

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

In the Matter of )  
 ) CC Docket No. 01-92  
Developing a Unified Intercarrier )  
Compensation Regime )

**REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.**

Nextel Communications, Inc. (“Nextel”), by its attorneys, hereby submits these reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) July 18, 2002 Public Notice seeking comment on Sprint Corporation’s (“Sprint”) Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by incumbent local exchange carriers (“ILECs”).<sup>1</sup> Nextel responds in particular to the comments filed by SBC and, specifically, SBC’s assertion that as an ILEC it is not required to provide Commercial Mobile Radio Service (“CMRS”) carriers with indirect interconnection or “transit services” so that calls from originating ILEC customers can be completed.<sup>2</sup>

In addition to falling within the requirements of Sections 251(a)(1) and 251(c)(2) of the Act – which mandate that ILECs allow both direct and indirect interconnection – ILEC-provided tandem transit service is, from a public policy standpoint, a necessary and integral component of widespread local exchange competition. The Commission must confirm, therefore, the threshold duty of ILECs to provide tandem transit service to other carriers. It should also confirm that ILECs be compensated for this transit function at TELRIC-based rates rather than allowing ILECs to use their unquestioned dominance to charge market-based rates.

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<sup>1</sup> Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs, *Public Notice*, CC Docket No. 01-92 (rel. July 18, 2002) (“*Notice*”).

<sup>2</sup> Comments of SBC Communications, Inc., CC Docket No. 01-92 (filed August 8, 2002) (“SBC Comments”).

## I. DISCUSSION

As AT&T correctly points out, the real controversy is the scope of the duty of ILECs to provide tandem transit service so that calls from rural ILECs to CMRS carriers can be completed.<sup>3</sup> Contrary to SBC's contention, ILECs have an obligation to provide transit service to requesting competitive CMRS carriers and are not permitted to unilaterally discontinue providing tandem transit interconnection. Both the Communications Act of 1934, as amended, and sound public policy dictate that ILECs be required to provide the ILEC's local tandem and transit to exchange traffic that originates in the rate center of an independent ILEC calling area, transits the ILEC's network and terminates on a CMRS carrier's network. Nextel has never suggested that its use of this transit be uncompensated. Indeed, wherever it presents traffic for transit, Nextel's interconnection agreements also provide for payment to the ILEC for its transit function. Similarly, where the independent ILEC originates the call, it should pay for the transit function that SBC or another BOC provides. The Commission must therefore confirm that ILECs are obligated to provide transit traffic services, and recognizing their monopoly status, must do so at TELRIC-based charges for the tandem switching and transport. Even though the total amount of transit traffic is *de minimis*, without access to these transit traffic services at reasonable rates, CMRS carriers will be unable to provide ubiquitous service to their customers.

### A. Section 251 Requires ILECs to Provide Transit Traffic

Section 251(a) of the Communications Act states that "[e]ach telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other

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<sup>3</sup> Comments of AT&T Corp., Inc., CC Docket No. 01-92 (filed August 8, 2002) ("AT&T Comments").

telecommunications carriers.”<sup>4</sup> This provision is fundamental to the Act’s purpose of advancing competition in the local markets. Indeed, as the Commission recognized in the *Local Competition Order*, “the duty to interconnect directly or *indirectly* is central to the 1996 Act and achieves important policy objectives.”<sup>5</sup> With respect to Section 251, the Commission has also recognized that Congress’ purpose in enacting this provision was to promote the “interconnection of all telecommunications networks by ensuring that incumbent LECs are not the only carriers that are able to interconnect efficiently with other carriers.”<sup>6</sup> Moreover, the “intent of the interconnection/intercarrier compensation regime is to facilitate efficient entry of CMRS and competitive LECs into the market for the provision of local service, without imposing an unreasonable burden upon the ILECs.”<sup>7</sup>

Transit provides competitive carriers with an efficient and cost-effective mode of entry into certain local markets and ILEC provision of the transiting function is required under Section 251(a) of the Act. Despite SBC’s contention that the Section 251(a) indirect interconnection requirement does not obligate SBC or other ILECs to act as an “intermediary” when two other carriers desire to interconnect indirectly, this is exactly the type of arrangement that Congress envisioned. SBC and other ILECs simply fail to acknowledge their monopoly status in the local telecommunications markets. The hierarchy of obligations set forth in the Communications Act,

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<sup>4</sup> 47 U.S.C. § 251(a)(1).

<sup>5</sup> Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, 15991 (1996) (“*Local Competition Order*”) (emphasis added and subsequent history omitted).

<sup>6</sup> Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Fourth Report and Order*, 16 FCC Rcd 15435, 15478 (2001) (“*Fourth Report and Order*”).

<sup>7</sup> Comments of Dobson Communications Corporation, in CC Docket No. 01-92, at 3 (filed August 21, 2001) (“Dobson Comments”).

and specifically Section 251, plainly recognizes the disparate position that ILECs and competitive carriers occupy in today's telecommunications market. Had the Act, and implementing regulation by the FCC, failed to step in and limit the actions of dominant carriers, SBC, BellSouth and other ILECs would be free to limit competitive carrier access to their networks. Congress, however, and the FCC, have recognized the importance of interconnection, both direct and indirect, to the ability of new entrants to compete effectively with incumbent carriers. And SBC is not able to point to any Commission decision that would suggest otherwise.<sup>8</sup>

The language of the statute and the FCC's interpretation of Section 251(a) demonstrate that SBC is required to provide CMRS carriers with transit services. Indeed, the rules implementing Section 251(a)(1) define "interconnection" as the "linking of two networks for the mutual exchange of traffic."<sup>9</sup> As several commenters suggest, transit service necessarily involves the linking of CMRS and ILEC networks to exchange local traffic. According to VoiceStream, for example, "[i]nterconnection may be direct or indirect, which means, among other things, that CMRS providers, smaller ILECs and CLECs may transit calls to each other by

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<sup>8</sup> The Commission has not addressed whether Section 251(a) requires ILECs to provide transit services. The Commission has, however, provided some guidance as to what "indirect" interconnection might include. In the *Local Competition Order*, for example, the Commission explained that indirect interconnection might include "two non-incumbent LECs interconnecting with an incumbent LEC's network." See *Local Competition Order*, 11 FCC Rcd at 15991. Similarly, in last year's *Advanced Services Competition Report*, the Commission noted that "Requiring incumbent LECs to provision cross-connects between requesting carriers is consistent with the statutory scheme outlined in section 251 and is consistent with Congress' explicit goal of ensuring interconnected networks. Indeed, pursuant to Section 251(a)(1), all telecommunications carriers have a statutory obligation to interconnect directly or indirectly with the facilities or equipment of other telecommunications carriers." See *Fourth Report and Order*, 16 FCC Rcd at 15478.

<sup>9</sup> 47 C.F.R. § 51.5.

way of RBOC or other dominant ILEC tandems to which they are already connected.”<sup>10</sup>

Similarly, Dobson’s comments state that “[i]n permitting non-dominant carriers to interconnect indirectly through an ILEC’s facilities, both Congress and the Commission are presuming that an ILEC will deliver the traffic between these carriers – *i.e.*, “transit” the traffic from the POI of the originating non-dominant carrier to the POI of the terminating non-dominant carrier.”<sup>11</sup>

As Nextel and others have explained, CMRS providers require interconnection with BellSouth and other ILECs to terminate calls to ILEC telephone subscribers and rural ILEC customers need transit to complete calls to CMRS customers. Similarly, as the comments reflect, the total amount of traffic exchanged between a rural ILEC and a particular CMRS provider cannot justify economically establishing a direct physical interconnection arrangement with each and every ILEC throughout the United States.<sup>12</sup> CMRS carriers, including Nextel, have no choice but to rely on interconnection and transiting arrangements with larger ILECs like BellSouth, to receive and complete calls between small and rural ILECs and the CMRS carriers. Without this interconnection, calls simply will not be completed. Any restriction on an ILEC’s provision of transit service plainly frustrates the Act’s requirement in Section 251(a)(1) that carriers be allowed to use indirect interconnection, which necessarily involves the use of a third carrier’s, *i.e.*, the ILEC’s, facilities.<sup>13</sup>

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<sup>10</sup> Joint Comments of VoiceStream Wireless Corporation and Western Wireless Corporation, in CC Docket No. 01-92, at 2 (filed August 21, 2001) (“VoiceStream Comments”).

<sup>11</sup> Dobson Comments at 7.

<sup>12</sup> *See, e.g.*, AT&T Comments at 2-3; VoiceStream Comments at 13; Dobson Comments at 5; Nextel Comments at 3.

<sup>13</sup> *See* Comments of Arch Wireless, Inc., in CC Docket No. 01-92, at 5 (“Arch Comments”) (filed August 21, 2001). (noting that the ILECs are “trying to avoid their obligation to carry transit traffic, in contravention of other carriers’ right to interconnect with each other indirectly.”)

In addition to running afoul of Section 251(a), SBC's suggestion that ILECs are not required to provide transit services is directly contrary to Section 251(c)(2). Pursuant to Section 251(c)(2), "each incumbent local exchange carrier has . . . [t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access." As AT&T correctly states, "[n]othing in the statute limits this duty solely to traffic between the incumbent LEC and the requesting carrier."<sup>14</sup>

Rather, an ILEC's refusal to provide transiting service to competing carriers effectively denies competing carriers the right to interconnect with other ILECs for the transmission and routing of traffic. Indeed, the Wireline Competition Bureau ("WCB") recently determined that providing an ILEC unilateral authority to terminate tandem transit service to independent carriers poses ". . . too great a risk that [the competing carriers'] end users might be rendered unable to communicate through the public switched network."<sup>15</sup> The Commission must take this opportunity to clarify that BellSouth and other ILECs cannot leverage their dominant market power unilaterally to discontinue the provision of transit traffic. Indeed, such attempts by ILECs to terminate or to refuse to carry such traffic "should not be tolerated, as such a practice

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<sup>14</sup> AT&T Comments at 4.

<sup>15</sup> See Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., *Memorandum Opinion and Order*, CC Docket No. 00-218; CC Docket No. 00-249; CC Docket No. 00-251, DA 02-1731, at ¶ 118 (rel. July 17, 2002) ("*Virginia Arbitration Order*").

cuts against the ‘fundamental principle’ of Section 251 of the Act.”<sup>16</sup>

In addition to confirming that ILECs must provide CMRS carriers with indirect interconnection or transit service, the Commission must also clarify that the ILECs must provide these transit traffic services at TELRIC-based charges for tandem switching and transport. Contrary to SBC’s contention that ILECs are not required to provide indirect interconnection at TELRIC rates,<sup>17</sup> the Commission’s rules implementing Section 251(c)(2) plainly require that ILECs provide interconnection at forward-looking costs.<sup>18</sup> Indeed, as explained above, ILECs are required under Section 251(c)(2) to provide transit service to competing carriers. Because transit service is within the scope of Section 251(c)(2)’s interconnection obligations, it must be provided at TELRIC-based rates.

Contrary to ILEC assertions, CMRS carriers are not attempting to avoid paying for these ILEC-provided transit services. As stated in its comments, Nextel believes that the transiting carrier should receive its forward-looking cost of transporting the traffic to the terminating ILEC within the same LATA or MTA from the originating carrier. Nextel, like the other CMRS providers, is merely seeking to prohibit the ILECs’ from charging CMRS carriers for intra-MTA

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<sup>16</sup> Dobson Comments at 7-8. Nextel also agrees with AT&T’s observation that ILEC restrictions on transit service conflict with ILEC obligation to provide UNE tandem switching, as required under Section 251(c)(3) of the Act and section 51.319(c) of the rules. The provision of transit service is nothing more than the provision of tandem switching for the routing of traffic between carriers. According to AT&T, the Act’s mandate for tandem transit is evidenced by the fact that competitive carriers can accomplish the same result – and incumbent LECs would be held to the same obligation – by ordering a tandem switching/transport UNE combination to deliver traffic via the incumbent LEC’s tandem to the third party. AT&T Comments at 5. The WTB confirmed this position in the *Virginia Arbitration Order*, stating that CLECs have the right to access UNEs – including tandem switching and interoffice transport UNEs – to provide telecommunications services, “including local exchange service involving the exchange of traffic with third-party carriers.” *Virginia Arbitration Order*, at ¶ 121.

<sup>17</sup> SBC Comments at 5, n.5.

<sup>18</sup> 47 C.F.R. § 51.501; 51.503(b)(1).

traffic that transits the ILEC's network and terminates on a CMRS carrier's network. In this case, it is the ILEC that originated the call – Calling Party's Network Pays – that is responsible for the cost of the transit transport and termination. Indeed, the ILEC should bill the originating third-party ILEC the relevant transport and termination charges based on the ILEC's forward-looking costs. Under the current framework, the transiting ILEC is not entitled to bill the terminating CMRS carrier for local transiting services.

**B. There Are Sound Public Policy Reasons Justifying Continuing ILEC Transit Obligations**

In addition to the statutory and regulatory requirements supporting ILEC-mandated transit services, there are sound policy and public interest reasons confirming the ILEC's obligation to provide transiting services. As AT&T correctly recognizes, the use of the ILEC's local tandem is essential to a competitive carrier's "ability to exchange traffic with smaller LECs (e.g., small independent companies, rural companies, wireless companies, and other CLECs) where direct interconnection of facilities is impractical."<sup>19</sup> Indeed, without access to the ILEC transit function, CMRS providers will likely be required to construct dedicated facilities to complete calls, or to purchase expensive and unnecessary facilities (shared or dedicated) from the ILEC. Because CMRS carriers generally exchange a *de minimis* amount of local traffic with smaller ILECs they will often be unable to cost-justify the necessary direct interconnection facilities.<sup>20</sup> Indeed, as one commenter stated the "widespread nature of these types of disputes

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<sup>19</sup> AT&T Comments at 4.

<sup>20</sup> See, e.g., Dobson Comments at 5. According to Dobson, a direct connection to a rural independent ILEC may average \$900 per month (depending on the distance involved in the connection). In several of Dobson's markets, it serves rate centers containing as few as 100 subscribers. Accordingly, by assuming that the 100 subscribers in a rate center generate 200 Minutes of Use ("MOU") per month apiece and that the customers make primarily local calls within the rate center, the cost of the dedicated link is 4.5 cents  
(continued...)

clearly demonstrates the need for a decisive declaratory ruling in this case. Such refusal [by the ILECs to provide transiting services], if permitted, would allow the ILECs to avoid their statutory interconnection obligations and also to use their monopoly power to force interconnecting carriers to purchase unneeded facilities from them in order to effectuate an inefficient network configuration.”<sup>21</sup>

Because most if not all CMRS carriers cannot justify economically the cost of these facilities needed to establish a direct physical interconnection arrangement with each and every ILEC throughout the United States, transiting arrangements with larger ILECs like BellSouth are vital to the CMRS carriers’ ability to receive and to complete calls between customers of small and rural ILECs and the customers of CMRS carriers. This is simply not a case of CMRS carriers trying to “get something for nothing.” Indeed, Nextel obtains direct interconnection in those instances when it makes sense for it to do so. Moreover, when Nextel originates a call to an small ILEC customer that transits a large incumbent LEC’s network, Nextel pays for the transit function. The rates charged for such service are set forth in the interconnection agreements that Nextel has in place with these ILECs. Thus, Nextel and other CMRS carriers pay their way when they are the cost causers.

BellSouth and the other ILECs have simply failed to recognize the “one-way” problem that is presented in this case. They seek to make it economically impossible for CMRS carriers

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per MOU. In comparison, the typical common transport rate charged by ILECs is \$0.001 to \$0.002 per MOU (depending upon distance of transport), and a typical tandem switching rate is \$0.002 per MOU. Therefore, routing a call to an independent ILEC via the RBOC’s tandem may cost a CMRS provider \$0.004 per MOU, whereas routing of the same call through a direct connection with the independent ILEC may cost the CMRS provider 4.5 cents per MOU; over a 1000% cost difference. *Id.* at n. 15

<sup>21</sup> Arch Comments at 16.

to serve smaller ILEC territories, and thus compete in the local markets. Indeed, if CMRS carriers are prevented from using ILECs' local tandems to receive and complete calls between small and rural ILECs, CMRS providers will essentially be unable to deliver calls to or receive calls from customers served by those smaller local exchange carriers. This inability to offer ubiquitous service and to provide complete calling packages to subscribers places CMRS carriers at a competitive disadvantage to the ILECs. Moreover, it delays the deployment of facilities-based local competition.

## II. CONCLUSION

Based on the foregoing, Nextel respectfully requests that the Commission grant Sprint's Petition and act in accordance with these reply comments.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Colleen Mulholland, a legal secretary at Drinker Biddle & Reath LLP do hereby certify that on this 19<sup>th</sup> day of August, 2002, a copy of the foregoing "REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC." was sent via U.S. Mail and where indicated hand delivered to the following:

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