

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
AT&T Corp. Petition Pursuant to 47 U.S.C.	)	WC Docket No. 03-256
Section 160(c) of the Communications Act	)	
For Forbearance from Enforcement of	)	
Section 204(a)(3) of the Communications	)	
Act, As Amended	)	

**COMMENTS OF SPRINT CORPORATION**

Sprint Corporation, pursuant to the Public Notice released December 24, 2003 (DA 03-4076), hereby respectfully submits its comments in support of the above-captioned Petition for Forbearance.

In its petition, AT&T requests that the Commission forbear from enforcing Section 204(a)(3) of the Act, which provides that certain streamlined local exchange access tariffs are "deemed lawful," insofar as that provision of the statute precludes customers from seeking reparations through the complaint process. As AT&T correctly points out, virtually none of the LEC tariffs filed on a streamlined basis are suspended or set for investigation by the FCC; thus, even if those tariffs result in unjust or unreasonably high rates, access customers have no redress for past period overcharges. As AT&T also demonstrates (Exhibit 1), rate-of-return LECs have charged interstate access rates that were "deemed lawful" but which resulted in earned rates of return far in excess of the maximum allowable limits.

In setting their interstate access rates, LECs subject to rate-of-return regulation<sup>1</sup> must forecast both their revenue requirement and their demand for the relevant tariff period. The revenue requirement includes a return on investment of 11.25%; however, the earned rates of return will be above or below the target depending on actual costs incurred and actual demand quantities.<sup>2</sup> LECs may file mid-period tariff changes if they wish to adjust their rate levels; however, these mid-period adjustments do not include any sort of true-up to compensate their access customers for past-period "over payments." Because the Commission has found that tariffs that were deemed lawful are not subject to retroactive refunds, access customers have no means of redress for rates that were, in retrospect, patently excessive. Knowing that the possibility of tariff suspension and investigation is virtually zero, rate-of-return LECs have every incentive to forecast their revenue requirement and demand quantities in a manner which maximizes the likelihood of an earned rate of return in excess of 11.25%.

It is this circumstance which AT&T's petition seeks to correct. Grant of AT&T's petition would only allow access customers to seek reparations for past period over-earnings under Sections 206-208 of the Act; it would not affect LECs' ability to file

---

<sup>1</sup> LECs subject to price cap regulation are not considered to have "over-earned" (and thus are not subject to damages arising from past period "over-earnings") so long as their rates fall below applicable caps/within applicable bands, and have been appropriately adjusted to meet any sharing obligations. ("In light of our prescription of the sharing and adjustment mechanism, complaints claiming that overall company earnings that comply with the sharing mechanism are excessive in view of costs will not lie." *See Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6802 (para. 128) (1990).) Under the CALLS plan, price cap LECs implemented a 6.5% productivity factor, thereby eliminating any sharing obligation.

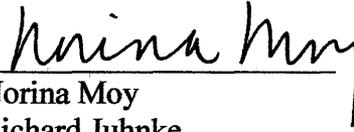
<sup>2</sup> Rarely are the forecasts so accurate as to yield an earned rate of return that is precisely on target.

tariffs on a streamlined basis, change the cost support requirements associated with such tariff filings, or change the Commission's pre-effectiveness tariff review process (Petition, p. 4). Because the requested change will help to ensure just and reasonable access rates, and does not impose any additional burdens on affected LECs in the preparation or filing of their streamlined tariffs, AT&T's petition is in the public interest and should be granted.

Section 10(a) of the Communications Act requires the Commission to "forbear from applying any regulation or any provision of this Act to a ... class of telecommunications carriers or telecommunications services" if the Commission determines that enforcement of the regulation or provision is not necessary to ensure just and reasonable charges, practices, classifications or regulations; that enforcement of such regulation or provision is not necessary for the protection of consumers; and that forbearance is consistent with the public interest. AT&T has demonstrated (Petition, pp. 14-21) that this three-part test is fully satisfied as regards forbearance from the policy which forbids award of damages for the period that a "deemed lawful" tariff was in effect. Because forbearance of this policy can only promote just and reasonable rates, protect the interest of access customers, and promote the public interest, AT&T's petition should be granted expeditiously.

Respectfully submitted,

SPRINT CORPORATION

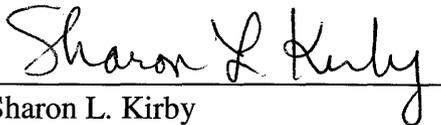
A handwritten signature in cursive script that reads "Norina Moy". The signature is written in black ink and is positioned above a horizontal line.

Norina Moy  
Richard Juhnke  
401 9<sup>th</sup> St., NW, Suite 400  
Washington, DC 20004  
(202) 585-1915

January 30, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was sent via electronic mail or U.S. First Class Mail, postage prepaid, on this 30th day of January 2004 to the below-listed parties.

  
Sharon L. Kirby

**DELIVERY BY ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TW-B204  
Washington, DC 20554

**DELIVERY BY ELECTRONIC MAIL**

William Maher, Bureau Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Qualex International  
Room CY-B402  
445 12th Street, SW  
Washington, DC 20554

**DELIVERY BY U.S. MAIL**

Tamara Preiss  
Chief, Pricing Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Room 5-A225  
Washington, DC 20554

Leonard Cali  
Lawrence Lafaro  
Peter Jacoby  
AT&T  
Room 3A251  
One AT&T Way  
Bedminster, NJ 07921