



Sprint Nextel
2001 Edmund Halley Drive, MS VARESP0202
Reston, VA 20191-3436
(703) 592-5114

Vonya B. McCann
Vice President
Government Affairs

January 30, 2007

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

Re: Notice of Ex Parte Communication

Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers

WC Docket No. 06-55

Dear Ms. Dortch:

In the nine months since Time Warner Cable filed its petition for a declaratory ruling,¹ the Commission has developed a record that shows the need to grant the petition to ensure that wholesale competitive carriers are able to interconnect with all local exchange carriers ("LECs") -- even rural LECs that may lack effective competition in their territories today.

Cable-based telephony, supported by wholesale carriers like Sprint Nextel, is realistically the best hope for new, facilities-based competition in rural areas. As a competitive wholesale carrier, Sprint Nextel offers cable companies a proven nationwide network and a menu of wholesale services. These include, for example, interconnection to the public switched telephone network; end office switching; long distance services; operator services; and call completion services for operator and directory assistance. For its wholesale telecommunications customers, Sprint Nextel also offers related services, including number assignment, administration, and porting; intercarrier compensation; billing services; directory listings; and 911 provisioning, administration, and PSAP contract negotiation.

¹ The petition was filed March 1, 2006. Public Notice DA 06-534 (rel. Mar. 6, 2006). Comments and replies were filed April 10 and April 25, 2006, respectively.

Today, Sprint Nextel provides these services to a dozen cable companies -- large and small -- in portions of 31 states. As a common carrier, it offers its wholesale services to all similarly situated cable providers and is eager to expand this wholesale business. These services enable even small cable providers to expand their service offerings -- faster and at lower cost -- and thus promote investment in areas previously under-served and lacking choices for consumers.

By federal law, wholesale carriers have a right to interconnection with all carriers. Nevertheless, some rural LECs have gone to great lengths to block or delay competitive entry. Bell Operating Companies and major incumbent LECs have not challenged Sprint Nextel's right to interconnection, and many states have recognized that such wholesale carriers are entitled to interconnection. Yet some rural LECs try to block expansion of Sprint Nextel's authority as a competitive local exchange carrier, refuse requests for interconnection under section 251(a) and (b),² refuse to arbitrate requests for interconnection under section 252,³ refuse to exchange cable telephony traffic, and discriminate against wholesale carriers while readily interconnecting with wireless carriers and their own competitive LEC affiliates.

As the record in this proceeding shows, prompted by rural LECs, some state commissions have misapplied federal law. Although most states have ruled correctly that rural LECs are obliged to interconnect with wholesale carriers like Sprint Nextel, wholesale carriers should not be required to face inconsistent results -- nor have to litigate these issues time and again -- in multiple proceedings in each state, in state after state, and on appeal.⁴ This needless litigation and delay hurts competitors and consumers, discourages investment in rural areas, and undermines Commission and statutory goals.

The Commission should act now to grant Time Warner Cable's petition. It should issue a declaratory ruling that closes the door -- firmly and comprehensively --- on any challenge to a wholesale carrier's rights to interconnect to provide wholesale services.

The Commission should affirmatively declare that, under sections 251(a)-(b) and 252, wholesale carriers, like Sprint Nextel, have a right to interconnection and, absent agreement, timely arbitration. In doing so, the Commission should also make clear that:

² 47 U.S.C. §§ 251(a), (b).

³ 47 U.S.C. § 252.

⁴ Sprint Nextel, for example, currently faces appeals in Illinois, Iowa, Nebraska, and Texas, and recently concluded another in New York. The Nebraska court stayed proceedings, pending the Commission's declaratory ruling, but encouraged the Commission to address these issues promptly. See Letter of Vonya B. McCann to Marlene Dortch (filed Oct. 19, 2006).

- The Act gives wholesale carriers the right to interconnect with incumbent LECs to exchange traffic for third-party competitive providers. Section 251(a) obligates all carriers to interconnect, and section 251(b) imposes additional, related duties on all incumbent LECs.⁵
- The Act's definitions confirm that wholesale carriers are entitled to interconnect to exchange traffic to support wholesale customers. A wholesale carrier, like Sprint Nextel, qualifies as a telecommunications carrier and as a common carrier.⁶
- It does not matter whether a wholesale carrier has end-user customers. There is no requirement under federal law that a carrier must serve end-users directly.⁷ Commission and court precedent have confirmed that wholesale carriers are entitled to interconnection.⁸
- It does not matter whether a wholesale carrier is certificated as a competitive LEC. An incumbent LEC's obligation to interconnect is not dependent on certification, and certification might not even be required to provide such wholesale services.⁹ Moreover, the Commission's rules expressly provide that

⁵ Section 251(b) provides that "all local exchange carriers" have a duty to allow resale, to provide number portability and dialing parity, to offer access to poles, ducts, conduits and rights of way on terms complying with 47 U.S.C. § 224, and to establish reciprocal compensation arrangements for transport and termination of telecommunications.

⁶ Sprint Nextel, for example, is a "telecommunications carrier," as defined by 47 U.S.C. § 153(44). The Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). Sprint Nextel is also clearly a "common carrier" under 47 U.S.C. § 153(10). Sprint Nextel offers its "transmission" services on a wholesale, common carrier basis. It offers its telecommunications services "for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used." *Id.* at § 153(46).

⁷ The Act also shows that carriers need not serve end users directly. *E.g.*, 47 U.S.C. § 153(46).

⁸ *E.g.*, NARUC v. FCC, 533 F.3d 601, 608 (D.C. Cir. 1976); Virgin Islands Tel. Corp. v. FCC, 198 F.3d 921, 930 (D.C. Cir. 1999); Implementation of the Local Competition Provisions in the Telecoms. Act of 1996, First Report and Order, 11 FCC Rcd 15499 at ¶ 191 (1996); Implementation of the Non-Accounting Safeguards of Secs. 271 and 272 of the Comms. Act of 1934, as Amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 at ¶ 263 (1996); Implementation of the Non-Accounting Safeguards of Secs. 271 and 272 of the Comms. Act of 1934, as Amended, Second Order on Reconsideration, 12 FCC Rcd 8653 at ¶ 33 (1997); Federal-State Joint Bd. on Universal Serv., Report and Order, 12 FCC Rcd 8776 at ¶ 785 (1997); Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 at ¶ 91 (2005).

⁹ Section 251(a)(1) requires all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(b) requires "all local exchange carriers" to provide resale at wholesale rates, to support number portability, to provide dialing parity, to give access to poles, conduits, and rights of way, and to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

incumbent LECs may not condition interconnection negotiations on the requesting carrier obtaining state certification.¹⁰

- It does not matter whether a wholesale carrier serves one customer or many in a given area. The nature of wholesale telecommunications services, particularly when serving cable-based telephony providers, will sometimes mean that there is only one ready customer in a particular area. A wholesale carrier, like Sprint Nextel, offers its services to all similarly situated cable providers.¹¹
- It does not matter whether a wholesale carrier's service agreements are individually tailored to the customer or whether their terms are confidential. "Individual case basis" contracts are routine among carriers. One would expect customized contracts between wholesale carriers and cable providers, because different customers have different needs, and all carriers naturally view such wholesale agreement terms as confidential. A wholesale carrier, like Sprint Nextel, remains a common carrier, because it offers the same menu of telecommunications services to all similarly situated cable providers.¹²
- It does not matter whether a wholesale carrier's customer uses voice over Internet protocol or any other technology in providing its own services to end users. A LEC's obligation to interconnect is not dependent on the technology used by or type of service offered by a wholesale carrier's customer.¹³

¹⁰ 47 C.F.R. § 54.301(c)(4).

¹¹ The requirement of offering services "to the public" does not mean "that the particular services offered must practically be available to the *entire public*." NARUC, 533 F.2d at 608. Moreover, to presume one must always have multiple customers in any given area would often preclude such wholesale services.

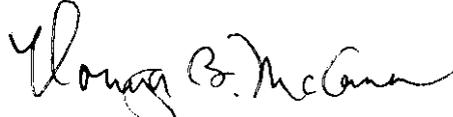
¹² The Iowa Utilities Board, for example, properly concluded "[i]t is clear that Sprint is willing to provide wholesale services to any last-mile retail service provider," that "Sprint is offering numerous different wholesale services and different last-mile providers will purchase different pieces to create their own distinct bundles," that "it should be no surprise that each contract has different pricing," and that it should be "unsurprising that parties to these contracts consider the specific terms and conditions, including the pricing, to be confidential." See Arbitration of Sprint Comms. Co. v. Ace Comms. Grp., Order on Rehearing, Docket No. ARB-05-02, at 14, 15 (Iowa Utils. Bd. Nov. 28, 2005). See Petition at Tab 10. Sprint Nextel believes, however, it should never have been necessary to litigate these issues before the Board.

¹³ In fact, the Commission has recognized that a service provider can be a "common carrier," and entitled to interconnection under section 251, even if the services its customers provide are themselves "information services." Deployment of Wireline Servs. Offering Advanced Telecoms. Capability, Second Report and Order, 14 FCC Rcd 19237 at ¶¶ 18-21 (1999).

- It does not matter whether the interconnection request is posed to a rural LEC. The rural exemption under section 251(f)(1) applies to interconnection under section 251(c), but does not exempt rural LECs from their duties to interconnect under sections 251(a) and (b), nor their duty to arbitrate under section 252.¹⁴

The Commission should act promptly, and address the issue comprehensively, to ensure that state commissions apply federal law correctly and uniformly, to ensure that some rural LECs cannot delay competition by misrepresenting the law, and to ensure that consumers in rural America receive the benefits of innovation, investment, competition, and choice that the Act and Commission policy have long intended.

Respectfully submitted,



Vonya B. McCann

cc: Michelle Carey
Thomas Navin
Jeremy Miller
Jennifer Schneider
Victoria A. Goldberg
Albert Lewis
Jennifer McKee

¹⁴ Except where the rural exemption applies, section 251(c) requires incumbent LECs to provide unbundled network elements, resale, network change notices, and collocation. Section 252 requires any incumbent LEC to submit to arbitration before the state commission if it does not reach an interconnection agreement through voluntary negotiations.