

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

In the Matter of)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Petition of Vaya Telecom, Inc. for Declaratory Ruling Regarding LEC-to-LEC VoIP Traffic Exchanges)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”), pursuant to the Public Notice released September 20, 2011 (DA 11-1561), hereby respectfully submits its comments in the above-captioned proceeding. In this proceeding, Vaya Telecom Inc. (“Vaya”) has asked the Commission to declare that a LEC’s attempt to collect intrastate access charges on LEC-to-LEC VoIP traffic when the VoIP traffic “originate[s] on the public Internet in IP format” is an unlawful practice, and that such traffic is instead subject to reciprocal compensation pursuant to Section 251(b)(5) of the Act (Petition, p. 1).

Sprint agrees with Vaya that intrastate access charges do not apply to VoIP traffic. However, rather than issuing a limited declaratory ruling as requested by Vaya, Sprint instead urges the Commission to rule that no access charges of any type apply to VoIP traffic. The public interest would be best served with a comprehensive Commission ruling on all VoIP traffic; it would be counter-productive and would only add to industry confusion and disputes to limit such a ruling to intrastate access charges or to a specific type of VoIP service (*e.g.*, over-the-top versus facilities-based VoIP traffic).

This issue has been exhaustively briefed and debated in multiple proceedings. The Commission has both the statutory authority and the information needed to make a determination as to the type of intercarrier compensation which may be assessed on the exchange of VoIP traffic. Sprint agrees with Vaya that the reciprocal compensation regime embodied in Section 251(b)(5) is the governing intercarrier compensation mechanism for VoIP traffic.¹ As Vaya has reiterated in its Petition (p. 7), “[b]ecause there was no pre-1996 Act obligation with respect to LEC-to-LEC VoIP traffic exchanges, the only reasonable construction of the 1996 Act is that the reciprocal-compensation rules for LECs’ exchanges of VoIP traffic must come from section 251(b)(5), not the access-charge regime preserved in section 251(g).” VoIP services were not offered before 1996, and thus the access charge carve-out contained in Section 251(g) is not applicable, leaving Section 251(b)(5), with its mandated reciprocal compensation regime, as the dispositive statutory provision.²

Vaya further points out that previous Commission orders support Vaya’s position that VoIP is jurisdictionally interstate and that intrastate access charges are thus not applicable. Citing the Commission’s analysis of ISP-bound traffic, Vaya states that “it is well-settled that traffic that is exchanged by LECs that implicates the Internet is jurisdictionally interstate traffic based on the Commission’s end-to-end analysis” (Petition, p. 3). The Commission can, and should, reform intercarrier compensation rules for all traffic, including traffic that some carriers claim are subject to intrastate access charges.³ However, Vaya’s requested clarification is too narrow. The Commission

¹ See Sprint *ex parte* letter, CC Docket No. 01-92 *et al.* (July 29, 2011).

² See Sprint July 29 *ex parte* letter, pp. 6-8.

³ See Sprint’s comments, Appendix A, filed in CC Docket No. 01-92 *et al.* (April 18, 2011).

should make clear that no access charges of any sort (interstate or intrastate) apply to any VoIP services, without regard to whether they are over-the-top or facilities-based and without regard to whether the traffic involves interconnected or non-interconnected VoIP services. To attempt to draw distinctions between different flavors of VoIP will result in competitive imbalances and further Balkanization of intercarrier compensation rules. Given the rate of change in the VoIP market, with new services of varying configurations being introduced at a rapid pace, any attempt to devise rules to address specific types of VoIP services is likely to either fall of its own weight and complexity, or become irrelevant.

Sprint acknowledges that the Commission appears to be poised to adopt rules that will result in unified termination rates at or very close to zero for all traffic currently subject to access charges or reciprocal compensation. Rapid adoption and implementation of such rules may well render Vaya's requested relief superfluous. However, in the event that an order on comprehensive intercarrier compensation reform is not immediately forthcoming, the Commission should issue a declaratory ruling that no LEC access charges may lawfully be applied to any VoIP traffic.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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October 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Nextel Corporation was filed electronically or via US Mail on this 6th day of October, 2011 to the parties listed below.

/s/ Norina T. Moy

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