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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Cost-Based Terminating Compensation)	CC Docket Nos. 95-185 and 96-98
For CMRS Providers)	WT Docket No. 97-207

REPLY OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its Reply to Sprint PCS' Opposition to SBC's Application for Review (AFR) of the May 9, 2001 letter issued jointly by the Wireless Telecommunications Bureau and the Common Carrier Bureau in the above-referenced proceedings.¹

SBC filed its AFR because the Joint Bureau Letter could be interpreted in a manner that is plainly inconsistent with the Commission's reciprocal compensation rules. In particular, the letter could be read as establishing a much broader definition of "additional costs" than the Commission previously established, and as reading the "equivalent facility" test out of the rules for purposes of determining whether a new entrant should be compensated at the tandem interconnection rate. Moreover, the Bureaus committed prejudicial procedural error by ignoring the comments that were filed in opposition to the rule clarifications requested by Sprint PCS. The Opposition filed by Sprint PCS completely fails to address the substantive issues raised in SBC's AFR or to justify the procedural impropriety of the Joint Bureau Letter.

¹ Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, and Dorothy T. Attwood, Chief, Common Carrier Bureau, to Charles McKee, Senior Attorney, Sprint PCS, CC Docket Nos. 95-185 and 96-98, and WT Docket No. 97-207, May 9, 2001 (Joint Bureau Letter).

Sprint PCS argues that the AFR does not satisfy Section 1.115(a) of the Commission's rules because it does not include a statement showing good reason why SBC did not participate in the earlier stages of the CMRS reciprocal compensation proceeding.² In fact, SBC *did* participate in the earlier stages of the proceeding that established the CMRS reciprocal compensation rules, so no such statement is necessary under the rules.³ The Commission has recognized that a party's participation in the earlier phase of a proceeding that "established the framework" of the rules is sufficient to satisfy Section 1.115(a), irrespective of whether it participated in the phase of the proceeding that is the subject of the application for review.⁴ Because SBC participated extensively in the earlier phases of the *Local Competition* proceeding that established the CMRS reciprocal compensation rules, it is fully within its rights to seek review of the Joint Bureau Letter.

The real procedural deficiency in this proceeding lies not with SBC's AFR, but in the Bureaus' failure to respond to any of the substantive arguments made in opposition to Sprint PCS' request for clarification.⁵ Sprint PCS attempts to justify this failure by describing the

² Sprint PCS Opposition at 1-2.

³ Both Sprint PCS's request for clarification and the Joint Bureau Letter referenced CC Docket Nos. 95-185 and 96-98, (the local competition proceeding), as well as WT 97-207 (the calling party pays proceeding). SBC filed numerous comments and *ex partes* in these proceedings prior to the February 2, 2000 letter filed by Sprint PCS that gave rise to the Joint Bureau Letter.

⁴ *Association for Local Telecommunications Services and Teleport Communications Group, Inc. Applications for Review of Bureau Orders Approving Zone Density Pricing Plans of Local Exchange Carriers*, CC Docket No. 91-141, Memorandum Opinion and Order, 11 FCC Rcd 11662, 11665 (1996).

⁵ Mid-Missouri Cellular defends the Bureaus' failure to respond to the comments that were filed on the grounds that the Joint Bureau Letter is merely an "informal statement" of the Commission's rules. Opposition of Mid-Missouri Cellular at 7. SBC agrees that the letter must be treated as an informal statement of the rules, albeit an inaccurate one. As Qwest persuasively demonstrates, the Joint Bureau Letter at most is an informal policy statement that is not binding

comments as raising only public policy and economic issues, rather than legal issues.⁶ Even if this characterization were accurate (and it is not), such a justification would be wholly inadequate. Federal agencies are not excused from adhering to the requirements of the APA when considering policy and economic arguments, as opposed to purely legal arguments. In any event, the comments filed in opposition to Sprint PCS' request for clarification did cite legal arguments, as well as policy and economic arguments. They argued, for example, that the *Local Competition Order* requires consideration of the functionality of a switch in any determination of the appropriate reciprocal compensation rate. They argued, further, that the Commission's reciprocal compensation cost recovery rules apply equally to wireline and wireless networks. Indeed, this argument -- that the reciprocal compensation rules must be applied consistently -- is at the very heart of the comments that were filed in opposition to Sprint PCS' request for clarification. To the extent the comments also discussed public policy and economic issues, they did so in the context of describing the problems that would be created by applying disparate reciprocal compensation rules to wireless networks.

Equally unavailing is Sprint PCS' claim that the Joint Bureau Letter reflects the decision of the full Commission in the *Intercarrier Compensation NPRM*. The Commission did not purport to change its intercarrier compensation rules in the *Intercarrier Compensation NPRM*. To the contrary, the discussion in the NPRM on which Sprint PCS relies was pure dicta, and it did not accurately describe the Commission's rules. Among other things, the discussion in the

on the incumbent LECs or state commissions because it fails to comply with the Administrative Procedure Act (APA). Qwest Comments at 3. Nevertheless, SBC seeks clarification of the Joint Bureau Letter because *other parties* are attempting to rely on the letter in state proceedings to support their interpretation of the Commission's reciprocal compensation rules.

⁶ Sprint PCS Opposition at 5.

NPRM simply wrote out of existence the Commission's holdings in the *Local Competition Order* – the very order in which the reciprocal compensation rules were adopted. It is these holdings that state commissions such as the Texas PUC relied on when they implemented the Commission's reciprocal compensation rules. The Commission's holdings in the *Local Competition Order* have the force of law and cannot be changed by dicta in an NPRM.

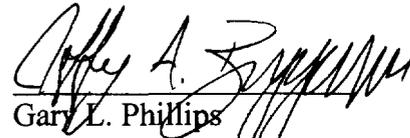
The bottom line, as the Texas PUC has recognized, is that a proper interpretation of the Commission's reciprocal compensation rules must give meaning to the underlying language in the “seminal” *Local Competition Order*. That order makes clear that (i) certain types of traffic-sensitive costs (*i.e.*, costs that are traffic sensitive over the long term) are not considered “additional costs” for purposes of the reciprocal compensation rules, and that (ii) states should consider the functionality of a new entrant's equipment in determining whether it should be compensated at the tandem interconnection rate.⁷ The Bureaus have no authority to modify the Commission's holdings in the *Local Competition Order*.

For the foregoing reasons, the Commission should grant SBC's Application for Review and issue a clarification to avoid the possibility that its reciprocal compensation rules will be misinterpreted. In particular, the Commission should clarify that, with respect to both wireline and wireless networks, recovery of the additional costs of transport and termination is limited to local switching costs that are sensitive to an additional call that originates on another carrier's network. Moreover, the Commission should clarify that both geographic area and functional

⁷ Mid-Missouri Cellular argues that SBC's AFR is actually a late-filed challenge to the Commission's holding that loop costs are not traffic sensitive and thus not an additional cost for reciprocal compensation purposes. Mid-Missouri Cellular Opposition at 5. This argument ignores the Commission's holding in the *Local Competition Order* that certain types of traffic-sensitive costs are not additional costs for purposes of the reciprocal compensation rules. SBC is simply requesting a clarification that the same definition of traffic-sensitive costs applies to both wireline and wireless networks.

equivalence are relevant to the determination of whether a carrier is eligible to receive the tandem interconnection rate, so that state commissions do not apply an overly restrictive interpretation of the Commission's rules.

Respectfully Submitted,



Gary L. Phillips
Jeffrey A. Brueggeman
Roger K. Toppins
Paul K. Mancini

SBC Communications Inc.
1401 I Street NW 11th Floor
Washington, D.C. 20005
Phone: 202-326-8911

Its Attorneys

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CERTIFICATE OF SERVICE

I, Loretia Hill, do hereby certify that on this 5th day of July a copy of the foregoing
“Reply” was served by U.S. first class mail, postage paid to the parties below.



Loretia Hill

**Micheal K. Kurthis
Jerome K. Blask
Lisa L. Leibow
Kurtis & Associates
Attorneys for Mid-Missouri Cellular
2000 M Street NW
Suite 600
Washington, DC 20036**

**Luisa L. Lancetti, Vice President-Regulatory
Charles W. McKee, General Attorney
Sprint Spectrum
401 9th Street NW Suite 400
Washington, DC 20004**

**Robert McKenna
Sharon Devine
Craig J. Brown
Qwest Corporation
1020 19th Street NW Suite 700
Washington, DC 20036**