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

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs	)	

SPRINT OPPOSITION

Sprint Corporation, on behalf of its local, long distance and wireless divisions, submits the following Opposition to the Petition for Reconsideration filed by the Missouri Small Telephone Company Group ("MSTCG").[1]

I. SUMMARY OF OPPOSITION

The MSTCG proposal would not improve the contract negotiation process between wireless carriers and incumbent local exchange carriers, particularly rural local exchange carriers. Wireless carriers and rural LECs already have a long history of litigation and confrontation over wireless attempts to enter rural markets.[2] The MSTCG proposal – that ILEC obligations be imposed on competitive wireless carriers – would only exacerbate this situation. Indeed, as dis-

[1] *See* Missouri Small Telephone Company Group, Petition for Reconsideration, CC Docket No. 01-92 (March 25, 2005)("MSTCG Petition"). *See also* Public Notice, *Petitions for Reconsideration of Action in Rulemaking Proceeding*, Report No. 2713 (May 25, 2005), *published in* 70 Fed. Reg. 34766 (June 15, 2005); Corrected Report No. 2713 (June 3, 2005).

[2] *See, e.g.,* Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (May 9, 2002); Public Notice, *Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs,* CC Docket No. 01-92, DA 02-1740 (July 18, 2002).

cussed below, the net result of the MSTCG Petition would be to increase the cost of services to consumers.

The MSTCG seeks to expand the *T-Mobile Declaratory Ruling*[3] to impose on competitive wireless carriers certain interconnection obligations that Congress deliberately imposed on incumbent LECs only. The MSTCG provides no substantive policy justification for this fundamental revision to the Act. Moreover, the MSTCG proposal would not only require the FCC to ignore the express provisions of Section 252(i) and the stated public policy for this rule, but it would also require the FCC to overturn several other provisions of the Communications Act, including the obligation that incumbent local exchange carriers base their reciprocal compensation rates upon their additional cost of providing service. This proposal would ultimately lead to higher costs for consumers. Finally, even if the FCC could adopt the MSTCG's rule proposal, it could not be implemented as a practical matter.

II. CONGRESS DESIGNED SECTION 252 TO PROTECT NEW ENTRANTS FROM THE MARKET POWER OF INCUMBENT LECS

As MSTCG acknowledges, the obligations of Section 252(i) and 47 C.F.R. § 51.809 are imposed upon incumbent LECs only.[4] The public policy behind this obligation was to "prevent discrimination" by incumbent LECs that hold inherent market power over new entrants.[5] As the

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[3] *Developing a Unified Intercarrier Compensation Regime, T-Mobile, et al., Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs,* CC Docket 01-92, *Declaratory Ruling and Report and Order*, FCC 05-42, 20 FCC Rcd 4855 (Feb. 24, 2005) ("*T-Mobile Declaratory Ruling" or "Order"*).

[4] *See* MSTCG Petition at 2.

[5] *See All-or-Nothing Rule Order*, 19 FCC Rcd 13494, 13510 ¶ 28 (2004). *See also First Local Competition Order*, 11 FCC Rcd 15499, 16139 ¶ 1315 (1996)("[T]he primary purpose of section 252(i) [is] preventing discrimination."); *id.* at 16141 ¶ 1321 ("[T]he importance of section 252(i) [is] in preventing discrimination.").

Commission has observed, competitive carriers have "little to offer the incumbent," with the result that incumbents have "scant, if any, economic incentive to reach agreement."[6] It has additionally recognized that an incumbent LEC "has superior bargaining power"[7] and "has the incentive to discriminate against its competitors."[8] In contrast to incumbent LECs, competitive wireless carriers possess no market power. The obligations of Section 252(i) and Rule 51.809 were imposed to address, in part, this fundamental imbalance.[9]

The MSTCG provides no justification for its proposed revision to the competitive balance that Congress and the FCC established through Section 252(i). MSTCG simply asserts that imposing incumbent LEC obligations on competitive wireless carriers "will facilitate the transition from tariff-based interconnection arrangements to contractual agreements under the Act."[10] While there is certainly no doubt that ILECs would find such a procedure convenient, and profitable, this is not a justification for changing a Congressional directive. Moreover, the MSTCG acknowledges that the majority of wireless carriers have already negotiated interconnection arrangements with these incumbent LECs. The FCC has also noted that "many incumbent LECs and CMRS providers, including many small and rural carriers, already participate in interconnection negotiations and the state arbitration process under the current rules."[11]

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6 *First Local Competition Order*, 11 FCC Rcd at 15560 ¶ 141.

7 *Id.*

8 *Id.* at 15612 ¶ 218.

9 The size of the respective parties often has little relevance in negotiations. For example, there are several areas in the country where Sprint cannot compete with rural LECs because rural LECs unilaterally refuse to honor the local telephone numbers that Sprint obtained in compliance with all FCC rules. *See* Sprint Declaratory Ruling Petition, CC Docket No. 01-92 (May 9, 2002); Public Notice, DA 02-12740 (July 18, 2002).

10 MSTCG Petition at 3, ¶ 4.

11 *T-Mobile Declaratory Ruling*, Final Regulatory Flexibility Analysis at ¶ 17. *See also id.* at ¶ 21 ("We also note that, during this proceeding, both CMRS providers and rural incumbent

Indeed, it is particularly disingenuous for the MSTCG to raise the claim that they have been unable to negotiate agreements with wireless carriers or that wireless carriers have demonstrated any unwillingness to negotiate interconnection agreements in Missouri. Sprint issued multiple requests for interconnection to Missouri ILECs, each of which triggered a right for the incumbent LEC to seek arbitration of the terms of interconnection under the Act, a right no ILEC exercised.[12] When these negotiations failed, Sprint filed an informal complaint against these carriers at the FCC because of the ILECs' refusal to "establish interconnection arrangements with Sprint PCS providing for reciprocal and symmetrical compensation for the exchange of local traffic."[13]

Despite, or because of, Sprint's efforts to establish interconnection agreements, the Missouri ILECs filed termination tariffs of the type the Commission acknowledges in this proceeding are now inappropriate. The result, not surprisingly, was to shift the negotiating leverage of the parties in favor of the incumbent LEC who could hide behind tariffs of four cents or more. The MSTCG proposal is simply a further extension of this strategy to maintain access level rates. To now permit the Missouri incumbents to opt into agreements that were tainted by this tariff procedure – a procedure the Commission has now rejected – would be fundamentally unfair and effectively reward the incumbents for having refused to negotiate in the first instance.

LECs have repeatedly emphasized their willingness to engage in a negotiation and arbitration process to establish compensation terms.").

[12] 47 U.S.C. §252(b)(1) ("During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier <u>or any other party to the negotiation</u> may petition a State commission to arbitrate any open issues.")(emphasis added).

[13] *See In re Informal Complaint of Sprint Spectrum L.P. against BPS Tel.Co., et al.,* filed June 22, 1998, copy attached.

The purpose of the Act is to "promote competition and reduce regulation"[14] – not to impose on an industry segment that the Chairman has recognized is "the poster child for competition" new regulations designed for incumbent carriers only.[15]

III. THE MSTCG PROPOSAL WOULD PERMIT INCUMBENT LECS TO AVOID THEIR COST BASED PRICING OBLIGATIONS

The MSTCG would not only have the Commission undermine the purpose of Section 252(i), it would have the Commission fundamentally rewrite the most basic provisions of the Act. Under the Act, incumbent LECs must exchange traffic based upon *their* specific cost of call termination.[16] New entrants, such as wireless carriers, exchange traffic on a symmetrical basis – that is, they charge the ILEC the same rate the ILEC charges them.[17] Of course, a wireless carrier, or any other new entrant, may waive its rights to force an incumbent LEC to prove its TELRIC costs of call termination.[18] But under the MSTCG rule proposal, it would be the incumbent

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[14] *See* Preamble, Telecommunications Act of 1996, PUB. L. NO. 1040104, 110 Stat. 56 (1996). This Congressional intent is further evidenced by Sections 10 and 11 of the Act, which give the FCC to tools to reduce regulation in markets as they become competitive.

[15] Presentation of Commissioner Kevin J. Martin, *Wireless and Broadband: Trends and Challenges*, Dow Lohnes-Comm Daily Speaker Series, at 1 (Oct. 14, 2004).

[16] *See* 47 U.S.C. § 252(d)(2)(A)(ILEC call termination rates shall be based on the ILEC's "reasonable approximation of the additional costs of terminating such calls."); 47 C.F.R. § 51.503 requires that an "*incumbent LEC's*" rates be based on the FCC's "forward-looking economic cost-based pricing methodology." Similarly, the cost-based, forward-looking rate requirements of 47 C.F.R. § 51.705 apply to "incumbent LECs" only.

[17] 47 C.F.R. § 51.711 provides that the rates of a non-incumbent LEC shall be symmetrical with those of the incumbent LEC unless the competitive carrier chooses to submit a cost study. In adopting this rule, the FCC explained that "state commissions, during arbitrations, should set symmetrical prices based on the *local telephone company's* forward-looking economic costs." *First Local Competition Order*, 11 FCC Rcd at 125517 ¶ 35 (emphasis added).

[18] For example, a wireless carrier may decide that arbitration cannot be cost justified with a particular incumbent LEC given the amount of traffic exchanged, and thus agree in negotiations to pay a higher rate than a TELRIC rate.

LEC that would decide whether it should comply with the pricing obligations of the Act and FCC rules.

This point can best be demonstrated with an example. Sprint PCS currently exchanges traffic with SBC in Missouri at a rate of $0.0007 per minute. As a result of the tariff filings discussed above, Sprint agreed in negations to pay certain MSTCG members with low traffic volumes rates in excess of $0.03 per minute to avoid the costs of arbitration. Under the MTSCG rule proposal, SBC would now have the right to opt-in to Sprint's contracts with one of the MSTCG members, and begin charging Sprint $0.03 per minute. This rate would not only be well above SBC's economic costs of call termination, it would apply to extremely high traffic volumes. In the end, the MTSCG proposal would result in all incumbent local exchange carriers, including the Regional Bell Operating Companies, being compensated at a rate based upon the highest cost incumbent LEC in the state. Sprint submits that the Commission does not possess the legal authority to establish a regime that permits an incumbent LEC to avoid its obligation to provide call termination at rates as specified in the Act.

252(i) provides new entrants with two options. First, the CLEC or wireless carriers can pursue arbitration with an incumbent LEC, forcing the LEC to prove its cost of providing service to a state commission and establishing appropriate terms and conditions of service. Or, second, the new carrier can opt into another carrier's agreement with that incumbent. One significant advantage of this rule is that once a new entrant has litigated the issue of cost based rates, other new entrants are not required to duplicate this expense. The proposed MSTCG rule would turn this principle on its head. Now ILECs will be able to avoid their obligation to demonstrate forward looking cost based rates, and instead opt into contracts with rates based upon another carrier's costs.

IV. DUELING "OPT IN" RIGHTS COULD NOT BE IMPLEMENTED AS A PRACTICAL MATTER

Finally, it would be impossible to implement the rule proposed by the MTSCG as a simple matter of contract implementation. If both new entrants and incumbent LECs have a right to choose the agreement that governs their relationship, whose choice prevails? Moreover, the terms of interconnection agreements include more than the rate to be charged. For example, contracts also address the type of interconnection to be used for the exchange of traffic. Would ILECs also have the right to dictate to new entrants network interconnection rearrangements (*e.g.*, a rural ILEC could opt-into a direct interconnection arrangement that a wireless carrier has with another ILEC even though traffic volumes with the second ILEC do not justify the cost of a direct interconnection)?

There is a more fundamental problem with extending opt-in rights to incumbent LECs now that the Commission has replaced the "pick-and-choose" rule with an "all-or-nothing rule" – namely, wireless contracts cannot be adopted *in toto* because every wireless carrier contract with every incumbent LEC is necessarily unique. For example, the balance of traffic between one wireless carrier and one LEC is often not the same as the balance of traffic between the same wireless carrier and another LEC. The interstate and interMTA factors used by one wireless carrier and one LEC are often different than the factors that would be appropriate between the same wireless carrier and a different LEC. Permitting LECs to opt-into a contract a wireless carrier has negotiated with another LEC could very well result in the second LEC getting a different (and better) deal than the first LEC. In short, as applied to CMRS-LEC contracts, the same contract as applied to two different LECs often does not result in the same deal.

V. IF THE FCC DOES ADOPT A NEW RULE, THE RULE SHOULD APPLY ONLY TO CONTRACTS NEGOTIATED AFTER THE EFFECTIVE DATE OF THE NEW RULE

Sprint believes that there is no basis in law or policy to adopt MSTCG's proposal. But if it does grant the MSTCG petition in any way, the Commission should make clear that any new rule applicable to wireless carriers applies only to those wireless carrier contracts that are negotiated or arbitrated *after* the new rule takes effect.

Wireless carriers like Sprint have negotiated and executed thousands of interconnection contracts with other carriers, including rural LECs. All of these contracts were negotiated with the understanding that the wireless carrier would not be required to offer the same terms to other carriers. Imposing for the first time a "most favored nation" requirement on wireless carriers would constitute a fundamental change between wireless carriers and other telecommunications carriers. There are many contracts, and many more provisions in other contracts, that a wireless carrier may not have agreed to if it had known at the time that these provisions would have to be made available to other carriers. In the end, it would be fundamentally unfair to apply new rules to contracts negotiated or arbitrated under the old rules. Accordingly, any new opt in rights that the Commission may extend to incumbent LECs should apply only to contracts negotiated or arbitrated *after* the new rules take effect.

VI. CONCLUSION

For the foregoing reasons, Sprint submits that the Commission should deny the reconsideration petition filed by the Missouri Small Telephone Company Group. This petition would only result in increased litigation and expense that will ultimately be borne by consumers.

Respectfully submitted,

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Certificate of Service

I, Jo-Ann Monroe, hereby certify that a true and correct copy of the foregoing opposition was sent electronically on this 30th day of June 2005 to the following:

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