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Mr. Charles McKee
Senior Attorney
Sprint PCS
4900 Main Street, 11th Floor
Kansas City, MO 64112

RECEIVED

Re: Cost-Based Terminating Compensation for CMRS Providers
CC Docket Nos. 95-185 and 96-98, and WT Docket No. 97-207

Dear Mr. McKee:

This letter responds to Sprint PCS' February 2, 2000 letter to the Wireless Telecommunications Bureau (WTB) and Common Carrier Bureau (CCB).[1] In that letter, Sprint PCS asked the Commission staff to "promptly reaffirm that the Communications Act and its existing rules entitle CMRS providers to receive in terminating compensation all their additional costs (subject to the submission of an adequately supported cost study)."[2] According to Sprint PCS, guidance from the Commission is necessary "because state commissions have encountered some difficulty in applying the Act and the Commission's rules and orders to mobile networks."[3]

Sprint PCS attached a legal memorandum to its February 2 filing, in which it contends that, under governing law, a CMRS provider may recover all of its traffic-sensitive call termination costs whether or not a particular wireless network element used in call termination is deemed to be functionally equivalent to network elements in wireline networks.[4] Sprint PCS notes that some State Commissions have focused on the "equivalent facility" language of Sections 51.701(c) and (d) of the Commission's rules "and in some instances have limited CMRS cost recovery to those mobile network components they deem to be 'equivalent' to network components utilized in wireline networks."[5] Subsequently, in its White Paper filed on April 7, Sprint PCS proposes a test to identify compensable wireless network costs. Under this test, according to the White Paper, spectrum, cell sites, backhaul links, base station controllers, and mobile switching centers are compensable costs.[6]

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[1] Letter from Jonathan M. Chambers, Sprint PCS, to Thomas J. Sugrue and Lawrence E. Strickling, Re: Cost-Based Terminating Compensation for CMRS Providers, CC Docket Nos. 95-185, 96-98, and 97-207, Feb. 2, 2000, at p. 1 (Sprint PCS Letter of Feb. 2, 2000).
[2] Sprint PCS Letter of Feb. 2, 2000, at p. 4. *See* 47 U.S.C. § 252(d); 47 C.F.R. § 51.711(b).
[3] *Id.*
[4] Sprint PCS Letter of Feb. 2, 2000, Attachment at p. 1.
[5] Sprint PCS Letter of Feb. 2, 2000, at p. 2.
[6] *Transport and Termination Costs in PCS Networks: An Economic Analysis*, prepared by Bridger M. Mitchell and Padmanabhan Srinagesh, CC Docket Nos. 95-185 and 96-98; WT Docket No. 97-207 (Apr. 4, 2000) at p. 28.

Comments to the Sprint PCS letters were solicited in a *Public Notice* released May 11, 2000.[7] Fourteen parties provided comments, and eleven parties provided reply comments.[8] Sprint PCS also notes the issue of the LEC tandem interconnection rate and commenters request that the FCC clarify the criteria by which CMRS carriers are eligible to receive the tandem interconnection rate to terminate traffic.[9]

As you may know, the Commission is currently considering a much broader range of issues regarding intercarrier compensation, and may make changes to the regulatory framework governing intercarrier compensation in the future. Indeed, the Commission recently adopted a *Notice of Proposed Rulemaking,* in which it has begun a fundamental reexamination of all currently regulated forms of intercarrier compensation.[10] The *Intercarrier Compensation NPRM* is intended to test the concept of a unified regime for the flows of payments among telecommunications carriers that result from the interconnection of telecommunications networks under current systems of regulation. Thus, it seeks comment on a number of broad issues, such as the feasibility of a bill-and-keep approach for such a unified regime and, alternatively, modifications to existing intercarrier compensation regimes.

In the context of examining the broader question of moving to a unified regime and to enable parties to provide meaningful comments, the Commission reviewed the application of its current orders and rules regarding asymmetric reciprocal compensation to LEC-CMRS interconnection.[11] Specifically, the Commission stated that, based on the language of section 252(d)(2)(A) of the Communications Act, CMRS carriers are entitled to the opportunity to demonstrate that their termination costs exceed those of the ILECs.[12] The Commission also noted that the "equivalent facility" language of sections 51.701(c) and (d) of the Commission's rules does not require that wireless network components be reviewed on the basis of their relationship to wireline network components; nor does it bar a CMRS carrier from receiving compensation for the additional costs that it incurs in terminating traffic on its network if those costs exceed the ILEC's costs.[13] Rather, the determination of compensable wireless network components should be based on whether the particular wireless network components are cost sensitive to increasing call traffic. In this regard, the Commission stated that "if a CMRS carrier can demonstrate that the costs

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[7] Public Notice, *Comment Sought on Reciprocal Compensation for CMRS Providers*, DA 00-1050 (released May 11, 2000).

[8] Commenters included Alpine PCS, AT&T, BellSouth, Centennial Communications, CTIA, Cellular XL Associates, GTE, Metrocall, PCIA, Rural Telecommunications Group, USTA, U.S. West, VoiceStream, and Western Wireless. Reply commenters included Alpine PCS, AT&T, BellSouth, Centennial Communications, Mid-Missouri Cellular, National Telephone Cooperative Association, Sprint PCS, USTA, U.S. West, VoiceStream, and Western Wireless.

[9] *See, e.g.*, Comments and Reply Comments of VoiceStream and Western Wireless; AT&T Reply Comments.

[10] In the Matter of Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132 (rel. Apr. 27, 2001) (*Intercarrier Compensation NPRM).*

[11] *Intercarrier Compensation NPRM* at paras. 104-105.

[12] *Id.* at para. 104.

[13] *Id.*

associated with spectrum, cell sites, backhaul links, base station controllers and mobile switching centers vary, to some degree, with the level of traffic that is carried on the wireless network, a CMRS carrier can submit a cost study to justify its claim to asymmetric reciprocal compensation that includes additional traffic sensitive costs associated with those network elements."[14] Under the Commission's rules, as noted in the *Intercarrier Compensation NPRM*, the CMRS carrier bears the burden of justifying its additional costs, and demonstrating that its analysis complies with all applicable Commission rules.[15] We do note that the *NPRM* does seek comment on whether we should change our rules on these issues.[16]

With respect to when a carrier is entitled to the tandem interconnection rate, the Commission stated that section 51.711(a)(3) of its rules[17] requires only that the comparable geographic area test be met before a carrier is entitled to the tandem interconnection rate for local call termination.[18] It noted that although there has been some confusion stemming from additional language in the text of the *Local Competition Order* regarding functional equivalency,[19] section 51.711(a)(3) requires only a geographic area test. Therefore, a carrier demonstrating that its switch serves "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.[20] The *NPRM* does seek comment on whether we should change this rule.

We do not address any of the other questions raised by the Sprint PCS letter, including the validity of the analytical framework contained in the White Paper. If you have further questions, please contact the Wireless Telecommunication Bureau's Policy Division at 202-418-1310, or the Common Carrier Bureau's Competitive Pricing Division at 202-418-1520.

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[14] *Id.*
[15] The Commission noted that its rules do not require that traffic-sensitive network elements to be priced on a minutes-of-use basis. *Intercarrier Compensation NPRM* at para. 109 n.176.
[16] *Intercarrier Compensation NPRM* at paras. 104, 106.
[17] 47 C.F.R. § 51.711(a)(3).
[18] *Intercarrier Compensation NPRM* at para. 105.
[19] *Local Competition Order*, 11 FCC Rcd. 16042 at para. 1090.
[20] *Intercarrier Compensation NPRM* at para. 105.

Sincerely,

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau

Dorothy T. Attwood
Chief, Common Carrier Bureau

cc: James Bradford Ramsey
NARUC General Counsel