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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	CC Docket Nos. 96-98, 95-185
Reciprocal Compensation for CMRS Providers	)	WT Docket No. 97-207
	)	

COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTA") hereby files its comments in response to the Commission's *Public Notice*[1] referencing the request for clarification filed by Sprint PCS regarding reciprocal compensation for CMRS providers.

Sprint PCS argues that CMRS providers should receive reciprocal compensation based upon their specific traffic sensitive costs. Sprint PCS states that "CMRS carriers provide local telecommunications services similar to those furnished by landline local exchange carriers, except that the services are mobile and are supported by radio spectrum rather than copper loops. As a result, CMRS networks are vastly different than landline networks: they use different technologies with different engineering economics, and accordingly, have fundamentally different cost structures."[2] Sprint PCS contends that the "Commission never performed ... additional cost analysis for mobile networks, which use mobile switching centers, cell cites and

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1 Public Notice DA 00-1050, released May 11, 2000.

2 Sprint PCS *A Legal Framework for CMRS Call Termination Cost-Based Compensation* at 1 (February 2, 2000).

spectrum instead of tandem switches, end offices, and copper loops"[3] used by wireline providers of telecommunications services. In addition, Sprint PCS asserts that the "Commission has never ruled, much less 'made clear,' that mobile telephony providers are limited to recovering their switching costs and may not recover their other traffic sensitive costs of call termination."[4] According to Sprint PCS, the Commission must provide guidance to state Commissions by specifying that CMRS providers are entitled to receive reciprocal compensation when using traffic sensitive elements of their mobile network to switch or terminate local traffic to mobile customers that originates on another carrier's network. Sprint PCS identifies these traffic sensitive elements as CMRS mobile switching centers, base stations controllers, cell sites or base transceiver stations, transport to cell cites, and wireless radio spectrum used in switching and terminating local calls to mobile customers.[5]

USTA believes that neither Sprint PCS nor any other CMRS provider is entitled to receive additional reciprocal compensation for network components that are functionally equivalent to a wireline carrier's loop when they are used to terminate traffic to mobile customers that originates on other carrier's networks. The Commission's prior rulings establish that Sprint PCS is not entitled to additional reciprocal compensation.

I. PUBLIC POLICY ISSUES

Notably absent from Sprint's petition is any estimate of the reciprocal compensation rate that would result from its proposal. Although USTA is not in a position to offer an estimate at this time, USTA suspects that the resulting rate would be far in excess of, and completely out of

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3 Sprint PCS Letter at 2 (February 2, 2000).

4 *Id.* at 4.

5 *Id.* at 3.

step with, reciprocal compensation rates for wireline traffic and with local rate structures for wireline traffic.[6] In this respect, Sprint's proposed modifications to the reciprocal compensation rules for wireless traffic, are not only at odds with the Commission's existing pricing rules, but raise broader public policy issues that the Commission must address as a threshold matter. Specifically, if the Commission were to conclude that CMRS is a fundamentally different technology than wireline service, for reciprocal compensation purposes, it would first have to consider how reciprocal compensation regimes should be structured when different technologies, with dramatically different cost structures, are used at the originating and terminating end of a call. Hypothetically, does it make sense, for example, to impose a compensation rate ten (10) times higher than the rate of the other carrier involved in the transaction? What impact would that have on local rates and local rate structures? Should wireless carriers recover any, much less all of their traffic-sensitive costs through reciprocal compensation, given that they are already paid by their end users for terminating traffic? These are critical issues that cannot be swept under the rug.

II. THE COMMISSION'S PRIOR ORDERS CONSIDERED AND REJECTED THE CURRENT RECIPROCAL COMPENSATION ARGUMENTS RAISED BY SPRINT PCS

The Commission's local competition Order addressing reciprocal compensation issues noted that CTIA, Sprint Spectrum and APC made arguments that CMRS providers should be

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[6] These issues are, of course, also raised in the context of inter-carrier compensation for dial-up Internet traffic. To the extent reciprocal compensation requirements are extended to interstate Internet traffic, the reciprocal compensation payments made by the originating carrier can exceed the revenues it receives from its end users.

treated differently than other services "because of different traffic flows and different termination costs."[7] These arguments were rejected some four years ago.

Sprint PCS claims that state commissions "have encountered some difficulty" in applying the Act and the Commission's rules. In the examples cited by Sprint, state commissions have acted in accordance with Section 51.701(c) and (d) by treating "equivalent facilities" in a consistent manner and by maintaining parity between wireline carriers and CMRS providers in determining what constitutes additional costs in which reciprocal compensation may apply. State commissions need no additional guidance to apply the Commission's rules applicable to reciprocal compensation received by CMRS providers. Asymmetrical reciprocal compensation is justified only when the cost of the connecting carrier exceeds the cost of the incumbent LEC. Sprint PCS should make its case for additional reciprocal compensation before state commissions by providing cost studies necessary for the states to make an appropriate determination.

III. SPRINT HAS FORGOTTEN ITS PAST

Sprint PCS argues that the Commission did not adequately consider the issues it now raises. Sprint PCS is simply incorrect. Affiliated companies of Sprint PCS raised these issues

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[7] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* at ¶¶1011, 1015 (1996).

four years ago. The Commission was well aware of these arguments when it adopted its current reciprocal compensation regulations in 1996.

In 1996, Sprint Spectrum and American Personal Communications ("APC"), predecessors to Sprint PCS, filed comments in both the local competition proceeding and the LEC-CMRS interconnection proceeding.[8] In the local competition proceeding, Sprint Spectrum and APC argued in favor of bill and keep as the preferred means of satisfying the reciprocal compensation obligations of the 1996 Act. According to its thinking in 1996, Sprint Spectrum and APC argued that "The Commission clearly can find that bill and keep is a reasonable means ... of mutual compensation, regardless of whether such a system is voluntary. Consequently, the Commission or a state may adopt bill and keep consistent with the 1996 Telecommunications Act."[9] As Sprint Spectrum and APC explained their support for bill and keep in the local competition proceeding:

> As we outlined in comments submitted in response to the *CMRS Notice*, Sprint Spectrum and APC strongly support the use of bill and keep ... since its serves as a sound proxy for the actual costs involved. Four major policy objectives support bill and keep: (1) it can be implemented quickly....; (2) it is simple and easy to administer, thereby conserving both industry and Commission resources; (3) it promotes the goal of an open, competitive market by facilitating co-carrier relationships; and (4) it is fair to CMRS providers ....[10]

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[8] Joint Comments of Sprint Spectrum and American Personal Communications, CC Docket No 96-98 (May 16, 1996), Reply Comments (May 30, 1996); Joint Comments of Sprint Spectrum and American Personal Communications, CC Docket No. 95-185 (March 4, 1996), Reply Comments (March 25, 1996). Jonathan M. Chambers, the author of the Sprint PCS current filing under review, was listed on the 1996 filings in CC Docket Nos. 96-98 and 95-185 as Vice President of Public Affairs for Sprint Spectrum.

[9] Joint Reply Comments of Sprint Spectrum and APC at 24, CC Docket No. 95-185 (March 25, 1996).

[10] Joint Comments of Sprint Spectrum and APC at 12, CC Docket No. 96-98 (May 16, 1996).

In joint reply comments, Sprint Spectrum and APC stated that "APC's own experience ... demonstrated that CMRS providers – particularly PCS providers – have the potential to achieve traffic balance with LECs. Accordingly, bill and keep is a fair and appropriate proxy for a policy of mutual, reciprocal trade of traffic between CMRS providers and LECs."[11]

Sprint Spectrum and APC also commented on two additional issues: (1) CMRS technology versus wireline technology; and (2) the nature of the traffic between CMRS providers and wireline providers for purposes of reciprocal compensation arrangements. In joint comments filed in the local competition proceeding regarding the CMRS technology, Sprint Spectrum and APC stated:

> A distinction between CMRS providers and wired competitors is based not on the technology they use to provide service to customers but on the service offered by CMRS providers and the jurisdiction created over them by the Communications Act .... Thus, Section 332(c)'s provision of different regulatory treatment for CMRS providers is a product of Congress' evaluation of the interstate characteristics of the service, not the technology, provided by CMRS providers"[12]
>
> Establishing specific policies for LEC-CMRS interconnection does not reflect any favoritism to the technology utilized by CMRS providers to serve their customers. Rather, honoring the explicit mandates of the 1996 Act and Section 332 simply implements the existing statutory scheme. The Commission cannot ignore this statutory distinction."[13]

According to its legal memorandum filed February 2, 2000, Sprint PCS argues that "CMRS carriers provide local telecommunications services similar to those furnished by landline local exchange carriers ("LECs"), except that the services are mobile and are supported by radio

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[11] Joint Reply Comments of Sprint Spectrum and APC at 12-13, CC Docket No. 96-98 (May 30, 1996).

[12] Joint Comments of Sprint Spectrum and APC at 3, CC Docket No. 96-98 (May 16, 1996).

[13] *Id.* at 4.

spectrum rather than cooper loops. As a result, CMRS networks are vastly different than landline networks: they use different technologies with different engineering economics, and accordingly, have fundamentally different cost structures."[14] Sprint PCS asserts that "In the end, it is a futile exercise to attempt to compare 'equivalent facilities' between particular network components utilized in landline and CMRS networks, given that fixed and mobile carriers use such different technologies with different engineering economics.[15] Yet Sprint PCS predecessor companies did engage in such a "futile exercise" four years ago. APC filed separate comments in the LEC-CMRS interconnection proceeding. These filings are clearly at odds with its successor company Sprint PCS arguments raised in this proceeding regarding the operational nature of CMRS networks and wireline networks. Contrary to its arguments in this proceeding that CMRS networks are uniquely different from wireline networks in transporting and terminating calls, APC argued four years ago that its PCS network was the functional equivalent of an ILEC network in the manner in which calls were originated and terminated. In Comments filed in 1996, APC stated:

> APC is the nation's first operational broadband PCS provider. It is submitting these Comments in order to share its real world experience with the Commission and establish factual predicates that will help the Commission develop an economically efficient reciprocal compensation policy.... ***APC's network performs the same functions as a LEC network in terminating calls***.[16]

APC explained at length, through text and a diagram, how its network was the functional equivalent of Bell Atlantic's network.

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[14] Sprint PCS *A Legal Framework for CMRS Call Termination Cost-based Compensation* at 1 (February 2, 2000).

[15] Sprint PCS Letter at 3 (February 2, 2000).

[16] APC Comments at 2, CC Docket No. 95-185 (March 4, 1996).

> When a call to an APC subscriber is originated on Bell Atlantic's network, it is carried from a Bell tandem to APC's gateway mobile switching center ("MSC") over two-way trunks connecting the two switches (entrance facilities). The gateway MSC functions as a tandem switch, concentrating and distributing traffic to the switch serving the CMRS customer at that moment ("the MSC"). These switches then send the call to one of several Base Station Controllers ("BSC") over trunks that are equivalent to LEC transport. Each BSC, in turn, handles calls to and from mobile units within range of the base stations controlled by the BSC. The BSC to base station trunk can be considered either transport or part of the end user "common line." Finally, the air link between base station and handset is equivalent to the local loop. These network elements are depicted in the diagram on the next page.[17]

Regarding traffic flows between wireless and wireline networks, APC stated four years ago that traffic flow to its network versus that flowing to wireline carriers was relatively even with 42 percent of calls "landline-originating, mobile terminating," compared with 58 percent of calls "mobile-originating, landline-terminating."[18] APC also stated that it expected that the majority of cellular/LEC calls terminating on the ILEC network would even-out once the Commission "establishes a compensation mechanism that recognizes CMRS providers and LECs as peers and removes economic obstacles to land-mobile calling...."[19] In addition, APC stated that it "expects that most or all broadband PCS providers will experience similar traffic flows,

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17 *Id.* at 8, CC Docket No. 95-185 (March 4, 1996).

18 *Id.* at 9.

19 *Id.* at 9, note 15. Air links, or spectrum, is thus the equivalent of the local loop. In its comments filed in the local competition proceeding, CTIA argued that "CMRS use significantly different technologies to provide service to end-users than LECs and other CLECs. The difference ... produces important distinctions warranting separate treatment. Two factual distinctions are particularly important: different traffic flows and different traffic termination costs. There currently exists an imbalance in traffic volumes between LEC to cellular and cellular to LEC traffic. This is due, in part, to the technical structure of cellular networks." *See* CTIA Comments at 7, CC Docket No. 96-98 (May 16, 1996). It is clear that Sprint PCS, and the CMRS industry, cannot argue that the Commission did not weigh these same arguments some four years ago in two separate proceedings, before adopting its current reciprocal compensation regulations.

given the tremendous success of APC's service. In addition, cellular carriers will face substantial competitive pressures to modify their service to respond to PCS, which should likewise cause cellular/LEC traffic flows to even out."[20] APC reasoned that "the Commission cannot reasonably expect traffic flows to be truly even until there is true parity between CMRS providers and LECs - - including reciprocal compensation and number portability. That is, even traffic flows are a consequence of, not a precondition to, the adoption of bill and keep compensation."[21] As APC concluded "each carrier would bear its own cost of terminating calls. As a result, each carrier would be motivated to lower those costs as much as possible, since it could not be assured of forcing its competitor to subsidize inefficiencies."[22] APC described its proposal as its "zero-cost compensation model" ... [w]here CMRS and LEC networks perform the same functions in terminating calls ... share the cost of entrance facilities ... and recover its own costs of originating and terminating calls."[23]

By its filing, Sprint PCS is attempting to use reciprocal compensation to extract illegal subsidies from ILECs. The Commission should put an end to this game by denying the relief sought by Sprint PCS.

The Commission's current reciprocal compensation rules need no further clarification.

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20 *Id.* at 9, note 16.

21 *Id.* at 11.

22 *Id.* at 13.

23 *Id.* at 11. PCIA supported APC's zero-cost compensation model when it urged that "the Commission ...adopt [a] plan for terminating compensation by LECs and broadband providers that consists of zero-cost termination of traffic by both parties (*i.e.*, each party bears its own transport, switching, and local loop costs), and shared cost of the trunks interconnecting the mobile and LEC switches." PCIA Comments at 8, CC Docket No. 95-185 (March 4, 1996).

USTA is unaware of any filing from individual state commissions stating any confusion over how to apply the Commission's reciprocal compensation regulations to CMRS providers. The Sprint PCS filing is nothing more than a solution in search of a problem. Sprint PCS is attempting to use the Commission's process to further game the reciprocal compensation regime adopted by the Commission. The arguments raised by Sprint PCS in this proceeding are radically different from those it raised doing business as Sprint Spectrum and APC four years ago. The Commission should deny this attempt by Sprint PCS to use the Commission's process to gain a competitive advantage over wireline carriers by requiring ILECs and their customers to subsidize the CMRS industry through the payment of illegal reciprocal compensation.

Respectfully submitted,

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