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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition of Mpower Communications Corp. for	)	CC Docket No. 01-117
Establishment of New Flexible Contract	)	
Mechanism Not Subject to "Pick and Choose"	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation, pursuant to the Public Notice released June 4, 2001 (DA 01-1348), hereby respectfully submits its comments on the above-captioned petition filed by Mpower on May 25, 2001. Sprint agrees with Mpower that more cooperative business relationships between ILECs and CLECs would ultimately improve services available to end users; unfortunately, however, we do not believe that the approach advocated in the instant petition will result in the kind of mutually beneficial partnerships envisioned by Mpower.

In this petition, Mpower requests that the Commission establish a new contract mechanism ("flex contracts") which would not be subject to the "pick and choose" requirements of Section 252(i), or to the state commission approval and enforcement requirements of Section 252(e) of the Act. Flex contracts would be available to any similarly situated CLEC, on an all-or-nothing basis; CLECs would not be allowed to "pick just 'the best parts' of the deal" (Petition, p. 8). According to Mpower, flex contracts will encourage mutually beneficial commercial business relationships between ILECs and CLECs, as opposed to the adversarial, regulation-based relationships which more typically exist today. Flex contracts would be in addition to the UNE system in place today (*id.*, p. 11).

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Mpower is correct in stating that the ILECs' Section 251 interconnection obligations have not resulted in the kind of smooth, mutually beneficial working relationships between ILECs and CLECs which are more characteristic of purely voluntary business transactions. However, such a result is hardly unexpected. CLECs and ILECs have opposing business interests here – the CLECs want as many unbundled network elements as they can get, at the lowest possible price, in order to provide service in competition with the ILECs. The ILECs, on the other hand, want to provide as few UNEs as possible, at the highest possible rate, in order to minimize CLECs' ability to make competitive inroads into the ILECs' local service customer base. Virtually from the day the 1996 Telecommunications Act was enacted, the two sides have engaged in extensive regulatory and legal wrangling to achieve their opposing business goals, and it is not at all clear how adoption of the proposed flex contract mechanism can overcome this basic divergence in business objectives.

In its petition, Mpower optimistically -- but, in Sprint's view, mistakenly -- states (p. 16) that a voluntary wholesale agreement "would help 'fill the pipeline' of the ILECs with CLEC business" and thus "ILECs would have no incentive to impede good wholesale business deals." Mpower's apparent assumption here that ILECs and CLECs would be negotiating with each other as approximate equals is incorrect. In fact, the ILECs have something critical that the CLECs lack – a ubiquitous network. CLECs simply cannot provide competitive local service without using ILEC facilities, and because of the expense, time, and difficulties associated with deploying an alternative network, CLECs may be expected to remain heavily dependent upon ILEC facilities for the foreseeable future. Furthermore, any wholesale revenues generated by the sale of UNEs to CLECs are likely to be far less than the retail revenues an ILEC would lose through the switch of its local service customers to a CLEC. Thus, ILECs have little or no incentive to voluntarily seek out additional wholesale business. To the contrary, the ILEC has every incentive to make it as difficult as possible (given regulatory constraints) for a CLEC to use its network.

Finally, if an ILEC were allowed to enter into a flex contract with one of its subsidiaries, affiliates, or otherwise favored requesting carrier,[1] Sprint is concerned that the presumably preferential terms in that flex contract would be available as a practical matter only to that one entity. Mpower proposes that flex contracts would be made available to other "similarly situated" carriers on a non-discriminatory basis. However, a flex contract can be structured with sufficient specificity that no other carrier could be considered to be "similarly situated."[2] Thus, there can be no real assurance that such contract would be available to any other CLEC. The potential harm to competition inherent in discriminatory arrangements (especially those involving bottleneck facilities) is contrary to the public interest and should accordingly be avoided.

Respectfully submitted,

SPRINT CORPORATION

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July 3, 2001

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[1] Sprint is doubtful that an ILEC would voluntarily enter into a flex contract with an unaffiliated CLEC.

[2] As evidenced from the tens of thousands of contract tariff offerings provided by interexchange carriers, it is a relatively simple matter to devise a service offering which is attractive or available only to the specific customer for whom the contract was developed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was sent by hand or by United States first-class mail, postage prepaid, on this the 3rd day of July, 2001 to the below-listed parties:

Christine Jackson

July 3, 2001

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