

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

In the Matter of	)	CC Docket No. 99-35
	)	Transmittal Nos. 72, 73 & 74
Sprint Local Telephone Companies	)	
Tariff F.C.C. No. 1	)	

**REPLY OF SPRINT LOCAL TELEPHONE COMPANIES**

The Sprint Local Telephone Companies (“Sprint”) respectfully submit the following comments in reply to the April 7, 1999 petition for reconsideration filed by Time Warner Telecom Holdings Inc. (“Time Warner”) in response to Sprint’s tariff establishing rates for Local Number Portability (“LNP”) Query Service.

In its petition, Time Warner challenges Sprint’s practice of levying its default query charge on calls to NXXs that have been converted to LNP but from which no numbers have yet been ported. Time Warner asks that the Commission reconsider its decision to allow Sprint’s LNP tariff to go into effect or, alternatively, suspend and set for investigation, as it has with other ILECs, the question of whether it is reasonable for Sprint to assess the default query charge in these situations.

I. Time Warner's Petition is an Untimely Petition to Reject or Suspend the Tariff and Must be Dismissed.

At page 2 of its pleading, Time Warner admits that it did not participate in the review of Sprint's query rate tariff while it was pending Commission approval. It was, in Time Warner's opinion, a "substantial undertaking" to "keep track of all of the LNP tariff transmittals..." and it did not become aware of Sprint's filing until after the deadline for petitions to reject or suspend. Thus, Time Warner asks that it now be permitted to challenge Sprint's tariff even though it has not previously participated in this proceeding.

Sprint strenuously objects to the filing of the subject petition and urges the Commission to dismiss it as nothing more than an untimely petition to reject or suspend the tariff. Time Warner's only justification for not raising its objections in a timely manner is that it just could not keep up with all of the LNP filings at the time Sprint's filing was being considered. Sprint notes that only six other companies had LNP tariffs pending concurrent with Sprint's – certainly not an overwhelming number – and Time Warner readily admits that it managed to intervene in a number of those cases. Whatever the reasons for Time Warner's tardiness, however, the fact remains that Sprint should not have to bear the burden of Time Warner's inability to track a handful of LNP tariff filings.

More importantly, Sprint made its filing in compliance with Commission rules and orders and the Commission found that filing to be reasonable. Time Warner makes much of the fact that AT&T filed a petition to reject or suspend Sprint's petition raising the same issue Time Warner attempts to resurrect here. However, Time Warner's reliance on the AT&T's filing only serves to emphasize the fact that the Commission had the opportunity to reject Sprint's tariff with respect to the query issue, but declined to do so. Notably, the Commission ruled that:

...Sprint has adequately responded to the issues raised in the Sprint Suspension Order. We find that Sprint has provided reasonable explanations for its cost recovery actions, and the modifications described in Transmittal No 76 adequately respond to the issues raised. We therefore decline to investigate these issues.<sup>1</sup>

It is outrageous that Time Warner should come forward now and ask to start the process all over again – and not for any valid reason, but rather because it was not able to adequately manage to follow Sprint's filing.

47 C.F.R., Section 1.106 commands that a petition filed by a "...person who is not a party to the proceeding...shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding." Time Warner's explanation of its belated appearance is relegated to a solitary footnote in its pleading and, as noted above, provides no explanation for its delay other than that it had difficulty

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<sup>1</sup> *In the Matter of Long-Term Telephone Number Portability Tariff Filings of Sprint Local Telephone Companies*, CC Docket No. 99-35, Transmittal No. 76. Reconsideration of Decision to Suspend and Investigate Tariff Filings of Sprint Local Telephone Companies, rel. March 8, 1999. Paragraph 4.

tracking each of the LNP tariffs filed. Certainly this half-hearted explanation does not rise to the level of a “good reason” justifying the re-opening of a matter already settled. Time Warner had an opportunity to participate in Sprint’s filing -- just as it admits it has participated in other ILECs’ filings -- yet it failed to do so. The Commission must reject its inappropriate attempt to do so now. Time Warner’s petition must be dismissed without further consideration.

II. Time Warner has not been Adversely Affected by Sprint’s Tariff.

The basic thrust behind Time Warner’s petition is its desire to stop Sprint from levying its query charge for NXXs until such time as at least one number has been ported. Time Warner claims that imposing the query charge before a number ports is an attempt by Sprint to raise its rivals’ costs. In reality, Time Warner’s petition can best be described as an attempt to avoid its self-imposed responsibilities for LNP costs. Sprint urges the Commission to reject this veiled attempt at competitive gamesmanship.

*(a) The Impact of the BFR Process on ILEC LNP Costs.*

In crafting the LNP implementation process, the Commission mandated that the incumbent local exchange company (“ILEC”) respond to a bona fide request (“BFR”) for LNP from a competitive carrier by deploying LNP capabilities in any requested switch. The ILEC is obligated to make this network investment regardless of the requesting carrier’s plans or ability to actually enter the market in the effected area. Because the competitive carrier is not required to prove any intent or state of readiness to enter a market before issuing the BFR to the ILEC, the result of the BFR process has been massive ILEC network investment with little or no corresponding number portability activity.

In the initial phase of LNP deployment, Time Warner and other carriers have demanded LNP capabilities in the various MSAs served by the Sprint LECs. While Sprint made the financial investments to meet those demands, carriers like Time Warner have not necessarily followed-through with implementing portability. This fact, however, should not be permitted to delay Sprint’s ability to recover its costs of deploying the service. This is especially true when certain carriers are asking for all NXXs to be activated upon switch conversion. If even one carrier requested this LNP activation schedule, Sprint believes it is obligated to honor that request.

The Sprint LECs have opened only those NXXs associated with switches that have been requested by the carriers pursuant to the BFR

process to be made LNP-capable -- it has not opened every LNP-capable switch. Once the switches are made LNP-capable, tandem-connected calls destined for these NXXs cause a query to be initiated in order to ascertain where the call is to be terminated. However, the tandem cannot make call routing decisions for subtending end offices without a query to an LNP database. Consequently, Sprint incurs an incremental cost for each query launched, just as Time Warner would, and should be permitted to recover that cost.

*(b) The Appropriate Time to Open NXXs in an LNP-Capable Switch.*

Once a switch is made LNP-ready, Sprint opens all NXXs served by that switch. This is not only the most efficient time to open the codes, but it also cuts down on administrative expenses that would result from constantly going back into the switch to open the codes one by one. Time Warner avers that only those specific NXXs with ported numbers should be opened. This position is contrary to the stance taken by competitive carriers in industry forums on this issue. During those industry discussions, some competitive carriers have insisted that once a switch is LNP-capable, all NXXs associated with that switch be opened. The carriers understand that opening the switch completely rather than by individual NXX greatly simplifies the administrative processes associated with LNP – for both the ILEC and the CLEC.

As Sprint noted in its Tariff Transmittal No. 72,<sup>2</sup> 45 days prior to the NXX opening, that information is listed in the local exchange routing guide (“LERG”). The LERG effective date is then an appropriate stake-date since information contained in the LERG is available to all carriers on a regular and known schedule (as opposed to Time Warner’s unnecessarily ad hoc approach) and thus is not susceptible to the communication errors associated with other forms of notification. Many carriers are not operating in the immediate areas where portability is available, but these carriers do have access to LERG data indicating that an NXX is being opened for portability. Consequently, using the LERG opening date as the effective date of the query charge, rather than the date on which first porting actually occurs, eliminates any confusion over precisely when the charge is effective. Sprint is in no way working to undermine its rivals, as Time Warner would have the Commission believe; rather, it is working with the new entrants to make the process flow as smoothly as possible. The Commission should recognize that LNP capability effects all carriers that terminate traffic in the U.S., not just Time Warner.

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<sup>2</sup> See Sprint Local Telephone Companies Transmittal No. 72, filed January 22, 1999.

(c) *Time Warner has it within its Power the Ability to Avoid the Query Charge*

Time Warner is in no way “adversely affected” by Sprint’s query charge or the manner in which it is applied. To the extent Time Warner has incurred costs associated with query dips, Sprint notes that Time Warner has it within its power the ability to avoid entirely Sprint’s query charge. More specifically, Time Warner’s switch in Orlando (to which it refers on p. 5 of its petition) is, according to LERG information, an LNP-capable switch. Based on its current configuration, it can perform its own look-up on ported numbers. However, Time Warner’s switch can easily be programmed to perform its own look-ups on all NXXs, whether ported or not, thereby avoiding entirely Sprint’s query look-up charge. In the end, it must be remembered that, as an N-1 carrier, it is Time Warner, not Sprint, that has the obligation to perform queries on traffic it passes on to Sprint. It can, as noted above, configure its switch to perform those look-ups or can pay Sprint to do the queries for it. Either way, it is Time Warner’s choice.

Moreover, Time Warner could also avoid Sprint’s query charge by direct trunking to Sprint’s end offices rather than to its tandem switch. As described above, the tandem, once it is LNP-capable, cannot distinguish between ported and non-ported numbers, whereas the end office can. Consequently, should Time Warner wish to avoid the query charge on non-ported calls, it again has it within its power to avoid that

charge. In either situation, it is clear that Time Warner is not “adversely effected” by the manner in which Sprint applies its query rate since it has multiple tools readily available to it to easily avoid the charge.

### III. Sprint is not Required to Follow the BOCs on this Issue.

Time Warner suggests that, because certain of the Bell operating companies (“BOCs”) have decided to apply their query charge once a number ports, Sprint must follow suit. There is no logical support for this position. Sprint is not similarly situated to the BOCs. Considering that the BOCs tend to serve the more densely populated areas of the country, it is quite likely that they are experiencing a higher percentage of ported numbers than is Sprint. Consequently, applying the query rate once the number has ported has little or no effect on these companies; as described above, the same is not true for Sprint.

There is no logical reason for all ILECs to march in lock step on this issue. The Commission should not cause Sprint to act in a manner that is against its interests, especially when there is no better reason to do so than to mirror the BOCs.

CONCLUSION

Time Warner's petition is without merit and should be dismissed without further consideration.

Respectfully submitted,  
SPRINT LOCAL TELEPHONE COMPANIES

By "signed" Jay C. Keithley

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April 19, 1999

## CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 4<sup>th</sup> day of February 1999, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply to Petition to Reject or Suspend" In the Matter of Telephone Number Portability Tariff Filings, CC Docket No. 95-116, Sprint Local Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 72, filed this date with the Secretary, Federal Communications Commission, to the persons listed below.

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"signed"  
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