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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TWB-204
Washington, DC 20554

Re: Notice of Ex Parte Communication

Implementation of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128

Dear Ms. Dortch:

On behalf of Sprint Corporation, Dick Juhnke and I met yesterday with Associate General Counsel Linda Kinney about the above-noted proceeding.

Allowing PSPs to Retain Overpayments Would Be Unfair and Reversible Error.

Sprint stated that the Commission should reject American Public Communications Council requests that it excuse PSPs from their obligation to refund Intermediate Period overpayments they received from IXCs. Sprint explained that, contrary to APCC arguments, it would be reversible error for the Commission to rescind its determination to allow IXCs to recover overpayments made at the excessive 28.4¢ rate set in the *Second Report and Order*, 13 FCC Rcd 1778 (1997), but overturned as unlawful by the court in *MCI*.¹ Sprint added that, if the Commission failed to order refunds, it would increase the cost of Sprint's net payment for the Interim and Intermediate Periods by a substantial amount.

Sprint also explained that APCC has wrongly claimed that IXCs "over-recovered" from end-users. During the "per-line" Interim Period, Sprint did not impose any end-user surcharges for payphone-originated calls. During the "per-call" Intermediate Period, Sprint only gradually became able to identify payphone calls for end-user billing purposes even after Flex-ANI was implemented. Although Sprint introduced a per-call surcharge effective October 12, 1997, it took time before Sprint could identify every payphone call for end-user billing purposes, even though it paid PSPs for all those calls. In addition, Sprint's per-call surcharge – when recovered at all – was only 30¢. At just 1.6¢ above the rate payable to PSPs, the surcharge would not have recovered administrative costs of payphone compensation and the costs of bad debt even if it could have been applied to all compensable calls. Overall, even without considering the

¹ *MCI Telecommunications Corp. v. FCC*, 143 F.3d 606, 609 (D.C. Cir. 1998). The court's ruling does not provide the Commission discretion to determine whether to require refunds; it shows plainly that the court did not vacate the unlawful rate solely because the Commission would order refunds on remand.

substantial costs incurred to develop and implement payphone compensation systems, Sprint substantially *under-recovered* its costs.²

Sprint also stated that the Commission should reject APCC's argument that the Commission should allow PSPs to retain Intermediate Period overpayments because of possible effects of IXC bankruptcies. For the Commission to take bankruptcies of some IXCs into account in deciding the liabilities of other carriers would run afoul of Illinois.³ The court expressly ruled that the Commission has no discretion to make some carriers pay for the payphone compensation responsibilities of others. Sprint cannot lawfully be made a guarantor of other IXCs' payment obligations.⁴

The RBOC Estimates Overstate Sprint's Market Share.

Sprint explained that the RBOC estimates of compensable calls, provided to the Bureau earlier this year,⁵ are not a proper basis for allocating payphone compensation for past periods. Not only are those estimates unreliable and incomplete, and not only have their methodologies not been aired or critically examined, but they also unlawfully assign to first-switch IXCs many of the calls that belong to facilities-based resellers. Such FBRs accounted for 25% or more of payphone-originated traffic on Sprint's network during the Interim and Intermediate Periods. At least two of the RBOCs even cautioned the Bureau against relying on such estimates for allocation purposes.⁶

² Also contrary to APCC claims, the Commission has never found that IXCs were compensated by their end-users for overpayments made to PSPs. Instead, after confirming that refunds would be required, the Commission found only that a *delay* in making refunds would not "substantially harm" IXCs. *Third Report and Order*, 14 FCC Rcd 2545 at ¶ 198 (1999).

³ Illinois Pub. Telecoms. Ass'n v. FCC, 117 F.3d 555, 565, clarified on reh'g, 123 F.3d 693 (D.C. Cir. 1997), cert. denied sub nom. Virginia State Corp. Comm'n v. FCC, 523 U.S. 1046 (1998).

⁴ Contrary to APCC's assertions, section 276(b)(1)(A) of the Act does not give PSPs a right to guaranteed full recovery, and the *Fourth Recon. Order*, FCC 02-22 (rel. Jan. 31, 2002) at ¶ 7, establishes a rate for calculating IXC payments, not a minimum average recovery for PSPs.

⁵ Letter from Whit Jordan, BellSouth, to William Caton, Acting Secretary (Mar. 29, 2002); Letter from James Hannon, Qwest, to William Caton (Mar. 14, 2002); Letter from D. Michael York, SBC, to Magalie Salas, Secretary (Jan. 22, 2002); Letter from Marie Breslin, Verizon, to Magalie Salas (Jan. 22, 2002).

⁶ Qwest cautioned that "Qwest collects data on calls originating at its payphones by Carrier Identification Code ("CIC"), not by the name of the carrier terminating the call. The specific IXC or reseller terminating a payphone call may or may not have a CIC. Even in those cases where a carrier has a CIC, it may be reselling the services of another IXC (and that IXC's CIC would be identified with the call)." Letter from James Hannon, Qwest, to Jeffrey Carlisle, Common Carrier Bureau (Jan. 22, 2002) at 1. See also Letter from Marie Breslin, Verizon, to Magalie Salas, Secretary (Jan. 22, 2002) at 1 (noting only IXCs can have reliable data).

Sprint's position, outlined in its petition for reconsideration of the *Fourth Recon. Order*⁷ remains that, instead of adopting arbitrary and unreliable estimates, the Commission should use actual IXC data from the period immediately following the Interim Period as the fairest and most accurate way to both calculate and allocate Interim Period compensation. Sprint stated that, if the Commission nevertheless insists on using these RBOC estimates for allocating payphone compensation during the Interim Period, it should expressly allow a first-switch IXC to subtract from its allocation any calls that its actual data for a proximate period⁸ show were routed to facilities-based resellers, so long as it provides PSPs with the percentage of calls routed to each facilities-based reseller, together with the name, contact person, and last known address and telephone number for the FBR to which it routed the call.⁹ Thus, for example, if a particular IXC were allocated a 20% share of total payphone compensation using the RBOC estimates and could show, using 1998 data, that it handed off 25% of its payphone-originated calls to FBRs, and could break down this percentage among those FBRs, it would have to pay Interim Period compensation based only on 75% of the allocation derived from the RBOC data, or 15% of the total.

Finally, Intermediate Period compensation true-ups for carriers that paid on a per-call basis during that period should be calculated by simply adjusting for the lower lawful per-call charge adopted in the *Fourth Recon. Order*. Any allocation process that assigns to first-switch IXCs the payphone obligations of other carriers would be unlawful in light of Illinois.

Pursuant to the requirements of Section 1.1206 of the Commission's rules, we are filing an electronic copy of this notice for addition to the docket.

Sincerely,



John E. Benedict

cc: Linda Kinney
Matthew Brill
Jeffrey Carlisle
Jordan Goldstein
Daniel Gonzalez
Christopher Libertelli
Joel Marcus
Lynne Milne
Tamara Preiss
Lenworth Smith
Jon Stover

⁷ Sprint Corporation's Petition for Reconsideration and Clarification (filed Apr. 3, 2002).

⁸ Since first-switch IXCs were not obligated to track payphone-originated calls on a per-call basis during the Interim Period, data for 1998 should be deemed to be sufficient for this purpose.

⁹ Under this alternate approach, IXCs actually would provide more than the law requires. As the Commission acknowledged in Bell Atlantic-Delaware, Inc. v. MCI Telecommunications Corp., FCC 02-223 (rel. Aug. 14, 2002) at ¶¶ 9-11, before November 23, 2001, first-switch IXCs had no obligation to provide call tracking for calls handed off to facilities-based resellers.