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Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Access Charge Reform)

CC Docket No. 96-262

Complete Detariffing for)
Competitive Access Providers and)
Competitive Local Exchange)
Carriers)

CC Docket No. 97-146

COMMENTS OF SPRINT CORPORATION

Sprint Corporation on behalf of its operating subsidiaries hereby submits its comments in response to the Public Notice released June 16, 2000 in the above-captioned dockets (DA 00-1268), in which the Commission seeks additional comment on mandatory detariffing of CLEC interstate access services as a possible means of addressing market failures to constrain terminating access rates and whether such detariffing would provide a market-based solution to excessive terminating charges by encouraging the negotiation of terminating access charges between CLECs and IXCs.

As a threshold matter, the issue of excessive CLEC access charges is not confined to terminating rates. It is Sprint's experience that virtually every CLEC charges the same rates for originating access as it does for terminating access, and the overwhelming majority of originating access minutes come, not from outbound calls placed by customers pre-subscribed to the IXC, but rather from toll-free calls placed by CLEC local service customers. Under the Commission's access charge rules, originating toll-free

calls are to be charged the rates for terminating access,¹ but this rule has never been extended to CLECs. Thus, there is no reason to limit the Commission's concern over CLEC access charges simply to charges for terminating traffic, nor likewise any reason to limit the scope of any mandatory detariffing that may be ordered in these proceedings to charges for terminating traffic.

The issue of CLEC access charges has been of considerable concern to Sprint for some time, and should be to the Commission as well. Extrapolating from its own experience, Sprint believes that the difference between the tariffed access charges of the CLECs and the amounts charged by the ILECs serving the same territories could amount to \$1 billion on an annual basis for the long-distance industry, at current volume levels. This is a billion dollars that ultimately consumers will have to pay. To put it in context, this amount offsets half of the switched access reductions from the CALLS plan recently adopted in the Sixth Report and Order in CC Docket No. 96-262, *et al.* (FCC 00-193, released May 31, 2000). As CLECs continue to penetrate the local market, the magnitude of the problem will grow, not shrink. These excess access charges serve no valid public purpose. They either reflect inefficient entry, constitute excess profits, or provide a source of funds to cross-subsidize retail local service and thereby allow CLECs to compete unfairly with ILECs whose access rates are constrained by regulation.

As Sprint has argued for more than three years in Docket 96-262, because CLECs have the same bottleneck power over access by long-distance carriers to and from their local service customers that even the largest ILECs have, attempts to rely on "marketplace" solutions must ultimately prove unavailing. Instead, Sprint believes the

¹ See §69.105(b)(1)(iii).

best way to deal with the CLECs' bottlenecks over access is to directly regulate CLEC access charges by adopting a ceiling for such charges at the level of the ILECs with whom they compete for local service.

In the absence of such action by the Commission, mandatory detariffing of CLEC access charges may be a constructive step, provided the Commission requires public disclosure of all CLEC access arrangements with all IXCs.² Such mandatory detariffing would preclude CLECs from attempting to bind IXCs to charges they unilaterally impose through the filing of access tariffs and would instead require contracts between CLECs and each of the IXCs to whom they wish to provide access service.

However, the Commission should be aware that relying on bilateral negotiations could have important adverse public policy consequences as well. Specifically, such a process tends to favor the largest IXCs and the largest CLECs over their smaller competitors. The larger the IXC, the more the CLEC needs to be able to complete calls to that IXC's customers in order to have a viable local service offering to its own end users. Thus, it may be willing to accept less for access from the largest IXCs simply to have interconnection with them and attempt to extract higher access charges from smaller IXCs. These smaller IXCs are vulnerable to higher access charges because their long-distance services may be perceived to be inferior if they cannot complete calls to and from the CLECs' customers while larger IXCs (who have entered into favorable access agreements) can.

² Disclosure of this information through, for example, an Internet web site, as was required for IXC charges to the public in *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 14 FCC Rcd 6004 (1999), would be appropriate.

Likewise, if a particular CLEC enjoys a large local market share (such as might prove to be the case with AT&T, once it commences large-scale use of its extensive cable properties for local telephony), such a CLEC may be able to extract higher access charges from any given IXC than that IXC would be willing to pay a CLEC with a much smaller share of the local market. The IXC may be willing to turn its back on a CLEC that has just a few local customers, but could not afford to deny its customers access to a CLEC with a very large local market share, and thus could be in the position of agreeing to pay far more to the larger CLEC than to the smaller one.

Furthermore, with RBOC entry into the long-distance market beginning to take place on a significant scale, the RBOCs could attempt to distort local competition by instructing their long-distance subsidiaries not to agree to purchase access from CLECs, thereby making the CLECs' local services less viable.

In short, even with mandatory detariffing of CLEC access charges, Sprint believes it will be necessary for the Commission ultimately to decide the reasonable terms of interconnection between CLECs and IXCs and to monitor and enforce the statutory prohibition against unjust discrimination.

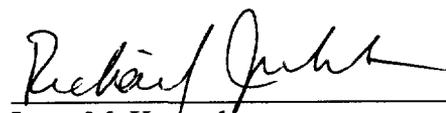
In the latter respect, the worst of all possible worlds might be mandatory detariffing with no required public disclosure of rates. One CLEC whose tariffed access charges are in the range of 8 cents per minute on each end of a call has publicly admitted that it has contractual arrangements with the two largest IXCs, but is attempting to enforce its tariffed rates against Sprint. It was only happenstance — the mention of one such contract in a quarterly earnings release by the CLEC — that Sprint happened to

learn that such contracts existed.³ Absent full public disclosure of such contracts, there would be no mechanism for the Commission to enforce, on complaint by others or on its own initiative, the anti-discrimination provisions of the Act, for no one would know that such discrimination is taking place. Given the undeniable bottleneck that CLECs possess over access to their customers from IXCs, it would be a clear abuse of discretion for the Commission to fail to require such disclosure.

In short, Sprint believes that mandatory detariffing of CLEC access charges, coupled with public disclosure of the terms of all agreements between CLECs and IXCs, may be a step better than no Commission action at all on CLEC access charges. However, the Commission must be aware that reliance on mandatory bilateral negotiations between CLECs and IXCs could distort both the long-distance market and CLEC competition by giving undue bargaining power to the largest IXCs and the largest CLECs.

Respectfully submitted,

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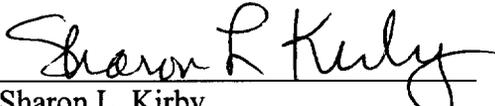
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³ See Opposition Brief of Sprint Communications Company L.P., filed March 10, 2000 in *MGC Communications, Inc. v. Sprint Communications Company L.P.*, File No. EB-99-MD-033, at 17. In response to that brief, MGC revealed that it had a switched access contract with MCI WorldCom, Inc. as well. See *id.*, Reply Brief of MGC Communications, Inc., filed March 17, 2000, at 7. Sprint is challenging the discrimination in these agreements *vis-à-vis* MGC's tariffed rates in *Sprint Communications Company L.P. v. MGC Communications, Inc.*, File No. EB-MD-00-007.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Corporation in CC Docket Nos. 96-262 and 97-146 was sent by hand on this 12th day of July, 2000 to the parties on the following list.


Sharon L. Kirby

July 12, 2000

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