage billing issue on behalf of Sprint. Specifically, for the invoices and end offices indicated on the included billing data, Missouri Network Alliance (MNA) incorrectly billed the following:

Per the FCC ICC reform (FCC 11-161) all rates were capped as of the end of 2011. Terminating IntraState rates were to be reduced to half the difference between Intrastate and Interstate rates beginning on July 1, 2012. The IntraState terminating rates were to be further reduced to parity with FCC rates beginning on July 1, 2013.

The IntraState terminating transport rates invoiced by MNA were neither reduced by half the difference beginning in July 2012, nor to parity with FCC rates beginning in July 2013. Sprint disputes the difference between the invoiced rates and the calculated rates for the mandated reductions. Invoicing rates for these elements between July 2012 and current at higher than allowed is a violation of the rate reduction requirement in the ICC reform order.

Sprint disputes these inappropriate charges and requests a full refund for all invoices, both current and past, rendered by MNA because of the billing practice described above.

I have attached the following supporting document(s):

CCSPR005544 SPR Missouri Network Alliance 292F Invalid Rates.xls - Dispute IntraState terminating transport rates
CCSPR005544 Claim Form.xls - Claim Form

Please distribute the credit amount of 10,296.33 USD on the Billing Account Numbers contained in the attached detail.

Please reply to me regarding this claim via email at Summar.Dunnill@teoco.com. Please copy ccspr@teocosolutions.com on your reply.

If you have any questions, you may also contact me at the phone number provided.

Thank you for your prompt attention to this matter.

Sincerely,
Summar Dunnill
TEOCO
703-259-4468
Summar.Dunnill@teoco.com

On behalf of Sprint Communications

EXHIBIT 4

March 30, 2017

Cassandra Webb
Missouri Network Alliance

cassandra.webb@bluebirdnetwork.com

Subject: CCSPC315235 - INVALID USAGE RATE - Incorrect rate applied to specific usage type

Please find attached the detail of the above referenced claim in the amount of 6,095.50 USD. Incorrect rate applied to specific usage type

I have attached the following supporting document(s):

CCSPC315235 _Details.xls - Detail support for claim
CCSPC315235 Claim Form.xls - Claim Form

Please distribute the credit amount of 6,095.50 USD on the Billing Account Numbers contained in the attached detail.

Please reply to me regarding this claim via email at Nora.Basore@sprint.com. Please copy ccspc@teocosolutions.com on your reply.

If you have any questions, you may also contact me at the phone number provided.

Thank you for your prompt attention to this matter.

Sincerely,
Norra Basore
Sprint Communications
913-762-6301
Nora.Basore@sprint.com