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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review For Local Exchange Carriers)	CC Docket No. 94-1
)	
Petition for Rulemaking of Consumer Federal of America, International Communications Association and National Retail Federation Relating to Access Charge Reform)	RM No. 9210
)	

COMMENTS OF SPRINT CORPORATION

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October 26, 1998

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COMMENTS OF SPRINT CORPORATION

Sprint hereby responds to the Commission's October 5, 1998 Public Notice (FCC 98-256) asking parties to refresh the record and comment on specific issues which remain pending in these dockets: the price cap x-factor; Bell Atlantic and Ameritech pricing flexibility proposals; and whether and how the Commission could implement specific forms of pricing flexibility for LECs subject to prescriptive access rates.

I. INTRODUCTION AND SUMMARY

Sprint supports the goal of basing access charges on forward-looking costs, but does not believe that competition is putting significant downward pressure on ILEC access charges. However, rather than engaging in the complex (and inherently judgmental) task of re-examining the price cap x-factor, and waiting until 2001 to receive forward-looking cost studies of access charges, the Commission instead should call for

the filing of cost studies now, then determine an appropriate transition period in which to bring access charges to those cost-based levels. The use of an x-factor mechanism to reduce access charges to costs can have the effect of penalizing those carriers whose charges are already closest to costs, while giving a perhaps unwarranted break to those carriers whose price/cost disparity is the greatest. In the meantime, the Commission should adhere to its plan to shift recovery of non-traffic-sensitive costs to flat-rated charges.

As for pricing flexibility, there simply is not sufficient competitive pressure today on ILECs to warrant the large-scale deregulation that the RBOCs seek. The market share they have lost to date is roughly only one-fourth of the amount of market share AT&T had lost at the time of divestiture. The type of pricing flexibility the RBOCs seek would enable them to nip local competition in the bud, as well as to harm long distance competition if and when they receive §271 authority to provide in-region long distance service. Nonetheless, certain forms of additional pricing flexibility are warranted and should be adopted:

- Liberalization of density zone pricing for special access and switched transport.
- Extension of density-zone pricing to other switched access rate elements.
- Removal of the IX basket from price cap regulation when 1+ intraLATA presubscription is fully implemented.

II. RATHER THAN REEXAMINE THE PRICE CAP X-FACTOR, THE COMMISSION SHOULD FOCUS ON A TIME-LIMITED TRANSITION TO BRING ACCESS CHARGES TO FORWARD-LOOKING COSTS

In its Access Charge Reform Order,¹ the Commission took certain steps, including greater reliance on flat-rated recovery of non-traffic sensitive costs, to realign the access charge rate structure more closely with costs, and made a policy determination that the level of access charges should reflect forward-looking economic costs. Rather than prescribe cost-based access charges, the Commission chose instead to rely on the price cap x-factor and market forces to drive access charges down to forward-looking economic costs. Nonetheless, as a backstop to this process, the Commission ordered each price cap LEC to file a cost study no later than February 8, 2001, showing the forward-looking costs of providing all access services that remain under regulation at that time. Id. at 16094-97.

Sprint fully supports the Commission's efforts to shift more of the recovery of non-traffic-sensitive costs to flat rated charges, and to move access charges to forward-looking cost levels. However, Sprint believes that competition is currently not exerting appreciable downward pressure on ILEC access charges, and is not likely to do so in the near future. Sprint expressed its views on this matter in its January 30, 1998 comments in RM 9210, and only a few additional observations are warranted.

The most significant form of competition today is for transport – transport between Sprint's and other IXCs' points of presence and the ILEC central offices that serve the IXCs' end user customers. (Because of the lack of ubiquitous facilities-based

¹ Access Charge Reform, First Report and Order, 12 FCC Rcd 15982 (1997) (subsequent history omitted).

loop alternatives to the ILECs' networks, there is far less competition for dedicated transport all the way to end user premises.) Sprint has every incentive to use alternative access vendors to the greatest extent possible, if they offer a high-quality and cost effective alternative to incumbent LECs. However, it has been Sprint's experience that alternative access vendors do not tend to price their services significantly below the prices charged by ILECs.² Furthermore, even in those instances where alternative vendors can be used all the way to a customer premises, the fixed costs of conversion, and the difficulties in obtaining landlord and customer consent to the use of an alternative vendor, are such that there are no appreciable cost savings to Sprint in using alternative vendors, which lessens their ability to exert effective pressure on ILEC access charges. In 1996, only nine cents of every special access dollar spent by Sprint went to non-ILEC vendors. By January 1998, this figure had increased only slightly: alternative vendors accounted for only 9.6% of Sprint's total access facility expenses.

Switched access competition – i.e., for the local switching and use of the common line – is in a far more primitive stage than transport and special access competition. Based on data for the month of January, competitive LECs account for only 0.4% of the minute-of-use-based access charges that Sprint pays. Overall, including both switched and special access, the ILECs' competitors received only 2.4 cents of every access dollar spent by Sprint in January 1998, up only marginally from two cents in 1996. And in the New York City LATA 132 – perhaps the most “competitive” LATA in the U.S., and one

² If the Commission's view, expressed in its Local Competition Order, 11 FCC Rcd 15499, 15909 (1996) (subsequent history omitted), that transport rates are already close to economic costs is correct, then competitive transport providers may not be in a position to price significantly below the ILECs.

where Sprint uses an alternative vendor as its carrier of choice – Bell Atlantic continued to receive 86 cents of every Sprint access dollar.

Furthermore, far from exerting downward pressure on ILEC access charges, some CLECs are attempting to impose excessive access charges on IXCs, so as to use IXCs as a source of funding their start-up costs and/or financing commercially attractive local retail rates. Some CLECs are seeking to charge as much as 12 times the rate charged by the ILEC in the same geographic region for switched access. Left to their own devices, this behavior on the part of CLECs is perfectly understandable. They succeed in the marketplace by persuading end users to become their local service customers. Obviously, this means they must offer attractive retail prices vis-à-vis those of the ILEC. When CLECs obtain the end user's local business, they become a bottleneck supplier of access to IXCs that wish to originate traffic from, or terminate calls to, the CLECs' end users. Some CLECs are attempting to exploit this bottleneck by charging IXCs excessive rates for access.

Although this is not the proper context in which to debate the actions the Commission may need to take regarding such practices,³ this behavior of some CLECs simply underscores the fact that the Commission cannot rely on competition to drive the ILECs' access charges to costs. Indeed, to the extent that CLECs are able to use high access charges to undercut the ILECs' retail prices for local service, competition tends to drive access charges up, not down. The ILECs have an incentive also to keep their access charges as high as possible so as to be able to meet the CLECs' lower retail prices.

³ Last Friday, AT&T filed a petition for declaratory ruling addressing this problem in the matter of Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers.

Because of the failure of competition to have the desired effects on switched access charges, Sprint believes the Commission should follow a prescriptive approach, and believes the Commission had the essentials of the right idea when it determined, in its Access Charge Reform Order, to order ILECs to file forward-looking cost studies of their access charges. However, rather than waiting to 2001 to require submission of these studies, and rather than examining yet another round of productivity studies to determine whether the current price cap x-factor should be changed, Sprint believes that a more direct approach is warranted. The Commission should order the ILECs to file forward-looking cost studies now, rather than waiting until 2001. Once these studies have been filed, and the Commission can gauge the gap between existing rates and rates based on forward-looking costs, it can determine an appropriate period of time in which to phase in access charges reflecting forward-looking costs.

This approach has clear advantages over attempting to revisit the price cap productivity factor. The establishment of that factor is inherently an uncertain task involving difficult issues of how to measure past productivity gains and how to predict the extent to which past performance can be expected to continue in the future. Regardless of what x-factor is adopted, relying solely on productivity adjustments to bring access charges to costs can have anomalous effects on individual ILECs. The use of productivity adjustments will mean that the carriers whose access charges are highest in relation to forward-looking costs will have the longest period of time to bring their access charges down. This could be viewed as unfair to those ILECs whose charges are closest to costs at the present time.

Furthermore, relying on an industry-wide x-factor could force rates of carriers whose rates are closest to costs today to below-cost levels while other carriers are still transitioning their rates down to economic costs. Once the access charges of a particular carrier reach economic costs, it may be unfair to continue to apply the industry x-factor to that carrier. Sprint believes that a major explanation for why productivity is so much greater in the local telecommunications industry than in the economy as a whole (hence, a positive x-factor) stems from the savings associated with the gradual replacement of old technology by new technology. Once access prices are based on the costs of new technology, it is only if and when the state of the art advances that forward-looking costs would fall further. While these advances will probably occur, they are unlikely to drive forward-looking costs down as quickly as the current productivity factor would suggest. Consequently, once access charges are at forward-looking cost levels, it may be incumbent on the Commission to cease applying an x-factor and instead periodically re-examine forward-looking cost levels. However, the Commission will not know at what point this cross-over is reached unless it has forward-looking cost studies in hand now, rather than waiting until 2001.

Although the nature of local switching for purely local traffic may differ from local switching of interexchange traffic, the cost methodologies the states have employed in setting prices for unbundled network elements, together with the Commission's experience with USF cost models, should be helpful to the Commission in establishing a forward-looking methodology for interstate access charges.⁴ Sprint suggests that the

⁴ However, Sprint does not recommend that the Commission merely use state-approved UNE rates for access purposes. State methodologies vary widely in their details, and the Commission must decide which methodology is appropriate.

Commission obtain from the state commissions detailed descriptions of the methodologies they are employing, and quickly decide on a sound methodology. It should then publish that methodology in a further notice of proposed rulemaking, with an expedited opportunity by affected parties to comment on the methodology, then require ILECs to submit cost studies based on that methodology. The Commission would then be in a position to determine how big the spread is between current access charges and cost-based access charges and thus to determine an appropriate transition to cost-based rates. Sprint sees no reason why this whole process could not be completed in time to begin a transition to cost-based rates in the July 1, 1999 access filings if the Commission sets its mind to it and devotes the necessary resources to this highly important task.

Because of the inevitable claims of confiscation and unfairness by some ILECs, who seek to charge rates based on historical cost levels in perpetuity, Sprint believes that the Commission would be better advised to promulgate a transition period for reducing access charges from current levels to economic cost levels, rather than attempting to engage in a flash-cut approach. Sprint believes that giving the ILECs reasonable notice of a change in the access charge regime and time to adapt to that new regime should obviate any claims of ILECs that such a phase-down of rates constitutes “confiscation.”⁵ How long the transition period should be cannot be determined until the Commission has an opportunity to examine the difference between current access charges and cost-based levels. However, a reasonable period of transition (perhaps with phased intermediate reductions) would give ILECs the opportunity and responsibility of managing their

⁵ See e.g., Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989); Market Street Railway Co. v. Railroad Commission of California, 324 U.S. 548 (1945); and Rogers Truck Line, Inc., v. United States, 14 Ct. Cl. 108 (1987).

businesses knowing the date by which they will have to achieve cost-based access charges.

In the meantime, the Commission should go forward with current mechanisms to phase in the recovery of non-traffic-sensitive costs through flat-rated elements. It is vastly preferable to place these flat-rated charges on the cost causer – the end user – than to use the combination of subscriber line charges and presubscribed interexchange carrier charges to accomplish this result. However, the PICC mechanism, with all its imperfections, is still clearly superior to recovery of these costs from IXC's on a traffic sensitive basis.

III. MEASURED INCREASES IN ILEC PRICING FLEXIBILITY ARE WARRANTED, BUT NOT THE PRICING FLEXIBILITY PROPOSED BY THE RBOCS

The pleas of the RBOCs, exemplified by the ex parte presentations of Ameritech and Bell Atlantic on which the October 5 Public Notice seeks comment, may be new to many of the current Commissioners and more recent additions to Commission staff, but are simply variations of an oft-repeated theme. For at least the past 5-1/2 years, the RBOCs have often claimed that they are inundated by competition and have lost all traces of their local bottleneck monopoly power. For example, Ameritech, in a March 1, 1993 filing with the Commission⁶ asserted that “market and technological forces have shattered the notion of the local bottleneck.”⁷

As a corporation with substantial ILEC interests, Sprint fully understands the motivations of the RBOCs. Every bit of deregulatory relief the RBOCs seek in this

⁶ Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region.

⁷ Id. at 5, emphasis omitted.

docket and elsewhere is something that Sprint's ILEC division would like to have as well. Sprint shares the RBOCs' view that when an ILEC's local bottleneck has truly been broken, there is no need to subject its services to regulation. Thus, Sprint fully supports, in principle, the notion that regulation should gradually diminish as changes in market forces warrant such action. However, the Commission must be on the alert to distinguish between what ILECs want in the way of access pricing flexibility and what they truly need in order to have a fair opportunity to compete effectively in the access market. In Sprint's view, the RBOCs are asking for far more than they legitimately need at this time.

As discussed above, Sprint sees very little real impact on access charges from local competition today. The most recent data available show that incumbent LECs account for 97.5% of total local service providers' local revenues in 1997.⁸ Excluding pay telephone providers and their revenues (since they are not a factor in the access market at all), the ILECs account for 98.1% of such revenues (id.). The 2.5 (at most) percentage points of market share that the ILECs have lost thus far is roughly only one-fourth the amount of long distance market share AT&T had lost at the time of divestiture.⁹ Furthermore, to the extent CLECs resell ILEC services or utilize ILEC UNEs, much of the CLEC revenue is flowed back to the ILECs, so the ILECs' actual losses may be much less than 2.5%.

⁸ Lande and Rangos, "Telecommunications Industry Revenues: 1997," Industry Analysis Division, CCB (October 1998), at Table 4.

⁹ Zolnierok, Rangos and Eisner, "Long Distance Market Shares Second Quarter 1998," Industry Analysis Division, CCB (September 1998), Table 3.5.

Neither the Ameritech nor the Bell Atlantic ex partes demonstrate that they face any substantial competitive threat warranting a change in the existing regulatory regime. Both ex partes rely chiefly on absolute numbers (e.g., of interconnection agreements, UNE loops, resold lines, minutes of use exchanged with competitors, collocation sites, etc.) with very little effort to place these absolute numbers into the more realistic context of whether they are losing significant market share.¹⁰

Ameritech makes only two attempts to relate these data to the size of the market. First, Ameritech claims (at 13) that in 1997 it exchanged more than four billion reciprocal compensation minutes with competitors (65% of which was ISP related traffic that Ameritech claims should not be considered local), compared with a total of over 140 billion local minutes in its region. At most, it has lost 2.9% of its traffic to its competitors (4/140), although it is elsewhere disputing the legitimacy of two-thirds of that lost traffic.

Ameritech (at 14) also claims to have lost 44% of the “Special Access DS1-Equivalent HICAP Market” in six metropolitan areas that assertedly account for 70% of total HICAP demand in its region. It is unclear how these DS1 equivalents were counted, but in any event reliance on such figures can be very misleading. In the first place, large customers, including interexchange carriers, increasingly tend to purchase transport facilities in units of DS3 and even larger capacity. Although a DS3 is the equivalent of 28 DS1s in terms of capacity, the price of a DS3 is far less than 28 times the price of an individual DS1. Second, Ameritech’s ex parte makes no effort to distinguish between interoffice HICAP facilities and high capacity channel terminations to customer

¹⁰ See Ameritech at 13-14; Bell Atlantic chart (unnumbered) labeled “Bell Atlantic’s

premises. To take a simplistic example, if an IXC used an ILEC to provide a single DS3 from its POP to a LEC wire center and, a DS3 from that wire center to an end office, then purchased 28 individual DS1s from that end office to 28 individual end user premises, that could be counted as simply 28 DS1 equivalents from the IXC POP to the customer premises. If the IXC decided to use a competitive access provider for the POP to end office portion of these circuits, the ILEC might show a loss of 28 DS1 equivalents to competitors, even though it retained the 28 DS1s from the end office to the customer premises. And in terms of revenue, those retained DS1s may be worth a lot more than the DS3 channels it lost.¹¹ Thus, the information on which Ameritech relies does not provide a meaningful insight into its true market share losses.

In addition to their failure to make a compelling argument that they are in fact beset by competition, Ameritech and Bell Atlantic both tend to rely on metrics of potential competition, rather than actual competition, as trigger points for their requested flexibility. The fact that there is collocation in a central office or wire center and thus some potential to reach end users through the purchase of loop UNEs, for example, does not show that there are commercially viable competitors whose services are in fact being purchased by significant numbers of consumers. To allow deregulation to occur only where the mere prospect of potential competition exists would be premature and unwarranted. Furthermore, it appears that in Bell Atlantic's case, its self-created criteria would allow substantial or complete deregulation of transport and switched access (at

Unique Competitive Conditions Require Additional Pricing Flexibility.”

¹¹ Applying Ameritech's Illinois rates to the example in the text, and assuming a five-mile interoffice channel, the 28 DS1 channel terminations that remain with the ILEC account for 59% of the total revenues of this circuit configuration (including multiplexing).

least for multi-line business customers) in a large portion of its existing service area. It is simply impossible to square this degree of regulation with a 97.5% market share for the ILEC industry.

The dangers of premature deregulation of ILEC access charges are well-documented in record in these proceedings,¹² and should not require extensive repetition here. It suffices to note that ILECs could use the requested pricing flexibility to engage in widespread discrimination so as to nip genuine competition in the bud. Furthermore, once the RBOCs are allowed to offer in-region long distance, they could use contract pricing and volume and term discount schemes to offer favorable terms to their own interLATA affiliates that would not readily be available to other carriers. A term discount available for a 10 or 25-year term, for example, would be attractive only to an RBOC affiliate.

Sprint does urge the Commission to take several actions which it believes give ILECs a degree of pricing flexibility that is warranted today but is not excessive in relation to genuine needs.

1. The existing density zone pricing regulation applicable to the transport basket should be significantly liberalized in two respects. First, ILECs should be allowed to re-price their special access and switched transport services in their existing density zones, based on costs and without regard to the constraints resulting from having required the same initial price cap index for each geographic zone. Because special access demand is so heavily skewed towards high density areas, setting the initial index in each zone

¹² See e.g., Sprint's December 11, 1995 Comments in CC Docket No. 94-1 and its January 29, 1997 Comments in CC Docket No. 96-262 at 33-45.

meant, as a practical matter, that there was very little downward pricing flexibility permitted in the high-density zone and, because of the price index bands, prices in the lower density, higher-cost zones could not be raised to cost-based levels. When density zone pricing was extended to switched transport, these same constraints carried over to switched transport as well.¹³ Allowing ILECs to re-initialize their existing rates in these density zones should give ILECs a fair opportunity to compete against other access transport providers that tend to concentrate in high-density areas while at the same time fully recovering their costs of serving less dense areas where competition has not yet emerged. In addition, if an ILEC believes that three density zones are insufficient for reflecting the cost differences throughout its service area, it should be allowed to disaggregate its rates into four or more zones. Particularly carriers that serve a range of locales from large urban metropolitan areas to sparsely populated rural areas may have a better opportunity to reflect their underlying costs in their rates if they are allowed to disaggregate their transport rates into more than three zones.

2. The Commission should immediately initiate density zone pricing for other elements of switched access: local switching and NTS recovery charges (both flat-rated and MOU-based). As Sprint demonstrated in CC Docket No. 96-262, both loop and local switching costs vary substantially with density (see Sprint's January 29, 1997 Comments at 41-42 and Exhibits 9 and 10). Again, if ILECs are to be given a fair opportunity to compete – without the freedom to engage in unwarranted price discrimination – they must have the ability to tailor their rates to the cost characteristics of areas where they face competition, as well as of areas where they do not. Otherwise, they are being forced

¹³ See Sprint's October 18, 1993 Petition for Reconsideration in CC Docket No. 91-141,

to charge above-cost rates in areas where competition is most likely to emerge, namely large metropolitan areas, while at the same time being forced to continue charging below-cost rates in less dense and rural areas, which has the effect of discouraging entry into those areas. Sprint is not aware of any invidious effects – or even any serious claims that there are such effects – of having allowed density-based deaveraging of transport access charges. The time has clearly come for extending this sound regulatory principle to other access rate elements as well. Again, as in the case of Sprint’s recommendations regarding density zone pricing for transport, there should be no requirement that the initial price cap index be the same for all density zone for other elements of access, and there is no reason to limit the ILECs to only three zones.

3. Sprint would support removing the IX basket from price cap regulation upon full implementation of intraLATA dialing parity. Once customers have an opportunity to select the interexchange carrier of their choice for intraLATA service (as they now do for interLATA service), Sprint believes the ILEC advantages in that market segment will quickly disappear and that competitive treatment of ILEC toll services would be warranted.

Beyond these steps, it is too early in the development of local competition to predict both appropriate metrics for further pricing flexibility as well as the proper type of pricing flexibility that can be employed where competition takes firmer hold. Sprint respectfully refers the Commission to the discussion of this issue in Sprint’s January 29, 1997 Comments in CC Docket No. 96-262 (at 46-49) and again urges the Commission to keep a vigilant eye on the developing competitive marketplace, so as not to unfairly

Phase I, at 2-8, for a more comprehensive discussion of this issue.

hamstring ILECs when meaningful local competition does emerge, while at the same precluding the ILECs from premature deregulation and the severe consequences such an action could have on the long run development of both local and long distance competition.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read "Richard Juhnke", is written over a horizontal line.

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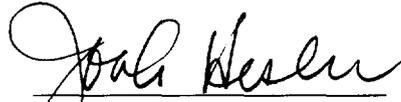
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 26th day of October, 1998 to the below-listed parties:


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