

**Before the
Federal Communications Commission
Washington, D.C. 20554**

)	
In the Matter of)	
)	CC Docket No. 96-262
Access Charge Reform)	
)	
)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation, on behalf of its operating subsidiaries, hereby replies to the comments of other parties in response to the Common Carrier Bureau's December 7, 2000 Public Notice (DA 00-2751).

The Public Notice asked for comment on two issues: (1) should rural CLECs be exempt from a benchmark rate that might be viewed as more appropriate for CLECs operating in urban areas, and if so, how should such exemption be defined; and (2) how do current CLEC charges compare with ILEC charges for interstate access, and what elements of ILEC access charges should be included in such a comparison. Curiously, the comments of the CLECs are largely unresponsive to the questions posed by the Commission. Rather, these parties reargue issues raised in earlier notices, such as whether there should be mandatory detariffing of CLEC access charges, whether IXCs have the right to refuse to do business with CLECs who impose high access charges, etc.

These parties deny that there is a “problem” with CLEC access charges at all,¹ and at the same time attempt to justify the fact that many CLECs are charging much higher rates for switched access than the ILECs with whom they compete for local service. In the latter regard, the principal justification they offer is that they inherently lack the scale and scope economies of the ILECs with whom they are competing,² and that it would harm local service competition if they were held to the ILECs’ access charges.³ In addition, ALTS offers a new proposal that would cap non-rural access charges at 2.5 cents per minute and gradually lower the cap by .2 cents per minute per year.

Sprint will not burden the record with repetition of its prior responses to such arguments. Rather, Sprint will confine itself to just a few observations on these arguments and then discuss briefly the rural exemption issue.

First, it cannot be denied that CLEC access charges constitute a very real problem. ALTS itself concedes that CLEC access charges are high: a survey it conducted of 36 participating CLECs, including such well-known carriers as Allegiance Telecom, Focal Communications, ICG, Intermedia, Mpower, Teligent, Time Warner Telecom, Winstar and XO Communications (n.12 at 7-8), shows an outrageously high average composite rate of 4.27 cents on originating traffic and 4.26 cents on terminating traffic (*id.* at 7). AT&T reports (at 9) that in calendar 2000, billings to it from CLECs with supra-competitive access rates exceed the amount that it would have paid to ILECs by approximately \$125 million, and that this represents “almost a three-fold increase over

¹ *See, e.g.*, McLeod USA at 4; and CTSI/Madison River at 3.

² *See, e.g.*, ALTS at 8-10; Focal/RCN/Winstar at 22-24; CTSI/Madison River at 6-9; and McLeod USA at 6-8.

³ *See, e.g.*, Eschelon at 4; and RICA at 2-4.

1999.” WorldCom (at 3) states that nearly a third of the CLECs from which it purchases switched access charge rates that are more than five times higher than ILEC rates, and warns (*id.*) that unless the Commission takes action, “it is inevitable that IXCs will be begin blocking switched access traffic from CLECs with the highest charges.” Sprint continues to experience attempts by CLECs to impose extortionate access charges on it as well. Although Sprint has succeeded in reaching formal agreements with a number of CLECs during the past year, it is still being billed, by other CLECs, \$6.8 million more per month (based on the most recent data available) than the charges it is paying these carriers pursuant to implied contracts using the competing ILEC rate.^{4 5}

Second, the justification asserted by a number of CLECs for above-ILEC access charges—that they have higher inherent cost structures than the ILECs with whom they are competing—cannot be squared with sound public policy. Rather, assuming they are correct in asserting that they do have higher costs than ILECs,⁶ their argument begs the obvious question: **What public benefit is served by inefficient entry, and why should the costs of inefficient entry be borne by long-distance users rather than the CLECs’ shareholders or the retail customers that choose to do business with these high-cost**

⁴ This amount includes the charges for both interstate and intrastate calls.

⁵ It should be noted that the dollar amount of the difference between CLEC bills and ILEC rates experienced by AT&T—roughly \$10 million per month—is much closer to the CLEC/ILEC differential of \$6.8 million per month experienced by Sprint than Sprint’s and AT&T’s relative market shares would suggest should be the case. That AT&T’s relative excess CLEC billings are so much less than Sprint’s lends strong evidentiary support to Sprint’s concern that with mandatory detariffing (or even permissive detariffing) of CLEC access charges, large IXCs would have better luck in obtaining favorable settlements than smaller IXCs. *See* Sprint’s July 12, 2000 Comments submitted in this docket and CC Docket No. 97-146, at 3; and its October 29, 1999 Comments in this docket at 25-26.

⁶ No CLECs have submitted studies showing their economic costs in this proceeding.

carriers? As Sprint has argued extensively before in this proceeding, acceptance of the argument that these CLECs are entitled to recover their costs, even if their costs are higher than those of an efficient competitor, runs counter to Commission policies that date back more than 60 years. It also runs counter to common sense. The CLECs are putting the Commission in the position of shoring up entry that they themselves assert is inefficient by allowing them to exploit their access bottleneck. Sprint does not dispute that these carriers have a right to enter, but if they cannot expect to match the cost structure of the incumbent carriers, the cold hard reality is that they deserve to fail.

Adoption of a policy that would allow these carriers to charge more than the incumbent for access would logically require the Commission to become involved in other related issues, such as regulation of the CLECs' retail long-distance rates to avoid unfairly burdening IXC's with a disproportionate share of these carriers' higher costs or anticompetitive price squeezes. The Commission might also be forced to examine the CLECs' rates for local services to determine whether these carriers' pricing practices amount to unlawful cross-subsidies under Section 254(k) of the Act. Sprint understands the natural desire of the Commission to show that competition, as envisioned by the 1996 Act, is working, but it must resist the temptation to create contrived success stories by shoring up inefficient competitors at the expense of the public at large. The fact that

there are a number of CLECs today charging access rates at or below ILEC levels⁷ is a further reason why the Commission need not do so.

Third, the only notable aspect of the ALTS benchmark rate proposal is that it shows that the ALTS members are finally beginning to see the handwriting on the wall: the starting rate of 2.5 cents per minute is less than half the benchmark level of 5.8 cents per minute heretofore championed by ALTS.⁸ But the fact remains that the starting rate proposed by ALTS is way too high—three times the level of the access charges charged by the large ILECs⁹—and the downward glide path of .2 cents per year is far too shallow—it would take 9 years before the resulting rate would equal today’s ILEC levels. On top of that, its proposed ceiling is too loosely defined to represent an effective check on CLEC access rates. The 2.5 cent ceiling would include “all switching and transport components” (ALTS at 5), but that would not seem to preclude the possibility that CLECs could charge for other elements, such as carrier common line or toll free database queries, at any level they chose. Given the incentives CLECs have to maximize their access charges and their proven penchant for taking advantage of opportunities to do so,

⁷ See AT&T Comments at 7; see also Sprint Comments, Appendix 1, p. 10. ALTS claims (at 7) that “local service affiliates” of AT&T and Sprint charge access rates well in excess of the ceiling it proposes, citing, in the case of Sprint, Sprint Spectrum [*sic*] which charges at the NECA rate of approximately 3.5 cents per minute. However, as ALTS recognizes (*id.*) Sprint Spectrum, or Sprint PCS, is not really a CLEC; rather, it is a wireless carrier. As Sprint has previously explained (*See* Sprint’s October 29, 1999 Comments at 9 and 19), mobile wireless carriers such as Sprint PCS have been held in this docket not to be the equivalent of local exchange carriers. Rather, they provide different services with radically different technology and cost characteristics. Thus, Sprint PCS’ charges for the origination or termination of interstate calls is irrelevant to the issue of the proper ceiling for carriers competing directly in the local exchange market.

⁸ See ALTS Reply Comments, November 29, 1999, at 26.

⁹ Based on Sprint’s experienced cost of \$.00776 per minute (*see* Sprint Comments at 7).

there is every reason to expect that some CLECs would circumvent the ceiling in any way that they can. It may also be noted that although the ALTS proposal has received some support from other IXC interests—mainly ASCENT (at 5) and WorldCom (at 5-6), both of these parties have conflicting interests. ASCENT represents (at 3) that 20% of its members also engage in facilities-based CLEC activities and provide exchange access to IXCs, and although ASCENT does not identify its members by name, it is reasonable to assume that they include CLECs that are charging well above ILEC levels. Likewise, WorldCom has extensive CLEC operations, and its tariffed rates are substantially in excess of ILEC levels as well. Furthermore, WorldCom’s endorsement is vague—it states that it does not support all facets of the ALTS proposal (at 5), but gives only one illustrative example of a facet of the proposal that it does not support. Moreover, WorldCom’s endorsement of a rate level that is triple ILEC levels is hard to reconcile with the position it takes elsewhere in its comments, that the benchmark or ceiling should only be “slightly higher than the average effective per-minute ILEC rate ...” (*id.* at 2).

Turning to the rural exemption issue, for the reasons indicated above and in Sprint’s initial comments, so long as the benchmark rate adopted by the Commission is the rate charged by the ILEC in the particular market in which the CLEC is offering service, Sprint sees no sound policy justification for a rural exemption.¹⁰ There is no more reason to encourage uneconomic entry in rural areas than there is in urban areas. Furthermore, the disparate comments of other parties show the difficulty of arriving at a

¹⁰ See also AT&T at 11-15 and WorldCom at 6-7.

sound and administrable definition of the rural exemption. In that regard, Sprint cannot resist pointing out the absurdity of the definition of “rural” many of the commenters propose. Specifically, McLeod USA (at 9), CTSI/Madison River (11-13) and Focal/RCN/Winstar (at 26), all advocate defining rural areas as any areas outside the top fifty metropolitan statistical areas (“MSAs”).¹¹ According to census data for 1999,¹² their definition of “rural” would include metropolitan areas having populations of up to 958,000, and would include such sizable cities as Honolulu, Tucson, Tulsa, Omaha, and Albuquerque, to name a few. These cities may not be the “Big Apple,” but it is hard to conceive of them as being “rural.”

Respectfully submitted,

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January 26, 2001

¹¹ Cf. Bayring/Lightship (at 21-22, proposing a definition of areas other than Density Zone One end offices in the top fifty MSAs.

¹² See <<http://www.census.gov/population/estimates/metro-city/ma99-04.txt>> and <<http://www.census.gov/population/estimates/metro-city/ma99-05.txt>>, visited on January 23, 2001.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply Comments of Sprint Corporation in CC Docket No. 96-262 was sent by Hand Delivery on this 26th day of January, 2001, to the following parties.

/s/ Sharon Kirby

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