

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition of Blue Casa Communications, Inc. for	)	WC Docket No. 09-8
Declaratory Ruling That Interstate Originating	)	
Switched Access Charges Apply to ISP-Bound	)	
Calls That Are Terminated Via VNXX-type	)	
Foreign Exchange Arrangements	)	

**OPPOSITION OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation, pursuant to the Public Notice released February 25, 2009 (DA 09-467), hereby respectfully submits its opposition to the above-captioned petition for declaratory ruling. In its petition, Blue Casa requests that the Commission declare that interstate originating switched access charges apply to ISP-bound calls that are terminated via virtual NXX (VNXX)-type foreign exchange arrangements. The Commission has explicitly and repeatedly determined that ISP-bound calls are subject to a capped intercarrier compensation rate (now \$.0007 per minute), and there is no basis for reversing such decision. The Commission should accordingly deny Blue Casa's petition.

Only a few months ago, the Commission issued its *Second ISP Remand Order* declaring that "although ISP-bound traffic falls within the scope of section 251(b)(5) [*i.e.*, traffic subject to reciprocal compensation rates], this interstate, interexchange traffic is to be afforded different treatment from other section 251(b)(5) traffic pursuant to our

authority under section 201 and 251(i) of the Act.”<sup>1</sup> Specifically, ISP-bound traffic is subject to a capped intercarrier compensation rate of \$.0007, not to “excessively high reciprocal compensation rates” (*Second ISP Remand Order*, para. 24).

Blue Casa attempts to circumvent the FCC’s explicit findings regarding ISP-bound traffic by claiming that the *Second ISP Remand Order* did not address calls made to ISPs that are completed via foreign exchange arrangements (Petition, p. 3). However, the Commission’s *Second ISP Remand Order* makes no such distinction. To the contrary, the Commission notes that Section 251(b)(5) “is not limited geographically (“local,” “intrastate,” or “interstate”), or to particular services...” (*Second ISP Remand Order*, para. 8). Rather, Section 251(b)(5) encompasses “‘telecommunications,’ the broadest of the statute’s defined terms” (*id.*). The Commission’s finding that “ISP-bound traffic falls within the scope of section 251(b)(5)” was unqualified as regards terminating arrangements, via foreign exchange facilities or otherwise (*id.*, para. 16).

In mandating that ISP-bound traffic is subject to an intercarrier compensation rate now capped at \$.0007 (rather than reciprocal compensation or originating switched access rates) pursuant to its Section 201 authority, the Commission’s analysis was similarly focused on ISP-bound traffic in general, without regard to terminating arrangements. (*See, e.g., Second ISP Remand Order* at para. 22 (“...the Commission plainly has authority to establish pricing rules for...ISP-bound traffic, under section

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<sup>1</sup> *High-Cost Universal Service Support*, WC Docket No. 05-337; *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *et al.*, *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking* (“*Second ISP Remand Order*”), released November 5, 2008 (FCC 08-262), para. 6. Sprint Nextel believes that application of the \$.0007 rate is also justified under Section 251(b)(5) of the

*Footnote continued on next page*

201(b)...”) The Courts have affirmed the Commission’s decision to impose a rate cap on ISP-bound traffic (as well as the associated mirroring rule),<sup>2</sup> and there is no basis for overturning such decision as Blue Casa proposes in the instant petition.

Finally, there is no evidence to suggest that calls to ISPs terminating to a VNXX are treated as interexchange traffic: the end user apparently does not dial “1” before the call or pay long distance charges for such calls,<sup>3</sup> and the calls are apparently routed as local traffic (originating LEC to terminating LEC) rather than as typical residential long distance calls (originating LEC to interexchange carrier to terminating LEC). In other words, Blue Casa proposes to treat calls to ISPs terminating to a VNXX as interexchange for the sole purpose of extracting originating switched access charge payments. This attempt to improperly assess originating switched access charges, rather than the prescribed \$.0007 capped rate, on ISP-bound traffic should be rejected.

For the reasons cited above, Blue Casa’s petition for declaratory ruling should be denied.

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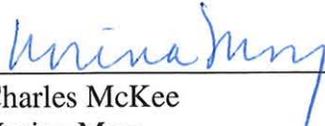
Act (*see* Sprint Nextel Petition for Partial Reconsideration of the *Second ISP Remand Order*, filed December 19, 2008).

<sup>2</sup> *Id.*, para. 26, citing *In re Core Communications, Inc.*, 455 F.3d 267, 278 (D.C. Cir. 2006).

<sup>3</sup> Blue Casa states that calls to ISPs terminating to a VNXX “appear to Blue Casa’s end users to be local calls because the central office or NXX code of the dialed number is associated with a rate center that is within the calling end user’s local calling area...” (Petition, p. 2).

Respectfully submitted,

SPRINT NEXTEL CORPORATION

  
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March 12, 2009

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition of Sprint Nextel Corp. was filed electronically or via US Mail on this 12<sup>th</sup> day of March, 2009 to the parties listed below.

  
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