

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC**

In the matter of)
)
Developing a Unified Inter-carrier) CC Docket No. 01-92
Compensation Regime)

To: The Commission, *en banc*

**AMERICAN ASSOCIATION OF PAGING CARRIERS
COMMENTS SUPPORTING SPRINT PETITION FOR DECLARATORY RULING**

AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully submits its comments to the Federal Communications Commission in support of the Sprint Petition for Declaratory Ruling dated May 9, 2002 (the "Petition"), concerning the routing and rating of traffic by Incumbent Local Exchange Carriers (ILECs).¹ Sprint requests that the Commission reaffirm that ILECs are obligated under the Communications Act to timely load in their networks numbering resources obtained by an interconnecting carrier, and to honor the routing and rating points designated by that carrier, even when the routing and rating points are geographically separate. AAPC strongly supports the relief requested by Sprint because its petition is unambiguously correct on the law, and because issuance of a declaratory ruling is the appropriate means for resolving its dispute with the ILECs.

Background

The Petition resulted from a dispute between the Sprint Corporation wireless division ("Sprint") and BellSouth Corporation ("BellSouth") originally concerning the implementation of

¹ The Petition was designated for public comment in CC Docket No. 01-92 by Public Notice DA 02-1740 released July 18, 2002.

an NXX code obtained by Sprint to serve customers in the MacClenny wireline exchange northwest of Jacksonville, Florida. Sprint's application for the code, which was approved by NeuStar, provided that the code would be rated from the MacClenny exchange and that the traffic would be physically delivered via BellSouth's tandem in Jacksonville over existing trunk connections to Sprint's switch in Jacksonville. The MacClenny exchange is served by Northeast Florida Telephone Company (NFT) and not by BellSouth.

BellSouth routinely provides this type of interconnection arrangement to CMRS carriers (commonly referred to as "flexible rating") when the rating point is associated with an exchange served by BellSouth. However, BellSouth refused to do so in Sprint's case because the rating point was associated with another ILEC exchange (NFT). BellSouth would only route the traffic to NFT's switch serving MacClenny, and insisted that Sprint must establish a direct connection with NFT in the MacClenny exchange in order to terminate traffic destined for Sprint's customers with numbers assigned from the NXX code in question.

After attempting unsuccessfully over many months to resolve its dispute directly with BellSouth, Sprint eventually filed its Petition requesting the Commission to rule that BellSouth's actions in refusing to honor Sprint's rating and routing directions are unlawful. Evidently due to the threat of this Commission's intervention, BellSouth modified its position to the extent that it did in fact load the NXX code in its tandem and honor Sprint's routing instructions; but BellSouth continued to insist that the arrangement is improper. Accordingly, BellSouth has sought rulings from state regulatory commissions to vindicate its obstruction of Sprint's interconnection.

AAPC is a new national trade association representing paging carriers throughout the United States. AAPC officially organized and commenced operation at its first annual meeting

at Myrtle Beach, SC, on May 31, 2002. Additional information concerning AAPC may be found at its web site www.pagingcarriers.org.

Members of AAPC utilize the “flexible rating” interconnection arrangement that lies at the core of the dispute between Sprint and BellSouth. Historically, this type of arrangement has not been available from all of the Bell ILECs in all areas; in fact, it is a relatively recent option even in those areas where it is now offered. As a result, paging carriers historically have been forced to utilize less efficient and substantially more costly Type 1 (end office) interconnections in order to extend local calling access to their customers from wireline exchanges in the outlying regions of their service areas. Confirming both the general obligation of ILECs who operate tandems to honor the rating and routing instructions for NXX codes obtained by CMRS carriers, as well as the specific obligation to do so when the rating point is physically separate from the delivery point, is thus vitally important to the paging industry as it endeavors to improve its networks and enhance their efficiency in today’s intensively competitive marketplace.

Comments in Support of Petition

AAPC would emphasize three main points for the Commission to consider when ruling on Sprint’s petition. First, contrary to BellSouth’s argument, there is still very much a live controversy for the Commission to resolve, notwithstanding that BellSouth has belatedly loaded the code in dispute and evidently is honoring Sprint’s rating and routing instructions. It is patently clear that BellSouth still maintains its incorrect view of the law, and, indeed, is maintaining proceedings at the state level to try to drum up some support for it.

Under Section 1.2 of the Commission’s rules, 47 C.F.R. §1.2, the Commission may issue a declaratory ruling to “terminat[e] a controversy” or to “remov[e] uncertainty”. BellSouth maintains its incorrect view of the law; hence, its dispute with Sprint continues unabated. Ac-

ordingly, issuance of the declaratory ruling as requested by Sprint remains an entirely appropriate and necessary mechanism for resolving that dispute in the interests of justice.

Second, Sprint is absolutely correct that BellSouth's conduct directly conflicts with the Commission's longstanding rule section 20.11, 47 C.F.R. §20.11, which requires BellSouth and other ILECs to provide the type of interconnection reasonably requested by CMRS carriers.² In substance, BellSouth refused to provide Sprint a Type 2 interconnection at BellSouth's tandem in Jacksonville to enable Sprint to serve the MacClenny exchange, and insisted instead that Sprint must utilize only a less efficient and more costly Type 1 connection directly to the MacClenny end office.

However, under Section 20.11, as Sprint correctly notes, CMRS carriers are entitled to choose the type of interconnection they desire; ILECs do not have the right to dictate the type of interconnection CMRS carriers must use. BellSouth's refusal over many months to load Sprint's NXX code associated with the MacClenny exchange, thereby denying Sprint a Type 2 interconnection for purposes of serving the MacClenny exchange, accordingly is a blunt and inexcusable violation of Section 20.11 and should be dealt with as such.

Third, in AAPC's view, the ruling sought by Sprint also follows directly from the mandatory provisions of Section 251(c)(2) of the Communications Act, 47 U.S.C. §251(c)(2). In pertinent part, Section 251(c)(2) obligates BellSouth to interconnect its network with Sprint "at any technically feasible point within [BellSouth's] network" for the "transmission and routing of telephone exchange service and exchange access".

² Section 20.11(a) explicitly provides that a local exchange carrier "must provide the type of interconnection reasonably requested by a mobile service licensee or carrier". The section contains the further qualifications that the type of interconnection must be "technically feasible" and "economically reasonable". However, those qualifications plainly are not implicated in this case. *See also In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (Second Report and Order)*, 9 FCC Rcd 1411, 1497-1498 (FCC 1994) (holding that "it is in the public interest to require LECs to provide the type of interconnection reasonably requested by all CMRS providers").

It unquestionably is “technically feasible” to interconnect at BellSouth’s tandem for the “transmission and routing” of traffic Sprint’s NXX code associated with the MacClenny exchange. That already has been accomplished, albeit grudgingly and belatedly. Moreover, all of the traffic in question is, by definition, either “telephone exchange service” or “exchange access”. Accordingly, BellSouth’s refusal to interconnect at the tandem level for traffic destined to Sprint’s NXX code associated with the MacClenny exchange – *i.e.*, BellSouth’s refusal to program its network to enable Sprint to serve MacClenny via BellSouth’s tandem in Jacksonville – is flagrantly in derogation of BellSouth’s obligation imposed by Section 251(c)(2) of the Act.

Conclusion

The law governing the core issues in this case has long been settled, both by Section 20.11 of the Commission’s rules (promulgated in 1994) and again by the Telecommunications Act of 1996 (effective February 8, 1996). Sprint wants to serve the MacClenny exchange in northern Florida via a Type 2 interconnection to BellSouth’s tandem office in Jacksonville. The requested Type 2 connection is both technically and economically trivial to accomplish. Both Section 20.11 of the Commission’s rules and Section 251(c)(2) of the Act give Sprint the right to make that determination. Nonetheless, BellSouth refused for many months to comply with its legal obligations to Sprint and continues to insist that it need not comply with those obligations. Accordingly, issuance of the declaratory ruling requested by Sprint is appropriate and necessary

to resolve their dispute; and the Commission should grant the requested relief with all deliberate speed.

Respectfully submitted,

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