Before the Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
@ Communications, Inc., Requestor	)	
	)	
v.	)	**Docket No.** 02-14
	)	
	)	
Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, "Sprint"), Respondents	)	

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OFFICE OF THE SECRETARY

To: The Commission

PETITION FOR DECLARATORY RULING

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January 9, 2002

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SUMMARY

@ Communications, Inc. ("@ Communications"), a CLEC, and Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, "Sprint"), ILECs, have entered into an interconnection agreement, and are still in the process of implementing physical interconnection. The parties have a dispute over interconnection, and Sprint refuses to interconnect or exchange traffic unless @ Communications waives rights it possesses under the Agreement and the Commission's rules.

The dispute between the parties is limited to the construction of the statute and the Commission's rules and orders. It involves no material issues of fact. No public comment is necessary for the Commission to issue a declaratory ruling.

The dispute relates to the cost responsibility for trunks on Sprint's side of the interconnection point(s) ("IP") between @ Communications' network and Sprint's network. Sprint is attempting to require @ Communications to bear the entire cost of the transport facilities from the IP to each local calling area. @ Communications intially chose to have a single IP in the LATA with each party bearing the cost of transport on its side of the IP. @ Communications' right to make this choice was based on the Federal Telecommunications Act, the Agreement, and the Commission's interconnection rules.

@ Communications has modified its plans, and now proposes multiple IPs in the LATA, at each tandem. It has proposed to Sprint that @ Communications bear cost responsibility for transport between each IP and @ Communications's switch, but that Sprint bear cost responsibility for transport and switching between Sprint customers and the tandems at which the IPs will be located.

Defendant Sprint will only agree to interconnect and exchange traffic with claimant provided @ Communications "agrees to make timely payment for the full cost of transport from the IP to the local calling area." In short, Sprint demands that @ Communications agree to pay for all transport from each Sprint end office in the LATA to @ Communications' switch, including the cost of transport between each Sprint end office and the Sprint tandem (all on *Sprint's* side of the IPs). This requirement would force Claimant to waive its rights under the parties' agreement, the Federal Telecommunications Act, and the Commission's orders and rules. Claimant believes that 47 U.S.C. § 251(c)(2), (3); 47 C.F.R. § 51.305(a)(2); 47 C.F.R. § 51.703(b); and 47 C.F.R. § 51.709(b) prohibit Sprint from making these demands for payment methods as a precondition to interconnection. Sprint apparently believes that this is not the case.

@ Communications originally brought a post interconnection dispute complaint (based on a single IP proposal) before the North Carolina Utilities Commission ("NCUC"). However, the NCUC's Recommended Arbitration Order in a separate matter (involving terms of a new agreement) appeared to be adverse to @ Communications' position on the cost of transport issue, and @ Communications therefore requested that the North Carolina Commission hold the cause in abeyance while @ Communications initiated a proceeding with the Federal Communications Commission seeking a declaratory ruling on the cost of transport issue and the effect of 47 C.F.R. § 51.709(b). The North Carolina Commission had indicated the issue was not clear under FCC precedent and had suggested this action in the other matter. On July 19, 2001, the North Carolina Utilities Commission entered an order holding @ Communications' complaint in abeyance.

@ Communications then proposed multiple IPs in the LATA, at each tandem. It has proposed to Sprint that @ Communications bear cost responsibility for transport between each IP and @ Communications's switch, and that Sprint bear cost responsibility for transport and switching between Sprint customers and the tandems at which the IPs will be located. Sprint refuses, on the same ground it refused before, and demands that @ Communications agree to bear 100% cost responsibility for transport between Sprint end users and @ Communications' switch, including Sprint facilities on Sprint's side of the IP, and without regard to the percent of traffic originated by Sprint.

Because of the need for speedy resolution of this controversy, and because the matters at issue are purely legal ones, @ Communications requested that the Commission take this matter up on its Accelerated Docket. Commission staff declined to include this matter on the Accelerated Docket. Claimant has brought this petition so that the Commission may resolve the matter, as suggested by the NCUC in several cases before it, including Requestor's.

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Carolina Telephone and Telegraph	)	
Company and Central Telephone Company	)	
(collectively, "Sprint"), Respondents	)	

To: The Commission

PETITION FOR DECLARATORY RULING

Comes now @ Communications, Inc. ("@ Communications"), Requestor, complaining of Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, "Sprint"), Respondents, and pursuant to 47 C.F.R. § 1.2, asking that the Commission issue a declaratory ruling to resolve the controversy between the parties and remove uncertainty, and would show the Commission as follows:

I. DESCRIPTION OF THE PARTIES AND ATTORNEYS

1. Requestor is @ Communications, a competitive local exchange company ("CLEC"). Its address is:

3000 Arendell Street
Moorehead City Plaza, Suite 111
Morehead City, North Carolina 28557

2. Requestor is represented by the following counsel:

W. Scott McCollough
Texas State Bar No. 13434100

e-mail: wsmc@aus.scmplaw.com

David Bolduc
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3. Respondents are Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, "Sprint"), incumbent local exchange companies ("ILECs"). Their address is:

Carolina Telephone and Telegraph Company
Central Telephone Company
14111 Capital Boulevard
Wake Forest, North Carolina 27587-5900

4. Respondents' attorneys are:

Kathryn L. Feeney
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5454 West 110th Street
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(202) 585-1920 (Voice)
(202) 585-1896 (Facsimile)

II. JURISDICTION

5. The Commission has jurisdiction over this matter under 5 U.S.C. § 554 and 47 C.F.R. § 1.2.

III. STATUTES, ORDERS, AND/OR REGULATIONS VIOLATED

6. While this Petition is not filed as a formal complaint, Respondents have violated 47 U.S.C. § 251(c)(2) and (3); 47 C.F.R. §§ 51.301(a), (b), and (c)(5) and (6); 47 C.F.R. § 51.305(a)(2) and (5); 47 C.F.R. § 51.321; 47 C.F.R. § 51.701(c)-(e); 47 C.F.R. § 51.703(b); 47 C.F.R. § 51.709(b); and the Commission's Orders in a number of proceedings,[1] by refusing to interconnect and refusing to exchange traffic unless @ Communications waives its rights under the statute, rules, and orders, and assumes the entire cost burden of all transport from @ Communications' switch to and from each applicable local calling area.[2]

---

[1] *See, e.g* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16045 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. Bd.*), *aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice Of Proposed Rulemaking*, ¶¶ 72, 112-114 (Rel. April 27, 2001); In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, *Order on Remand and Report and Order*, note 149 (Rel. April 27, 2001) (*ISP Remand Order*); In the Matter of Application by SBC Communications, *et al* to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, *Memorandum Opinion and Order*, FCC 00-238 at ¶ 78 (Rel. June 30, 2000); In the Matters of TSR Wireless, LLC, *et al.*, v. U S West Communications, Inc., *et al.*, FCC 00-194, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, *Memorandum Opinion And Order*, 15 FCC Rcd. 11166, ¶¶ 25, 31 (Rel. June 21, 2000). *aff'd sub nom. Qwest v. FCC*, 252 F.3d 462 (D.C. Cir., 2001).

[2] A substantial portion of the traffic in question will be ISP-bound traffic, which the Commission has recently held to fall within the purview of its § 201 authority. Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, *ISP Remand Order*, ¶ 52 (Rel. April 27, 2001).

7. Sprint is demanding compensation from @ Communications for transport of traffic on its side of the IP in excess of that allowed by (and thus in violation of) the Act and Commission orders and rules. Sprint refuses to interconnect and exchange traffic with @ Communications unless @Communications waives its rights under the Act and Commission orders and rules. This refusal is a violation of the Act and Commission orders and rules.

8. Sprint's refusal, detailed below, to interconnect and exchange traffic with Claimant unless @ Communications agrees to waive its rights violates its duty to interconnect under 47 U.S.C. § 251 and 47 C.F.R. §§ 51.305(a)(2) and (5).

9. Sprint's refusal, detailed below, to interconnect and exchange traffic with @ Communications unless @ Communications agrees to waive its rights violates its duty to negotiate in good faith under 47 U.S.C. §§ 251(b) and (c) and 47 C.F.R. §§ 51.301(a), (b), and (c)(5) and (6).[3]

10. Sprint's demand, detailed below, that @ Communications be 100% responsible for transport costs violates 47 U.S.C. § 251(b)(5), 47 C.F.R. §§ 51.701(c), 51.701(d), 51.701(e), 51.703(b), and 51.709(b), and the Commission's single IP rule (47 C.F.R. § 51.321), as expressed in the orders cited above.

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[3] "We reject the general contention that a request by a party that another party limit its legal remedies as part of a negotiated agreement will in all cases constitute a violation of the duty to negotiate in good faith. A party may voluntarily agree to limit its legal rights or remedies in order to obtain a valuable concession from another party. *In some circumstances, however, a party may violate this statutory provision by demanding that another waive its legal rights.*" *Local Competition Order, supra*, at ¶ 152. (Emphasis added.) No "valuable concession" is at issue here. Sprint simply demands that @ Communications waive its legal rights on the "cost of transport" issue and accept Sprint's preferred resolution of the issue before Sprint will interconnect and exchange traffic.

IV. FACTS

11. There are no material facts at issue in this dispute. The issue raised in this controversy is purely one of determining what the rules of the Commission require. Despite Sprint's insistence, and the North Carolina Utilities Commission's finding, that the rules are not clear, the rules are clear, and @ Communications merely seeks a declaration interpreting the existing rules. This being the case, there is no reason for the Commission to invite public comment.

12. @ Communications received its certificate of public convenience and necessity to provide local exchange telecommunications services in North Carolina on October 20, 1998 in Docket No. P-742. The Certificate of Public Convenience and Necessity was issued on January 28, 1999 under Docket No. P-742, Sub 1.

13. @ Communications adopted the terms of the North Carolina Sprint-MCImetro agreement. The North Carolina Utilities Commission approved the @ Communications-Sprint interconnection agreement in March, 1999 in Docket No. P-10, Sub 524[4] and Docket No. P-7, Sub 879.[5]

14. The initial term of the @ Communications-Sprint Interconnection Agreement ("the Agreement") term expired on or about August 16, 2000. The Agreement continues in force, however, because, (A) the parties are negotiating a replacement agreement and/or (B) on information and belief, the underlying agreement between MCImetro and Sprint is also still in effect.

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4 Agreement with Central Telephone Company.

5 Agreement with Carolina Telephone and Telegraph Company.

15. @ Communications and Sprint are still in the process of implementing physical interconnection. The parties have a dispute over interconnection and Sprint refuses to interconnect or exchange traffic unless @ Communications waives rights it possesses under the Agreement and the Commission's rules. The dispute, which has, to date, delayed full implementation for more than 12 months, relates to cost responsibility for trunks on Sprint's side of the interconnection points ("IPs") between @ Communications' network and Sprint's network. Sprint is attempting to require @ Communications to bear the entire cost of the transport facilities from the IPs to each local calling area.[6]

16. @ Communications initially chose to have a single IP in the LATA with each party bearing the cost of transport on its side of the IP. @ Communications' right to make this choice is based on the Federal Telecommunications Act, the Agreement, and the Commission's interconnection rules. However, after the abatement of the North Carolina proceeding described below, @ Communications proposed multiple IPs in the LATA, at each tandem. It has proposed to Sprint that @ Communications bear cost responsibility for transport between each IP and @ Communications's switch, but that Sprint bear cost responsibility for transport and switching between Sprint customers and the tandems at which the IPs will be located.

17. Attachment IV, Interconnection of the Agreement provides, in pertinent part:

> **1.2 Interconnection Point**
>
> 1.2.1 "Interconnection Point" or "IP" means the physical point that establishes the technical interface, the test point, and

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[6] Correspondence between the parties, including Sprint's May 11, 2001 letter refusing to interconnect and exchange traffic unless @ Communications bears full cost responsibility for transport is attached hereto as Exhibit "B" to Attachment B, *infra*. Sprint's August 7, 2001 letter is also attached as Attachment A hereto.

the operational responsibility hand-off between MCIm and Sprint for the local interconnection of their networks.

1.2.2 MCIm[7] shall designate at least one (1) physical IP in the LATA (of which one (1) IP shall be a tandem office or from a location which MCIm purchases transport to such tandem office, unless otherwise mutually agreed by the Parties) in which MCIm originates Local Traffic and interconnects with Sprint. MCIm will be responsible for engineering and maintaining its network on its side of the IP. Sprint will be responsible for engineering and maintaining its network on its side of the IP. If and when the Parties choose to interconnect at a mid-span meet, MCI and Sprint will jointly provision the facilities that connect the two (2) networks. Sprint will be required to provide either fifty percent (50%) of the facilities or to its exchange boundaries, whichever is less. MCIm will be required to provide either fifty percent (50%) of the facilities or to its exchange boundaries, whichever is greater.

1.2.2.1 Upon MCIm's request for additional points of interconnection, Sprint will interconnect with MCIm at any Technically Feasible point of MCIm's choosing.

1.2.2.2 Any end office not subtending Sprint's tandem Switch will require provisioning of a separate IP or purchase of transport to an existing IP is (*sic*) such transport is available, by MCI to terminate traffic to such end office.

* * * *

2.4.3 MCIm may choose to establish direct trunking to any given end office. ...

* * * *

4.1.4 Trunking can be established to tandems or end offices or a combination of both via either one-way or two-way trunks. Trunking will be at the DS-0 level, DS-1 level, DS-3/OC-3 level or higher, as agreed upon by MCIm and Sprint. Initial trunking will be established between the MCIm switching centers and Sprint's access tandem(s). The Parties will utilize direct end office trunking under the following conditions:

4.1.4.1 **Tandem Exhaust.** If a tandem through which the Parities are interconnected is unable to, or is forecasted to be unable to, support additional traffic loads for any period of

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[7] Claimant adopted the North Carolina MCIm – Sprint interconnection agreement.

> time, the Parties will mutually agree to an end office trunking plan that will alleviate the tandem capacity shortage and ensure completion of traffic between MCIm and Sprint subscribers.
>
> 4.1.4.2 **Traffic Volume.** The Parties shall install and retain direct end office trunking sufficient to handle actual or reasonably forecast traffic volumes, whichever is greater, between an MCIm switching center and a Sprint end office where the traffic exceeds or is forecast to exceed 220,000 minutes of Local Traffic per month. The Parties will install additional capacity between such points when overflow traffic between the MCIm switching center and Sprint access tandem exceeds or is forecast to exceed 220,000 minutes of Local Traffic per month unless otherwise mutually agreed.
>
> 4.1.4.3 **Mutual Agreement.** The Parties may install direct end office trunking upon mutual agreement in the absence of the conditions set forth in Subsections 4.1.4.1 and 4.1.4.2 above and agreement will not be unreasonably withheld.[8]

18. Sprint is refusing to interconnect unless @ Communications pays for the transport facilities on Sprint's side of the IPs to every local calling area – that is, between the Sprint tandems and each Sprint end office, on Sprint's side of the IP. Section 4.1.4.3, which requires mutual agreement, does not allow Sprint to impose a trunking cost obligation far beyond and in direct conflict with the express terms of the Agreement and FCC rules.

19. Defendant Sprint will only agree to interconnect and exchange traffic with claimant provided "@ Communications agrees to make timely payment for the full cost of transport from the IP to the local calling area."[9] In short, Sprint insists that @ Communications be responsible for the cost of transport between each Sprint end office and the Sprint tandem (all on *Sprint's* side of the IPs). This requirement would force Claimant to

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[8] The citation to the agreement is interposed merely to show that the agreement is consistent with the FCC's rules. @ Communications is not here seeking interpretation or enforcement of the agreement.

[9] *See* August 7, 2001 letter from Robert Carl Voigt, Sprint, to Cathleen M. Plaut. A copy is attached hereto as Attachment A.

waive its rights under the parties' agreement, the Federal Telecommunications Act, and the Commission's orders and rules.

20. On May 24, 2001, @ Communications filed a complaint against defendants with the North Carolina Utilities Commission[10] alleging defendants' refusal to interconnect and exchange traffic without a waiver of @ Communications' rights as alleged above, where @ Communications had proposed a single IP.

21. On July 16, 2001, @ Communications, noting that the North Carolina Utilities Commission's Recommended Arbitration Order in a separate matter before them[11] was adverse to @ Communications' position on the cost of transport issue, requested that the North Carolina Commission hold the cause in abeyance while @ Communications initiated a proceeding with the Federal Communications Commission seeking a declaratory ruling on the cost of transport issue and the effect of 47 C.F.R. § 51.709(b). The North Carolina Commission had suggested that FCC resolution was proper in the other matter as well.[12] On July 19, 2001, the North Carolina Utilities Commission entered an order holding the cause in abeyance.[13]

22. As discussed below, @ Communications attempted to have this dispute accepted on the Commission's Accelerated Docket. Sprint argued that a petition for

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[10] North Carolina Utilities Commission, Docket No. P-7, Sub 969; Docket No. P-10, Sub 611. A copy of the complaint is attached hereto as Attachment B.

[11] In The Matter of Petition of Sprint Communications Company, L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. P294, Sub 23, *Recommended Arbitration Order*, July 5, 2001. Sprint Communications Company was the CLEC in that case, while Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, "Sprint") are the ILEC in this case – circumstances that suggest the utility to both ILECs and CLECs of resolving this issue.

[12] *Id.* The Recommended Arbitration Order suggested that if it felt aggrieved by the order, "Sprint may wish to seek a declaratory ruling from the FCC, so that a more definitive statement of this issue may be received from that source."

declaratory ruling would be a more appropriate method for resolving the dispute, and Commission staff denied @ Communications' request that this matter be accepted on the Accelerated Docket.

23. While Claimant had suggested a method for cost allocation and payment in its filing, the North Carolina Commission was silent on the matter, thus leaving Claimant with defendants' refusal to interconnect and exchange traffic with Claimant unless Claimant agrees to waive its rights and bear the entire cost of transport.

24. @ Communications has changed its original proposal, to a multiple IP architecture, but Sprint still refuses to interconnect and exchange traffic from any local calling area that does not contain a IP unless @ Communications agrees in advance to Sprint's cost allocation scheme. The problem before the North Carolina Commission and the problem before this Commission, while similar, are different. In the case before this Commission, @ Communications proposes multiple IPs, at Sprint tandems in the LATA, instead of the single IP discussed before the North Carolina Commission. As a consequence, @ Communications will bear more cost responsibility for trunking between the IPs and @ Communications' switch. The Sprint demand is still that @ Communications agree to bear 100% cost responsibility between each Sprint end office and the @ Communications switch – in other words, for the connection between Sprint end offices and Sprint tandems *on Sprint's side of the IPs* – without regard to percent originating use. Sprint is attempting to require @ Communications to pay for traffic originated by Sprint.

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[13] A copy of the order is attached hereto as Attachment C.

V. DISCUSSION

25. The Commission's rules are consistent with the Agreement, and the Commission has recently reaffirmed and clarified these rules. A CLEC has the right to establish a single IP in a LATA and an ILEC bears the responsibility and cost of delivering traffic to and from the IP.

26. The FCC has extensively addressed this issue. *See* 47 U.S.C. § 251(c)(2), (3); 47 C.F.R. § 51.305(a)(2); 47 C.F.R. § 51.321; 47 C.F.R. § 51.703(b); 47 C.F.R. § 51.709(b); In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice Of Proposed Rulemaking*, ¶¶ 72, 112-114 (Rel. April 27, 2001) ("*Intercarrier Compensation NPRM*" or "*NPRM*"); In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, *Order on Remand and Report and Order*, note 149 (Rel. April 27, 2001) "*ISP Remand Order*")[14]; In the Matter of Application by SBC Communications, *et al* to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, *Memorandum Opinion and Order*, FCC 00-238 at ¶ 78 (Rel. June 30, 2000); In the Matters of TSR Wireless, LLC, *et al.*, v. U S West Communications, Inc., *et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, *Memorandum Opinion And Order*, ¶¶ 25, 31 (Rel. June 21, 2000), *aff'd sub nom. Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

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[14] Note 149 to the *ISP Remand Order* states: "This interim regime affects only the intercarrier *compensation* (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under out Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection." (emphasis added)

27. As the Commission explains in the rules and decisions above, a carrier may designate a single point of interconnection ("IP") in a LATA and each carrier is responsible for the underlying cost of the facilities on its side of the interconnection point.

28. In the *Intercarrier Compensation NPRM*, the Commission noted that currently "an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single IP per LATA."[15]

29. The Commission's existing rules preclude an ILEC for charging non-CMRS carriers for transport of traffic other than "interstate or intrastate exchange access, information access, or exchange services for such access" that originates on the ILEC's network.[16] They also require that an ILEC compensate the other carrier for transport and termination for such traffic that originates on its network facilities.[17]

30. The Commission asks for comment in the *NPRM* on whether it should retain the single IP rule and whether it should amend its existing rules requiring the ILEC to bear its own transport costs up to the IP in the event that a CLEC picks a IP outside of the ILEC's "local calling area." This request for comment on whether the rules should be changed clearly indicates that the existing rules require the ILEC to bear cost responsibility to the IP.[18]

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[15] *Intercarrier Compensation NPRM* at ¶¶ 72, 112; 47 C.F.R. § 51.701.

[16] 47 C.F.R. § 51.701(b). The *NPRM* quotes the old rule, which was amended by the *ISP Remand Order* at ¶¶ 34, 36, 39, 42-43.

[17] *Id.*

[18] Id. at ¶¶ 72, 112-114. The request is phrased in terms of whether the ILEC should bear its costs, but it is clear that *the Commission's current rules require this. See* 47 C.F.R. § 51.305(a)(2); 47 C.F.R. § 51.703(b); 47 C.F.R. § 51.709(b)*; Intercarrier Compensation for ISP-Bound Traffic,* CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-132, ¶ 78, n. 149 (Rel. April 27, 2001)(petition for stay pending) ("*ISP Remand Order*"); In the Matter of Application by SBC Communications, *et al* to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, *Memorandum Opinion and Order*, FCC 00-238 at ¶ 78 (Rel. June 30, 2000); In the Matters of TSR Wireless, LLC, *et al.*, v. U S West Communications, Inc., *et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, *Memorandum Opinion And Order*, FCC 00-194, ¶¶ 25, 31 (Rel. June 21, 2000), *aff'd sub nom. Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).. As the Commission

31. The existing rules flow directly from the text of the Act. Section 251(c)(2) mandates that ILECs are required to provide for interconnection with their networks "at any technically feasible point."[19] This requirement applies regardless of the locations of ILECs' arbitrarily determined "local calling areas." Section 251(b)(5) requires an ILEC to "establish reciprocal compensation requirements for the transport and termination of telecommunications,"[20] and Section 252(d)(2)(A)(i) and (ii) require, respectively, that this compensation must provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier"[21] and that this compensation must be a "reasonable approximation of the additional costs of *terminating* such calls."[22] The Act clearly precludes Sprint's position that the single IP rule should be somehow changed or disregarded or that it should receive greater compensation (i.e., more than the terminating carrier's additional costs of terminating) – that is, reimbursement for costs it incurs to deliver calls that it *originates* to a distant IP.

32. While the Commission has invited comment in the *NPRM* on whether the "single IP" and associated transport rules should be changed, it made it clear when it did so that the current rules require ILECs such as Sprint to allow a CLEC to establish a single IP in the LATA and prohibit the ILEC from charging the CLEC transport from a local calling area

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explains in these decisions, a carrier can designate a single point of interconnection in a LATA, and each carrier is responsible for the underlying cost of the facilities on its side of the interconnection point and the cost of delivering calls to the networks of interconnecting carriers.

[19] 47 U.S.C. § 251(c)(2).

[20] 47 U.S.C. § 251(b)(5).

[21] 47 U.S.C. § 252(d)(2)(A)(i).

[22] 47 U.S.C. § 252(d)(2)(A)(ii) (emphasis added).

to the IP.[23] It is equally clear that the transport cost allocation result is the same where there are multiple IPs.

33. 47 C.F.R. § 51.703(b) is quite clear on the subject of one LEC charging another for local telecommunications traffic that originates on the LEC's network – it is specifically prohibited:

> A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.[24]

34. As the Commission ruled in *TSR Wireless*, this prohibition clearly covers the cost of LEC transmission facilities that are used to deliver local telecommunications traffic that originates on the LEC's network.[25]

35. Even if the Commission's "single IP" rules did not have the result described above, and @ Communications were *required* to establish multiple IPs,[26] Sprint would still bear cost responsibility for the transport facilities in relation to its percent originating traffic. 47 C.F.R. § 51.709(b) states:

> (b) The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover

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[23] *See*, for example, the discussion in the *Intercarrier Compensation NPRM*. A single IP, where requested by the CLEC, is mandatory. ¶¶ 72, 112. While the Commission asks whether, in *future* rules, the ILEC *should* have an obligation to meet the CLEC at an IP outside a local calling area, and bear its own transport costs to that point (¶¶ 72, 112-114), it is clear that the current rules impose such an obligation, and that the Commission is not asking *whether* they do now, but whether they *should* in the future. The Commission's statement of the current rules is clear: "Our current rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network." ¶ 112.

[24] 47 C.F.R. § 51.703(b). As used here, "telecommunications traffic" means "Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." 47 C.F.R. § 51.701(b).

[25] In the Matters of TSR Wireless, LLC, *et al.*, v. U S West Communications, Inc., *et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, *Memorandum Opinion And Order*, FCC 00-194, ¶¶ 25, 31 (Rel. June 21, 2000), *aff'd sub nom. Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

[26] Note that @ Communications current proposal is, in fact, to establish multiple IPs, at each Sprint tandem.

only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

The FCC discussed this rule in the *Local Competition Order*:

> 1062. Finally, in establishing the rates for transmission facilities that are dedicated to the transmission of traffic between two networks, state commissions should be guided by the default price level we are adopting for the unbundled element of dedicated transport. For such dedicated transport, we can envision several scenarios involving a local carrier that provides transmission facilities (the "providing carrier") and another local carrier with which it interconnects (the "interconnecting carrier"). The amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility. For example, if the providing carrier provides one-way trunks that the interconnecting carrier uses exclusively for sending terminating traffic to the providing carrier, then the interconnecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic cost of those trunks. The interconnecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the interconnecting carrier. Under an alternative scenario, if the providing carrier provides two-way trunks between its network and the interconnecting carrier's network, then the interconnecting carrier should not have to pay the providing carrier a rate that recovers the full cost of those trunks. These two-way trunks are used by the providing carrier to send terminating traffic to the interconnecting carrier, as well as by the interconnecting carrier to send terminating traffic to the providing carrier. Rather, the interconnecting carrier shall pay the providing carrier a rate that reflects only the proportion of the trunk capacity that the interconnecting carrier uses to send terminating traffic to the providing carrier. This proportion may be measured either based on the total flow of traffic over the trunks, or based on the flow of traffic during peak periods. Carriers operating under arrangements which do not comport with the principles we have set forth above, shall be entitled to convert such arrangements so that each carrier is only paying for the

> transport of traffic it originates, as of the effective date of this order.[27]

36. Even if @ Communications has some cost responsibility for the transport trunks between each local calling area and the IP, that cost responsibility is limited only to the proportion equal to @ Communications' percent originating use. Sprint's attempt to require @ Communications to bear 100% cost responsibility regardless of the direction of the traffic violates the Commission's rules.

37. As shown above, Sprint is refusing to interconnect and refusing to exchange traffic unless @ Communications assumes the entire cost burden of all transport from the IPs to and from each local calling area, including transport on Sprint's side of the IPs. This demand is wholly inconsistent with the current agreement and the Commission's rules. This dispute has delayed implementation of @ Communications' entry into local competition with Sprint. Sprint's refusal to abide by the contract and rules is unjust, unreasonable, anti-competitive and in violation of law.

VI. PROCEDURAL MATTERS

38. Claimant has attempted to resolve this matter through discussions with defendants, and both parties are well aware of each others' positions. However, the parties, after discussions and becoming involved in the North Carolina proceeding described above, are set in their positions, and these discussions have proved fruitless.

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[27] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16045 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. Bd.*), *aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (footnote omitted).

39. On August 16, 2001, Claimant requested that the Commission initiate an Accelerated Docket process to resolve this dispute. This request was made in the belief that the Accelerated Docket process would provide the most expeditious resolution of the dispute. Sprint resisted this request, suggesting that a petition for declaratory ruling would be a preferable method of resolving the dispute.

40. On November 7, 2001, Commission staff declined to initiate an Accelerated Docket process.

41. Prior to its Accelerated Docket request, Claimant mailed a certified latter to Defendants outlining the allegations that form the basis of the complaint it anticipated filing (and of this petition) that invited a response within a reasonable period of time. Claimant also served a draft copy of a Complaint on Defendants and had a mediation session with them as part of the Accelerated Docket intake process. It is clear to Claimant as a result that the parties are set in their positions, and any additional steps to resolve this dispute before the filing of a complaint would be fruitless.

42. As noted above, this dispute has been the subject of actions filed with the Commission and with the North Carolina Commission. Neither of these actions has led to a resolution of the dispute, and the North Carolina Commission action has been abated so that a declaratory ruling may be obtained.

VII. RELIEF SOUGHT

43. @ Communications respectfully requests that the Commission expeditiously rule on this matter, and issue a declaratory ruling terminating this controversy and removing uncertainty about what the current rules require.

44. The Commission should expeditiously issue a declaratory ruling affirming that the existing rules require ILECs to either bear cost responsibility on their side of the IP in circumstances like those described above, or, alternatively, that cost responsibility for ILEC facilities be apportioned according to percent originating use without regard to the location of IPs.

VIII. PRAYER

Wherefore, premises considered, @ Communications prays that:

1. The Commission expeditiously resolve this petition in @ Communications' favor;
2. The Commission expeditiously issue a declaratory ruling terminating this controversy and removing uncertainty about what the current rules require;
3. The Commission expeditiously issue a declaratory ruling affirming that the existing rules require ILECs to either bear cost responsibility on their side of the IP in circumstances like those described above, or, alternatively, that cost responsibility for ILEC facilities be apportioned according to percent originating use without regard to the location of IPs; and
4. The Commission order such other and further relief to which @ Communications may be justly entitled.

Respectfully submitted,

@ Communications, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Declaratory Ruling has been served on the following by electronic mail and/or by first class U.S. mail, properly addressed with postage prepaid, on this 9th day of January, 2002.

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