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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Sprint Petition for Declaratory Ruling	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

REPLY COMMENTS

The Nebraska Independent Companies, Northeast Florida Telephone Company, Inc. ("N.E. Florida"), Public Service Telephone Company, Nucla-Naturita Telephone Company, and the South Dakota Telecommunications Association, collectively the Rural Independent Carrier Coalition ("RICC"), hereby submit these Reply Comments in the above captioned proceeding in accordance with the Commission's ***Public Notice.***[1] As explained in these Reply Comments, Sprint's proposal to separate rating and routing points for CMRS calls constitutes an extreme distortion of the '96 Act and unwarranted intrusion into the state regulatory sphere.[2] Aside from the legal problems imposed by this proposal, the welter of problems and significant cost shifting proposed by this change in industry practice call for its rejection. The rural ILEC industry is ill equipped to deal with additional uncompensated CMRS traffic on top of that traffic which the CMRS industry is already terminating for free. Yet that is precisely what the Sprint proposal would accomplish. In addition to that, the Sprint proposal would shift significant costs onto those rural carriers, both **by** imposing costs from the tandem provider to the rural ILECs for identifying CMRS traffic, and in causing ILECs to transport calls outside of their local calling

[1] ***Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs***, DA 02-1740 (rel. July 18, 2002) ("Public Notice").
[2] ***See, Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs***, CC docket No. 01-92, (filed May 9, 2002)("Sprint Petition").

area at their own expense. Contrary to Sprint's assertions, none of this is business as usual in the telephone industry, but is a brazen attempt by Sprint to cause ILEC customers and stockholders to underwrite the costs of wide-area CMRS calling. These points will be discussed in order.

The Interests of the RICC

N.E. Florida is a small rural ILEC in the state of Florida. It currently exchanges CMRS traffic indirectly with Sprint through its Macclenny, Florida exchange and is not compensated for such traffic. Sprint has now received an NPA-NXX that is rate centered in the Macclenny exchange, but which has a routing destination for termination of traffic in the Jacksonville, Florida tandem. Jacksonville is a local exchange of BellSouth Telecommunications, Inc. This particular configuration is partly the subject of Sprint's petition. The SDTA represents the interests of 33 independent, cooperative and municipal local exchange carriers in the State of South Dakota and the Nebraska Independent Companies represents the interests of 19 independent local exchange carriers in the State of Nebraska.[3] Both groups' constituent companies constitute statewide representation of the rural ILEC industry, and the affected companies. Nucla-Naturita Telephone Company and the Public Service Telephone Company are small, rural ILECs which are likewise impacted by the Sprint Petition. All of these ILECs are "rural telephone companies" as defined in 47 U.S.C. §153(37).

The Commission Should Continue To Protect The Interconnection Rights of Rural Carriers

As previously discussed, Sprint's Petition represents a marked distortion of the '96 Act whose foundation is based in significant part on reciprocal, intercarrier compensation and upon intercarrier interconnection. Key to both concepts, as is demonstrated here, is the recognition

[3] A list of the SDTA member companies and the Nebraska independent companies is attached

that carriers who are required to provide interconnection enjoy the right to determine whether it will be provided directly or indirectly.

The statutory and precedential underpinnings of this right is discussed below. It is important that the Commission realize, however, how this subject is inextricably linked to the issue of compensation. Many rural ILECs, and perhaps the majority, receive no compensation from wireless carriers who terminate traffic through a tandem provider, such as an RBOC. Although the Commission does not appear to have contemplated the scenario requiring ***three*** carriers to complete a local **call,**[4] there can be no question that the terminating ILEC is entitled to compensation for the use of its facilities. Continued protection of that ILEC's right to determine whether interconnection should be direct or indirect is an important tool in correcting the free-ride that many CMRS carriers are enjoying today.

Small Rural Carriers Are Not Reauired To Enter Into Indirect Interconneetion Agreements With Sprint And Other CMRS Carriers

In its ***First Report and Order,*** the Commission determined that ILECs, and not CMRS carriers like Sprint, are entitled to determine the method of interconnection for exchanging wireline/CMRS traffic. Specifically, the Commission addressed the issue of interconnecting "directly or indirectly" with the facilities of other carriers. It concluded:

> ...telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices.[5]

This language reflects that the choice of direct or indirect interconnection is made by carriers who provide interconnection, as opposed to carriers who receive it. The distinction is a

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[4] ***Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,*** First Report and Order, CC Docket Nos. 96-98 and 95-185, (released August 8, 1996), 11 FCC Rcd 15499 at para 1034.
[5] *Id.* para. 997 (Emphasis added).

critical one. Indeed, as Sprint correctly notes, the Commission found only that "indirect connection (e.g., two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a)."[6] The Commission's finding does not create a hierarchy requirement favoring one type of interconnection over another, while it does recognize providing carriers, such as small ILECs, may exercise choice as to direct or indirect interconnection consistent with the factors mentioned by the Commission.

Sprint's Interconnection Theory Should Be Reiected Bv The Commission

Sprint's theory of interconnection confuses the "type" **of** interconnection with the "method of interconnection required by the '96 Act and should be rejected. It relies in this respect upon the ***Bowles*** case.[7] Such reliance is misplaced. First, for instance, it should be noted that ***Bowles*** did not address interconnection under the '96 Act (a point Sprint fails to even acknowledge) and hence has no bearing on it. The Commission's Order recognized this:

> [t]he complaint submitted by ***Bowles*** was filed in November 1995, before the Telecommunications Act of 1996 was enacted, and neither party has asserted that sections 251 and 252 govern the determination of actions that occurred before those provisions became law[8]

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[6] Sprint Petition at 15; ***First Report and Order*** at para. 997. ***See also, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,*** Second Report and Order, 9 FCC Rcd 1411 para. 234 (1994) (a LEC may deny a CMRS provider a form of interconnection that the ILEC provided to another carrier when the LEC could show that the provision of such interconnection was either technically infeasible or economically unreasonable.)

[7] ***Rowles v. United Telephone,*** 12 FCC Rcd 9840 (1989); Sprint Petition, pp. 15-16.

[8] ***William G. Bowles Jr. P.E. d/b/a Mid Missouri Mobilfone v. United Telephone Company of Missouri,*** Memorandum and Order, 12 FCC Rcd 9840; 8 CR 1284, para. 3 (1997).

Not only did the ***Bowles*** case not address the '96 Act, it did not address **the** topic of direct or indirect interconnection. Instead, the issue was whether a LEC providing Type 1 interconnection to a paging carrier, was required to provide a different type of interconnection (i e., "Type 2").

Historical experience underpins this distinction between the "type" and "method of interconnection. For example, in the 1986 FCC ***Policy Statement on Interconnection of Cellular Systems***[9] the Commission stated that under the reasonable interconnection standard, a cellular carrier "should be permitted to choose the type of interconnection, Type 2 or Type 1, and that a telephone company should not refuse to provide the type of interconnection requested."" Similarly, the ***Third Radio Common Carrier Order,*** cited by Sprint, referenced the Commission's denial of BellSouth's and Ameritech's requests to reconsider or clarify the application of the Commission's Type 2 interconnection policy to provide such interconnection to RCCs.[11] The Commission focused on the capacity and technical elements of interconnection, and not, as argued by Sprint, the provisioning of interconnection through third party carriers.

Sprint and other CMRS commenters argue that Section 20.11(a) of the Commission's rules are relevant to the method of interconnection required between ILECs and CMRS carriers. Again, however, the argument is misfocused on interconnection type. Section 20.11(a) was adopted in 1994[12] in the context of Type 1 and Type 2 interconnection. There is no tie between the term "type" in rule 20.11(a) and the direct/indirect interconnection methodology of the '96 Act and Commission Rule 50.100(a)(1), which speaks to the direct and indirect interconnection methodology.

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[9] ***The Need to Promote Competition and Efficient Use of Spectrum for Kadio Common Carrier Services,*** 1986 FCC LEXIS **3878;** 59 Rad. Reg. 2d (P & F) 1275 (rel. March **5,** 1986).
[10] *Id.* at 1284 (Appendix B)(emphasis added).
[11] Sprint Petition at **15-16** citing the *Third Radio* ***Competition*** Order at para. 47.

The Commission thus should reject Sprint's argument. It relies on a confused construction between the "type" and "method of interconnection. Nothing relied upon by Sprint or its supporters require small ILECs to provide direct or indirect interconnection at the option of a CMRS carrier. As discussed below, Sprint's advocated solution would impose significant and unnecessary costs upon the industry.

Sprint's Proposal Constitutes A Significant And Costlv Distortion Of The Intercarrier Compensation Regime

The indirect interconnection methodology proposed by Sprint jeopardizes the rights of rural carriers to efficiently utilize intercarrier compensation regimes and distorts calling areas The Commission's interconnection rules and most existing reciprocal compensation agreements require the calling party's carrier to compensate the called party's carrier for terminating the call. The Commission has explicitly contemplated that CMRS carriers will pay reciprocal compensation to rural ILECs.[13] Sprint's proposal seeks to distort these relationships. **As** the Commission is no doubt aware, no clear statutory mechanism appears in the '96 Act which would allow ILECs to demand interconnection negotiations leading to arbitration. Given this result, it is no surprise that CMRS carriers like Sprint have terminated traffic to small ILECs through third party tandems while failing to pay any transport or termination charges.[14] NTCA's comments have noted this phenomenon, in at least 20 states.[15] Sprint's proposal to separate the rating and routing points of its NXXs will only exacerbate this problem since it appears uniquely designed to avoid direct connection with rural ILECs.

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[12] *See* 59 FR 18495, April 19, 1994.
[13] ***First Report and Order,*** para 1045.
[14] ***See e.g., Exchange of Transit Traffic,*** Iowa Utilities Board Docket No. SPU-00-7; TF-00-275 (DRU-00-2); 2002 Iowa PUC LEXIS **183** (2002).
[15] NTCA Comments at 5.

The ultimate resolution of this issue is far from ideal if these arrangements continue to proliferate. State regulatory commissions have and will approve transport and termination tariffs for CMRS carriers who refuse to negotiate, while tandem providers like the RBOCs will be pressured to function in an unwarranted role of a clearinghouse.[16] The opportunity costs imposed by the attendant litigation and the record-keeping costs are enormous, and can hardly be said to be "efficient" in any rational sense of that term, especially when one considers that an anticompetitive form of cost shifting is taking place to fund Sprint's wide-area calling plans. Sprint's proposal to split its rating and routing functions between the facilities of N.E. Florida and the BellSouth tandem, for instance, would involve N.E. Florida transporting calls outside of its service area to the BellSouth tandem and back again, merely to complete a wireline to wireless call in N.E. Florida's service area.

Such costs are not the only costs that these contorted network arrangements portend Rural ILECs in Iowa, for instance, have been presented with charges from one self-styled "transit" (tandem) provider, who insists both on terminating CMRS traffic to subtending ILECs, while attempting to assess charges for traffic data, where such data which is useless without an underlying agreement or tariff

Contrary to the implications in Sprint's Petition, none of this is business as usual in the telephone industry. Sprint blandly attempts to dismiss away the significance of rate centers for instance, by claiming they have nothing to do with reciprocal compensation:

> An ILEC's practice of using rate centers to rate its calls as local or toll for purposes of billing its own customers should not be confused with the rules governing intercarrier reciprocal compensation. *See* 47 C.F.R. § 51.701(b)(2) (MTA reciprocal compensation to LEC-CMRS traffic).[17]

[16] *See* SBC Comments at 7.
[17] Sprint Petition, p.4., n. 5.

Commission precedent exposes this claim as facile. It has previously held that intra **MTA** traffic "falls under our reciprocal compensation rules if carried by an incumbent LEC, and under our access charge if carried by an interexchange carrier."[18] Calls that leave a rural ILECs service area are not usually considered to be "local" for any purposes. Sprint's proposal would turn that on its head

Sprint's contention that it can require an ILEC to treat Sprint's calls as local, based upon unsupervised representations to NANPA, is similarly wrong." It has never been 'normal' in the telephone industry to distinguish local calls from non-local based upon unsupervised and unregulated representations made to NANPA in the process of obtaining number assignments. Indeed, Sprint can point to no statute or Commission order which requires such treatment. **As** some commenters have pointed out, the V&H coordinates found in the LERG, and which display rating and routing points, has no real relevance mobile services and mobile service users." It makes little sense for ILECs to rely upon these coordinates to determine local calling areas **fro** CMRS carriers, and, in fact, they do not.

In sum, Sprints proposal is a distortion of the requirements of the '96 Act and Commission's rules and policies thereunder. It would proliferate the already widespread practice of allowing CMRS carriers to terminate mobile traffic onto ILEC networks free of charge, and would shift substantial costs, that should be borne by CMRS carriers, onto the ILECs themselves, **As** discussed below, the Commission should take a much harder look at this proposal, if indeed it is to look further at all.

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[18] *TSR* ***Wireless,*** *LLC,* ***et*** *al. v. U S* ***West Communications,*** *Inc.,* ***et al,*** Memorandum Opinion and Order, 15 FCC Rcd 11 166 (rel. June 21,2000).
[19] Sprint Petition, p. 4.

The Commission Should Proceed With Greater Deliberation

RICC submits that the Commission should not address the interconnection and reciprocal compensation issues raised by the Sprint Petition by way of a Declaratory Ruling. As has been discussed, these issues will have a widespread impact on rural carriers if such rating and routing arrangements are to proliferate. Moreover, state commissions have an important role to play in arbitrating these matters and managing the rate centers that reflect decades of policy evolution unique to each state. Accordingly, if the Commission elects not to deny the Sprint Petition, it should institute a Notice of Inquiry to address the interconnection requirements and the reciprocal compensation issues raised by Sprint's Petition. RICC suggests that the following policy guidelines should be addressed in a rulemaking proceeding:

1. When a CMRS provider obtains an NPA-NXX with a rating point of an independent LEC, then the CMRS provider must designate a Point of Interconnection within the ILEC's serving area and make arrangements with the LEC, which may include establishing a direct interconnection agreement with the ILEC.

2. The ILEC has the right to determine, based on its own economic costs, whether it will require a CMRS provider to directly interconnect with them the ILEC or to indirectly interconnect with that ILEC.

3. Landline originated calls to numbers outside the ILEC's local service area must be routed to the presubscribed IXC due to dialing parity and equal access obligations of ILECs. Such traffic is subject to access charges and not reciprocal compensation.

[20] ***See.*** Comments of the Alliance of Incumbent Rural Independent Telephone Companies and the Independent Alliance, pp. 7-8.

Respectfully submitted,

THE NEBRASKA INDEPENDENT COMPANIES

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Dated: August 16, 2002

Appendix A

Members of the South Dakota Telecommunications Association

1. Armour Independent Telephone Company
2. Baltic Telecom Cooperative
3. Beresford Municipal Telephone Company
4. Bridgewater-Canistota Independent Telephone
5. Swiftel Communications
6. Cheyenne River Sioux Tribe Telephone Authority
7. Dakota Community TelephoneIrene
8. East Plains Telecom, Inc.
9. Faith Municipal Telephone Company
10. Fort Randall Telephone Company
11. Golden West Telecommunications Cooperative
12. Interstate Telecommunications Cooperative
13. James Valley Telecommunications
14. Long Lines
15. Kadoka Telephone Company
16. Kennebec Telephone Company
17. McCook Cooperative Telephone Company
18. Midstate Communications
19. Mt. Rushmore Telephone Company
20. Roberts County Telephone Cooperative
21. RC Communications, Inc.
22. Santel Communications
23. Sioux Valley Telephone Company
24. Splitrock Properties, Inc.
25. Splitrock Telecom. Cooperative
26. Stockholm-Strandburg Telephone Company
27. Sully Buttes Telephone Cooperative
28. Tri-County Telcom, Inc.
29. Union Telephone Company
30. Valley Telecommunications Cooperative
31. West River Cooperative Telephone Company
32. West River Telecommunications Cooperative
33. Western Telephone Company

The Nebraska Independent Companies

1. Arlington Telephone Company
2. Blair Telephone Company
3. Cambridge Telephone Company
4. Clarks Telecommunications Co.
5. Consolidated Telephone Company
6. Consolidated Telco Inc.
7. Eastern Nebraska Telephone Company
8. Great Plains Communications, Inc.
9. Hartington Telecommunications Co., Inc.
10. Hershey Coopoerative Telephone Company, Inc.
11. Hooper Telephone Company
12. K&M Telephone Company, Inc.
13. Nebcom, Inc.
14. Nebraska Centeral Telephone Company
15. Northeast Nebraska Telephone Company
16. Pierce Telephone Company
17. Rock County Telephone Company
18. Stanton Telephone Company, Inc.
19. Three River Telco

CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing "Reply Comments" were served by first class U.S. mail or hand delivery on this 19th day of August, 2002 to the persons listed below:

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