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November 2, 2004

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

**Re: Notice of Ex Parte Communication**

Unbundled Access to Network Elements, WC Docket No. 04-313

Review of the Section 251 Unbundling Obligations of Incumbent Local  
Exchange Carriers, CC Docket No. 01-338

Dear Ms. Dortch:

On behalf of Sprint Corporation, Richard Juhnke and I met yesterday with Scott Bergmann, Legal Advisor to Commissioner Adelstein, and separately with Matthew Brill, Chief Legal Advisor to Commissioner Abernathy. Today, Mr. Juhnke and I met with Jessica Rosenworcel, Legal Advisor to Commissioner Copps, with Norina Moy and David Nall of Sprint also attending.

The purpose of each meeting was to explain Sprint's positions in these dockets. Sprint's presentation was consistent with its comments filed in these dockets and is summarized in the attached outline, which we distributed at the meetings.

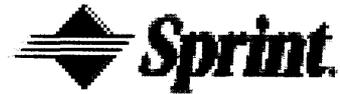
Pursuant to the requirements of Section 1.1206 of the Commission's rules, I am filing electronic copies of this notice for addition to these dockets.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Benedict".

John E. Benedict

cc: Scott Bergmann  
Matthew Brill  
Jessica Rosenworcel



## **RECOMMENDATIONS FOR THE COMMISSION ON REMAND**

### **Access to Unbundled Network Elements WC Docket No. 04-313 CC Docket No. 01-338**

#### **Statutory Goals**

The Commission should reaffirm the Commission's commitment to the market-opening and pro-competitive goals of the 1996 Act.

#### **Impairment Definition**

The Commission should explain that impairment is based on economic and operational barriers for an efficient CLEC within the overall communications market.

#### **High Capacity UNEs**

The record shows impairment is the overwhelming norm, not the exception, for DS1, DS3, and dark fiber loops and transport.

The Commission should make a national finding of impairment for high-capacity loops and transport, with specific locations or routes removed only where evidence shows the Triennial Review Order's self-provisioning or wholesaling triggers are met.

It should adopt location specific impairment review, based on actual evidence, or adopt AT&T's proposal to have wholesalers report.

It should reject line count or market size as arbitrary surrogates for impairment in high-capacity facilities.

Special access is not a substitute for unbundled high-capacity facilities.

#### **CMRS Carriers Access to UNEs**

CMRS carriers need access to UNE transport, particularly between MSCs and base stations.

There are no significant competitive facilities available, and special access for these links represent Sprint PCS's largest single network operating costs.

If facilities-based competition is to be the goal, as it should be, CMRS carriers need cost-based access to compete head-on with wireline carriers.

In any event, non-BOC CMRS carriers need cost-based facilities from the BOCs to compete with BOC-owned wireless carriers.

#### **Section 271 Obligations**

The Commission should uphold Bell Operating Company obligations to provide access to unbundled network elements under section 271.