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Mr. William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte Communication*
Sprint NXX Rating and Routing Declaratory Ruling Petition
CC Docket No. 01-92

Dear Messrs. Maher and Sugrue:

While there are many areas of contention between wireless carriers and the rural ILECs, the straightforward issue presented in this proceeding is whether ILECs can unilaterally refuse to honor the rating and routing points specified by a wireless carrier.

Sprint's petition does not raise an issue regarding intercarrier compensation, as the ILECs would have the Commission believe.¹ A land-to-mobile call that originates and terminates in the same ILEC local calling area is subject to reciprocal compensation, not access charges. Indeed, Commission rules affirmed on appeal specify that land-to-mobile calls that originate and terminate in the same MTA are subject to reciprocal compensation.²

Nor does Sprint's petition involve an issue of state tariffs.³ Sprint seeks in its petition a reaffirmation of federal law, *existing* federal law.⁴ The Commission has previously held that an

¹ See, e.g., Qwest Reply at 2 ("The ultimate issue raised by Sprint and BellSouth comes down to compensation among carriers exchanging traffic."); BellSouth Reply at 2 ¶ 5 ("Properly understood, the dispute between Sprint PCS and BellSouth is about intercarrier compensation."); Texas Coop Reply at 2 ("The issue in this proceeding is one of compensation."); NTCA Reply at 1 ("The parties overwhelmingly agree that this dispute involves intercarrier compensation instead of numbering resources.").

² See 47 C.F.R. § 51.701(b)(2).

³ See BellSouth Reply at 2 ¶ 5 ("Properly understood, the dispute between Sprint PCS and BellSouth is about . . . state tariffs.").

⁴ See, e.g., SBC Reply at 1 (The "underlying dispute between Sprint and BellSouth raises issues concerning the rights of carriers under current Commission rules with respect to the provision of indirect interconnection.").

ILEC cannot ignore the requirements of federal law simply by preparing and filing incompatible state tariffs.⁵

USTA asserts that the issue Sprint raises in its petition is moot because BellSouth, after refusing to load Sprint's NXX codes for over a year, ultimately loaded the code after its practice was challenged in one of its Section 271 proceedings.⁶ Contrary to USTA's claim, as discussed below and in Sprint's Reply Comments, this issue remains very much alive. If the Commission does not address the narrow issue presented by Sprint, ILEC members could continue to prevent the deployment of wireless services in rural areas by refusing to load CMRS numbers lawfully obtained pursuant to Commission rules – at least until the CMRS carrier files a petition like the one Sprint has filed.

Further, the fact that the dispute between Sprint and BellSouth is not moot, is evidenced by the fact that BellSouth has asked the Florida Commission to sanction its proposal to decide for itself whether it will load the NXX codes that Sprint lawfully obtains pursuant to FCC rules.⁷ BellSouth filed this state petition even though Sprint demonstrated that the Commission has already preempted states over this matter.⁸

In addition, while BellSouth may have now loaded Sprint's NXX code, Sprint nevertheless still cannot provide local mobile services in McClenny, Florida because the ILEC in McClenny (Northeast Florida) refuses to load Sprint's code, even on an interim basis, unless Sprint concedes to its demand for direct interconnection. Sprint's McClenny code was supposed to have been activated 19 months ago, but the ILEC refusal to load this code has precluded Sprint from giving residents of McClenny choices for their local service.

The ILECs argue that they should be permitted to discriminate in the application of their own local calling area based on the technology used by an interconnecting carrier. According to the ILECs, an ILEC customer may make a *local seven-digit call* if he calls his spouse at a neigh-

⁵ See, e.g., *TSR Wireless v. US WEST*, 15 FCC Rcd 1166, 11183 ¶ 29 (2000), *aff'd Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). Note also that BellSouth is incorrect in suggesting that Sprint obtains interconnection "pursuant to tariffs filed with the state commissions." BellSouth Reply at 2 ¶ 4. In fact, Sprint and BellSouth have interconnected pursuant to an interconnection contract, not a tariff, in Florida since 1997. See Order No. PSC-97-0933-FOF-TP, Order Approving Interconnection and Unbundling Agreement issued on August 5, 1997, Order No. PSC-99-0425-FOF-TP, Order Approving Resale, Interconnection and Unbundling Agreement issued on March 3, 1999 and Order No. PSC-02-0076-FOF-TP issued on January 11, 2002, Order on Final Interconnection Agreement.

⁶ See USTA Reply at 2. Sprint is troubled by BellSouth's continued insistence that Sprint is "incorrect" when it stated that BellSouth refused to load Sprint's 904-408 code. BellSouth Reply at 2 ¶ 3. BellSouth has never challenged the declaration Sprint submitted documenting BellSouth refused to load Sprint's 904-408 code for over a year. See Sprint Reply (June 6, 2002), Attachment 1, Declaration of Billy H. Pruitt. In addition, the Florida Commission staff has recognized that BellSouth "refused to activate Sprint PCS' new NXX code." See Memorandum from the Office of General Counsel to the Director, Division of the Commission Clerk, Docket No. 020415-TL, File Name and No. PSC\GCL\WP\020415.RCM, at 4 (July 26, 2002).

⁷ See Sprint Reply at 2-3; BellSouth Reply at 2 n.2.

⁸ See Sprint Declaratory Ruling Petition at 19-20.

bor's house by dialing the neighbor's landline telephone, but the same ILEC customer would have to dial 10 digits and incur toll charges if he instead called his spouse using the spouse's mobile handset.

It is understandable why ILECs take the position they do. After all, mobile service would represent much less of a competitive threat if a mobile customer's friends, family and business associates must dial 10 digits (vs. seven digits) and incur toll charges each time they called the handset.⁹ But it is equally apparent why ILECs do not cite to a single Commission order authorizing this discriminatory arrangement.¹⁰ The discriminatory result that ILECs would like the Commission to approve would contravene the dialing parity statute.¹¹

Finally, as the small ILECs acknowledge, the issue Sprint raises in its petition is "not simply a dispute between Sprint and BellSouth."¹² If the pleadings filed by ILEC associations accurately reflect the views of their members, there are hundreds of ILECs that have decided to ignore federal law requirements in order to forestall competition.

Congress has authorized the Commission to issue "a declaratory order to terminate a controversy or remove an uncertainty."¹³ While Sprint does not believe that current federal law requirements are uncertain, the numerous ILEC comments indicate that there is an ongoing controversy and that this controversy is nationwide in scope. Sprint requests that the Commission act promptly to reaffirm federal law requirements in this area.

⁹ ILECs assert they are taking their position to protect interexchange carriers ("IXCs"). See, e.g., FW&A Reply at 10 (Grant of Sprint's petition would "harm IXCs"). It is noteworthy that of the three largest IXCs, two (AT&T and WorldCom) did not file comments and the third IXC (Sprint) obviously supports its own petition. In fact, the issue Sprint has raised in its petition does not impact IXCs.

¹⁰ Completely unexplained (and inaccurate) is the ILEC assertion that CMRS will enjoy "an artificial and inefficient competitive advantage" (FW&A Reply at 25) if ILECs apply their local calling areas in a non-discriminatory fashion.

¹¹ See 47 U.S.C. § 252(b)(3). FCC rules implementing this statute provide that a LEC "shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider." 47 C.F.R. § 51.207 (emphasis added). The Commission has ruled that a LEC's obligation to provide dialing parity extends to CMRS providers. See *Second Local Competition Order*, 11 FCC Rcd 19392, 19429 ¶ 68 (1996).

¹² Texas Coop Reply at 1.

¹³ 5 U.S.C. § 554(e). BellSouth is simply incorrect in suggesting that there must be a "case or controversy" before the Commission may issue a declaratory ruling. See BellSouth Reply at 2 ¶ 3. In fact, courts have held that "[u]nlike United States district courts, federal administrative agencies are not restricted to adjudication of matters that are 'cases and controversies' within the meaning of Article III of the Constitution." *North Carolina Utilities Comm'n v. FCC*, 537 F.2d 787, 791 n.2 (D.C. Cir.), cert. denied, 429 U.S. 1027 (1976).

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed electronically with the Secretary's office. Please associate this letter with the files in IB Docket No. 01-185 and ET Docket No. 95-18.

Respectfully submitted,



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