

April 29, 2009

BY E-MAIL

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *EX PARTE* Submission: *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135.*

Dear Ms. Dortch:

Sprint Nextel Corporation (“Sprint”) is submitting into the record of the above-referenced proceeding the public version of the brief that its subsidiary Sprint Communications Company LP filed with the Iowa Utilities Board on March 31, 2009 in *Qwest Communications Corp. v. Superior Telephone Cooperative, et al.*, Docket No. FCU-07-2. Although the proprietary portions of the brief have been redacted, the brief sets forth record evidence of the fact that, as the Iowa Consumer Advocate has recognized, the local exchange carrier (LEC) defendants in the Iowa proceeding, together with their free calling service company (FCSC) partners, have been and continue to engage in a fraudulent scheme to steal millions of dollars from Sprint and other IXCs.¹ As detailed in Sprint’s brief, the record before the Iowa Utilities Board establishes, *inter alia*,

- that the defendant LECs have been charging and are continuing to impermissibly charge Sprint and other IXCs access rates for calls that did not and do not terminate to end users in Iowa;
- that the defendant LECs and their FCSC partners have been and continue to enable minors to easily access explicit pornographic chat, conference and information lines without the protections afforded parents under Section 223 of the Communications Act, 47 U.S.C. § 223, and the Commission rules issued thereunder to control such access;
- that several of the defendant LECs have been and continue to fraudulently obtain universal service fund support by, for example, claiming that lines from exchanges where no traffic ever traveled were eligible for such support; and,

¹ Qwest has filed the Initial Brief of the Iowa Consumer Advocate in the Iowa proceeding into the record of the instant docket. See Qwest’s Ex Parte filing dated April 3, 2009.

- that several of the defendant LECs have been and continue to provide service to their FCSC partners out of exchanges where the LECs are not authorized to provide service or where the LECs do not offer tariffed services.

Section 201(a) of the Communications Act, 47 U.S.C. §201(a), requires “every common carrier engaged in interstate and foreign communications by wire or radio to furnish such communication service upon reasonable request therefor.” Moreover, it gives the Commission the authority, “after opportunity for hearing” and upon finding such “action necessary or desirable in the public interest,” to require a common carrier “to establish physical connections with other carriers... .” Given the fraudulent scheme outlined in the attached brief as well as in the extensive record before the Iowa Board Sprint believes that requests from its end users to terminate calls to the defendant LECs and their FCSC partners are not reasonable under Section 201(a).² Of equal importance, it would be difficult, if not impossible, for the Commission to find that the public interest requires that Sprint “establish physical connections” with the defendant LECs so that they together with their FCSC partners can engage in the fraudulent activities that have now been thoroughly documented in the proceeding before the Iowa Board.³

Although the comment cycle in this proceeding has now been closed for nearly two and a half years, the Commission has yet to issue a decision. Thus, the defendant LECs and their FCSC partners have been able to continue their scams which in turn are causing significant public harms. Indeed, these fraudulent activities are jeopardizing the existence of legitimate businesses providing, for example, conference calling services paid for by the users of those services. *See*, Notice of Ex Parte filed April 8, 2009 in this proceeding by David Frankel, CEO of ZipDX LLC.

If the Commission believes it needs more information before reaching a decision here, it need only review the record in the Iowa proceeding. That record provides conclusive evidence of the fraudulent activities of the defendant LECs and their FCSC partners. Sprint respectfully urges the Commission to act quickly. If the Commission is unable to resolve this issue in this proceeding, Sprint reserves its legal right to take action pursuant to Section 201(a) to prevent its

² *Cf.*, *Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc., Complainants, v. AT&T Corporation, Defendant*, 16 FCC Rcd 5726, 5735-39 ¶ 21 (2001), *affirmed, in relevant part, AT&T Corporation v. FCC*, 317 F.3d 227 (D.C. Cir. 2003).

³ Assuming *arguendo* that the Commission disagrees with Sprint that the LEC activities at issue in the proceeding before the Iowa Board constitute fraud, the Commission still could not find it to be in the public interest under Section 201(a) to require that switched access be used to establish the “physical connection” between Sprint and the LECs engaged in such fraud. Part of the Commission’s mandate under Section 1 of the Communications Act, 47 U.S.C. §151, is to promote the efficient use of telecommunications facilities. It is simply inefficient to use switched access to deliver the volume of traffic generated by these traffic pumping schemes. Rather, IXCs should be able to deliver such traffic to the premises of the FSCS via dedicated access obtained either from the FSCS’s LEC partner or some other access provider. Under such circumstances, a CLEC’s insistence that all traffic destined to its FSCS partners be delivered via switched access does not even come close to meeting the public interest standard under Section 201(a).

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network from being used by the defendant LECs and their FCSC partners in furtherance of their fraudulent schemes. Once such action is taken, the defendant LECs engaged in these scams that wish to establish a physical connections with Sprint so as to continue engaging in fraud would be required to petition the Commission for a hearing under Section 201(a). In such a proceeding, Commission would have to determine whether forcing Sprint to connect with such LECs and allowing its network to be used to sustain the fraud is "necessary or desirable in the public interest."

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Dortch', with a large, sweeping flourish extending to the right.

Enclosure

cc: Julie Veach
Donald Stockdale
Albert Lewis
Deena Shetler
John Hunter