

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

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| In the Matter of |) | |
| |) | |
| Developing a Unified Intercarrier Compensation Regime |) | CC Docket No. 01-92 |
| |) | |
| Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic |) | DA 02-2436 |
| |) | |

SPRINT COMMENTS

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Summary

The US LEC declaratory ruling petition and the declaratory ruling petition filed jointly by four CMRS carriers raise very different issues, and Sprint addresses them separately.

- The US LEC CMRS Access Charge Petition. US LEC seeks confirmation that LECs may impose access charges on IXC's for the traffic they transport to or from CMRS carriers. While Sprint has no knowledge of US LEC's dealings with other carriers, including ITC Delta-Com, and cannot comment on the facts at hand, Sprint does comment on the broader issues raised by the petition.

Sprint agrees that providers of access service should be compensated for the use of their networks, regardless of whether they are ILECs, CLECs, or CMRS providers. Of course, no carrier should recover access charges for services it does not provide. Nor should access charges be based upon a misrepresentation regarding the services being provided.

However, where the access function is jointly provided by two carriers (*e.g.*, CMRS and a LEC), it is a common industry practice for all participants to be compensated for the services they provide. "Meet point billing" is the method for the joint provision of access service through multi-company ordering and billing arrangements. The FCC has endorsed the industry MECAB meet point billing standards, and one of the options in this standard is a single-bill-single tariff arrangement. There is, therefore, nothing unlawful in a LEC recovering access charges when providing jointly provided switched access or when the LEC and CMRS carrier use the single bill-single tariff option sanctioned by industry standards.

- The Joint CMRS Wireless Termination Tariff Petition. Some smaller ILECs have chosen to file unilaterally interconnection tariffs rather than negotiate (and if necessary) arbitrate interconnection issues. Four CMRS carriers seek confirmation that such interconnection tariffs are not the proper mechanism for establishing reciprocal compensation arrangements under the 1996 Act.

The issue raised by this petition is straightforward. The FCC has repeatedly ruled that "using the tariff process to circumvent the section 251 and 252 processes cannot be allowed." In addition, the law is settled that LEC-prepared state tariffs (and state commission orders approving such tariffs) which are inconsistent with federal law are void and unenforceable under the Supremacy Clause of the U.S. Constitution.

Because a growing number of small ILECs have chosen to ignore these settled principles of law, entry of the requested declaratory ruling becomes necessary to terminate the controversy that certain small ILECs have created. CMRS carriers should not be required to re-litigate the identical issues in multiple states, and interpretations of federal law should be made by federal regulators.

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SPRINT COMMENTS

Sprint Corporation, on behalf of its local, long distance and wireless divisions (“Sprint“), submits these comments in response to the Petition for Declaratory Ruling of US LEC Corp. and the Petition for Declaratory Ruling of T-Mobile USA, Inc., *et al.*, filed in the above referenced proceeding.¹ Because the two petitions raise very different issues, Sprint will address them separately.

I. THE US LEC CMRS ACCESS CHARGE PETITION

US LEC seeks confirmation from the Commission that local exchange carriers (“LECs”), including competitive local exchange carriers (“CLECs”), are entitled to impose access charges on interexchange carriers (“IXCs”) for traffic that they transport to or from commercial mobile radio service (“CMRS”) providers.² Without additional factual information, Sprint cannot comment on the specific disputes between US LEC and ITC DeltaCom. Sprint has no knowledge of the arrangements made between US LEC, CMRS providers or ITC DeltaCom, nor does Sprint

¹ See *Public Notice*, Comment Sought on Petitions for Declaratory Ruling Regarding Inter-carrier Compensation for Wireless Traffic, CC Docket No. 01-92, DA 02-2436 (Sept. 30, 2002).

² US LEC does not appear to raise, and Sprint does not attempt to address, issues of reciprocal compensation in these comments.

have any knowledge of the manner in which US LEC is processing traffic. Accordingly, Sprint is not endorsing any specific US LEC billing practice.

Sprint agrees as a general matter, however, that providers of access service should be compensated for the use of their networks, regardless of whether they are ILECs, CLECs or wireless carriers. Each carrier is entitled to be compensated for the specific services it provides. Accordingly, when an ILEC or CLEC provides tandem switching and transport, it should be compensated for providing that service. Of course, no carrier should recover access charges for services it does not provide, nor should access charges be based upon misrepresentations regarding the service provided. Again, Sprint does not have knowledge of the particular facts at issue here. Sprint is commenting to help ensure that the FCC fully considers the broader issues raised by this filing.

CMRS carriers provide exchange access under the Communications Act.³ The Commission has recently reaffirmed that CMRS carriers may impose access charges, but unlike LECs, CMRS providers cannot file their own access tariffs to recover these charges from IXCs but must instead rely upon contractual obligations, either express or implied.⁴ The fact that CMRS carriers may not recover access charges by filing their own tariffs does not, however, preclude CLECs from being compensated for the provision of their portion of access services, nor does it preclude wireless carriers from participating in standard industry billing arrangements.

³ See 47 U.S.C. § 153(16) (“The term ‘exchange access’ means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.”). CMRS carriers are not, however, required to provide equal access. See *id.* at § 332(c)(8).

⁴ See *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, *Declaratory Ruling*, FCC 02-203 (July 3, 2002) (“*CMRS Access Charge Order*.”), *appeal lodged*, *AT&T Corp. v. FCC*, No. 02-1221 (D.C. Cir., filed July 9, 2002). FCC rules prohibit CMRS carriers from filing their own access tariffs. See 47 C.F.R. § 20.15(c).

IXCs and CMRS carriers generally do not interconnect directly with each other, particularly where traffic is terminating to the CMRS carrier. Instead, they ordinarily interconnect indirectly *via* the RBOC LATA tandem switch – much in the same way that rural ILECs and CLECs often interconnect with IXCs.⁵ For IXC traffic originated by a mobile customer, the CMRS carrier may transport the call to the RBOC tandem, which then forwards the call to the correct IXC. For toll traffic destined to a mobile customer, the IXC delivers its calls to the LATA tandem switch, where the RBOC forwards the call to the destination CMRS carrier (in the same way the RBOC forwards a toll call to one of its own end office switches, a rural ILEC switch or a CLEC switch). With this interconnection arrangement, two access providers (a LEC and a CMRS provider) jointly provide the exchange access function.

It is common industry practice for all participants in such jointly provided switched access arrangements, or “meet point billing arrangements,” to be compensated for the services they provide. “Meet point billing is a method for the joint provision of access service through multi-company ordering and billing arrangements.”⁶ The industry has developed standards – known as the Multiple Exchange Carrier Access Billing Standard, or simply, “MECAB” – to govern the situation where the exchange access function is performed jointly by two or more different entities.⁷ The Commission has required LECs to follow the MECAB standards for “meet point” billing arrangements.⁸

⁵ See *Unified Inter-carrier Compensation NPRM*, 16 FCC Rcd 9610, 9643 ¶ 91 (2001).

⁶ *800 Database Access Tariffs*, 11 FCC Rcd 15227, 15318 n.322 (1996). A meet point billing arrangement constitutes “a simple division of revenues.” *Elkhart Telephone v. Southwestern Bell*, 11 FCC Rcd 1051, 1055 ¶ 27 (1995).

⁷ See Ordering and Billing Forum, Multiple Exchange Carrier Access Billing (MECAB), ATIS/OBF-MECAB-007, Issue 7 (Feb. 2001)(“MECAB”).

⁸ See, e.g., *Access Billing Requirements Reconsideration Order*, 3 FCC Rcd 13, 16-17 ¶¶ 29-31 (1987).

The MECAB establishes two options where the access function is jointly provided by two entities: single bill (one carrier bills on behalf of itself and the other provider), and multiple bill (each access provider submits its own bill to the IXC). The Commission has adopted the multiple bill option as the default arrangement if the two access providers cannot agree amongst themselves, but it has further declared that the single bill arrangement is the “vastly preferable” method.⁹ MECAB provides for two alternatives under the single bill option, multiple tariff and single tariff,¹⁰ and it describes the single bill-single tariff arrangement as follows:

The billing company [*e.g.*, the RBOC tandem owner] agrees to prepare a single access or interconnection bill based on their rate structure. Usage data is transmitted from the recording point for input into the billing system. The billing company renders a bill to the customer for all portions of the service. The other providers render a bill to the billing company for that portion of the service they provide. The customer remits payment to the billing company. The billing company remits payment to the other providers.¹¹

MECAB is very clear that CMRS carriers are access providers and may participate in meet point billing arrangements with other access providers. In fact, MECAB states on page 1:

This document contains the recommended guidelines for the billing of access and interconnection services provided to a customer by two or more providers or by one provider in two or more states within a single LATA. Access and interconnection services may be billed as usage-sensitive and flat rated charges, which may include intraLATA non-subscribed toll, *wireless* and local services. Examples of Usage-Sensitive Services are *Wireless Services [Type 1 (Line Side Service), Type 2A (Trunk Side Tandem Service) and Type 2B (Trunk Side End Office Service)]*¹²

⁹ *Id.* at 17 ¶ 38 (“It is clear from the tariff filings before us that some carriers did not understand clearly the strength of the Commission’s insistence that the multiple billing option was to be selected as a last resort only.”).

¹⁰ *See* MECAB at 4-1 ¶ 4.2.

¹¹ MECAB at 4-3 ¶ 4.3.1.2.

¹² *Id.* at 1-1 § 1 (emphasis added).

MECAB defines a wireless service provider as a “company whose network provides service to an end user through the use of airwave signals,” including “CMRS (Commercial Mobile Radio Service), PCS (Personal Communication Services), etc.”¹³

Sprint is not familiar with US LEC’s access tariffs. Accordingly, Sprint makes no attempt to determine whether US LEC has engaged in proper billing practices under its specific tariffs. However, other LECs have meet point billing access tariffs on file and in effect. For example, Section 2.4.8 of Qwest’s interstate access tariff (Tariff F.C.C. No. 1), is entitled, “Ordering, Rating and Billing of Switched Access Service Provided in Conjunction with a Commercial Mobile Radio Service Provider.” Among the options available to CMRS providers is single bill-single tariff arrangement described above.¹⁴ In addition, Sprint PCS has executed numerous interconnection contracts with LECs that address the subject of meet point billing for the joint provision of exchange access to IXCs. State commissions have routinely approved CMRS-LEC interconnection contracts that include meet point billing arrangements for exchange access services.¹⁵

There is, in summary, as a general proposition, nothing unlawful in a LEC recovering access charges when providing jointly provided switched access or when the LEC and CMRS carrier use the single bill-single tariff option sanctioned by industry standards. Such an arrangement is explicitly provided for in the MECAB, and the Commission has endorsed MECAB as the proper procedure to use for meet point billing arrangements. Ultimately, however, each carrier should charge only for the services it is providing and should not engage in misrepresentation

¹³ *Id.*

¹⁴ *See* Qwest Corporation, Tariff F.C.C. No. 1, Access Service, Original Page 2-75 (effective Aug. 8, 2000).

¹⁵ *See, e.g., GTE California/Sprint Spectrum Interconnection Contract Approval Order*, Resolution T-16395 (CPUC Feb. 17, 2000).

with respect to the nature of the services it provides or the carriers on whose behalf it is billing. In that regard, the bare fact that US LEC is handing off originating wireless traffic to an IXC, or is handing off terminating toll traffic to a wireless carrier, does not entitle US LEC to charge the IXC for the entire originating or terminating access function and retain all amounts so charged if, in fact, it is only performing a tandem function. Similarly, absent a lawful arrangement between the wireless carrier, US LEC and the IXC permitting such a practice, US LEC is not entitled to charge for access at rates of its own choosing and divide those amounts with the wireless carrier. Finally, the suggestion in US LEC's petition (at 9) that it would be entitled to charge the full CLEC benchmark rates established in the *Seventh Access Charge Reform Order*,¹⁶ when it only performs part of the access function is entirely misplaced. Nothing in that *Seventh Order* remotely suggests that the ceiling benchmarks adopted therein are presumptively reasonable in instances where the CLEC is performing only a part of the access function.

II. THE WIRELESS TERMINATION TARIFF PETITION

Four CMRS carriers have petitioned the Commission to reaffirm that "wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of telecommunications under the Communications Act."¹⁷ There should be no dispute concerning this straightforward proposition, given that the Commission has repeatedly held that LECs may not circumvent the statutory negotiation/arbitration/federal court review process by filing state interconnection tariffs. In addition, the law is also clear that even if LECs could file such tariffs, tariff provisions that are incompatible with

¹⁶ *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC 01-146, 16 FCC Rcd 9923 (April 27, 2001).

¹⁷ T-Mobile, Western Wireless, Nextel Communications and Nextel Partners Petition for Declaratory Ruling, CC Docket No. 01-92, at 1 (Sept. 6, 2002)("Joint CMRS Petition").

federal requirements are void and unenforceable. Nevertheless, because some small ILECs have chosen to ignore these settled principles of law, entry of the requested declaratory ruling becomes necessary to terminate the controversy that certain small ILECs have created.¹⁸

A. Under Existing Commission Precedent, LECs May Not Circumvent the Section 252 Process by Filing Unilaterally State Tariffs

In the 1996 Act, Congress described in considerable detail the procedures carriers are to follow in establishing the terms governing the interconnection of their networks. Congress chose not to use the existing tariff process for inter-carrier interconnection. Instead, it determined that interconnection issues should be negotiated and if negotiations prove unsuccessful, then arbitrated pursuant to the timeframes and standards that Congress established.¹⁹ Congress also determined that state courts should be precluded from reviewing state commission arbitration decisions,²⁰ and that such review should instead be conducted exclusively by the federal courts.²¹ Federal courts have held that in considering state arbitration decisions, they review the agency's "interpretation of the Act *de novo* and do not accord any deference to [the agency] interpretation of the Act."²²

CMRS carriers and rural ILECs generally interconnect indirectly (*via* the LATA tandem switch), and historically they have exchanged traffic without an interconnection contract (be-

¹⁸ The FCC is empowered to "issue a declaratory order to terminate a controversy or remove uncertainty." 5 U.S.C. § 554(e). *See also* 47 C.F.R. § 1.2.

¹⁹ *See* 47 U.S.C. §§ 251(c)(1), 252.

²⁰ *See id.* at § 252(e)(4) ("No State court shall have jurisdiction to review the action of a State commission in approving or rejected an agreement under this section.").

²¹ *See id.* at § 252(e)(6).

²² *Michigan Bell v. Strand*, 2002 U.S. App. LEXIS 20649 at *16 (6th Cir. Sept. 30, 2002). *See also MCI v. Bell Atlantic*, 271 F.3d 491, 515-517 (3d Cir., 2001) (court rejects PUC argument that its interpretation of federal law is entitled to deference); *U S WEST v. Sprint*, 275 F.3d 1241, 1248 (10th Cir. 2002); *AT&T v. Verizon*, 270 F.3d 162, 169 (3d Cir. 2001).

cause the small amounts of traffic exchanged do not justify a formal agreement). Recently, a growing number of rural LECs have asked Sprint PCS to enter into interconnection negotiations, and Sprint PCS has entered negotiations as requested. In stark contrast, rural ILECs in some states have decided to circumvent the negotiation/arbitration/federal court review procedure that Congress has established and have instead filed state interconnection tariffs – which they often call, “wireless termination tariffs.”

There are numerous problems with this state tariff approach, including:

- Contrary to Congress’ directive, there are no “give and take” negotiations between carriers; rural ILECs simply incorporate their wish list into the tariffs they prepare and file;
- The tariff proposals often contain terms that are inconsistent with federal law (*see below*);
- In a tariff proceeding, customers have the burden of demonstrating that a LEC proposal is unreasonable; in an arbitration proceeding, in contrast, the LEC has the burden of demonstrating that its proposals are consistent with federal law;
- State commissions review the tariffs pursuant to the standards specified in state law rather than the standards that Congress has established for the interconnection of networks; and
- Appeals of state tariff decisions are filed in state courts, when Congress has explicitly divested state courts of reviewing issues involving the interconnection of telecommunications networks.

The Commission has already (and repeatedly) ruled that “using the tariff process to circumvent the section 251 and 252 processes cannot be allowed.”²³ The Commission has declared that use of the tariff process for interconnection with other carriers could “not have been intended by Congress, given the central role played by the section 251-252 process in the Tele-

²³ *Bell Atlantic v. Global NAPs*, 15 FCC Rcd 12946, 12959 ¶ 23 (1999). *See also Bell Atlantic v. Global NAPs*, 15 FCC Rcd 5997, 6002 ¶ 14, 6004 ¶ 20 (2000)(same); *Bell Atlantic v. Global NAPs*, 15 FCC Rcd 20665, 20671 ¶ 16 (2000)(same).

communications Act of 1996.”²⁴ As the Wireline Competition Bureau explained only three months ago, permitting LECs to file interconnection tariffs would “thwart [the] statutory right to ensure that the new rates comply with the requirements of sections 251 and 252”:

Under section 252(e)(6), “[i]n any case in which a State commission makes a determination *under this section*, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section.” Under Verizon’s proposal, the new tariffed rates would not be the subject of a determination under section 252²⁵

Existing law is thus clear and settled: LECs may not use the tariff process to circumvent the negotiation/arbitration/federal court review procedure that Congress has established. Rural LECs in certain states have made apparent their intent to ignore governing federal law requirements by filing state tariffs without first conducting the negotiation process. Grant of the Joint CMRS Declaratory Ruling Petition will help resolve this issue. The Commission should therefore confirm that no LEC, regardless of size, may use the state tariffing process to circumvent the procedure Congress specifically established in the 1996 Act.²⁶

B. THE LAW IS SETTLED THAT LEC STATE TARIFFS THAT ARE INCONSISTENT WITH FCC ORDERS AND RULES ARE VOID AND UNENFORCEABLE

Many of the terms contained in rural ILEC state interconnection tariffs are unlawful even if the Commission were to change its position by ruling that LEC interconnection state tariffs are not incompatible with the negotiation/arbitration/federal court review process that Congress has

²⁴ *Bell Atlantic v. Global NAPS*, 15 FCC Rcd 20665, 20671 ¶ 16 (2000).

²⁵ *WorldCom/Verizon Arbitration Order*, CC Docket No. 00-218, DA 02-1731, at ¶ 601 (July 17, 2002) (emphasis in original).

²⁶ There is a second, independent basis upon which the FCC may grant the Joint CMRS Petition. Courts have held that Section 332(c) provides “an independent basis of support *outside* the 1996 Act” to adopt rules governing CMRS-LEC interconnection. See *Qwest v. FCC*, 252 F.3d 462, 466 (D.C. Cir. 2001) (emphasis in original). As the Joint CMRS Petitioners demonstrate, the FCC has long held that LECs engage in bad faith when they file CMRS interconnection tariffs before conducting interconnection negotiations with CMRS carriers. See Joint CMRS Petition at 8-9 and 12-13.

established. The law is settled that LEC-prepared state tariffs which are inconsistent with federal law (and state commission orders approving such tariffs) are void and enforceable under the Supremacy Clause of the United States Constitution.

The Constitution provides that “the laws of the United States . . . shall be the supreme Law of the Land; . . . anything in the Constitution or Laws of any state to the Contrary notwithstanding.”²⁷ The Supreme Court has held that the phrase, “laws of the United States,” encompasses “federal regulations that are properly adopted in accordance with statutory authorization.”²⁸ The Supreme Court has specifically declared that “[f]ederal regulations have no less preemptive effect than federal statutes.”²⁹

The statutory authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof.³⁰

State laws – whether statutes, court decisions, agency regulations, or carrier-filed state tariffs – that are inconsistent with federal agency rules are “null”³¹ and “unenforceable”.³²

Since our decision in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 407, 427 (1819), it has been settled that state law that conflicts with federal law is “without effect.”³³

This Commission has similarly ruled that state tariffs filed by LECs are unenforceable if the tariffs are inconsistent with Commission orders and rules:

²⁷ U.S. CONST., Article VI, Clause 2.

²⁸ *New York v. FCC*, 486 U.S. 57, 63 (1988).

²⁹ *Fidelity Federal Savings & Loan v. De La Cuesta*, 458 U.S. 141, 152 (1982).

³⁰ *New York v. FCC*, 486 U.S. at 64. See also *Lincoln Savings & Loan v. Federal Home Loan Bank Board*, 856 F.2d 1558, 1560 (D.C. Cir. 1988) (“So long as an agency has statutory authority to issue regulations, those regulations will preempt inconsistent statute statutes by the simple operation of the Supremacy Clause.”)

³¹ *Fidelity v. De La Cuesta*, 458 U.S. at 152.

³² *New York v. FCC*, 486 U.S. at 63.

³³ *Cipollone v. Liggett Group*, 505 U.S. 504, 516 (1992).

[A]ny LEC efforts to continue charging CMRS or other carriers for delivery of such traffic would be unjust and unreasonable and violate the Commission's rules, *regardless of whether the charges were contained in a federal or a state tariff.*³⁴

The Supreme Court has held that the Commission possesses the authority to adopt rules regarding the interconnection of networks that apply to both interstate and intrastate traffic.³⁵ The Commission has adopted national interconnection rules, including rules specifically applicable to the interconnection of CMRS and LEC networks, and those rules have been affirmed on appeal.³⁶ State tariffs that are inconsistent with these Commission rules are therefore void and unenforceable as a matter of law.

Many of the "wireless termination tariffs" that certain rural ILECs have filed are incompatible with the Communications Act and the Commission's rules implementing the Act. For example:

- The Commission has made clear that its reciprocal compensation rules, rather than access charges, apply to intraMTA traffic exchanged with a CMRS carrier.³⁷ Many rural ILEC tariffs purport to impose access charges or access-like charges on CMRS carriers for intraMTA traffic.
- The Commission's TELRIC rules prohibit LECs from recovering any of their local loop costs in reciprocal compensation, because these costs constitute non-traffic sensitive costs.³⁸ Yet, the rates some LECs attempt to recover in their state tariffs include local loop costs.
- Most of the rural ILEC tariffs are entirely one-sided. While the tariffs purport to require CMRS carriers to pay ILECs for call termination, the tariffs make no

³⁴ *TSR Wireless v. U S WEST*, 15 FCC Rcd 11166, 11183 ¶ 29 (2000)(emphasis added), *aff'd Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). *See also Metrocall v. Concord Telephone*, File No. ED-01-MD-008, DA 02-301, at ¶ 7 (Feb. 8, 2002)("[W]e have jurisdiction to resolve Metrocall-s complaint, notwithstanding the fact that the disputed charges were contained in a pre-1996 Act state tariff.").

³⁵ *See, e.g., AT&T v. Iowa Utilities Board*, 525 U.S. 366 (1999).

³⁶ *See, e.g., Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997).

³⁷ *See, e.g., 47 C.F.R. § 51.701(b); Inter-carrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, 9173 ¶ 47 (2001); *Local Competition Order*, 11 FCC Rcd 15499, 16016 ¶ 1043 (1996).

³⁸ *See Local Competition Reconsideration Order*, 11 FCC Rcd 13042, 13045 ¶ 6 (1996); *Local Competition Order*, 11 FCC Rcd at 16024-25 ¶ 1057.

mention of the ILEC obligation to pay CMRS carriers for terminating intraMTA traffic.

- Some of the tariffs purport to authorize the rural ILECs to block CMRS traffic if CMRS carriers do not pay the tariffed rates that on their face are void and unenforceable.
- Some of the tariffs purport to exempt rural ILECs from engaging in good faith negotiations with CMRS carriers.

Under the Supreme Court cases cited above, these state tariff provisions are void, unenforceable, and without effect.

III. CONCLUSION

For the foregoing reasons, Sprint Corporation respectfully requests that the Commission act in a manner consistent with the discussion above.

Respectfully submitted,

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