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OFFICE OF THE SECRETARY

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November 30, 2001

By Courier

Thomas Navin
Deputy Chief – Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room TW-A-325
Washington, D.C. 20554

Re: Attached Comments of AT&T Corp on Sprint PCS's Petition for Declaratory Ruling (WT Docket No. 01-316)

Dear Mr. Navin:

Pursuant to the instructions of the Enforcement Bureau, attached is a courtesy copy of the Comments of AT&T Corp. on Sprint PCS's Petition for Declaratory Ruling. Due to the security restrictions imposed by the Commission, this document has been delivered, without envelope, to the Capitol Heights filing location. I am also forwarding this document to you by email. Please let me know if there is anything further that you need.

Sincerely,



Jennifer M. Rubin

cc: Daniel Meron

Attachments (1)

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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)
)
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AT&T CORP.)
)

295 North Maple Avenue)
Basking Ridge, N.J. 07920)
)

Petitioner,)
)

v.)

WT Docket No. 01-316)
)

SPRINT SPECTRUM, d/b/a SPRINT PCS)
)

6160 Sprint Parkway)
Overland Park, K.S. 66211)
)

Respondent.)
)

**COMMENTS OF AT&T CORP. ON SPRINT PCS'S
PETITION FOR DECLARATORY RULING**

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November 30, 2001

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

In the Matter of

AT&T CORP.

295 North Maple Avenue
Basking Ridge, N.J. 07920

Petitioner,

v.

SPRINT SPECTRUM, d/b/a SPRINT PCS

6160 Sprint Parkway
Overland Park, K.S. 66211

Respondent.

WT Docket No. 01-136

**COMMENTS OF AT&T CORP. ON SPRINT PCS'S
PETITION FOR DECLARATORY RULING**

Pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, and the Commission's Public Notice of November 8, 2001 (DA 01-2618), Petitioner AT&T Corp. ("AT&T") submits the following comments on Sprint PCS's Petition for Declaratory Ruling.

INTRODUCTION AND SUMMARY

Sprint PCS seeks to characterize this dispute as an effort by IXCs to get a windfall, leaving CMRS carriers without payment of their access costs. Sprint PCS is wrong. This case involves a unilateral effort by Sprint PCS to supplant the prevailing industry practice of obtaining compensation for call termination costs through a *de facto* form of bill and keep – the only bill and keep regime that has arisen through the market system rather than through regulatory *fiat* – which enables CMRS carriers to recover their *full* costs through end user charges, while also avoiding

regulation of CMRS rates. At the same time, IXCs and their customers benefit both by avoiding the monopolistic abuses that have characterized access charges in other contexts, such as the CLEC access market, and by enabling IXCs to maintain low long distance prices for their end users. Sprint PCS's short-sighted attempt to extract access charges from IXCs would, if sanctioned, plunge the CMRS context into the same regulatory quagmire that the Commission is struggling to escape in the landline context.

The arguments that Sprint PCS presents in support of that effort are fundamentally flawed. As discussed more fully below, Sprint PCS's principal argument – that neither the Act nor the Commission's rules bars wireless carriers from recovering call termination costs from IXCs – is based on a demonstrably erroneous view of the relationship between the Communications Act and state law, and on a misinterpretation of the Commission's decisions. Sprint PCS's alternative claim – that AT&T violated Sections 201(b) and 202(a) by failing to pay Sprint PCS for access – is not only legally and factually baseless, but it also blatantly contradicts Sprint's own advocacy to the Commission when its long distance affiliate has been sued for unpaid access charges.

ARGUMENT

I. SPRINT PCS'S ARGUMENTS RELY ON KEY MISINTERPRETATIONS OF FEDERAL LAW AND COMMISSION POLICY.

Sprint PCS's principal argument is that “no federal law or commission policy . . . bars Sprint PCS from recovering its call termination costs from AT&T.” Sprint PCS Pet. at 5. Indeed, Sprint PCS goes further and makes the remarkable suggestion that the Commission has already “squarely ruled that CMRS providers may recover from interexchange carriers (“IXCs”) their cost of terminating long distance traffic.” *Id.* at 6. Sprint PCS's arguments rest on a fundamental misapprehension of the relationship between the Federal Communications Act and state implied contract law and on a misinterpretation of the Commission's decisions.

A. The Commission Should Reject Sprint PCS's Attempt To Turn This Federal Issue Into A Question Of State Implied Contract Law.

Sprint PCS claims that “there is no federal law or policy that prohibits Sprint PCS from recovering from AT&T its call termination costs incurred in terminating AT&T traffic.” Sprint PCS Pet. at 7. Indeed, Sprint PCS goes so far as to “question[] whether the Commission possesses the legal authority to prohibit it from recovering its call termination costs from long distance carriers.” *Id.* at 6. Although Sprint PCS fails to spell out its argument in any detail, Sprint PCS appears to believe that the absence of a definitive pronouncement in the past by the Commission on the question of whether CMRS carriers should recover from IXCs their costs of terminating interexchange calls means that Sprint PCS's entitlement to such charges is controlled exclusively by state implied-in-fact contract law (also known as “quasi contract”) and state quantum meruit (“unjust enrichment”) actions. Thus, although Sprint PCS concedes that the Commission could preclude “in the future” a CMRS carrier from imposing access charges, Sprint PCS Pet. at 6, Sprint PCS appears to believe that the Commission cannot displace state quasi contract law as to AT&T's liability for past periods. Sprint PCS's position rests on a critical misapprehension of the relationship between the federal Communications Act and state law.

As the federal district court that referred this dispute to the Commission correctly concluded,¹ resolution of this dispute necessarily depends on whether it is a reasonable practice under Section 201(b) of the Communications Act for a CMRS carrier to recover the costs it incurs in terminating interexchange calls from captive IXCs rather than from the CMRS carrier's own end users, and whether any such charges would be “just” and “reasonable.” 47 U.S.C. § 201(b). This issue, which lies at the heart of this dispute, is exclusively controlled by the

¹ See *Sprint Spectrum L.P. v. AT&T Corp.*, — F. Supp. 2d —, —, 2001 WL 1231711, *4 (W.D. Mo. July 24, 2001) (attached to AT&T Pet. as Exh. A) (“*Referral Order*”).

provisions of the Communications Act. Indeed, as the Commission has concluded, any attempt by a state court applying state law to establish a rate for any wireless service, or to determine the reasonableness of such a rate, would be preempted by Section 332(c) of the Act. *See, infra*, at 4-5. Accordingly, the Commission cannot avoid ruling on the reasonableness of permitting CMRS carriers to recover their costs from IXCs, rather than from end users – as has been the prevailing industry practice for decades – by resorting to implied contract law.

Significantly, Sprint PCS does not and cannot claim that the parties have an express contract, or a “meeting of the minds,” regarding the compensation that would be owed to Sprint PCS. Thus, Sprint PCS is not asking simply to enforce an existing agreement between the parties as to the rate that would apply, a request that might have enabled an entity to avoid setting a rate for the wireless services provided by Sprint PCS. Instead, Sprint PCS has sought to “imply” an obligation on AT&T’s part to pay Sprint PCS. Unlike a contract claim, which seeks to enforce a voluntary agreement of the parties, Sprint PCS’s implied contract and unjust enrichment claims in the district court sought to impose an involuntary payment obligation on AT&T, the terms of which would be set by operation of law. For the reasons set forth below, each of Sprint PCS’s counts require an entity to set an appropriate level of compensation (*i.e.* a rate) for the wireless services provided by Sprint PCS. As AT&T has steadfastly maintained, the entity setting that rate can only be the Commission – and the only reasonable rate is “zero.”

By its clear terms, Section 332(c)(3)(A) of the Act preempts any state law (including implied contract law) which establishes a rate for a wireless service or determines the reasonableness of such a rate. Section 332(c)(3)(A) states: “[N]o state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating

the other terms and conditions of commercial mobile services.” Interpreting this language, the Commission has ruled that “[o]f course, a court will overstep its authority under Section 332 if, in determining damages, it does enter into a regulatory type of analysis that purports to determine the reasonableness of a prior rate or it sets a prospective charge for services.” *In the Matter of Wireless Consumers Alliance, Inc.*, Mem. Op. and Order, 15 FCC Rcd. 17021, ¶ 39 (2000). Yet, as explained below, Sprint PCS’s quasi contract and quantum meruit theories would require a factfinder to set a reasonable rate for its services. For this reason, any attempt to impose liability on an IXC for payment of access charges to a CMRS carrier based on state “implied-in-fact contract” or “unjust enrichment” claims would be barred by Section 332(c)(3)(A), even if the Commission had failed to specifically rule on the lawfulness of such charges.

Where a carrier seeks payment of access charges under implied contract, action on account, quantum meruit, and account stated grounds, “[t]he reasonableness of the rates charged by plaintiff is the entire crux of this matter. If th[e] Court [or the Commission] were to rule in favor of plaintiff, the underlying presumption would be that the rates were reasonable.” *Southwestern Bell Tel. Co. v. Allnet Communications Servs.*, 789 F. Supp. 302, 305 (E.D. Mo. 1992) (concluding that breach of contract, action on account, quantum meruit, and account stated claims by local exchange carrier plaintiff would require the court to determine the reasonableness of the plaintiff’s rates). Here, each of the claims brought by Sprint PCS against AT&T in its district court complaint requires some entity to set the reasonable rate (if any) for its services. For example, in Count II of that complaint, Sprint PCS sought recovery under an “unjust enrichment” or quantum meruit theory. It is hornbook law that “[q]uantum meruit recovery is limited to the reasonable value of services performed” and, therefore, “plaintiff has the burden of proving this reasonable value.” *Bash v. B.C. Constr. Co.*, 780 S.W.2d 697, 698 (Mo. Ct. App. 1989); *see*

also *Mills Realty, Inc. v. Wolff*, 910 S.W.2d 320, 322 (Mo. Ct. App. 1995) (stating required elements of quantum meruit, including element that “services were of a certain and reasonable value” and stating that “the plaintiff has the burden of proving the reasonable value of his or her services”); *Service Constr. Co. v. Nichols*, 378 S.W.2d 283, 289 (“It was essential, if plaintiff was to recover in quantum meruit, that its proof show that the charges made were fair and reasonable.”); *Brush v. Miller*, 208 S.W.2d 816, 819 (St. Louis Ct. App. 1948).

Sprint’s implied contract claim likewise directly implicates the reasonableness of the rates that it charges for its services. Under Missouri law, a claim for a breach of implied contract serves “to prevent unjust enrichment,” *Westerhold v. Mullenix Corp.*, 777 S.W.2d 257, 263 (Mo. Ct. App. 1989), and, thus, requires the court to imply a contract for the party who allegedly received a benefit “to pay the reasonable value” of the benefit, *Consolidated Prods. Co. v. Blue Valley Creamery Co.*, 97 F.2d 23, 26 (8th Cir. 1938).² Finally, Sprint’s action on account, to the extent it is not simply derivative of the other two counts, similarly would have required a showing of reasonable value of the goods or services allegedly provided. See *Albers v. Moffitt*, 187 S.W.2d 903, 904 (St. Louis Ct. App. 1915). Indeed, as the district court noted, the fact that Sprint PCS’s state law theories would have required the Court to establish the reasonableness of its rates is demonstrated by Sprint’s complaint, which specifically alleged that its rates “are standard and are reasonable.” See *Referral Order*, 2001 WL 1231711 at *4 (“In Sprint’s own claim for ‘action on account,’ Sprint alleges that its rates are ‘reasonable.’”).³

² Under Missouri law, Sprint’s claims for breach of implied contract and for quantum meruit amount to the same claim. See *Executone of St. Louis, Inc. v. Normandy Osteopathic Hosp.*, 735 S.W.2d 772, 775 (Mo. Ct. App. 1987).

³ Although Sprint is likely to claim that its claims simply required enforcement of the amounts it invoiced and would not have required the court to set a rate, any such claim would be spurious. The rates on Sprint’s invoices are nothing more than Sprint’s demands, which AT&T expressly

Whether a CMRS carrier may reasonably recover its termination costs from IXCs – a question within the exclusive jurisdiction of the Commission – would not only be an essential element of any attempt to impose liability on AT&T based on state quasi contract actions, but AT&T’s counterclaims in the district court also challenged the reasonableness of such a practice. In particular, AT&T specifically pled a claim under Section 201(b) of the Act, alleging that Sprint PCS engaged in an “unreasonable practice” when it unilaterally sought to recover its costs from captive IXCs, rather than abide by the prevailing industry-wide *de facto* bill and keep arrangement. *See* AT&T Ans., 8-9 (Counterclaim Claim II), *Sprint Spectrum L.P. v. AT&T Corp.*, Docket No. 4-00-00973-HFS (W.D. Mo.). The district court’s referral order specifically noted that primary jurisdiction referral to the Commission was necessary for the Court to obtain guidance on this issue, an issue which is governed solely by the Communications Act. Indeed, Sprint PCS admits that the Commission has the authority to rule that its rates are unlawful under Section 201(b), Sprint PCS Pet. at 7 n.20, and it is well settled that such a determination declares what the law was in the past, and thus would apply “retroactively” to the two-year period prior to the filing of Sprint PCS’s state-court complaint. *See, e.g., AT&T v. Business Telecom, Inc.*, Mem. Op. & Order, 16 FCC Rcd. 12312, ¶¶ 9-10 (2001).

Congress vested the Commission with exclusive authority to determine the reasonableness of any rate for a wireless service – including whether any rate at all may appropriately be assessed – precisely to avoid the balkanization of telecommunications policy that would result if these issues were determined through application of state implied contract principles by differing courts. If, as Sprint PCS appears to argue, an IXC’s liability for access payments to a CRMS

rejected. There is absolutely no basis in law to conclude that a plaintiff in an implied in fact or quasi-contract case is automatically entitled to be compensated at whatever rate it demanded.

carrier would be a matter of state law to be determined in individual state actions, the result might very well be that one IXC, such as AT&T, would be found liable to one CMRS carrier, such as Sprint PCS, under one state's law, whereas another IXC (*e.g.*, Sprint) might be found not to owe access charges to another wireless carrier (*e.g.*, Verizon Wireless). Congress could not have intended such an arbitrary result.

Sprint PCS thus has things backwards when it suggests that, in the absence of a past pronouncement by the Commission specifically addressing whether CMRS carriers may impose access charges on IXCs, this dispute should be governed by state quasi contract law principles. On the contrary, any imposition of liability on an IXC for such charges based on state implied (quasi) contract law or unjust enrichment actions would be preempted by federal law, which is the exclusive source of law governing whether CMRS carriers may reasonably impose access charges on IXCs. Accordingly, the Commission cannot avoid ruling on whether Sprint PCS's attempt to foist its costs on IXCs in the form of access charges, rather than abiding by industry practice and recovering its costs from its end users, was reasonable, a pronouncement that would determine the lawfulness of Sprint PCS's conduct not only in the future but in the past as well.⁴

B. The Commission Has Never Held That CMRS Providers Should Charge IXCs, Instead Of End Users, For Access.

Apparently recognizing that it cannot prevail in this dispute merely by showing that the Commission has not yet spoken to the precise issue, Sprint PCS is ultimately compelled to argue

⁴ Sprint PCS's statement that AT&T has argued "that because Sprint PCS's service prices are not regulated, it can use Sprint PCS's network for free," Sprint PCS Pet. at 5, is, as the Commission is surely aware, a blatant mischaracterization of AT&T's position. AT&T's position, which is set forth in detail in its petition, is that under prevailing industry practice and sound telecommunications policy, CMRS carriers can and should recover their full network costs from their end users, not from captive IXCs, and that any attempt to introduce access charges into the wireless context would be a significant step backwards, requiring either the Commission or the state commissions to regulate a heretofore unregulated aspect of the communications industry.

that the Commission has in fact already “squarely ruled that CMRS providers may recover from interexchange carriers (“IXCs”) their cost of terminating long distance traffic.” Sprint PCS Pet. at 6. Sprint PCS relies for this remarkable claim on the fact that in the *CMRS Equal Access NPRM*, the Commission stated that “cellular carriers are entitled to just and reasonable compensation for their provision of access.” *Id.* At the same time, Sprint PCS admits that “curiously, the next year . . . the FCC stated that ‘we have never addressed . . . whether . . . IXCs should remit any interstate access charges to CMRS providers when the LEC and the CMRS provider jointly provide access service.’” Sprint PCS Pet. at 6 n.19 (citing *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd. 5020, ¶ 115 (1996)). As reflected in Sprint PCS’s confusion regarding the Commission’s orders, Sprint PCS’s position is based on a misinterpretation of the Commission’s decisions. In fact, as the Commission correctly noted in the *LEC/CMRS Interconnection NPRM*, the Commission has never resolved whether CMRS carriers should recover compensation for providing access from IXCs, as opposed to end users.

Tellingly, although Sprint PCS claims that the Commission has “squarely ruled” that CMRS carriers may recover their costs of terminating interexchange traffic from IXCs, Sprint PCS cannot quote a single Commission decision that states that IXCs must remit access charges to CMRS carriers, and none exists. Indeed, while Sprint PCS appears to believe that the Commission’s Orders are self-contradictory and that the Commission grossly misunderstood its own prior orders when it stated in 1996 that it has never addressed whether IXCs must remit access payments to CMRS carriers, the Commission’s orders are in fact quite consistent. While the Commission’s decisions conclude that CMRS carriers are entitled to be compensated for the costs they incur in originating and terminating interexchange calls – a proposition with which

AT&T has never disagreed – the Commission has never ruled that such compensation should be paid by IXCs, rather than by the CMRS carrier’s end users.⁵

The distinction in the Commission’s decisions between these two questions – (1) whether CMRS carriers should receive compensation for providing access and (2) whether that compensation should be paid by IXCs or end users – is exemplified by the very Commission Order on which Sprint PCS primarily relies, the 1994 *CMRS Equal Access NPRM*. *In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, 9 FCC Rcd. 5408, ¶ 93 (1994) (“*CMRS Equal Access NPRM*”). In the paragraph of the *CMRS Equal Access NPRM* (¶ 93) miscited by Sprint PCS (as ¶ 83), the Commission reiterated its prior statement that “cellular carriers are entitled to just and reasonable compensation for their provision of access” in support of its conclusion that CMRS carriers should receive compensation for the costs of implementing the equal access obligations proposed by the Commission in that *NPRM*. The Commission addressed the separate question of who should pay that compensation a few paragraphs later, when it tentatively concluded that CMRS providers could charge “*either . . . their equal access interexchange customers or end users*” for the costs of converting to equal access. *Id.* ¶ 95 (emphasis added).⁶ The *NPRM* on which Sprint PCS principally relies thus itself recognized that a CMRS carrier’s entitlement to compensation for the costs incurred in providing

⁵ As the Commission is aware, even in the wireline context many of the costs of providing access are borne directly by the LECs’ end users. Under the Commission’s rules, for the most part, the RBOCs’ costs of providing the common line (*e.g.*, the loop) are recovered directly from end users through a subscriber line charge, and not from IXCs. Likewise, special access services are paid for entirely by the customer of record for the line, which is often the end user.

⁶ This tentative conclusion never resulted in a final rule because Congress in the 1996 Act prohibited the Commission from imposing its proposed equal access obligations on CMRS carriers. See *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd. 12456, ¶ 3 (1996) (“*CMRS Equal Access Order*”).

access did not resolve the question of whether such compensation should be paid by IXCs, rather than end users.

The closest the Commission has come to resolving the precise question at issue here – whether CMRS carriers should recover their costs of providing access from interexchange carriers – was in another Notice of Proposed Rulemaking. *See In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd. 5020, ¶ 115 (1996) (“*LEC-CMRS Interconnection NPRM*”). In the *LEC-CMRS Interconnection NPRM*, the Commission, without the benefit of comment or record evidence, “tentatively conclude[d] that CMRS providers should be entitled to recover access charges from IXCs, as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa) via LEC networks.” *Id.* ¶ 116 (emphasis added). At the same time, the Commission acknowledged that if the Commission were to adopt that tentative conclusion, it might have to impose rate regulation on CMRS carriers, because “CMRS providers . . . may have some market power over IXCs that need to terminate calls to a particular CMRS provider’s customer.” *Id.* ¶ 117. The Commission, however, never issued a final order implementing that tentative conclusion, perhaps because the experience from the CLEC access context led the Commission to recognize the regulatory quagmire that would result if access charges were permitted to be imposed by carriers whose end user rates are not regulated, or perhaps because the Commission recognized that the industry had spontaneously developed its own bill and keep solution to the problem and the Commission saw no need to upset industry practice.

Whatever the reason, the clearest evidence that the Commission has never resolved the issue is that only seven months ago, in the NPRM it issued in the *Intercarrier Compensation*

docket, the Commission renewed its request for comment on the question of “whether CMRS carriers are entitled to receive access charges, or some additional compensation, for interexchange traffic terminating on their networks,” presumably to update the record on this issue based on the lessons learned since early 1996. *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd. 9610, ¶ 94 (2001). Obviously, the Commission does not believe that it has already ruled on the question. It is thus as true today as it was in 1996 that the Commission “ha[s] never addressed . . . whether . . . IXCs should remit any interstate access charges to CMRS providers.” *LEC-CMRS Interconnection NPRM* ¶ 115.

II. SPRINT PCS’S SECTION 201 AND 202 CLAIMS ARE BOTH LEGALLY AND FACTUALLY BASELESS.

Sprint PCS makes the cursory claims (at 8-10) that AT&T’s decision to abide by industry practice and refuse to pay Sprint PCS for access violates Sections 201(b) and 202 of the Communications Act. Sprint PCS’s claim that AT&T, as Sprint PCS’s alleged customer, has failed to pay Sprint PCS’s charges, however, fails to state a claim under either statutory provision – as this Commission’s Orders make clear (and as Sprint PCS’s parent corporation has frequently argued). But even if a *customer’s* failure to pay for services could state a claim under either Section 201(b) or 202, Sprint PCS’s claim that AT&T has acted unreasonably, or has engaged in unreasonable discrimination, is factually baseless.

A. A Complaint That A Carrier Has Refused To Pay Access Charges Does Not State A Claim Under Either Section 201 or 202.

1. Section 201(b) Does Not Apply To Claims That A Customer Has Failed To Pay Charges For Services, Even Where That Customer Is A Carrier.

Sprint PCS's claim that AT&T has violated Section 201(b) by failing to pay Sprint PCS for access is as ironic as it is erroneous. Section 201 declares it the "duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor," and provides that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable." Sections 206 and 207 of the Act, in turn, impose liability on common carriers for violating the provisions of the Communications Act, including Section 201(b). Taken together, these provisions impose liability on a carrier for practices in connection with the carrier's provision of services to customers. *See, e.g., MCI Communications Corp. v. AT&T Co.*, 462 F. Supp. 1072, 1090 (N.D. Ill. 1978) (noting that complainant could state a claim under Section 201(b) because it "was acting as a customer" in seeking interconnection); *see also In the Matter of Kenneth Kiefer v. Paging Network, Inc.*, FCC 01-309, 2001 WL 1232323, ¶ 4 (rel. Oct. 18, 2001) ("Under section 201(b) of the Act, 'all charges, practices, classifications and regulations for and in connection with' *communications services offered by common carriers* must be just and reasonable.") (emphasis added). Section 201(b), however, does not impose liability on a customer, including a customer that is a carrier, for actions in connection with the *purchase* of services.

For this reason, the Commission has long held that a carrier's claim for unpaid tariffed charges against its customer – even where the customer is, like AT&T, also a carrier – does not

state a claim under the Communications Act.⁷ As the Commission explained in *sua sponte* dismissing a complaint brought against an IXC for failure to pay a LEC's access charges:

On our own motion, we will dismiss the BOCs' complaints and cross-complaints against AT&T. Like AT&T's complaint against the BOCs, these complaints fail to state a cause of action under the Communications Act and must be dismissed. 47 C.F.R. § 1.728.

Title II of the Communications Act was designed primarily to protect customers in their dealings with communications common carriers. The complaint provisions in particular make a carrier liable to its customers for any damages that result from the carrier's unlawful actions or omissions. 47 U.S.C. §§ 206-209. The BOCs' complaints in this case would subvert that design and turn the complaint procedures into a collection mechanism for the carriers.

In effect, the BOCs allege conditionally that AT&T, one of their interexchange carrier customers, has failed to pay the tariff rates for Special Access services. It is true that this case does not involve the typical customer-carrier relationship. The "customer" in this case is AT&T, which is itself the largest carrier in this country. But the pertinent inquiry for determining the applicability of the complaint procedures focuses on the relationships between the BOCs and AT&T with regard to the charges in question. As to those charges, the BOCs clearly are the "carriers" providing service to AT&T as the "customer." The complaints do not allege that AT&T, in its role as a carrier, acted or failed to act in contravention of the Communications Act -- allegations that might properly be the subject of a complaint. See 47 U.S.C. § 208(a). Rather, they allege conditionally that AT&T may have failed to pay the lawful charge for service. Such allegations do not state a cause of action under the complaint procedures and are properly dismissed.⁸

This conclusion is confirmed by 47 U.S.C. § 153(44), a provision added by Congress in 1996. That provision states expressly that "a telecommunications carrier shall be treated as a

⁷ See, e.g., *C.F. Communications Corp. v. Century Tel. of Wisc., Inc.*, Mem. Op. & Order, 8 FCC Rcd. 7334, ¶ 14 (1993), *vacated on other grounds*, 128 F.3d 735 (D.C. Cir. 1997); *American Sharecom, Inc. v. The Mountain States Tel. & Tel. Co.*, Mem. Op. & Order, 8 FCC Rcd. 6727, ¶ 12 (1993); *Long Distance/USA, Inc. v. Bell Tel. Co. of Pa.*, Mem. Op. & Order, 7 FCC Rcd. 408, ¶ 13 (1992), *recons. dismissed*, 11 FCC Rcd. 1835 (1996); *Tel-Central of Jefferson City, Mo., Inc. v. United Tel. Co. of Mo., Inc.*, Mem. Op. & Order, 4 FCC Rcd. 8338, ¶ 16 (1989), *petition for review denied*, 920 F.2d 1039 (D.C. Cir. 1990); *Illinois Bell Tel. Co. v. AT&T*, Order, 4 FCC Rcd. 5268, ¶ 18 (1989), ("*Illinois Bell Order*"), *recon. denied*, 4 FCC Rcd. 7759 (1989).

⁸ *Illinois Bell Order*, ¶¶ 16-18.

common carrier under this chapter only to the extent it is engaged in *providing* telecommunications services.” By contrast, a carrier, in its capacity as a *purchaser* of a telecommunications service, is no more subject to Title II regulation than an end user.

Ironically, as the Commission is well aware, Sprint PCS’s parent, Sprint Corp., has been perhaps the most vocal proponent of the position that an IXC cannot be held to have violated Section 201(b) by failing to pay for access charges. Thus, when one CLEC, Time Warner Telecom, brought a complaint at the Commission against Sprint, alleging that Sprint violated Section 201(b) by failing to pay Time Warner’s access charges, Sprint moved to dismiss, strenuously arguing that such an allegation, even if true, did not state a claim under Section 201(b). In the *Time Warner Telecom Inc. v. Sprint Communications Co. L.P.* proceedings, Sprint took the position that “[s]ection 201(b) cannot reasonably be read to include as a violation the alleged failure of a customer to pay the bills remitted by a common carrier for the provision of common carrier service. That section imposes duties upon carriers in their provision of telecommunications services to their subscribers.” Supp’l Resp. Br. of Sprint Communications Co. L.P., *In the Matter of Time Warner Telecom Inc. v. Sprint Communications Co. L.P.*, File No. EB-00-MD-04, ii-iii (Dec. 15, 2000) (attached as Exh. 1). As Sprint pointed out in that proceeding, the fact that it is a common carrier does not change the fact that, as an IXC receiving access, it is acting as a customer. *Id.* at 5 n.3. “[S]ection 201 clearly and unambiguously imposes duties upon carriers in their provision of telecommunications services to their subscribers, but not on their role as customers in their taking of such services from other carriers.” *Id.* at 10. In support of this argument, Sprint argued:

[T]aken to its logical conclusion, TWTC’s position that a carrier violates Section 201(b) of the Act when it fails to pay for the goods and services that are necessary in its provision of its

telecommunications services would enable any aggrieved supplier of goods and services to a carrier to enlist the Commission as its collection agent. . . . There is absolutely no support in the Act's statutory language or its legislative history that Congress intended to confer such expansive jurisdiction on the Commission.

Id. at 12. In short, as Sprint PCS's parent has itself argued, a claim that AT&T has failed to pay Sprint PCS for access simply does not state a claim under Section 201(b) as a matter of law.

2. Section 202(a) Does Not Apply To Claims That A Customer Has Failed To Pay A Given Carrier For Service.

As with Section 201(b), the allegation by a carrier – such as Sprint PCS – that a customer has failed to pay access charges does not state a claim under Section 202(a). As the Commission has made clear in concluding that a claim that an IXC has failed to pay for access does not state a valid claim under Section 202(a), “Section 202 contemplates that the Commission would find compensable discrimination only if a similarly situated *customer* paid less for the same service and the complaining *customer* can show injury.” *In the Matter of Illinois Bell Tel. Co. v. AT&T Co.*, 4 FCC Rcd. 7759, ¶ 5 (1989) (emphasis added). *See also In the Matter of AT&T Corp. v. Jefferson Tel. Co.*, 16 FCC Rcd. 16130, ¶ 15 (2001) (concluding that complaint “fails to state a discrimination claim under section 202(a)” where complainant “fails to allege that [the carrier] treated one customer differently from another”); *In the Matter of American Message Centers v. Sprint Communications Co.*, 8 FCC Rcd. 5522, ¶ 12 (1993) (“Since this is not a case where the *customer* requested or even challenged any particular treatment or action by Sprint, we find that AMC has failed to state a cause of action under Section 202(a).”).

Again, at a time when doing so suited its purposes, Sprint recognized that an allegation that a customer has failed to pay access charges cannot state a claim under Section 202(a). For example, Sprint has observed that “in the IXC-to-CLEC context, the CLEC, and not the IXC, is the provider of service. Therefore, under the specific language of Section 202(a), the IXC's

refusal to accept (or decision to discontinue) purchasing the CLEC's access service is not covered by Section 202(a)." Sprint Petition for Declaratory Ruling, *In the Matter of Petition for Declaratory Ruling Regarding the Legality of Terminating or Declining Access Service Ordered or Constructively Ordered, and the Minimum Requirements for Effecting Such Termination*, File No. CCB/CPD No. 01-02, 9 (Jan. 19, 2001). Sprint has also argued that:

[W]ith respect to access services, the IXC is the customer, and the CLEC is the service provider. Section 202(a), like the other statutory provisions cited by the CLECs, restricts telecommunications service providers, not their customers (including carrier-customers). No cause of action lies against a customer for discriminating against its bottleneck service provider. Thus, an IXC may have a cause of action against a CLEC for unreasonable discrimination in the provision of interstate access service, but the CLEC has no Section 202(a) rights against its IXC customer with respect to the latter's purchase of access services, or refusal to purchase such services.

Reply Comments of Sprint Communications Co. L.P., *In the Matter of Petition for Declaratory Ruling Regarding the Legality of Terminating or Declining Access Services Ordered or Constructively Ordered, and the Minimum Requirements for Effecting Such Termination*, File No. CCB/CPD No. 01-02, 13-14 (March 2, 2001). *See also id.* at 14-15 ("The [IXCs], however, are not discriminating unfairly in the provision of service to the CLECs' customers. Rather, it is the CLECs that are placing unreasonable conditions on the petitioner's access to the CLECs' customers. The petitioners' refusal to pay extortionate charges to the CLECs as a condition of access to their customers does not constitute unjust discrimination against such customers."). The hypocrisy is clear – for Sprint recognizes the limits on Section 201(b) and 202(a) when those limits benefit its corporate coffer. It is equally clear that the correct statutory interpretation is the one advocated by AT&T in this proceeding and by Sprint PCS's parent corporation in other proceedings: the allegation that a *customer* has failed to pay a carrier simply cannot state a claim under either Section 201(b) or 202(a).

B. AT&T's Conduct In Abiding By Long-Standing Industry Practice Is Neither Unreasonable Nor Discriminatory.

Even if an allegation that a customer has failed to pay for access charges could support a claim for violations of Sections 201(b) and 202(a) under some set of circumstances, Sprint PCS's claims that AT&T has engaged in unjust or unreasonable conduct, or has unlawfully discriminated against Sprint PCS, when AT&T refused to pay Sprint PCS's invoices for "access" are factually without foundation.

Perhaps the most important indicator of whether a party in a commercial relationship has behaved reasonably is evidence of industry practice. Despite Sprint PCS's overblown rhetoric in complaining about AT&T's allegedly arbitrary conduct, Sprint PCS Pet. at 10, the following critical facts are undisputed:

- For 15 years, from 1983, when CMRS providers began providing service,⁹ and continuing until 1998, no CMRS carrier – not even Sprint PCS – billed IXCs for access. Instead, under uniform and long-standing industry practice, all CMRS carriers recovered their full costs of originating and terminating interexchange calls from their end users.
- Between 1998 and 2000, Sprint PCS was the only CMRS provider that attempted to bill IXCs for access.¹⁰
- Evidently not wishing to see one of their CMRS competitors gain an unfair advantage, in mid-2000 Western Wireless began billing AT&T (and presumably other IXCs) for access, and in the last few months Verizon Wireless has begun billing for access as well. However, to this day the substantial majority of CMRS providers – including AT&T Wireless, Cingular, Voicestream, Nextel and others – do not bill IXCs for access.

⁹ After the Commission began licensing cellular systems in 1981, "[c]ellular service to the public began in late 1983." *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, First Report, 10 FCC Rcd. 8844, ¶¶ 3, 13 (1995).

¹⁰ Throughout that period, AT&T repeatedly informed Sprint PCS that it would not pay those charges. Subsequently, WorldCom ceased paying those charges as well. Thus, no large IXC that is unaffiliated with Sprint PCS pays Sprint PCS for access.

- Although Sprint PCS is demanding payment of approximately \$60 million from AT&T Corp. for access (an amount that is growing by the day), throughout the period in which AT&T Wireless was a part of AT&T Corp. (and apparently to this day), AT&T Wireless abided by the industry's practice and did not bill Sprint Corp. for access services.

Given this history, Sprint PCS's claims that AT&T has engaged in unjust or unreasonable conduct in refusing to pay Sprint PCS cannot withstand scrutiny. AT&T's conduct throughout the period was consistent with long-standing, virtually uniform, industry practice. Indeed, if any carrier has engaged in an unreasonable practice in this dispute, it is Sprint PCS, which attempted unilaterally and for its own singular advantage to supplant the deregulatory bill and keep system that for 15 years was the industry practice with access charges that no other CMRS carrier was imposing.¹¹

Sprint PCS's claim that AT&T unreasonably discriminated against Sprint PCS is likewise baseless. To begin with, AT&T has treated all CMRS carriers equally, and its decision in 1998 to abide by long-standing and uniform industry practice could hardly be said to be unreasonable. Indeed, even if Section 202(a) could be applied to AT&T's conduct as a purchaser of services, Section 202(a) permits carriers to differentiate between entities based on legitimate differences, and, as AT&T demonstrated at length in its petition, genuine regulatory and economically relevant

¹¹ Inexplicably, Sprint PCS cites (at 10-11) *In the Matter of Total Telecommunications Servs. v. AT&T Corp.*, Mem. Op. & Order, 16 FCC Rcd. 5726 (2001), for the proposition that AT&T's actions in this case violate Section 201(b). But *Total Telecommunications* is thoroughly inapt. First, and foremost, Total Telecommunications's complaint did not even allege that AT&T violated Section 201(b). *Total Telecommunications*, 16 FCC Rcd. at ¶¶ 13, 19-35. Second, in *Total Telecommunications*, the Commission concluded that AT&T should pay the tariffed rates that would have prevailed had the complainants not engaged in a sham. Here, far from there being a contract or tariff in place, Sprint PCS is attempting to displace the *de facto* bill and keep regime that has long been the governing system for CMRS-IXC interconnection. Notably, unlike here, where end user charges enable Sprint PCS to collect any call termination costs, the Commission emphasized in *Total Communications* that the "Complainants may not be able to recover their legitimate costs, if any, through other means" than through access charges. *Id.* ¶ 37. Accordingly, *Total Telecommunications* is of no relevance to this dispute.

differences between CMRS carriers and landline LECs justifies treating those two entities differently – as the industry has done. Numerous Commission decisions recognize the relevant differences between wireless and wireline carriers. *See, e.g., In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking, 14 FCC Rcd. 12673, ¶ 275 (1999) (“We note that wireless companies already charge the called parties for receiving calls.”) (“*Calling Party Pays CMRS NPRM*”); *In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services*, Notice of Inquiry, 12 FCC Rcd. 17693, ¶ 2 (1997) (“CMRS telephone consumers throughout the Nation typically pay on a per minute basis for all calls they initiate or receive. . . . A fundamental difference between wireline and wireless service is that currently a U.S. wireline telephone subscriber does not pay any additional charges to receive telephone calls, whereas most CMRS telephone subscribers pay a per minute charge to receive calls.”); *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, Declaratory Ruling & Notice of Proposed Rulemaking, 14 FCC Rcd. 10861, ¶ 2 (1999) (“Today in the United States, the presubscribed customer of a CMRS provider—“the called party”—generally pays *all charges* associated with incoming calls.”) (emphasis added). If any party is seeking to treat “like” carriers differently, it is Sprint PCS, which is seeking millions of dollars of payments that its rival CMRS carriers have not sought and would not receive for past periods.

Nor is there any merit to Sprint PCS’s hypocritical claim that AT&T would receive a “windfall” unless it were required to pay Sprint PCS’s access demands. Sprint PCS Pet. at 10. To begin with, as AT&T explained in its petition, the interexchange market is vigorously competitive. For this reason, no IXC is capable of retaining excess profits. To the extent that the CMRS industry’s practice of recovering all its costs from end users enabled IXCs to avoid costs,

those cost savings were passed on to the IXCs' customers in the rates charged by the IXCs.

Indeed, as the Commission reported to Congress:

Access charges have been a significant portion of the total cost of providing long-distance service for all facilities-based long distance carriers. The Commission has previously found that the interstate long distance market is substantially competitive. Because past experience indicates that long distance carriers tend to compete on the basis of per-minute rates, among other things, this competition creates strong incentives for carriers to reflect reductions in their costs through lower rates. Therefore, we would expect long distance companies to pass through access charge reductions, and especially in per-minute access charges, to their customers.

Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579, Report to Congress, 13 FCC Rcd. 11810, ¶ 28 (1998). Since 1998, the interexchange market has only become more competitive, as the Commission has also concluded. *See also Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Report & Order, 16 FCC Rcd. 7418, ¶ 22 (2001) (“It is also undisputed that the interstate, domestic, interexchange market is competitive. In 1995, the Commission reclassified AT&T as a nondominant interexchange carrier based on its finding that AT&T lacked unilateral market power in the long distance market, which it stated was subject to ‘substantial competition. . . . When the Commission approved the merger of MCI and WorldCom in 1998, it found that these competitive market trends continued. . . . The trends have continued and, indeed, accelerated since that time.”). Sprint PCS’s claim that the industry practice has resulted in a windfall to AT&T makes no economic sense.

Moreover, Sprint PCS’s complaint that AT&T has received a “windfall” is sheer hypocrisy. As set forth above, it is simply undisputed that until very recently no wireless carrier, other than Sprint PCS, billed IXCs for access, and the majority do not do so today. Thus, any “windfall” enjoyed by AT&T when AT&T’s interexchange customers called Sprint PCS’s customers was likewise enjoyed by Sprint Corp. when it completed calls destined to customers

served by unaffiliated wireless carriers. There is certainly no reason to believe that Sprint Corp. voluntarily remitted any payments to unaffiliated CMRS carriers for access, nor is there any reason to conclude that the percentage of interexchange calls provided by Sprint Corp. that terminate on CMRS networks exceeds the percentage of CMRS-destined interexchange calls originated by AT&T.

Indeed, it is Sprint PCS, not AT&T, that is seeking a windfall. It is undisputed that throughout the time in which AT&T Wireless was a part of AT&T Corp. (and apparently to this day), AT&T Wireless respected established industry practice and never billed Sprint Corp. for access. Sprint PCS is thus seeking to require AT&T to pay Sprint for calls terminated by Sprint's wireless affiliate even though Sprint will not be required to pay for calls already terminated by AT&T's one-time wireless affiliate.¹²

Far from constituting a windfall, a ruling that AT&T is not obligated to pay Sprint PCS for access is necessary to prevent the manifest injustice that would occur if AT&T were now required to pay for calls terminated prior to such a ruling. Because the virtually uniform industry practice during the period of this dispute was one in which wireless carriers did not bill IXCs for access, AT&T justifiably relied on the reasonable expectation that it would not have to make such payments when it set its rates. AT&T has no way now to retroactively increase its rates for those past periods, and thus would have no way to recover the costs of paying Sprint PCS for past periods.

¹² In addition, since Sprint PCS apparently is still charging its end users for calls that they receive, obtaining access charges for those same calls would result in at least a double recovery of its costs. In the case of its billing of access services to AT&T, this would result in a \$60 million windfall.

By contrast, there would be no unfairness to wireless carriers if the Commission ruled that the existing end-user pays system should continue. Under that system, which continues today to be the one followed by the majority of wireless carriers, wireless carriers were and will be able to fully recover the costs they incur in originating and terminating interexchange calls – they will simply have to recover those costs from their end users, as all wireless carriers have for years.

Sprint PCS's claim that requiring all wireless carriers to abide by the dominant industry practice would hamper the ability of wireless carriers to compete with ILECs, Sprint PCS Pet. at 11, flies in the face of the historical evidence and the Commission's (and Sprint's) prior statements regarding the nature of the local exchange market. To begin with, the Commission has repeatedly recognized that wireless carriers do not today provide a service that competes with the ILECs' local exchange service. *See, e.g., In the Matter of Applications of NYNEX Corp., Transferor, and Bell Atlantic, Corp., Transferee*, 12 FCC Rcd. 19985, ¶ 90 (1997) ("Mobile telephone service providers are currently positioned to offer products that largely complement, rather than substitute for, wireline local exchange."¹³ Indeed, when it suited its purposes (*e.g.*, in asserting that *CMRS providers'* actual costs should be considered in determining access charges, but that the actual costs of *CLECs* are irrelevant), Sprint PCS's parent argued that *CMRS* carriers should be treated differently from *LECs* because "they do not provide a substitute for wireline local service." Comments of Sprint Corp., *In the Matter of Access Charge Reform*, CC Docket No. 92-262, 19 (Oct. 29, 1999).

Moreover, Sprint PCS's unsupported assertion that "Sprint PCS cannot possibly become a meaningful[] competitor to ILECs if ILECs receive access charges . . . while Sprint PCS does

¹³ That is why none of the Commission's Orders approving mergers between *LECs* considered wireless services to be part of the relevant product market in determining the concentration of the local exchange markets or the competitive effects of those proposed mergers.

not” cannot be squared with the evidence of the actual historical growth in wireless services. Wireless service provides its customers with mobility, a benefit for which the customer is willing to pay more. Thus, the fact that no wireless carrier, including Sprint PCS, billed IXCs for access prior to 1998, and the fact that the majority do not do so even today, has in no way impeded growth in the CMRS market. *See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Sixth Report & Order, 16 FCC Rcd. 13350, 13433 (2001) (“The past year has continued the positive trends of increased competition in the CMRS industry described in the *Fifth Report*. First, during 2000 mobile telephone subscribership climbed 23.5 million, to 109.5 million. . . . [A]ccording to the Bureau of Labor Statistics, the price of mobile telephone service fell by 12.3 percent.”). The burgeoning CMRS market completely belies Sprint PCS’s allegation that the lack of access charges somehow prevents CMRS carriers from thriving.¹⁴

Finally, Sprint PCS’s complaints about the allegedly discriminatory treatment of CMRS carriers as compared with LECs in collecting access charges rings particularly hollow given the significant regulatory advantages enjoyed by wireless carriers, such as Sprint PCS, in competing with both the ILECs and with IXCs, such as AT&T. Unlike the ILECs, wireless carriers, such as Sprint PCS, are exempt by statute from providing equal access to long distance carriers. *See* 47 U.S.C. § 332(c)(8) (“A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for

¹⁴ Sprint PCS acknowledges (at 2) that it was not until 1998 – 15 years into the history of CMRS – that it first sought access charges from IXCs. That admission eviscerates Sprint PCS’s blatantly incorrect claim (at 6) that “CMRS providers have been compelled to charge mobile customers for incoming calls because local exchange carriers (“LECs”) and IXCs historically refused to pay CMRS carriers anything for their call termination costs.” Unlike LECs, IXCs were not even approached about paying for access until years after CMRS emerged, and years after CMRS carriers began charging their customers airtime charges on calls received by the customers.

the provision of telephone toll services.”). Accordingly, any Sprint PCS customer that wishes to place a 1+ long distance call must use Sprint’s long distance service. This exemption has at least two significant consequences. First, this regulatory advantage means that unlike the ILECs, who incur a marginal cost but receive no marginal revenue when originating many 1+ interexchange calls (*i.e.*, when the end user is not presubscribed to the ILEC for long distance service), Sprint PCS has a statutorily protected monopoly on the end user’s revenue when originating a 1+ long distance call. Second, whereas independent IXCs have to compete for their long distance customers’ business with other IXCs and with those ILECs who are permitted to provide interexchange service originating within the state, Sprint PCS is shielded by law from having to compete for the interexchange business of its end users.

Sprint PCS, in its capacity as an IXC, likewise enjoys a regulatory advantage over independent IXCs. Under the Commission’s rules, all calls carried by a CMRS provider within a major trading area (“MTA”)¹⁵ are considered “local,” even where they cross multiple exchange lines or local access transport area (“LATA”) boundaries. *See In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand, 16 FCC Rcd. 9151, ¶ 47 (2001); *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, ¶ 1036 (1996) (deciding that intra-MTA LEC-CMRS traffic is subject to reciprocal compensation, even if the traffic is inter-LATA); 47 C.F.R. §§ 51.701(b)(2), (e). Thus, when one of Sprint PCS’s customers makes a call between New York City and Albany, Sprint PCS pays only reciprocal compensation rates to Verizon to terminate the call,

¹⁵ An MTA is the largest geographic service area for cellular service. *Local Competition Order* ¶ 1036. MTAs are considerably broader than are LATAs; the United States is split into 51 broad areas, including the 47 Major Trading Areas as defined by Rand McNally, plus 4 additional MTAs for Alaska, Guam and the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and American Samoa. *See* 47 C.F.R. § 24.202(a) (defining MTA).

whereas AT&T would have to pay the far higher intrastate access rates when completing the same call.

Sprint PCS has never been heard to complain about the regulatory differences between its services and those of other carriers when the disparity in treatment inures to its benefit. As a long distance provider, Sprint Corp. likewise enjoyed the benefits of the CMRS industry's prevailing practice when completing calls to AT&T Wireless customers, or to customers of the dozens of other wireless providers who do not bill for access. On the other hand, when it sees the opportunity to obtain a significant amount of revenue not even sought by the majority of its wireless competitors (and, even then, only very recently), and not incurred by Sprint Corp. when completing calls to unaffiliated wireless carriers, Sprint PCS is quick to complain about alleged disparities in treatment. Sprint PCS's unprincipled and hypocritical attempt to depart unilaterally from accepted industry practice and bill IXCs for access should be rejected.

CONCLUSION

For the foregoing reasons, Sprint PCS's Petition for Declaratory Ruling should be denied.

Respectfully submitted,

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