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

In the Matter of	)	
	)	
Petitions of Global Crossing	)	
Telecommunications, Inc.	)	
and SBC Communications, Inc.	)	**WC Docket No. 04-424**
for Declaratory Ruling	)	
	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of its wireline and wireless operating divisions, and pursuant to *Public Notice*, DA 04-3865 (released Dec. 8, 2004) and *Order Extending Pleading Cycle*, DA-04-4030 (released December 23, 2004), hereby respectfully submits its comments on the petitions for declaratory ruling filed by Global Crossing Telecommunications Inc. ("Global Crossing") and SBC Communications, Inc. ("SBC") in the above-captioned proceeding.

I. INTRODUCTION

On one level, the petitions filed by both Global Crossing and SBC could be viewed as requesting that the Commission resolve a simple tariff dispute. Both petitioners ask the Commission to rule on which of two tariff provisions in Tariff F.C.C. No. 73 filed by SBC's local telephone subsidiary Southwestern Bell Telephone L.P. ("SWBT") should be used in determining the jurisdiction of originating wireless traffic that Global Crossing delivers to SWBT for termination. Global Crossing requests the Commission to declare that SWBT must use the provision setting forth the so-called entry-exit surrogate ("EES") for determining such jurisdiction. Global Crossing Petition at 2. For its part, SBC states that the Commission should

"affirm" that if long distance carriers (IXCs) cannot include in the call detail they provide SWBT "accurate and reliable information" as to the geographic location wireless callers, "SWBT's interstate tariffs permit SWBT to use calling and called party numbers to determine whether to assess interstate or intrastate terminating switched access rates for wireless originated calls." SBC Petition at 12.

Sprint believes that what is at issue here is whether the Commission will abandon its long standing principle that the origin and destination of a call determine whether the call is interstate or intrastate for purposes of assessing switched access charges and that in cases where the origin is not readily available, carriers must utilize an auditable methodology that enables them to determine such jurisdiction with relative accuracy. This principle was the foundation for the Commission's decision in 1985 concluding that the EES methodology was acceptable for determining the jurisdiction of wireline traffic being carried by IXCs subscribing to switched access arrangements which did not offer the means for either the IXCs or the LECs to determine the jurisdiction of the call by reference to the calling party number ("CPN"). *See MCI Telecommunications Corporation; Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service,* FCC 85-145, 1985 FCC LEXIS 3500 (1985); *recon. denied,* FCC 85-595, 1985 FCC LEXIS 2320 (1985) ("*EES Order*").

This principle should be the Commission's guidepost in resolving the instant controversy. This means that Commission's decision here will need to be based on the fact that because subscribers to wireless services can use their handsets to make calls from anywhere in the country, the telephone number assigned to a wireless phone cannot reliably be used to determine the jurisdiction of the wireless call. In the 1985 *EES Order*, the Commission agreed with the position advocated by SBC's local telephone companies, among others, and refused to continue

to sanction the inaccurate methodology then being used by many IXCs to determine the jurisdiction of calls.[1] Similarly, in this proceeding, the Commission must refuse to sanction the use of the methodology being advocated by SBC for determining the jurisdiction of calls from wireless phones to landline phones because such methodology does not take in account the mobility afforded by wireless phones and thus is highly likely to incorrectly assign a significant percentage of traffic to the wrong jurisdiction for purposes of assessing access charges. Rather, the Commission should require the use of a reasonable and verifiable methodology that would give both the IXCs and the LECs a high decree of comfort that the jurisdictional classifications of wireless to landline calls is relatively accurate. Although the EES methodology being advocated by Global Crossing may not provide this high decree of comfort, fortunately the Commission has provided the industry with the parameters for such a methodology in its *Local Competition Order* (*Implementation of the Local Competition Provisions of the Communications Act of 1996*, 11 FCC Rcd 15499, 16017 ¶1044 (1996)) where it explained that the initial cell site or perhaps the mobile switching center ("MSC") could be used to determine the location of the wireless customer. Sprint's position here is discussed further below.

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[1] The methodology then being used by many IXCs was based on whether they ordered Feature Group A or Feature Group B access lines from the LECs interstate or intrastate tariffs. *See EES Order* at ¶8. The Commission noted that regardless of whether these lines were ordered out of the LECs interstate or intrastate tariffs, they were being used to carry both interstate and intrastate traffic and thus the carriers had to utilize a method that accounted for the amount of interstate and intrastate traffic being transported over each line for access charge purposes. *Id.* at ¶4. *See also Thrifty Call, Inc., Petition for Declaratory Ruling Concerning BellSouth Telecommunications Inc. Tariff F.C.C. No. 1, Declaratory Ruling*, DA 04-3576 (released November 12, 2004) (*Thrifty Call Decision*) at ¶16 ("In adopting the EES methodology, the Commission was attempting to devise a way for carriers more accurately to report their interstate and intrastate usage").

II. ARGUMENT

A. The Global Crossing/SBC Dispute Confirms the Need for Inter-carrier Compensation Reform.

Initially, the dispute between Global Crossing and SBC at issue and similar disputes between IXCs and LECs in the past, *see, e.g., Thrifty Call Decision*, clearly demonstrate that the current access charge regime is in desperate need of repair. As a matter of economics, it makes absolutely no sense to assess different access rates depending upon whether the call is jurisdictionally interstate or jurisdictionally intrastate. This is so because the per-minute cost incurred by the LEC in the provision of access services is the same regardless of whether the IXC traffic in question is interstate or intrastate. Certainly, widely disparate charges for what is a commodity service would not be sustainable absent the current regulatory structure that requires carriers to divide their traffic between jurisdictions.

The inevitable result of a jurisdictionally-based access charge regime is that both IXCs and LECs have an incentive to "game the system" to their advantage. In the scheme at issue in *Thrifty Call*, IXCs entered into arrangements that sought to avoid having traffic classified as intrastate in order to avoid paying intrastate access charges which generally are much higher than interstate access charges. By the same token, LECs, suspicious of possible IXC schemes to misclassify traffic, have an incentive to adopt "bright line" tests that ignore the mobility afforded wireless subscribers and rely upon a method devised for stationary wired phones to misclassify what is jurisdictionally interstate wireless traffic as intrastate. And both industry segments spend an enormous amount of resources in billing disputes, at least some of which, like the case at bar, end up before this Commission for resolution.

Sprint believes that the only way for the Commission to end untoward gamesmanship, and to prevent a drain on its limited resources as it is called upon to resolve these jurisdictional

disputes between carriers, is to adopt a unified access charge structure such at the one proposed by the Intercarrier Compensation Forum of which Sprint, Global Crossing and SBC are all members.[2] A unified access regime would eliminate any incentive that IXCs and LECs would otherwise have to engage in arbitrage. Of equal importance, a unified rate structure would produce the result that would likely exist in an unregulated market which is, or should be, the goal of regulation.

Of course, the Commission must decide the instant dispute under the current access charge system, irrational as that system may be. Fortunately, as the following discussion makes clear, Commission precedent provides a way for the Commission to resolve this matter in a way that produces an equitable result.

B. Using the Telephone Number Assigned to the Wireless Handset to Determine the Jurisdiction of a Wireless Call by is Contrary to Commission Precedent.

There can be no debate that under long-standing Commission and court precedent, the beginning and end points of a call determine whether the call is interstate or intrastate.[3] In the case of traditional wireline calls where the call is made from a stationary phone and the IXC is able to deliver the CPN to the terminating LEC, the jurisdiction of the call can be easily determined by comparing the CPN to the called number. However, use of such comparison simply cannot be relied upon to accurately determine the jurisdiction of a wireless call. This is so because although a wireless customer's telephone number is usually based on the location of

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[2] *Ex Parte* Brief of the Intercarrier Compensation Forum in Support of the Intercarrier Compensation and Universal Service Reform Plan, CC Docket 01-92, filed October 5, 2004.

[3] *See, e.g., Teleconnect Company v. The Bell Telephone Company of Pennsylvania et al.,* 6 FCC Rcd 5202, 5206 (1991); *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation*,7 FCC Rcd 1619, 1621 (1992); *Long Distance/USA et al. v. The Bell Telephone Company of Pennsylvania et al.,* 10 FCC Rcd 1634 1637-38 (1995); *The Time Machine*, 11 FCC Rcd 1186, 1190 (1995); *Local Competition Order, supra*, 11 FCC Rcd at 16017 ¶1044; *Thrifty Call Decision*, *supra* at ¶15; *NARUC v. FCC*, 746 F.2d 1492, 1498 (D.C. Cir. 1984); *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1, 4 (D.C. Cir. 2000).

the customer's home or business, the mobility afforded by wireless phones and the fact that wireless carriers, such as Sprint PCS, have built nationwide networks enable wireless subscribers to make calls from anywhere in the United States. By way of example, a Sprint PCS subscriber residing in Austin, Texas could be assigned a wireless phone number with an NPA of 737. This subscriber would be making a interstate call under Commission precedent, if while on a business trip to San Francisco, California, she uses her wireless phone to call the business offices of a colleague in Dallas, Texas. By the same token, she would be making an intrastate call, under Commission precedent, if she uses her phone while in San Francisco to call the offices of a business colleague located in Los Angeles.[4] Yet SBC would (1) classify the San Francisco to Texas call as intrastate and charge the IXC delivering the call intrastate access change, and (2) classify the San Francisco to Los Angeles call as interstate and charge the IXC delivering the call the access rates set forth in its FCC tariff.

SBC concedes that the telephone number assigned to the wireless handset cannot be relied upon to determine the location of the subscriber when placing a call to landline phone. *See* Petition of Global Crossing at 2 and fn. 2. Nonetheless, it claims that it is entitled to use such telephone number to determine whether the traffic should be classified as interstate or intrastate. This is so, according to SBC, because using the telephone number assigned to the wireless phone is "consistent with SWBT's interstate tariffs [and] with longstanding industry practice." Petition at 1. SBC's arguments here are without merit.

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[4] Sprint would note that SBC does not claim, let alone provide any evidence, for the proposition that the amount of wireless traffic it misclassifies as jurisdictionally intrastate is offset by the amount of wireless traffic that it misclassifies as jurisdictionally interstate. If it does argue on reply that the net effect of its traffic misclassifications approaches zero, it will have to supply solid evidence to support such claim. *See EES Order* at ¶21.

There is no provision in SBC's tariff that gives SBC the right to use a method for determining the jurisdiction of the call under which the geographic location of the phone from which the call is placed is irrelevant. If there is such a provision, it should be declared void since it is directly contrary to Commission and court precedent specifying how the jurisdiction of a call is to be determined.[5] It is also inconsistent with the principle that carriers are to use the methodology that enables them "more accurately to report their interstate and intrastate minutes." *Thrifty Call, supra* at ¶16 .

SBC's reliance on a standard industry practice, even if true -- and Sprint would note that SBC does not provide any proof that all LECs employ such practice to determine the jurisdiction of wireless calls terminating to their customers -- also is no justification for using a methodology which would assign traffic to the incorrect jurisdiction in a significant number of cases. Indeed, Sprint is unaware of any Commission or court decision that accepts the notion that an industry-wide practice allows carriers to knowingly misclassify the jurisdiction of traffic.

In short, SBC's arguments here, such as they are, do not provide any reason for granting SBC the declaratory relief that it seeks.

C. The Commission Should Declare That IXCs Are Entitled to Use A Reasonable and Verifiable Methodology for Reporting the Jurisdiction of Wireless Calls To Terminating LECs.

Global Crossing asks that the Commission declare that the EES methodology is to be used by IXCs to develop the factors to be given the terminating LECs so that they are able to sort wireless calls delivered to them by IXCs into the interstate or intrastate "buckets." However, Global Crossing's proposal lacks the clarity as to exactly how the EES methodology it advocates

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[5] For example, in its *Local Competition Order* 11 FCC Rcd at 16017 (¶1044), the Commission stated unequivocally that the "geographic locations of the calling party and the called party determine whether a particular [wireless] call should be compensated … under interstate or intrastate access charges." *See also* the other cases cited in fn. 3 *supra*.

would be applied and tested. As the Commission observed in *Thrifty Call*, certain IXCs used the EES methodology to avoid paying intrastate access charges on jurisdictionally intrastate traffic. For this reason, Sprint believes that sanctioning the use of an undefined standard in the context of determining the jurisdiction of wireless calls is highly problematic. This is especially the case here since it appears that Global Crossing would assume that the geographic location of the wireless carrier is in the state where the wireless call first enters Global Crossing's network at Global Crossing's point of presence ("POP"). *See* Global Crossing Petition at 11 ("... a call's point of entry into a carrier's network is the linchpin of the methodology"). Use of an IXC's POP as the origination point for wireless calls could enable the IXC to "game" the EES methodology by, *e.g.,* transporting an intrastate call from the wireless carrier's switch to an out-of-state IXC switch to disguise the origin of the call.

In any event, in its *Local Competition Order*, the Commission set forth what it considered to be reliable and readily available indicia of the point of origin of a wireless call. Thus, it explained that "the initial cell site where a call begins shall be used as the determinate of the geographic location of the mobile customer." Alternatively, carriers could use "the point of interconnection" between the LEC and wireless carrier "at the beginning of the call"-- and this point is logically the MSC -- "to determine the location of the [wireless] caller..." *Id.* 11 FCC Rcd at 16017-18 (¶1044). Of course an IXC using a methodology based on either one of these indicia or another reasonable methodology must maintain detailed information as to how it determined the jurisdiction of the wireless calls as well as subject itself to audits by the LECs to verify the validity of the jurisdictional split it provides to the LECs. Indeed, the Commission has

already found that record maintenance and submission to reasonable audit requests are essential components of a methodology that is based on estimates of interstate and intrastate traffic.[6]

III. CONCLUSION

For the reasons stated above, the Commission should deny the declaratory relief sought by SBC and Global Crossing. Instead, the Commission should declare that IXCs terminating wireless traffic to an LEC are to use a reasonable and verifiable methodology for reporting the jurisdiction of such calls.

Respectfully submitted,

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[6] *EES Order* at ¶28. The Commission's *EES Order* is precedent for what Sprint believes should be the outcome of this proceeding. There the Commission denied the declaratory relief requested by MCI and instead found that the approach then being taken by some of the states for determining the jurisdiction of Feature Group A and Feature Group B access traffic was reasonable and should be adopted. Here Sprint is asking that the Commission deny the declaratory relief being requested by both SBC and Global Crossing -- at least to the extent that granting such relief would entail prescribing either of the methodologies being advocated by SBC and Global Crossing for the entire industry -- and instead find that carriers are to determine the jurisdiction of wireless traffic using the indicia set forth in the Commission's *Local Competition Order.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was filed via electronic mail copies sent by e-mail or by United States first-class mail, postage prepaid, on this the 7th day of January 2005 to the parties on the attached page.

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January 7, 2005

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