BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Dkt. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Dkt. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Dkt. 07-135
	)	
High-Cost Universal Service Support	)	WC Dkt. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Dkt. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Dkt. 96-45
	)	
Lifeline and Link-Up	)	WC Dkt. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Dkt. 10-208

GLOBAL CONFERENCE PARTNERS OPPOSITION TO THE SPRINT NEXTEL AND USTELECOM PETITIONS FOR RECONSIDERATION

Global Conference Partners ("GCP"), by its attorneys, submits this opposition to the petitions for reconsideration ("Petitions") of Sprint Nextel Corporation ("Sprint")[1] and the United States Telecom Association ("USTelecom")[2] filed on December 29, 2011, that seek reconsideration of portions of the Federal Communication Commission's ("FCC" or

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[1] Petition for Reconsideration and Clarification of Sprint Nextel Corporation, WC Dkts. 10-90, *et al.* (filed Dec. 29, 2011) ("Sprint Petition").

[2] Petition for Reconsideration of the United States Telecom Association, WC Dkts. 10-90, *et al.*, (filed Dec. 29, 2011) ("USTelecom Petition").

"Commission") recent Order.[3] In particular, GCP opposes the Petitions to the extent they seek reconsideration of the Order's holding regarding the applicable rate for local exchange carriers ("LECs") that meet the high-volume triggers established in the Order.

INTRODUCTION

The Commission's path to intercarrier compensation ("ICC") reform has been a long and arduous process.[4] Comprehensive ICC reform has been a long-term FCC goal, and open proceedings to address the issues surrounding high-volume users and revenue sharing have been pending for many years.[5] After a sometimes contentious proceeding, the FCC ultimately adopted comprehensive ICC reform that will transition over time to a bill-and-keep system whereby carriers primarily recover the cost of their network through end-user charges rather than from access charges assessed on competing carriers.[6] The FCC determined that, rather than require a flash cut to the bill-and-keep system, the prudent course was to establish an orderly transition period in order to minimize unnecessary hardships on the industry.[7]

To address concerns about high-volume users during the transition to bill-and-keep, the FCC established interim rules, including rules applicable to parties that meet certain high-volume triggers.[8] These interim rules require users that engage in revenue sharing to refile tariffs, with competitive LECs required to file tariffs with rates that reflect no higher than the state's price-

[3] *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("Order").

[4] *See, e.g.*, Order, Statement of Commissioner Robert M. McDowell, Approving in Part, Concurring in Part, at p. 744 ("The challenge of solving the seemingly intractable Universal Service and intercarrier compensation puzzle . . . has cast a long shadow over the FCC for more than a decade.").

[5] *See, e.g.*, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Notice of Proposed Rulemaking, 22 FCC Rcd. 17989 (2007).

[6] *See* Order at ¶ 650.

[7] *See id.* at ¶ 692.

[8] *Id.*

cap LEC rate[9] and rate-of-return LECs to set rates pursuant to §61.38 of the FCC's rules.[10] In establishing these rules the FCC undertook a painstaking review of the record, which included input from parties across the industry, and provided decisive analysis as the basis for its long-term reforms and transition mechanism. The FCC's ICC reform formalizes a new rate mechanism that stabilizes rates for revenue sharing from February 2012 to July 2014 and then graduates those rates down to zero over a six-year period. We believe the fact that the FCC sought to first stabilize the rate from February 2012 to July 2014 reflects its guidance for all existing contractual or litigious disputes on which the economies of high-volume revenue sharing relationships can be resolved.

Despite these efforts that have culminated in what can best be described as a reasonable solution that balances competing interests and varied opinions submitted to the FCC, Sprint and USTelecom ask the FCC to reconsider its interim rules for high-volume users with revenue sharing arrangements. These petitioners, however, raise no new facts or arguments that would permit the FCC to reconsider its initial decision. GCP appreciates the time and careful consideration the FCC exercised in preparing its ruling and intends to abide and govern its business practices accordingly. As a result, GCP urges the FCC to deny the Petitions and continue instead down the path it established for comprehensive ICC reform.

DISCUSSION

I. THE SPRINT AND USTELECOM PETITIONS FOR RECONSIDERATION FAIL TO COMPLY WITH COMMISSION PROCEDURAL REQUIREMENTS

Both Sprint and USTelecom ask the FCC to reconsider the rate remedy that will apply when the high-volume triggers are met. The Petitions assert that, rather than benchmarking to

[9] Order at ¶ 689.

[10] *Id.* at ¶ 687.

the price-cap LEC with the lowest rate in the state, the FCC should instead require providers that meet the triggers to recover only $.0007 per minute for terminating access.[11] Sprint and USTelecom assert that $.0007 is the appropriate recovery amount because LECs have low costs, and $.0007 is a simple and widely used recovery amount.[12]

The standards that parties must meet to file a petition for reconsideration are well established. A petition for reconsideration can only be granted if it relies on facts or arguments which have not previously been presented to the FCC.[13] Even if the facts or arguments have not been presented, a petition for reconsideration can only be filed in limited circumstances: when (1) the facts or arguments relate to events that occurred or circumstances that changed since the last opportunity to present matters to the FCC;[14] (2) the facts or arguments have been unknown to the petitioner until after his last opportunity to present them to the FCC, and the petitioner could not have learned of the facts through the exercise of ordinary diligence;[15] or (3) the FCC determines that consideration of the facts or argument relied on is required in the public interest.[16] As discussed below, the Sprint and USTelecom Petitions fail to meet the above standards and, therefore, must be rejected.

A. THE USTELECOM AND SPRINT PETITIONS FAIL TO RAISE ANY NEW FACTS OR ARGUMENTS AND MUST BE REJECTED

A threshold requirement for a petition for reconsideration filed before the FCC is that the petition must rely on facts that have not been previously presented. The Petitions, however, fail

[11] Sprint Petition at 7-8; USTelecom Petition at 36.

[12] *Id.*

[13] 47 C.F.R. § 1.429(b).

[14] *Id.* § 1.429(b)(1).

[15] *Id.* § 1.429(b)(2).

[16] *Id*. § 1.429(b)(3).

to present any new facts and merely reiterate arguments made repeatedly in filings throughout this proceeding.

First, USTelecom and Sprint rely on no new facts. Instead, USTelecom cites and relies upon arguments raised in this proceeding by AT&T and Sprint,[17] while Sprint relies only on its previous filings in the proceeding to support its argument.

Further, USTelecom and Sprint present no new arguments. USTelecom repeats the well-worn argument that the FCC should have used the dial-up ISP-bound traffic approach to establish a $.0007 benchmark for CLECs engaged in access stimulation,[18] arguing that a benchmark rate based on the price-cap LEC rate would continue to encourage access stimulation.[19] Likewise, Sprint has repeatedly argued throughout this proceeding that a rate of $.0007 should be adopted for access stimulation traffic.[20] Sprint tries to hide its same argument under a different hat by claiming that parties meeting the high-volume triggers should not benefit from a benchmarked rate during the transition to bill-and-keep,[21] but the Commission already denied this argument determining that there is "insufficient evidence to justify abandoning the benchmark."[22] As these arguments have already been presented to the FCC, Sprint and USTelecom have provided no basis upon which the FCC could rely to issue a new order.[23]

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[17] USTelecom Petition at 36.

[18] *See id.* at 36. *See also* Comments of AT&T, WC Dkts. 10-90, *et al.*, at 16-17 (filed Apr. 1, 2011); Comments of Sprint Nextel Corp., WC Dkts. 10-90 *et al.*, at 2, 8-9 (filed Apr. 1, 2011) ("Sprint Comments").

[19] USTelecom Petition at 36.

[20] *See* Sprint Petition at 8. Indeed, Sprint solely cites to its April 2011 comments to support its argument pushing $.0007. *See* Sprint Comments at 5, 15-19.

[21] Sprint Petition at 8.

[22] Order at ¶ 692.

[23] *Id.* ("Our benchmarking approach addresses access stimulation within the parameters of the existing access charge regulatory structure.").

Both Sprint and USTelecom reassert their prior arguments for the sole intent to get the FCC to flash cut to a $.0007 rate which is tantamount to moving immediately to a bill-and-keep system. The FCC in its careful, comprehensive consideration and vetting of the facts and opinions raised during the ICC reform proceeding saw the wisdom of a purposeful transition to a bill-and-keep system. Both Sprint and USTelecom provide no additional reasoning, cause or guidance to modify the FCC's intent-filled reform.

FCC precedent is clear that it will not reconsider arguments it previously addressed. It is Commission policy "that petitions for reconsideration are not to be used for mere re-argument of points previously advanced and rejected."[24] Recently, for example, in denying a petition for reconsideration filed by AT&T, the FCC stated it had "considered and rejected the same arguments repeated by AT&T in its petition."[25] The Sprint and USTelecom Petitions also run afoul of this policy.

The Commission specifically concluded in the Order that "it will not adopt a benchmarking rate of $.0007 in instances where the definition is met, as is suggested by a few parties."[26] The FCC reasonably found that the $.0007 rate was intended as a negotiated rate in reciprocal compensation arrangements for ISP-bound traffic, and there was insufficient evidence to justify abandoning CLEC benchmarking in favor of this rate.[27] The FCC, using reasoned discretion, decided it was preferable to address high-volume traffic within the parameters of the

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[24] *See S&L Teen Hosp. Shuttle*, Order on Reconsideration, 17 FCC Rcd. 7899, ¶3 (2002).

[25] *Structure and Practices of the Video Relay Service Program*, Memorandum Opinion and Order, 26 FCC Rcd. 14895, ¶ 24 (Oct. 17, 2011). *See also Amendment of the Amateur Serv. Rules Governing Vanity and Club Station Call Signs*, Memorandum Opinion and Order, FCC 12-1, at ¶8 (rel. Jan. 11, 2012) (rejecting attempts to reconsider decisions that are already addressed).

[26] Order at ¶ 692 (citing to filings of AT&T and Sprint).

[27] *Id.*

existing access charge regulatory structure.[28] Thus, the FCC has already responded to the Petitions' argument in very specific and clear terms. Both parties fail to comply with the Section 1.429(b)'s requirement by relying upon facts and arguments already presented, and FCC precedent requires a rejection of their arguments.

B. The Petitions Fail to Conform to the Limited Circumstances Where Reconsideration Will be Granted

Assuming *arguendo* that the FCC can look past the fact that the Petitions fail to argue new facts or arguments, the Petitioners' filings do not comply with the other Section 1.429(b) requirements. First, the facts that relate to the arguments in this proceeding have not changed. Significantly, the general facts have not changed since the FCC began working on reform years ago and USTelecom and Sprint rely on these same facts and arguments that were raised throughout this proceeding. For example, USTelecom's argument that the FCC should approach access stimulators' traffic similarly to dial-up ISP-bound traffic has the same factual underpinning as it did when the FCC previously rejected such an argument. Similarly, LEC benchmarking has been a potential policy solution for a number of years. Sprint has had many opportunities to voice its opposition to benchmarking, but the underlying facts remain the same.

Second, no new facts have arisen that were unknown to USTelecom and Sprint.[29] Both parties were heavily involved in the proceeding, and were well aware of the issues and facts surrounding the proceeding, having actively participated in this and other related proceedings.[30]

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[28] Order at ¶ 692

[29] 47 C.F.R. § 1.429(b)(1).

[30] For example, Sprint Nextel filed 31 *ex partes*, letters, or comments with the FCC on these and related issues in this docket in 2011 alone, and USTelecom filed at least 43 *ex partes*, letters, or comments on these issues.

Third, neither party asserts that consideration of the facts the Petitions rely on regarding $.0007 is in the public interest. Rather, they argue self-serving positions in an attempt to lower their costs and limit competition. The FCC, however, made a determination that the ICC transition period had significant public policy benefits and that consumers will benefit from the regulatory transition.[31] Neither Petition highlights a significant public interest reason for the FCC to reconsider its decision, or credibly argues why the FCC's determination is incorrect. For these additional reasons, the Petitions should be denied.

II. THE FCC'S ADOPTED RULES ARE A REASONABLE COMPROMISE TO ADDRESS HIGH-VOLUME TRAFFIC

The FCC's transition approach to certain high-volume traffic is tenable because it permits competitive services an opportunity to continue to serve its customers and the public during the transition to bill-and-keep. This period will allow these competitive services to transition to models that will allow consumers to decide the value derived by their services while not disrupting the existing valued services provided to its customers and the public. The Commission's action, along with market actions through privately negotiated agreements, will go a long way toward "reducing the effects of access stimulation."[32] By properly recognizing that revenue sharing arrangements are a legitimate business practice,[33] the FCC has rejected arguments that parties engaged in these arrangements should no longer be permitted to operate.

Moreover, the FCC properly rejected the extreme $.0007 reciprocal compensation rate in the Order. Such a low rate is far beyond what is necessary to address the perceived problem: it is far less than what the largest BOCs with typically high volumes of traffic charge for

[31] Order at ¶802.

[32] *Id.* at ¶692.

[33] *Id.* at ¶672.

terminating access, is divorced from the realities of LEC's operating costs, and is likely confiscatory. The use of a new, low benchmark rate for LECs that meet the high-volume triggers should ensure the traffic is fairly compensated during the transition to bill-and-keep.

CONCLUSION

GCP supports the FCC's ICC reform, which properly balanced many disparate positions. As the Commission has already reviewed, analyzed, and rejected USTelecom and Sprint's arguments, it should not waste resources or time on Petitions that fail to meet its stated requirements for reconsideration.

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