

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

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In the Matter of )  
 )  
Access Charge Reform )

CC Docket No. 96-262

COMMENTS OF SPRINT CORPORATION

SPRINT CORPORATION

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October 29, 1999

No. of Copies rec'd 274  
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Sprint Corporation hereby submits its comments in response to the Fifth Report and Order and Further Notice of Proposed Rulemaking released by the Commission in the above-captioned proceeding on August 27, 1999 (FCC 99-206).

**I. INTRODUCTION AND SUMMARY**

In the Fifth Report and Order, the Commission adopted a series of pricing flexibility measures for price cap LECs, including expanded geographic deaveraging for the trunking basket, as well as a two-phase approach for further deregulating interstate access services. Although the Commission defined the triggers for allowing such further deregulation and the exact nature of the relief permitted for both Phase I and Phase II of trunking deregulation, the Commission only established the Phase I trigger and relief for other switched access services. In the Further Notice, the Commission asked for comment on four broad topics: (1) further pricing flexibility for switched access services other than trunking, including geographic deaveraging and Phase II pricing flexibility triggers and relief; (2) access rate structure issues, including whether local switching and tandem-switched transport should be charged for on a capacity basis instead of a minute-of-use (MOU) basis; (3) price cap issues, including possible revision of the common line growth formula, reorganization of baskets and bands, and a change in the measurement of

inflation; and (4) CLEC access charges, including possible alternative ways of regulating, directly or indirectly, the prices charged by CLECs for access.

As the Commission is aware, Sprint is a multifaceted corporation: it owns the third largest long-distance carrier,<sup>1</sup> the sixth largest group of incumbent LECs,<sup>2</sup> as well as the fastest growing wireless carrier,<sup>3</sup> with PCS licenses to serve areas totaling 270 million in population. As such, Sprint's operating units are both large purchasers and large providers of exchange access services.

Sprint is a member of the Coalition for Affordable Local and Long Distance Service (CALLS), which also includes AT&T, GTE, and three of the four RBOCs. After months of difficult negotiations, these companies agreed on an integrated interstate access reform and universal service plan for price cap ILECs to be effective for a five-year period beginning in January 2000. Among other things, this plan would essentially eliminate the carrier common line rate element, permit geographic deaveraging of the subscriber line charge, and lower the remaining switched access charges (local switching and switched transport) to an effective level of slightly more than \$.0055 per minute at which the charges would be frozen for the remainder of the five-year period. The CALLS plan was filed with the Commission on July 29, 1999,<sup>4</sup> and it was supplemented with a supporting memorandum and a draft of rule changes necessary for implementation of the plan on August 20, 1999.<sup>5</sup> On September 15, the Commission issued a Notice of Proposed Rulemaking (FCC 99-235) seeking comments on the CALLS proposal.

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<sup>1</sup> Sprint Communications Co., LP ("Sprint Long Distance").

<sup>2</sup> Collectively, the Sprint Local Telephone Companies ("Sprint LTCs").

<sup>3</sup> The Sprint PCS group.

<sup>4</sup> See July 29, 1999 Ex Parte Letter in CC Docket No. 96-262 *et al.* from John T. Nakahata.

<sup>5</sup> See August 20, 1999 Ex Parte letter in CC Docket No. 96-262 *et al.* from John T. Nakahata.

Adoption of the CALLS proposal would substantially simplify the issues that need to be dealt with in the Further Notice. The CALLS plan explicitly addresses several of the issues raised in the Further Notice, including geographic deaveraging of common line access elements, and the advantages and disadvantages of prohibiting common line cost recovery from IXCs. Although the CALLS plan does not directly address some of the rate structure issues proposed in the Further Notice, the CALLS proposal would reduce the level of charges to the point that the rate structure issues are simply not that important. And the reduction in MOU charges, coupled with the rate freeze once those charges reach the agreed-on levels, obviate in Sprint's view the need to address changes in the price cap rules.<sup>6</sup>

With respect to switched access pricing flexibility, Sprint has always supported cost-based geographic deaveraging of access charges as a legitimate means of allowing ILECs to compete fairly – and to provide the correct economic signals for efficient new entry – and believes that geographic deaveraging is every bit as valid for common line and local switching rate elements as it is for transport elements. The CALLS plan directly addresses common line deaveraging, and Sprint also supports deaveraging of local switching.

As for Phase II pricing flexibility for switched access, Sprint fails to see any need to consider such pricing flexibility. Sprint is at a loss to understand what incentive an ILEC would have to offer lower switched access rates in the face of CLEC competition. ILECs and CLECs compete for end users, not for provision of switched access to IXCs, and have an economic incentive to exploit that bottleneck through higher, not lower,

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<sup>6</sup> Sprint sees no need to comment further on the issues raised in ¶¶226-235 of the Further Notice.

rates. Until there is real marketplace evidence that there is a need for further switched access pricing flexibility for ILECs, Sprint opposes adoption of such measures.

Regarding the possible restructuring of local switching and tandem switched transport charges on the basis of capacity, rather than minutes of use, Sprint believes that such restructuring lacks the factual underpinning necessary for it to be a rational basis for cost recovery. In addition, the changes that would be required in ILEC billing systems – particularly if the Commission were to require maintenance of minute-of-use-based rates alongside capacity-based rates – would pose substantial administrative complexities. In any event, the CALLS proposal, by shifting a significant portion of the local switching rate element to the common line basket and by reducing MOU-based charges so substantially, obviates the need for any further refinements in the local switching and tandem switched transport rate structures.

With respect to CLEC access charges, CLECs – despite their minuscule share of the local service and exchange access market – have every bit as much bottleneck power over exchange access to and from their end users as does an ILEC that has provided local service on a monopoly basis for a hundred years. CLEC access charges – that can exceed those of the ILEC by as much as twenty times – are a growing problem on both originating and terminating traffic. There is no apparent justification for allowing CLECs to charge IXCs more for access than is charged by the ILECs with whom they compete: such higher access charges must either reflect exploitation of their access bottleneck or uneconomic entry into the local market that should not be encouraged by the Commission and should not be financed on the backs of long-distance carriers and their customers. Like any other bottleneck, CLEC access must be regulated in some fashion by the

Commission. Although Sprint understands the Commission's desire to impose the least intrusive form of regulation possible, it must nonetheless regulate in an effective manner. Sprint believes the least intrusive, yet effective, approach to CLEC regulation would be to provide that CLECs cannot charge IXCs more for interstate access than the charges imposed by the ILEC in the same geographic region served by the CLEC, with an "escape valve" allowing the CLEC to recover, directly from its own end-user customers, any additional access charges it wishes to impose. In the event the Commission fails to adopt the ILEC ceiling/escape-valve approach, then it must give IXCs other effective means to combat high CLEC access charges, including allowing IXCs to refuse to interconnect with CLECs that impose above-ILEC access charges, and allowing IXCs to institute rate differentials on calls that utilize the services of such CLECs. As will be discussed in more detail in the comments, however, these solutions are problematic in their own right and are less desirable than the ILEC ceiling/escape-valve approach.

## **II. GEOGRAPHIC DEAVERAGING FOR SWITCHED ACCESS SERVICES**

### **A. Common Line Basket**

In ¶¶191-98 of the Further Notice, the Commission asks whether and how to allow ILECs to deaverage common line access elements. The CALLS proposal would effect significant changes in the common line rate elements. Residential and single-line business PICCs would be eliminated, the SLC ceiling for such customers would be increased (largely to reflect the elimination of the PICCs), and both the multi-line business PICCs and carrier common line charge would be virtually eliminated during the period encompassed by the CALLS proposal. Thus, once the CALLS plan is fully implemented, the primary common line rate element (with *de minimis* exceptions) would

be the SLC. The CALLS plan provides for geographic deaveraging of the SLC, subject to several safeguards. SLCs may be deaveraged only after a state commission establishes deaveraged UNE rates (except in cases where the LEC voluntarily deaverages through rate reductions), and only when the ILEC has eliminated multi-line business PICCs and carrier common line charges. The zones for such deaveraging must be the same zones used by the state for UNE deaveraging, except that a maximum of four zones would be allowed for purposes of SLC deaveraging. In addition, a new explicit universal service support program would be established to protect rural customers by capping the residential (and single-line business) SLCs at \$7.00 per month. Other deaveraging safeguards include requirements that deaveraged SLCs may not generate more revenue than geographically averaged SLCs would have, multi-line business SLCs cannot be set below residential SLCs in any given UNE pricing zone, and SLCs for any particular customer class cannot be lower in a higher-cost zone than the amount charged in a lower-cost zone. These safeguards are explained in more detail in the CALLS *ex parte* filing of August 20, 1999. Sprint believes that the CALLS proposal adequately addresses the issues raised by the Commission in the Further Notice and will provide the proper incentives to encourage economic local competition in high-density, low-cost and low-density, high-cost areas alike, with portable universal service support for serving customers in high-cost areas and expanded Lifeline support to ensure that there will be no material adverse effect on subscribership.

**B. Traffic-Sensitive Charges**

In ¶199, the Commission seeks comment on establishing geographically deaveraged charges for local switching and other traffic-sensitive rate elements, noting

that, in the past, parties have argued that such costs do not vary significantly within study areas and that, as far as the Commission is aware, no state has established deaveraged prices for the unbundled local switching element.

Sprint's own experience shows a demonstrable inverse relationship between switching costs and density. In its Initial Comments in this proceeding, filed January 29, 1997, Sprint included two exhibits showing scatter diagrams (together with a least-squares regression curve), that plot costs-per-line against the number of lines connected to the switch. These data reflect all of the switches deployed by the Sprint LTCs; each point on the scatter diagrams represents a host switch together with any remotes that subtend the host. These data show that unit costs rise sharply as the number of lines connected to the switch falls below 20,000. Those exhibits are appended to these Comments as Exhibits 1 and 2. Sprint has no reason to believe that the clear inverse relationship between switching costs and density that its LTCs experience is atypical for other price cap LECs. On the contrary, LECs that serve higher-density major metropolitan areas may experience even greater geographic variation of local switching costs than is true for the Sprint LTCs. Although none of the states in which the Sprint LTCs operate has explicitly approved or mandated deaveraged local switching UNEs, the Sprint LTCs offer such deaveraged UNEs in 15 of their 18 states either by tariff or in their standard term sheets for interconnection with CLECs.

Thus, Sprint urges the Commission to permit cost-based geographic deaveraging of the per-minute local switching rate element. As in the case of the CALLS plan, Sprint believes it makes sense to require deaveraging of the local switching rate element for access to be contingent on state deaveraging of the local switching UNE, and that, for

access purposes, a maximum of four zones should be sufficient. However, since the relationship between switching costs and density may differ from the loop-cost/density relationship, the zones for switching need not be the same zones used for loop deaveraging.

### **III. PHASE II PRICING FLEXIBILITY FOR SWITCHED SERVICE**

In ¶¶201-206 of the Further Notice, the Commission asks for comment on the appropriate triggers and relief for Phase II pricing flexibility for switched access common line and traffic-sensitive services. As will be developed in more detail in Section V. of these comments below, Sprint does not foresee at this time the emergence of any genuine competition for switched access services. Rather, switched access is a bottleneck byproduct that a LEC gains when it sells switched local service to the end user. Once that sale is made, any IXC that wishes to carry long-distance calls to or from that end user must deal with the end user's chosen LEC. Competition among LECs is focused on end users; LECs have every incentive to charge as little to end users as possible and, if permitted to do so by regulatory authorities, make as much as they can by exploiting their access bottleneck. Thus, Sprint fails to see what use an ILEC would make of switched access pricing flexibility, other than as an opportunity to craft charges that would benefit the ILEC's long-distance affiliate vis-à-vis unaffiliated long-distance carriers. Consequently, Sprint opposes any further switched access pricing flexibility for ILECs and does not believe appropriate Phase II triggers and relief exist. However, Sprint will comment briefly on three issues raised in this section of the Further Notice.

In the Fifth Report and Order (¶114), the Commission determined to exclude mobile wireless services from the calculation of the Phase I trigger because of the

difficulty of assessing whether wireless service serves as a substitute for, and thus competes with, wireline service. In ¶202 of the Further Notice, the Commission asks whether mobile wireless services should be excluded from the Phase II calculus as well. The answer is clearly yes. Sprint fails to see any basis for reaching a different conclusion for Phase II than for Phase I. The calculation problem relied on in ¶114 is the same in both instances. Thus, any determination to reach a different result for Phase II would clearly be subject to challenge as arbitrary and capricious.

More fundamentally, there is no reason to view mobile wireless service as an effective competitive substitute for wireline service. As a corporation whose PCS subsidiaries hold licenses that can reach virtually the entirety of the U.S. population, but whose wireline LECs only serve just under 8 million access lines, Sprint would be delighted if mobile wireless were an effective competitor of wireline service. But that clearly is not the case. Although mobile wireless service may be having some effect on the volume of wireline calls,<sup>7</sup> there is no reason to believe that mobile wireless consumers, to any significant degree, are abandoning their subscription to wireline services altogether.

With respect to the Commission's request (in ¶206) for comment on the relationship between pricing flexibility for common line and traffic-sensitive services and the receipt by price cap LECs of universal service support with respect to these services,

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<sup>7</sup> The overall impact of wireless services on wireline call volumes is unclear. Undoubtedly, many mobile wireless calls are calls that, absent the wireless service, would be made (perhaps at a different place and time) from a wireline phone instead. Many other wireless calls, by the very nature of the communication, are calls which would never have been made if they could not have been made at the moment the wireless user wished to place the call, and if no other type of telephone service was available at that time and in that location. Furthermore, the growth in wireless services may actually stimulate wireline calls, both in terms of calls from a wireline phone to a wireless phone and vice versa, and even calls between wireline phones that are an outgrowth of an earlier call to or from a wireless user.

all such support these LECs receive today is for intrastate services, and thus there is no such relationship.

Finally, with respect to questions relating to the advantages or disadvantages of common line cost recovery from IXCs (*see* ¶205), as discussed above, the CALLS plan essentially eliminates all such recovery from IXCs and puts the recovery of common line costs where it belongs: on the person choosing to subscribe to the network and choosing which carrier it wants to provide its local service.

#### **IV. SWITCHING ISSUES**

##### **A. Local Switching**

In ¶¶211-216, the Commission considers whether to require capacity-based charges (*e.g.*, DS1 equivalents) rather than per-minute charges for local switching. In ¶¶217-22, the Commission further asks, if such a structure were adopted, whether it would be appropriate to introduce a “q” factor in the traffic-sensitive PCI formula similar to the “g” factor in the common-line PCI formula so as to reflect growth in the number of trunks in the price cap formula, and whether to make a one-time downward adjustment of the traffic-sensitive PCIs to correct for past earnings imbalances in the traffic-sensitive basket.

Sprint believes the CALLS proposal, if adopted, would obviate the need to undertake the rate structure changes proposed in this section of the Further Notice. First, the CALLS proposal would shift 25% of the usage-sensitive local switching revenue requirement to the common line basket (and to the SLCs), in part to reflect the fact that it is the end user, rather than the IXC, that chooses the local switching provider and thus can be considered, at least in part, the “cost-causer” with respect to switching. Sprint also

believes that this shift makes sense for other reasons as well. In the past, the price cap productivity “x” factor has been applied uniformly across all baskets, thus effectuating the same annual percentage reductions in the price cap index for all baskets. In fact, however, productivity growth is not uniform: there have been far greater productivity advances in switching – through technological advances in switching equipment – and transport – as a result of the economies of the use of fiber optics in interoffice transmissions – than is the case with the relatively static, largely copper, loop plant. As a result, the profitability of the traffic-sensitive basket is far higher than the profitability of the common line basket. Stated differently, the permitted price cap rates for local switching are well above forward-looking costs, while the price cap LECs’ common line revenues are very close to – and in some cases may be below – the interstate-allocated portion of forward-looking loop costs. This 25% shift of MOU switching costs to the common line thus corrects for the unforeseen distortion that arose from the Commission’s initial decision to apply the “x” factor uniformly to all baskets.

Equally important, the CALLS proposal, by substantially reducing the level of local switching charges, makes the structure of such charges far less important. The need to fine-tune the rate structure to make it more cost causative simply can become more trouble than it is worth.

Sprint believes this is certainly the case for local switching. Quite apart from the conceptual difficulties discussed below, capacity-based rates for the local switching access element raise other thorny issues as well. These include the proper equivalency between a DS3 group of trunks and trunks in DS1 units. Adoption of an erroneous equivalency factor could unwarrantedly raise (or lower, as the case may be) the costs of

an IXC purchasing a DS3 vis-à-vis the costs of an IXC purchasing a DS1. Similarly, the Commission would have to decide whether to require LECs also to make a minute-based alternative available, particularly to accommodate carriers that simply lack the traffic volumes to purchase and efficiently utilize a DS1 into an end-office switch.<sup>8</sup> That would raise an equally complex issue of determining the right relationship between the MOU rate and the DS1 charge. Moreover, a dual rate structure would greatly complicate the billing and other administrative burdens on ILECs, since, in every switch, they would have to have two methods for ordering and billing for the same function operating side-by-side.

Sprint also believes the underpinning for local switching on a capacity basis has some inherent difficulties. These difficulties are best illustrated by Exhibit 3, which is a simplified diagram of a typical digital switch (a DMS-100). On the trunk side of the switch, which is the relevant side for access purchased by long-distance carriers, the DS1s terminate on a Digital Trunk Controller (“DTC”), which then is connected to the switching fabric (the Network Module) through a varying number of DS-30 links (each having a capacity of 30 voice-grade lines). Thus, up to 20 DS1s, or 480 voice-grade trunks, can be concentrated on as many as 480 trunk equivalents, or as few as 120 trunk equivalents, depending on the ILEC’s estimate of the number of links into the Network Module needed to meet peak-hour demand. Furthermore, the DS1 trunks of an IXC must contend with those of other IXCs for switching resources at the peak period. As a result, the IXC is not getting any true guarantee of switching capacity from a capacity-based

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<sup>8</sup> Sprint does not believe it is likely that a local switching resale market would develop (*cf.* ¶216). In restructuring local transport rates, the Commission similarly hoped that smaller IXCs would “share” direct trunks, but as far as Sprint is aware, no such sharing has taken place.

charge. The amount of switching resources it actually receives are in part a function of the concentration the ILEC employs between the Digital Trunk Controller and the Network Module, and a function of the peaking characteristics of the traffic of the other IXCs. The only way to guarantee switching on a capacity basis would be to require each IXC to purchase the capacity of an entire Digital Trunk Controller and to be responsible for the links between the DTC and the Network Module. Given the capacity of the smallest DTC – 20 DS1s – such a requirement would impose high fixed costs on all IXCs and would grant a regulation-created scale advantage to the largest IXC vis-à-vis other IXCs. But requiring local switching, instead, to be charged for on the basis of the number of DS1s entering the DTC is really an illusory method of charging for switching on a capacity basis because, as explained above, the IXC has no real control over how much or how little capacity it is actually purchasing. In short, Sprint believes that the concept of charging for trunk-side switching on a capacity basis is conceptually flawed.

**B. Tandem-Switched Transport**

In ¶¶223-225, the Commission requests comment on whether tandem-switched transport, which is now offered on an MOU basis, should be charged for on a capacity basis instead. Sprint believes the idea of pricing tandem-switched transport on a capacity basis is as flawed as a capacity-based local switching charge, if not more so. By its very nature, tandem-switched transport involves the use of a common set of trunks by a number of different carriers (including the ILEC itself) to transport traffic between the tandem switch and a particular end-office, and it is ultimately within the sole discretion of the ILEC how to size the common transmission path between such offices. The purchaser of tandem-switched transport is not receiving any discrete amount of capacity;

rather, it is only receiving the right to send or receive calls – *i.e.*, minutes of use – between the two offices. IXCs have ample incentives to purchase direct trunks when they have adequate capacity to utilize such trunks efficiently. When they do not, there is no readily apparent means of constructing an equitable “capacity-based” charge for use of the common trunk bundle.

There is no reason for the Commission to be concerned about IXCs using common transport as overflow during peak periods (see ¶224). There is nothing inherently wrong with this practice. It is one that many IXCs have employed, without complaint from ILECs as far as Sprint is aware, for many years, and it is a practice that enables IXCs to make more efficient use of dedicated trunks, thereby lowering their costs of access and their rates to the public. Since ILECs have unchecked discretion under the Commission’s rules to determine the size of the common trunk bundle, and can base their rates for tandem-switched transport on their actual utilization,<sup>9</sup> they have ample means of ensuring that the overflow of peak period traffic by a particular IXC does not impair the quality of service on a particular trunk bundle, and that their total costs of providing common transport are recovered.

## **V. CLEC ACCESS CHARGES**

Perhaps the most important issue raised in the Further Notice, in terms of its long-run impact on the industry and, ultimately, consumers, is the issue of how to ensure reasonable access charges from facilities-based (including UNE-based) CLECs. As the Commission points out (¶183), at the time it adopted its initial order in this proceeding determining not to regulate CLEC access charges, it had no evidence CLECs were

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<sup>9</sup> See the First Report and Order in this proceeding, 12 FCC Rcd 15982, 16070-72 (1997) (subsequent history omitted).

attempting to charge access rates above ILEC levels. That was understandable, since at the time the Commission issued that order, less than nine months had elapsed since the issuance of the Local Competition Order, much of which was tied up in litigation, and in any event the painful process of negotiating interconnection agreements had barely begun. In Sprint's case, Sprint Long Distance did not begin to receive significant bills for access charges from CLECs until well into 1998.<sup>10</sup> However, the Commission, faced with a growing body of evidence that CLECs are charging unreasonably high access rates which thus far have not been constrained by the marketplace (*see* ¶238), made good on its promise in its First Report and Order herein<sup>11</sup> to revisit the issue of CLEC access charges if its original belief that CLECs were unlikely to charge more than ILECs was not borne out.

**A. The Level of CLEC Access Charges Is A Serious Problem**

The problem of excessive CLEC access charges is a real and growing one. Since CLEC access bills first hit Sprint's "radar screen" in the summer of 1998, Sprint has endeavored to employ a marketplace response by disputing billed amounts that exceed the amount that would have been billed by the ILEC serving the same geographic area. As of September 1999, Sprint had outstanding disputes with more than two dozen CLECs. That list has recently been growing by 2 or 3 CLECs every month. The total amount in dispute (again as of September) was \$15.5 million and growing at the rate of \$2.3 million per month. The rate of growth itself is also accelerating; Sprint's Access Verification personnel estimate that, based on recent trends, the disputed amounts will

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<sup>10</sup> For convenience, Sprint Long Distance will be referred to simply as "Sprint" in the remainder of this section.

<sup>11</sup> 12 FCC Rcd at 16142.

exceed \$3 million per month by year-end. While these amounts may be small in relation to Sprint's total access bill, they are too large to be ignored by a prudently managed company.

The level of charges some CLECs are seeking to collect could easily undermine the basis for current long-distance rates. These charges can be as much as 14 times those of the ILEC in the same geographic area. In absolute terms, several CLECs charge between 7 and 9 cents per minute for interstate access.<sup>12</sup> It may also be noted that nearly all CLECs impose the same charges for both originating and terminating traffic. Obviously, Sprint cannot make much of a profit on its "Nickel Nights" if it has to pay 8¢ on each end of a call, and the Commission cannot expect to see continuing price reductions by IXCs that are confronted with access charges at these levels from a rapidly growing body of CLECs.

Sprint is seriously concerned that this problem could easily mushroom in the future. To begin with, there simply hasn't been that much facilities- or UNE-based competition for local traffic up to this point, because of a combination of factors: the lack of business certainly created by the litigation that followed the Local Competition Order, lack of permanent UNE prices, lack of efficient ordering and provisioning systems from ILECs, etc. As these problems begin to be worked out, UNE-based competition can be expected to grow in the future to a much larger scale than it is now. Furthermore, a CLEC business strategy predicated on high access charges can enable a CLEC to grow much more rapidly than would otherwise be the case: by charging high access rates, it can offer local services at below-ILEC prices and thus take market share from the ILEC

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<sup>12</sup> CLEC prices are based on billed data as of September 1999. Sprint believes that nearly all, if not all, of the CLECs in question file access tariffs with the Commission, and their rates are a matter of public record.

much more rapidly than if it did not have the “war chest” provided by high access charges. In the local telephony market, there is no access competition. Rather it is all focused on providing retail service to end users. If you sign up the customer as a local customer, then you automatically become its access provider. Thus, CLECs have every incentive to compete for end users, but have no incentive to “compete” for the provision of interstate access to IXCs. In addition, just as one rotten apple can spoil a barrel, if one CLEC enters the market with high access charges, and can as a result offer attractively low prices for retail services, other CLECs, even those that believe that high access charges are unjustified as a matter of principle, have no choice but to follow suit.

Indeed, not only would high access charges allow a CLEC to undercut the retail rates of the ILEC, there may be cases in which the CLEC could give away the local service or even kick back some of the access charges to the customer. The web site of one CLEC, whose tariffed access charges are in the range of 8 cents per minute, discloses an “800 Access” “partnership program to facilities such as hotels or convention centers, which generate significant long-distance and/or 800 traffic.” See Exhibit 4. The Commission should ask itself whether this is the type of competitive behavior it wishes to encourage. Having struggled long and hard to lower ILEC access charges, it makes no sense for the Commission to allow CLECs to distort local competition by imposing high charges for access, which can only induce ILECs to seek to turn back the clock on access reform and impose high charges of their own simply to maintain a competitive posture in the local retail market, which is where they really compete.

The reason for this CLEC behavior is quite simple: a CLEC has as much of a bottleneck on access as does the largest of ILECs. Once a consumer decides to take his or her local service from a particular LEC, that LEC automatically becomes the bottleneck for IXCs wishing to complete calls to, or receive calls from, that consumer (except in those instances, confined to larger businesses, where the consumer has enough long-distance traffic to justify the cost of a separate, special access line connecting its premises directly with the long-distance carrier's network). Attached as Exhibit 5 is "An Economic Analysis of CLEC Pricing," prepared by Drs. Jan Acton and Stanley Besen of Charles River Associates, who conclude that CLECs not only have a bottleneck, but also the incentive to exploit it. They also conclude that current Commission policies encourage CLECs to overcharge for access, resulting in consumer welfare losses, and that market forces are unlikely to constrain CLEC behavior. As they succinctly put it (Exhibit 5, p. 10, footnote omitted),

First, a CLEC can act as a monopolist because it controls an essential component of the system that provides interexchange calls. Once the user has selected a particular LEC, calls to or from that user generally cannot be completed without that LEC's involvement. Second, customers decide to place (or accept) a call based on the price they face. Payments that take place between a LEC and an IXC do not affect a user's behavior unless they affect the prices the user faces. Third, any amount that a CLEC charges for access is averaged into the per minute charges imposed by IXCs. As a consequence, the overall per minute charge by the IXC rises by less than the amount any CLEC charges for originating or terminating access.

Sprint submits that there can be no justification for allowing CLECs to charge IXCs access rates that exceed those of the ILECs with whom they are competing. To be sure, different types of carriers providing different types of services using different

technologies may have different cost characteristics and are entitled to recover the efficient costs of providing their services. For example, mobile wireless carriers – which the Commission held in the Fifth Report and Order do not provide a substitute for wireline local service – have substantially higher traffic-sensitive costs due to the nature of the technology they employ, and should not be artificially constrained by the efficient cost levels of a different group of carriers, providing different services with different technologies. But that is not what is before the Commission here. Rather, the issue here involves wireline CLECs, using essentially the same technology as wireline ILECs – indeed, often purchasing UNEs from the ILECs. Such CLECs can be expected to have a mature level of costs that is no higher than those of the ILECs with whom they are competing. If a CLEC's mature costs exceed those of the ILEC, it is an inefficient entrant that has no proper role or function to play in the marketplace.

Admittedly, all new entrants have start-up costs, but they cannot expect to enter a market, of their own free will, as competitors and yet attempt to recover their start-up costs from customers. That is the function of investment bankers and shareholders. To be sure, when Sprint entered the long-distance market, it suffered from substantial start-up costs and lacked the scale of economies of AT&T. Sprint incurred sizable losses – sometimes in excess of \$1 billion per year – in its early years. But Sprint did not attempt to compete with AT&T by charging rates that exceeded AT&T's rates by ten- or twenty-fold. Thus, the Commission correctly concluded (§244) that high CLEC start-up costs cannot be used as the basis for high access charges.

It is also true that some ILECs charge more for access than others, and the charges – particularly of smaller independent LECs that serve low-density rural areas – can be in

the same ballpark as the access charges imposed by many CLECs. However, any attempt to justify CLEC access charges on the basis of the rates charged by such ILECs is clearly an improper apples-to-oranges comparison. Nearly all CLECs offer their services not in the rural areas served by these ILECs, but rather in high-density metropolitan areas competing with a different set of ILECs.

ILEC rates are not “perfect” rates for access – they are widely acknowledged to be excessive in relation to economic costs – but they are the only reasonable benchmark against which to judge the access rates of a CLEC. The ILECs’ access rates are subject to regulation, and if the regulatory authorities have determined to allow the ILECs’ rates to remain above forward-looking efficient costs, there is no reason to require CLECs to charge less than the ILEC is permitted to charge.<sup>13</sup> At the same time, allowing CLECs to charge more than ILECs for access would defeat the purpose of competition. Early in its existence, the Commission recognized that the Communications Act does not guarantee that each carrier in a competitive market will recover its costs.<sup>14</sup> The Commission later explained that basing rates even on industry average costs is contrary to the public interest:<sup>15</sup>

This is so because the adoption of an industry-wide approach would, by averaging the requirements of competitors, deprive the public of the opportunity for rate benefits which were one of the reasons for introducing competition in the first place. An industry approach to ratemaking is in effect a guarantee to the less competent or less efficient operator that his failure to measure up in the competitive rate will be rewarded. The industry approach would thus serve to deprive the public of the benefit of competition rate-wise.

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<sup>13</sup> Such a policy would allow ILECs to undercut the CLECs’ retail local charges, giving the ILECs an unfair advantage in the marketplace.

<sup>14</sup> See *Postal Telegraph-Cable Company, et al.*, 5 FCC 524, 529 (1938). This policy was reiterated a decade later in *Charges for Communications Service Between the United States and Overseas and Foreign Points*, 12 FCC 29 (1947).

<sup>15</sup> *The Western Union Telegraph Company*, 25 FCC 535, 580 (1958) (footnote omitted).

This decades' old policy is still as valid now as when it was first adopted.

**B. The Commission Should Adopt An ILEC Ceiling/Escape-Valve Policy**

Sprint is mindful of the Commission's desire (*see* ¶256) to act in the least intrusive means to correct market failures with respect to CLECs, and Sprint supports that goal. But at the same time, the Commission must take action that is effective in curbing CLEC practices that exist today. Of the possible approaches to CLEC access charges, Sprint believes the least intrusive one, consistent with an effective check on the CLECs' exploitation of their access bottleneck, is to establish the relevant ILEC access charges – that is, the access rates charged by the ILECs with whom the CLEC is competing for local service – as an absolute ceiling on what CLECs can charge IXCs for access, but with an “escape valve” similar to that proposed in ¶¶249-252. Under the “escape valve” that Sprint supports, the CLEC could charge additional amounts for access, in any fashion it chooses (*e.g.*, flat-rated charges instead of MOU-based charges) so long as those amounts are charged by the CLEC to its own end user. Drs. Acton and Besen conclude (Exhibit 5, p. 16) that this alternative “goes a long way to addressing the problem of monopoly pricing identified above, while minimizing the amount of regulatory interference with market forces.”

Using the ILEC rate as a ceiling on access charges to IXCs is sound policy where the ILEC rate is an appropriate benchmark for the other carrier. To be sure, the ILEC rate is not an appropriate benchmark for all carriers and all services. As noted above, mobile wireless carriers, for example, offer different services over technology with very different traffic-sensitive cost characteristics, and the ILEC's cost, or access charge, has no relationship to the efficient cost of the access provided by such carriers. Thus, there is

no sound economic basis for tying wireless carriers' access charges to those of the ILEC. However, the ILEC charge is clearly an appropriate benchmark for wireline CLECs, whose services and technology are not materially different than those of the ILEC and indeed are often provided in large part over UNEs purchased from the ILEC itself. As discussed above, for these CLECs, charges to IXCs for access in excess of those of the ILEC reflect either inefficient entry or the CLEC's attempt to exploit its access bottleneck, neither of which are consistent with sound economics or sound public policy.

If the Commission is unwilling to impose the ILEC charge as an absolute ceiling on these wireline CLECs, then it is only fair to require the CLEC to charge its own end users, rather than IXCs, for any excess access charges it wishes to collect. It is the end user who decides which LEC to choose for local service, and hence for access, and if the CLEC wants to charge more than the ILEC, that charge should be levied on the customer who has the power to choose the LEC. Thus, even on terminating traffic to the CLEC's customer or on toll-free traffic originated by the CLEC's customer, it is the CLEC's customer, not the calling party (in the case of terminating calls) nor the paying party (in the case of toll-free calls) to whom the additional amounts would be billed. Since those parties lack control over the choice of the access provider, there is no sound policy basis for requiring these parties to bear the additional costs occasioned by the CLEC customer's choice of carrier.

Sprint's experience is that there is rarely any difference between charges by CLECs for originating and terminating traffic. Indeed, data from the five CLECs who have the largest amounts in dispute with Sprint show that only 7% of the traffic is 1+ originating traffic, while 44% of the traffic is toll-free originating and 49% is terminating.

Thus, charges for traffic in both directions must be encompassed by the Commission's decision here.

Another possible solution – a variation on the Bell Atlantic proposal described in ¶253 – would be to adopt a rule, equally applicable to ILECs and CLECs alike, that they must recoup all of their access costs from 1+ originating traffic – *i.e.*, they cannot charge for terminating calls or for the originating leg of a toll-free-type call. While this would dampen the incentives of both ILECs and CLECs to exploit their access bottleneck, it would be a marked departure from today's access charge regime. Clearly, the lesser measure proposed by Bell Atlantic – mandating some fixed relationship between originating and terminating access charges – has thus far been proven not to be effective, since, as noted above, virtually all CLECs impose identical rates for origination and termination.<sup>16</sup>

**C. Other Proposals To Deal With CLEC Access Charges Are Problematic**

If the Commission determines not to adopt the ILEC ceiling/escape-valve approach that Sprint recommends, it must come up with some other effective alternative to control CLEC access charges. Two possibilities on which the Commission invited comment are allowing an IXC to decline a CLEC's access service or to allow the IXC to impose surcharges on calls involving a CLEC. Both of these alternatives are lawful under the Act and both should be allowed if the Commission fails to adopt a more direct

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<sup>16</sup> USTA's notion (see ¶240) that even terminating access charges are subject to marketplace pressures since a pair of callers in repeated communications would have an incentive to alter their pattern of calls to favor the lower-priced alternatives – is unrealistic. USTA's theory is predicated on the assumption that the CLEC will charge more for terminating access than for originating access, which appears not to be the case, and more fundamentally assumes that callers are aware of the access charges their local carriers charge to their long-distance carriers and that this is a frequent topic of conversation. Drs. Acton and Besen conclude that the USTA hypothesis "fails on both theoretical and empirical grounds." See Exhibit 5, p. 9.

approach, but neither is desirable as a means of curbing the exercise of the CLEC bottleneck.

### **1. Refusal to purchase access.**

Allowing an IXC to refuse to purchase access from a CLEC is undesirable in several respects, but clearly is a lawful alternative as a means of combating high CLEC access charges. It cannot seriously be argued that an IXC has a duty to purchase access from a CLEC regardless of the terms and conditions the CLEC seeks to impose on such interconnection. The Commission has plainly held that a carrier cannot subject another carrier involuntarily to its tariff.<sup>17</sup> Thus, as Sprint argued in support of the AT&T declaratory ruling petition, it would be reasonable for the Commission to declare that IXCs can refuse to interconnect with CLECs in circumstances where the CLECs are seeking to impose access charges in excess of ILEC levels.<sup>18</sup> Yet, this “marketplace” alternative is every bit as “regulatory” as Sprint’s preferred alternative: both involve the adoption of the ILEC access charges as a benchmark for what the CLEC may charge. Sprint believes that the obligation of all carriers to interconnect, under Section 251(a), must be read in conjunction with the requirements of Section 201(a), which contemplate that interconnection can only be required on Commission-supervised terms. Sprint does not believe it would be consistent with the statutory scheme to allow carriers to refuse to interconnect with each other for no good reason. At the same time, however, one carrier cannot be forced to interconnect with another carrier regardless of the reasonableness of the terms and conditions for interconnection. Thus, relying on individual carrier decisions

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<sup>17</sup> *Capital Network Systems, Inc.* 6 FCC Rcd 5609 (CCB 1991), *application for review denied*, 7 FCC Rcd 8092 (1992), *aff’d Capital Network Systems, Inc. v. FCC*, 28 F.3d 201 (D.C. Cir. 1994).

<sup>18</sup> See Reply Comments of Sprint Communications Co. LP, filed December 22, 1998 in CCB/CPD No. 98-63.