

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

In the Matter of)	
)	
Sprint Communications Company LP)	
)	WC Docket No. 08-116
Section 63.71 Application for the Discontinuance)	Comp. Pol. File No. 871
Of 900 Transport Service)	
_____)	

**FURTHER COMMENTS OF JARTEL, INC. IN OPPOSITION TO
SPRINT APPLICATION FOR DISCONTINUANCE**

Jartel, Inc. (“Jartel”), through its undersigned counsel and in accordance with the Public Notice issued on July 30, 2008¹ in the above-referenced proceeding, respectfully submits its Further Comments in Opposition to Sprint’s Application for Discontinuance. Recognizing the substantial potential detrimental effects of discontinuance, the Federal Communications Commission (“FCC” or “Commission”) removed Sprint’s Application from streamlined processing and sought further comment on two issues: (1) the availability of reasonable substitutes given commenters’ suggestion that measures should be taken to preserve the telephone numbers currently in use in order to avoid customers from being forced out of the marketplace; and (2) the availability of any alternative discontinuance date that would be reasonable and in the public interest.² As the record demonstrates, and as discussed herein, there

¹ Public Notice, DA 08-1820, *Application of Sprint Communications Company L.P. to Discontinue Domestic Telecommunications Services Not Automatically Granted, Further Comment Requested* (July 30, 2008) (“Public Notice”).

² Public Notice at 3.

are not *any* substitutes to Sprint's Transport 900 service because 900 numbers are not portable. If the Commission, however, grants the discontinuance it must provide at least fourteen months from the date of the Commission's order.

As an initial matter, Sprint's claim that it intends to discontinue 900 service is misleading. In its latest submission, Sprint makes clear that it intends to keep at least certain 900 numbers for its own use.³ Sprint has no intentions of fully discontinuing its 900 service. Instead, Sprint wants to use this discontinuance proceeding as an excuse to terminate those customers that it no longer wishes to serve. The reality is that Sprint is discriminating against its customers based on the content of their services.

Indeed, Sprint's desire to exit the 900 marketplace must be viewed as a challenge to the content of the service being provided. Sprint wants to eliminate certain 900 services (information providers) but maintain other 900 service for other purposes (*e.g.*, TRS). This decision to maintain 900 service for certain products but not others clearly is discriminatory in violation of Sprint's obligations as a common carrier under the Act.⁴ Furthermore, Sprint's conduct also is contradictory to the Commission's mandate under the Act, which is "to encourage the provision of new technologies and services to the public, including interstate 900 services...."⁵ The Commission must prohibit Sprint from engaging in such discriminatory conduct.

³ Further Comments of Sprint at 4 (stating that Sprint is going to maintain one block of 900 numbers).

⁴ See 47 U.S.C. § 202.

⁵ *Petition for an Expedited Declaratory Ruling Filed by National Association for Information Services, Audio Communications, Inc., and Ryder Communications, Inc., Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 4153 (1995).

The Commission must reject Sprint's claim that it has an unfettered right to discontinue service with 90 days notice under the parties' contracts. Section 63.71 of the Commission's rules explicitly provides the Commission with the right to review a request for a carrier to exit the marketplace to ensure that the public interest is satisfied.⁶ In this case, as the record has made clear, the public interest would not be satisfied by permitting Sprint to discontinue the service that it provides to its customers, and particularly not on such short notice.

Sprint's claim that the 900 service is declining also is irrelevant to the issues in this proceeding. Sprint's claim does not take into account Jartel's or NTS's (also a Sprint customer) use of that service. Though Sprint claims the call volumes are *de minimis*, both Jartel and NTS generate a substantial amount of traffic over the telephone numbers that they obtain from Sprint, and such traffic is not *de minimis* to their own operations.⁷ Jartel has used and advertised many of the telephone numbers at issue for approximately eighteen years. It will take a substantial amount of time and effort to market new telephone numbers so as to ensure that Jartel continues to operate in the marketplace. Indeed, like NTS's customers, Jartel's customers are accustomed to dialing the telephone numbers at issue and have developed customer loyalty through the use of these telephone numbers.⁸ Furthermore, as NTS explains in its comments, part of the overall decline that Sprint is experiencing is due to its own making.⁹

⁶ 47 C.F.R. § 63.71.

⁷ See Opposition at 7 (stating Jartel lost a substantial amount of revenue when its 900 numbers serviced by AT&T were discontinued); see also Further Comments of NTS at 1-2 (stating that NTS has averaged more than 40,000 minutes per month on the telephone numbers that it obtains from Sprint). Moreover, Sprint either misleads—or at least greatly underestimates—the number of customers that it serves or intends to serve. To the extent Sprint provides TRS service, each state essentially would be deemed to be a separate provider.

⁸ See NTS Further Comments at 2 (stating “NTS customers have grown accustomed to the 900 exchange telephone numbers they have called for twenty years and the corresponding quality of services. Customers of NTS have developed a relationship with these 900 exchange

Jartel reiterates that the Commission cannot grant the discontinuance because there are not *any* viable substitutes to Sprint’s 900 transport service.¹⁰ Contrary to Sprint’s accusation, Jartel did not argue that there were not any other companies providing 900 service;¹¹ instead, as Sprint itself acknowledges, Jartel correctly argued that there are not any true substitutes to Sprint’s transport service, because the telephone numbers at issue are not portable. As Sprint acknowledges, 900 telephone numbers are not portable.¹² Thus, even if Jartel were to secure another 900 provider, it would be unable to use the same telephone numbers that it obtains from Sprint. Allowing Sprint to discontinue its service would immediately, and adversely, affect each and every one of Sprint’s customers—and their own customers.¹³ Jartel, both a service bureau and information provider, has used many of the telephone numbers for eighteen years and has invested millions of dollars to advertise and promote those particular numbers. Moreover, separate and apart from the porting issue, at no time does Sprint acknowledge that it is one of the few nationwide (or nearly nationwide) providers of 900 service. Even if Jartel is able to

telephone numbers and this in turn has developed a customer loyalty to the services provided by NTS through these telephone numbers.”).

⁹ *Id.* at 1 (identifying reasons for Sprint’s decline in service). Sprint claims that it is difficult to make money using the existing 900 platform, but its own affiliate—Sprint Wireless—blocks outbound 900 traffic, which likely contributes to the decline in 900 traffic that Sprint claims to be experiencing.

¹⁰ See Opposition to Sprint Application for Discontinuance at 1 (July 15, 2008) (“Opposition”).

¹¹ Further Comments of Sprint at 2.

¹² *Id.* at 4.

¹³ See *Ex Parte* Letter from Jennifer Kashatus, Womble Carlyle Sandridge & Rice, PLLC to Marlene Dortch, Secretary, Federal Communications Commission at 1 (July 30, 2008) (“*Ex Parte* Notice”); Opposition at 5.

maintain its numbers, it will take substantial time for it to find alternative providers to serve those telephone numbers.

Sprint's claim that it is too costly to maintain the 900 service is simply disingenuous. Sprint acknowledges that it intends to maintain a certain block of 900 numbers and that it intends to use certain 900 numbers for TRS service.¹⁴ Sprint would use the same network to provide service to those 900 numbers, whether they are used for TRS or for other purposes, as it would to provide 900 service to Jartel. Sprint also has not expressed any intent to discontinue its 800 services, which it also routes over the very same trunks that it uses for 900 services.¹⁵ Requiring Sprint to continue to provision 900 services would not mean the maintenance of *any* additional trunks, therefore, no added expense. Sprint's claim that relinquishing 900 service will enable it to focus on deploying its IP network also must fail for these same reasons: if Sprint is maintaining its trunks for its own 900 use or for any 800 purpose, there is simply no additional network cost that would impede Sprint's ability to deploy an IP network.

The only alternative to requiring Sprint to maintain its service would be to require Sprint to transfer its 900 NPA/NXXs to another provider—essentially, force a 900 port—so as to enable Sprint's service bureau customers—and their customers—to continue using the same telephone numbers.¹⁶ Since learning of the proposed discontinuance, Jartel has attempted to work out a solution with Sprint, including trying to convince Sprint to return the telephone numbers to the pool, but Sprint has steadfastly refused to do so. Apparently, recognizing that this was a

¹⁴ *Sprint Communications Company LP, Section 63.71 Application for Discontinuance of 900 Transport Service*, 08-116, Application at 1 n.1 (May 7, 2008) (“Application”).

¹⁵ Declaration of Todd Lesser at ¶ 4 (attached to July 30, 2008 Ex Parte Notice).

¹⁶ Letter from Michael Hazzard, Womble Carlyle Sandridge & Rice PLLC, to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (May 30, 2008) (“May 30, 2008 Letter”); Opposition at 7.

reasonable request, Sprint now states that it “intends to return all but one of the blocks of 900 numbers...to the [NANPA] pool....”¹⁷ The Commission must not rely on Sprint’s promise without anything more, but instead, before allowing any discontinuance, must make Sprint’s “intention” a requirement and must ensure that the numbers that Sprint “intends” to return are indeed those numbers that Jartel currently obtains from Sprint. Jartel has been asking Sprint to return the numbers to the NANPA pool since learning of the discontinuance, but Sprint has steadfastly refused, thus causing Jartel to doubt the sincerity of Sprint’s newfound “intention.” The Commission also must ensure that there is a means for Jartel to obtain service from another provider and to use those same telephone numbers *without interruption*. Simply relying on Sprint’s intention, without any firm time commitment or plan, is as good as discontinuing the numbers altogether. The Commission must not permit Sprint to discontinue its service until the numbers at issue are in fact successfully ported.

If the Commission grants Sprint’s application, even with the conditions described above for returning telephone numbers to the pool, the Commission must require Sprint to maintain the service for a specified period of time. Jartel disagrees that providing an additional 60 days is sufficient. Jartel must seek out and negotiate contracts with other providers, and it will take substantially longer than 60 days.

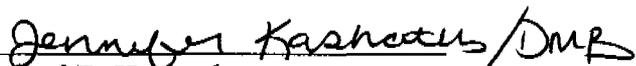
Furthermore, if Sprint does not return the numbers as it now promises, or take other action to ensure that Jartel can keep the exact same numbers without interruption that it currently uses, then the Commission must require Sprint to maintain its service for fourteen months. As Jartel has explained, it frequently advertises the telephone numbers that it uses fourteen months

¹⁷ Further Comments of Sprint at 4.

in advance. Providing Jartel with fourteen months will allow those advertisements to expire and will provide Jartel with time to begin to advertise new telephone numbers.

For the foregoing reasons, Jartel respectfully requests that the Commission deny Sprint's Application; or, in the alternative, require Sprint to relinquish its 900 numbers to NANPA and issue a date of discontinuance at least fourteen months from its order.

Respectfully submitted,


Michael B. Hazzard
Jennifer M. Kashatus
WOMBLE CARLYLE SANDRIDGE & RICE PLLC
1401 Eye Street, NW, Suite 700
Washington, D.C. 20005
(202) 467-6900 (telephone)
(202) 261-0006 (facsimile)
mhazzard@wcsr.com
jkashatus@wcsr.com

August 6, 2008

CERTIFICATE OF SERVICE

I, Danielle M. Benoit, certify that I served a copy of the foregoing Comments of Jartel, Inc. in Opposition to Sprint Application for Discontinuance on August 6, 2008, to the Commission via ECFS and as follows:

Via Email

Carmell Weathers
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Via ECFS

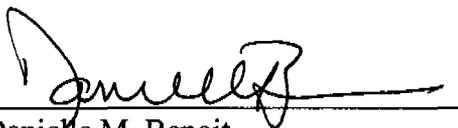
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Ave., N.E., Suite 110
Washington, D.C. 20002

Rodney McDonald
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Via US Mail and Email

Michael B. Fingerhut
Anna M. Gomez
2001 Edmund Valley Drive
Reston, Virginia 20191

Paul Clanon
Executive Director
Public Utilities Commission
San Francisco Office
505 Van Ness Avenue
San Francisco, CA 94102



Danielle M. Benoit