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

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In the Matters of	)	
	)	
Deployment of Wireline Services	)	
Offering Advanced Telecommunications Capability, et al.	)	CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, and 98-91

COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby comments on the issues raised in the Common Carrier Bureau's Pubic Notice in the above-captioned dockets, released September 9, 1999 (DA 99-1853). As Sprint will explain, the Commission's conclusion, in its Memorandum Opinion and Order, and Notice of Proposed Rulemaking ("MO&O") herein,[1] that "xDSL-based services" are either "telephone exchange service" or "exchange access" within the meaning of the Communications Act of 1934, as amended ("the Act"), is incontrovertibly correct.

The Bureau's Public Notice was occasioned by the Commission's voluntary remand of U S West's appeal of the MO&O,[2] in which U S West's sole argument was that the Commission had erred in concluding that xDSL services are either "telephone exchange service" or "exchange access" to which the obligations of §251(c) of the Act apply. U S West's entire argument before

[1] 13 FCC Rcd 24011, 24032 (1998).

[2] U S West Communications, Inc. v. FCC, CADC No. 98-1410.

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the court[3] rested on the slender reed that the only use of the ILECs' xDSL services is to connect ILEC subscribers with Internet service providers, thus putting the service outside the ambit of "telephone exchange service" (because subscribers are not interconnected with all other local exchange telephone subscribers) and "exchange access" (because, as a result of the enhanced service exemption from access charges, there is no separate "toll" charge for accessing an ISP).

Even if it were assumed, arguendo, that U S West's arguments were correct for that one narrow use of xDSL service,[4] xDSL can also be used in a variety of other services that clearly fall within the definitions of both "telephone exchange service" and "exchange access."

A DSL is simply a loop that has been conditioned to permit the transmission of intelligence on a digital basis at a high rate of speed. Depending on the facilities to which the loop is connected, this type of loop can be used in a number of different service offerings. The federally tariffed ADSL service offerings of ILECs have tended to be special access offerings and have most commonly been viewed as enabling the ILEC's subscriber to connect to an Internet service provider.[5] However, nothing in the ILEC

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[3] See U S West's Brief filed May 17, 1999.

[4] However, as discussed below, even this narrow use of xDSL service can be considered "telephone exchange service."

[5] See, e.g., GTE Telephone Operating Cos., 13 FCC Rcd 22466 (1998). In this form of DSL service, the DSL constitutes, in effect, the "channel termination" between the subscriber and the ILEC serving wire center, where the loop is

tariffs restricts the use of their ADSL services solely to connect customers to ISPs. Rather, the ILECs allow their ADSL customers to connect to anyone that utilizes their packet, ATM or frame relay services.[6] For example, the ILECs' ADSL service can be used to connect a subscriber to an IXC's packet switched service. In addition, another form of DSL -- HDSL -- has been routinely deployed by ILECs for the past four years to provision T-1 lines, which in turn can be used for either local exchange service or special access.

In addition to the ILECs' current offerings, DSL can, and shortly will be, used for voice services as well. In offering its Integrated On-demand Network ("ION") service to the residential and small business market segments, Sprint intends to deploy ADSL loops that will be used for the customers' local calling as well as for the origination and termination of their long distance calls. Deployment of this phase of Sprint ION will begin in the next few months. Other entities also have unveiled xDSL-based voice services. Just two weeks ago, for example, Lucent Technologies announced an integrated DSL access concentrator that "enables service providers to offer their customers up to 16 phone lines, as well as dedicated high-speed data and Internet access, over a single copper connection that

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then connected to a packet switch that directs the data to the subscriber's designated ISP.

[6] See e.g., Bell Atlantic Tariff FCC No. 1, Section 16.8(C)(1); BellSouth Tariff FCC No. 1, Section 7.2.17(A); GTOC Tariff FCC No. 1, Section 16.6(A); and Pacific Bell Tariff FCC No. 128, Section 17.5.1(A).

runs into their home or business today."[7] Lucent's press release states that this platform will support all versions of DSL and quotes David Frankel, Chairman and CTO of Jetstream Communications, as characterizing voice as the "killer app[lication]" for DSL. In the case of Sprint ION, the voice services will be provided through a packet switch, while it is our understanding that the Lucent product will route the voice channels from a DSL to a conventional circuit switch.

Clearly, these xDSL-based services will constitute "telephone exchange service" as defined in Section 3(47) of the Act. In this regard, the addition of clause (B) to that section, in the 1996 amendments to the Act,[8] which defines "telephone exchange service" to include "comparable service provided through a system of switches, transmission equipment or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service," frees the definition of "telephone exchange service" from the conventional technology and flat-rated charges that have often characterized local exchange service in the past. "Comparable" does not mean "identical;" on the contrary, Webster's Third International Dictionary (1976 Edition) defines "comparable" simply as "having enough like

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[7] Lucent Technologies press release, "Lucent Technologies Launches Break-through DSL Platform to Deliver High-Quality, Voice Data and Video Services," September 7, 1999 <http://www.lucent.com/press/0999/990907.nsa.html>.

[8] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

characteristics or qualities to make comparison appropriate." Thus, any service that shares even some characteristics or qualities with the telephone exchange service as it is now defined in clause (A) of Section 3(47) qualifies as a "telephone exchange service." To be "comparable" the service need not use a conventional circuit switch but can use "other facilities," such as a packet switch, that perform comparable functions.

Moreover, the service in question does not necessarily have to be a local service to qualify as a "telephone exchange service." Rather, it qualifies under clause (B) so long as it is "comparable" to a clause (A) service and so long as the subscriber "can originate and terminate a telecommunications service." With this broad definition, xDSL service, even when used simply as special access to connect to an unregulated ISP, is used to "originate and terminate a telecommunications service" and thus comes within the ambit of Section 3(47)(B).[9]

In short, not only can xDSL-based services include fully functional substitutes for conventional local exchange service, even the special access form of xDSL service now tariffed by ILECs can constitute "telephone exchange service" under the expanded definition of that term.

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[9] "Telecommunications service" in turn is defined in Section 3(46) as "the offering of telecommunications for a fee directly to the public...regardless of the facilities used." Since the DSL service, when used as a special access connection to an ISP, would be a service for which a fee is charged to the public and is being provided by a carrier to permit access to an ISP, it thus constitutes a telecommunications service, notwithstanding that the services the subscriber obtains from an ISP thereafter are considered enhanced and unregulated.

Likewise, xDSL-based services can also be used for "exchange access" as defined in Section 3(16) of the Act. That term is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." In turn, Section 3(48) defines "telephone toll service" to mean service "between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." The ILECs' current tariffed offering of ADSL service as a special access facility thus fits the definition of "exchange access." These services can connect the ADSL subscriber to any other user of the ILECs' packet switched (and other) services and thus can be used to form a basic data communications pipeline between the subscriber and another location outside the subscriber's local calling area. So long as there is an additional charge (over and above the charge for the ADSL loop itself) for the inter-city facility, the ADSL service is used for "exchange access." Even when an ISP purchases the LECs' ADSL service to connect with their customers, they are purchasing "exchange access" since they connect the ADSL service to the long distance transmission services they purchase from (and pay toll charges to) IXCs in order to provide their enhanced services to their customers.

Moreover, the xDSL-based customers of Sprint ION will be able to use their service to originate and receive long distance

calls -- clearly a form of "exchange access." In addition, as noted above, the ILECs, for several years, have used one form of DSL -- HDSL -- to provision T-1 lines that can be used for "exchange access" as well as for "telephone exchange service."

As already explained, the Commission's conclusion that xDSL-based services are "telephone exchange services" and "exchange access" is entirely correct and should be reaffirmed. Furthermore, nothing in the legislative history of the 1996 Act suggests that Congress in any way attempted to confine the requirements of §251(c) to particular technologies, much less "old" or "conventional" technologies,[10] and there is no reason for the Commission to read into the Act such a narrow intent. On the contrary, the Commission was quite correct and justified in concluding, in the MO&O herein,[11] that "the plain language of the statute thus refutes any attempt to tie these statutory definitions to a particular technology." Given the fact that advanced technologies can be used to provide conventional services, such as switched voice service, a contrary interpretation of the Act would permit ILECs to evade the fundamental obligations placed upon them simply through the deployment of new technology over the passage of time.

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[10] There is really nothing very new about packet-based services such as those used in conjunction with DSL facilities. Packet-switched services have been offered by ILECs for 15 years. See Pacific Bell Telephone Co, et al., ENF-84-15 et al., FCC 84-561, 1984 FCC Lexis 1636 (1984).

[11] 13 FCC Rcd at 24032 (footnote omitted).

Respectfully submitted,

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September 24, 1999

CERTIFICTE OF SERVICE

I hereby certify that a copy of the foregoing **Comments of Sprint Corporation** was sent by hand on this the 24th day of September, 1999 to the below-listed parties:

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September 24, 1999

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