

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</b>	)	<b>CC Docket No. 96-98</b>
	)	
<b>Inter-Carrier Compensation for ISP-Bound Traffic</b>	)	<b>CC Docket No. 99-68</b>
	)	

**OPPOSITION OF SPRINT CORPORATION**

Sprint hereby files its Opposition to the Petitions for Reconsideration filed in this proceeding.<sup>1</sup> Several of the Petitioners contest the “mirroring” provision adopted by the Commission, which applies the same compensation treatment to voice-based traffic as it does to IP-based traffic. In part, Petitioners allege that the Commission’s solution: (1) violates the provisions of the Administrative Procedure Act; (2) improperly favors CLECs over incumbent local exchange providers in determining compensation for the termination of traffic; and (3) could result in increased costs to rural providers and higher rates for rural consumers.

In addition, Wireless World LLC (Wireless World) requests modification of the new market and growth cap provisions. Specifically, Wireless World requests that the Commission clarify that the new market bar does not apply to carriers who have

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<sup>1</sup> See Petition for Reconsideration by Choctaw Telephone Company *et al.* (June 14, 2001); Petition for Clarification by Florida Public Service Commission (June 14, 2001); Petition for Reconsideration by Independent Alliance on Inter-Carrier Compensation (June 14, 2001); Petition for Reconsideration by National Telephone Cooperative Association (June 14, 2001); and Petition for Reconsideration and Clarification by Wireless World LLC (June 14, 2001). Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, CC Docket Nos. 96-98 and 99-68, FCC 01-131 (rel. April 27, 2001).

requested interconnection negotiations with incumbent carriers as of April 27, 2000.

Wireless World also urges the Commission to delay implementation of the growth cap provisions for one year.

Sprint urges the Commission to retain the “mirroring” provisions adopted in the *Order on Remand and Report and Order (Order)* without modification. Further, the “band-aid” solution to the growth and new market provisions proffered by Wireless World is insufficient to remedy the inequities of those provisions.

**I. The Commission Should Retain the “Mirroring” Provisions Adopted in the Order**

**A. Adequate Notice Was Provided**

Petitioners’ claim that the “mirroring” provision, which applies the same compensation rates equally to local voice and IP-based traffic, was adopted without adequate notice and comment is erroneous. In determining whether the APA notice and comment requirements have been satisfied, the final rules must constitute a “logical outgrowth” of the proposed rule.<sup>2</sup> A final rule is not a logical outgrowth of a proposed rule only “when the changes are so major that the original notice did not adequately frame the subjects for discussion.”<sup>3</sup>

In its initial *Declaratory Ruling and Notice of Proposed Rulemaking (NPRM)*, the Commission asked broadly about what compensation scheme should be applied for inter-carrier compensation of ISP-bound services and invited parties to submit alternative

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<sup>2</sup> See *Omnipoint Corp. v. FCC*, 78 F.3d 620, 631 (D.C. Cir. 1996) (citing *American Water Works Ass’n v. EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1994)).

<sup>3</sup> *Id.* (citing *Connecticut Light and Power Co. v. Nuclear Regulatory Comm’n*, 673 F.2d 525, 533 (D.C. Cir.), *cert. denied*, 459 U.S. 835, 103 S.Ct. 79 (1982)).

proposals that would advance its policy objectives.<sup>4</sup> Two such objectives specifically mentioned in the *NPRM* were to maintain the enhanced service providers (ESPs) exemption (which treats data traffic like local voice traffic for purposes of ordering facilities), and to continue to treat such traffic as local for purposes of jurisdictional separations.<sup>5</sup> The Commission also proposed that inter-carrier compensation for IP-based traffic should be negotiated pursuant to sections 251 and 252,<sup>6</sup> which suggests that compensation arrangements for ISP-bound traffic could be treated the same as those for local voice traffic to which Sections 251 and 252 apply.

The *NPRM* clearly framed the subject matter broadly enough that the result reached by the Commission constituted a “logical outgrowth” of the original *NPRM*. Indeed, Sprint and others understood the *NPRM* to embrace the possibility that ISP-bound compensation should be tied to compensation for local traffic and urged the Commission to do so.<sup>7</sup> The Commission’s ultimate decision to treat both voice and IP-based traffic equally, based on ample record evidence, thus clearly constitutes a logical outgrowth of its original *NPRM*.

#### **B. The “Mirroring” Provision Does Not Discriminate Against ILECs**

Choctaw *et al.* maintains that the “mirroring” provision improperly disadvantages ILECs by requiring them to reduce their termination charges to the prescribed caps

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<sup>4</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, *Declaratory Ruling and Notice of Proposed Rulemaking*, CC Docket Nos. 96-98 and 99-68, FCC 99-38 (rel. Feb. 26, 1999) at ¶ 33.

<sup>5</sup> *Id.* at ¶ 36.

<sup>6</sup> *Id.* at ¶ 30.

<sup>7</sup> See Comments of Sprint Corporation at 3-4 (noting that it would be anomalous to use a different compensation regime for ISP-bound calls than for local voice traffic); see also Comments of AT&T at 3; Comments of MCI at 19; Comments of Time Warner at 1; Comments of ALTS at 12; Comments of Focal at 14-15; Comments of CompTel at 3-5.

without imposing a similar obligation on CLECs for terminating traffic.<sup>8</sup> Choctaw *et al.* alleges that this inequity would “bestow a wholly unfair and unwarranted competitive advantage” upon CLECs and is therefore “an unwise and disruptive policy choice.”<sup>9</sup>

Sprint disagrees with Choctaw *et al.*'s interpretation of the mirroring provision adopted in the Commission's *Order*. As Sprint reads the Commission's decision, the ISP rates apply only if an ILEC offers to *exchange* all traffic subject to section 251(b)(5) at those rates.<sup>10</sup> By specifically using the term “exchange,” the Commission clearly envisioned a reciprocal relationship between ILECs and CLECs (or CMRS carriers) for purposes of compensation.<sup>11</sup> Indeed, the Commission noted that one possible compensation arrangement could include bill and keep.<sup>12</sup> It is clear from this context that the Commission intended compensation parity between ILECs and CLECs; otherwise, by its terms, the resultant compensation scheme would not constitute bill and keep. Because the compensation scheme adopted by the Commission applies equally to the termination of local voice traffic on either an ILEC or CLEC's network, the Commission clearly intended that CLECs be subject to the same rates as ILECs for terminating traffic. Thus, Choctaw *et al.*'s interpretation of the Commission's *Order* is erroneous.

**C. Costs of Providing Rural Services Are Appropriately Addressed through the Universal Service Fund, not Reciprocal Compensation**

The Independent Alliance warns that the “mirroring” provision adopted by the Commission could lead to higher rates for rural customers by effectively eliminating an

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<sup>8</sup> See Choctaw *et al.* Petition at 7-8.

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Order* at ¶ 89.

<sup>11</sup> See, e.g., Merriam-Webster's Collegiate Dictionary (defining “exchange” as “reciprocal giving and receiving”).

important revenue stream for rural carriers.<sup>13</sup> The Independent Alliance further warns that investment in rural areas may be curtailed.<sup>14</sup> The Independent Alliance therefore urges the Commission to limit the scope of the *Order* to ISP-bound traffic only.<sup>15</sup>

Sprint objects to the Independent Alliance's apparent belief that termination charges could appropriately be used to subsidize the cost of providing rural services. Such charges are intended only to compensate a carrier for the actual costs of terminating traffic on its network. Rather, subsidies for rural and high cost areas are appropriately addressed through the universal service mechanism. Indeed, as the Court of Appeals for the Fifth Circuit recently held, the plain language of Section 254(e) of the Telecommunications Act does not permit any implicit subsidies for universal service support.<sup>16</sup> To the extent that members of the Independent Alliance require subsidies to provide service to their rural customers, they should be derived from universal service funds, not termination charges.

Furthermore, termination charges that recover more than the cost of termination would be a violation of section 252(d)(2) pricing standards for transport and termination of traffic. These standards require that these termination charges reflect only "the additional costs of terminating such calls." Therefore, reliance on termination charges by petitioners as an "important revenue source" to provide an above cost contribution in order to maintain low local rates contradicts the Acts express pricing standard for this traffic.

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<sup>12</sup> *Order on Remand and Report and Order* at ¶ 89.

<sup>13</sup> Petition for Reconsideration and/or Clarification of the Independent Alliance at 9.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Comsat Corporation et al. v. Federal Communications Comm'n.*, 250 F.3d 931, 939-940 (5<sup>th</sup> Cir. 2001).

## **II. The New Market and Growth Cap Modifications Requested by Wireless World Are Insufficient to Remedy the Inequities Resulting From the Underlying Provisions**

In an effort to minimize the burden that new or expanding CLECs would face, Wireless World proposes that the Commission modify its new market and growth cap provisions. Specifically, Wireless World requests that the Commission clarify that the new market bar does not apply to carriers who had requested interconnection negotiations with incumbent carriers as of April 27, 2001. Wireless World further encourages the Commission to defer implementation of the growth cap provision by one year. Wireless World suggests that its solution would ameliorate the harm caused to CLECs that are in the process of expanding the scope of their operations.

The modifications requested by Wireless World do not cure the underlying problems with the growth cap and new market provisions. As Sprint previously has commented, the growth cap and new market provisions result in competitive inequities that advantage certain CLECs over others.<sup>17</sup> Wireless World itself acknowledges such inequities, noting that the legal deficiencies will hopefully be resolved on judicial appeal. Wireless World nevertheless proposes a “band-aid” solution that would moderate, but not eliminate, these inequities. Instead, the preferable course of action would be to eliminate the growth and new market caps entirely, as Sprint is advocating on appeal.<sup>18</sup>

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<sup>17</sup> See Comments of Sprint Corporation in Support of Core Communications, Inc.’s Petition for Partial Stay (June 5, 2001); see also *Ex Parte* Presentation of Sprint Corporation (April 16, 2001) and *Ex Parte* Presentation of Sprint Corporation (April 17, 2001).

<sup>18</sup> *Sprint Corporation v. Federal Communications Comm’n* (CADC 01-1229), consolidated with *WorldCom Inc. v. Federal Communications Comm’n* (CADC 01-1218).

### III. Conclusion

For the reasons set forth above, the Commission should retain the “mirroring” provision adopted in the *Order* and reject Wireless World’s “band-aid” solution to the growth and new market caps.

Respectfully Submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read "Susan E. McNeil", written over the printed name.

Susan E. McNeil

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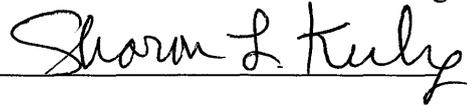
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July 23, 2001

## CERTIFICATE OF SERVICE

I, Sharon L. Kirby, hereby certify that on this 23rd day of July 2001 copies of the foregoing Opposition of Sprint Corporation were sent via US Mail to the following:



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