Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Sprint for Declaratory Ruling Regarding Application of CenturyLink's Access Tariffs To VoIP Originated Traffic Pursuant to Primary Jurisdiction Referral	)	**WC Docket No. 12-105**

COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA")[1] hereby submits its Comments in response to the April, 30, 2012 Public Notice issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.[2]

I. BACKGROUND

The *Notice* seeks comment on the petition for declaratory ruling filed by Sprint Communications Company ("Sprint") raising issues relating to the application of tariffed access charges to Voice over Internet Protocol ("VoIP")-originated traffic.[3] Sprint seeks a Commission ruling that: (1) prior to December 29, 2011, federal access tariffs on file with the Commission, including CenturyLink's tariffs, did not impose a compensation obligation on VoIP-originated calls delivered over the public switched telephone network ("PSTN"); (2) intrastate access tariffs cannot impose compensation obligations on VoIP-originated calls delivered over the PSTN; and

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[1] ITTA's membership includes CenturyLink, Cincinnati Bell, Comporium Communications, Consolidated Communications, FairPoint Communications, Hargray Communications, HickoryTech Communications, SureWest Communications, and TDS Telecom.

[2] *Wireline Competition Bureau Seeks Comment on Sprint Petition for Declaratory Ruling on VoIP Originated Traffic*, DA 12-681 (rel. Apr. 30, 2012) ("*Notice*" or "*Public Notice*").

[3] *See* Petition for Declaratory Ruling of Sprint Communications Company, WC Docket No. 12-105 (filed Apr. 5, 2012) ("*Petition*").

(3) Sprint did not violate section 201(b) of the Communications Act[4] when it compensated CenturyLink at $0.0007/minute, rather than at the rates in CenturyLink's tariffs.[5]

Sprint's petition was filed pursuant to a referral from the United States District Court for the Western District of Louisiana where CenturyLink filed a complaint against Sprint to enforce federal and state access tariffs with respect to VoIP-originated traffic.[6] The Court referred "those counts involving Federal Access Tariffs" to the FCC for interpretation.[7] Sprint's requested ruling exceeds the scope of the Court's referral, which includes only the question of whether prior to December 29, 2011, CenturyLink's access tariffs on file with the Commission imposed a compensation obligation on VoIP-originated calls delivered over the PSTN.[8] Consequently, ITTA's comments are appropriately limited to the federal tariff issue referred by the Court to the Commission.

II. SPRINT IS REQUIRED TO PAY ACCESS CHARGES FOR THE IP-to-PSTN CALLS AT ISSUE

The question presented to the Commission for resolution is straightforward, *i.e.* whether CenturyLink's federal access tariffs obligated Sprint to pay for calls originated in IP format and terminated by CenturyLink on the PSTN in the period prior to December 29, 2011 when the compensation obligations contained in the *USF/ICC Transformation Order*[9] became effective.

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[4] 47 U.S.C. § 201(b).

[5] Petition at 3.

[6] *See CenturyTel of Chatham, LLC v. Sprint Communications Company L.P.*, No. 09-1951 (W.D. La.), Ruling (rel. Jan. 25, 2011) ("Referral Order").

[7] Referral Order at 3.

[8] The Petition itself acknowledges that Commission staff advised Sprint the *Referral Order* requires resolution only of the federal access tariff interpretation issue. Petition at 2.

[9] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint*

The answer to that question is equally straightforward. The language of CenturyLink's federal access tariffs and the Commission's rules required Sprint to pay interstate access charges for the traffic in question.

a. CenturyLink's Federal Tariffs Obligated Sprint to Pay Interstate Access Charges for VoIP-to-PSTN Calls.

Sprint acknowledges that it delivered interstate, interexchange calls to CenturyLink for termination during the period in question.[10] Sprint claims, however, that the calls are not subject to interstate access charges because they originated in IP format.[11] Sprint fails to acknowledge that CenturyLink's federal tariff contains no exemption or limitation for VoIP calls.

The rates, terms and conditions for CenturyLink's Switched Access Service are contained in Section 6 of its federal tariff.[12] CenturyLink's Switched Access Service provides an interexchange carrier with the ability "to terminate calls from a customer designated premises … to an end user's premises in the LATA where [the Switched Access Service] is provided." That is undisputedly the manner in which Sprint utilized CenturyLink's service. Since Sprint utilized CenturyLink's local exchange facilities in the same manner as any other interexchange carrier purchasing terminating switched access service and since CenturyLink's tariff does not exempt VoIP-to-PSTN traffic from switched access charges, CenturyLink properly charged, and Sprint was obligated to pay, access charges for the traffic in question.

Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, at ¶ 145 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*").

[10] Petition at 1.

[11] Petition at 3.

[12] *See* CenturyLink FCC Tariff No. 7, § 6.

Sprint attempts to avoid this result by claiming that the definitions of "customer" and "end user" in CenturyLink's tariffs preclude the application of access charges to VoIP-originated calls. According to Sprint, CenturyLink's Switched Access Service is available to an interexchange carrier furnishing service to a "customer" of interstate telecommunications service. With respect to VoIP-based services, the "customer" is the person or entity making the call in IP format.[13] Under this theory, if the calling party purchased a non-telecommunications service from its VoIP provider, access charges are not applicable.

Sprint intentionally misinterprets the definitional language in CenturyLink's tariffs. Under CenturyLink's tariffs, an "end user" is "a customer of an interstate or foreign telecommunications service that is not a carrier," and a "customer" is an individual or entity that "subscribes to the services offered under [the] tariff, including both Interexchange carriers (ICs) and End Users."[14] Because they do not subscribe to the services offered in CenturyLink's tariffs, the calling parties are not "end users" under the tariff. Thus, it is irrelevant whether the calling parties received a telecommunications service from their VoIP providers. Sprint was the "customer" of CenturyLink's Switched Access Service. As such, CenturyLink properly applied switched access charges to the VoIP-to-PSTN traffic delivered by Sprint and Sprint was obligated to pay those charges.

b. The Commission's Intercarrier Compensation Rules Have Always Applied to All Voice Traffic on the PSTN.

The Commission's access charge regime is designed to ensure that incumbent local exchange carriers ("ILECs") have the opportunity to recover the costs or originating and

[13] Petition at 11.

[14] CenturyLink FCC Tariff No. 7, § 2.6.

terminating other service providers' non-local telecommunications traffic.[15] Under the Commission's rules, ILECs are expected to bill access charges to all other carriers for all interexchange traffic delivered to them for termination on the PSTN.

The federal access charge regime was designed to apply broadly to afford ILECs the revenue they need to provide and maintain the ubiquitous local networks that make up the PSTN. ILECs are obligated to deploy and maintain their networks even in high cost and rural areas and they would not be able to fulfill this obligation (which they shoulder as carriers-of-last-resort) in the absence of the revenue they receive from access charges.

The Commission has long held that the "cost of the PSTN should be borne equitably among those that use it in similar ways."[16] Therefore, any service provider that sends traffic to the PSTN is subject to the same compensation obligation and access charges apply to all interexchange voice traffic originated or terminated on the PSTN without reference to whether that traffic is originated or terminated in IP format.

The limited exception to the general rule that access charges apply to all PSTN traffic does not apply to Sprint. The Commission's Enhanced Service Provider ("ESP") exemption allows ESPs to use ILEC networks to receive calls from their customers without paying access charges.[17] This narrow exemption was designed to account for the fact that ESPs use the PSTN

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[15] *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service,* Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000), at ¶ 41 (subsequent history omitted).

[16] *IP Enabled Services NPRM* at ¶ 61.

[17] *Access Charge Reform,* CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Transport Rate Structure and Pricing*, CC Docket No. 91-213, *End User Common Line Charges*, CC Docket No. 95-72, First Report and Order, 12 FCC Rcd 15982 (1997) ("*Access Charge Reform Order*"), at ¶ 343.

much differently than carriers do for the provision of ordinary communications services.[18] In establishing the exemption, the Commission specified that ESPs are not *carriers* but instead are *end users* whose customers use the PSTN to connect to them and receive their information services.[19] VoIP providers (and those, like Sprint, that provide wholesale termination services to VoIP providers for interexchange calls), on the other hand, are carriers that use the PSTN in the same manner – and for the same purpose – as any traditional carrier that provides interexchange voice services. For this fundamental reason, the ESP exemption does not afford Sprint any forbearance from the payment of access charges for the traffic in question.[20]

c. Existing Commission Rules During the Period At Issue Required Sprint to Pay Access Charges for VoIP-to-PSTN Traffic.

Part 69 of the Commission's rules lends further support to the conclusion that Sprint was required to pay access charges during the relevant period for the IP-to-PSTN traffic handed off to CenturyLink for termination.

Section 69.5(b) provides for "carrier's carrier charges" to be "computed and assessed on all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services."[21] Sprint used CenturyLink's local exchange switching facilities in the form of exchange access service and it did so in the same manner as any other interexchange carrier. Notwithstanding that the traffic originated as VoIP, Sprint handed off the traffic to CenturyLink in TDM format. As such, Sprint's traffic was

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[18] *Access Charge Reform Order* at ¶¶ 343-45.

[19] *Access Charge Reform Order* at ¶ 345.

[20] Sprint's argument that its traffic "undergoes a net change in form" (Petition at 7) does not alter the outcome. The ESP exemption does not, and was never intended to, exempt service providers from paying access charges for interexchange voice calls simply because those calls originate in one format (*i.e.*, IP) and are then converted to another format (*i.e.*, TDM) for delivery to the PSTN.

[21] 47 C.F.R. § 69.5(b).

indistinguishable from any other interexchange traffic. It therefore is reasonable that Sprint pay the same access charges as any other interexchange carrier utilizing exchange access service for the termination of calls over the PSTN.

Further, Sprint utilized CenturyLink's exchange access service to provide "interstate or foreign telecommunications services," thus meeting the second requirement of Section 69.5(b). Sprint provides wholesale services to cable VoIP providers. As the Commission has confirmed, carriers provide a telecommunications service when they provide wholesale service to VoIP providers.[22] And, as Sprint itself has acknowledged in other proceedings, the classification of the customer's retail service offering to end users is irrelevant to the wholesale carrier's status under the Communications Act.[23] Thus, Sprint's argument that access charges do not apply because "VoIP-PSTN traffic … is not a telecommunications service"[24] is inapposite.

Finally, Sprint contends that access charges do not apply to the traffic in question because "there was no pre-1996 intercarrier compensation obligation that applied to VoIP originated traffic" and such charges therefore "were not preserved by Section 251(g)'s carve-out for the legacy access charge regime."[25] However, the Commission rejected explicitly that argument in

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[22] *See In re Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, As Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, ¶¶ 9-12 (2007).

[23] *See, e.g.*, Sprint Nextel Corporation's Comments in Support of Petition for Declaratory Ruling, WC Docket No. 06-55 (filed Apr. 10, 2006), at 23. The VoIP-to-PSTN services were provided by third-party cable VoIP providers, not Sprint. Sprint provided wholesale interexchange telecommunications service.

[24] Petition at 8.

[25] *Id.*

the *USF/ICC Transformation Order*.[26] In doing so, the Commission noted that "this argument flows from a mistaken impression of section 251(g)."[27] It went on to explain that "[t]he essential question under section 251(g) is not whether a particular service or traffic involving a particular transmission protocol existed prior to the 1996 Act," but instead whether there was a "'pre-Act obligation relating to intercarrier compensation for' particular traffic exchanged between a LEC and 'interexchange carriers and information service providers.'"[28] As shown above, such "pre-Act obligation" to pay intercarrier compensation (in the form of access charges) existed between LECs and other carriers with respect to all interexchange voice traffic, regardless of originating format, delivered for termination on the PSTN. Thus, Sprint's argument that the terms of section 251(g) afford it relief from the payment of access charges for the traffic at issue is meritless.

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[26] "We reject the claims of some commenters that VoIP PSTN traffic did not exist prior to the 1996 Act, and thus cannot be part of the access charge regimes 'grandfathered' by section 251(g)." *USF/ICC Transformation Order* at ¶ 956 (footnote omitted).

[27] *Id.*

[28] *Id.* (footnotes omitted).

III. CONCLUSION

For all of the foregoing reasons, Sprint's petition for declaratory ruling should be denied. Rather, the Commission should confirm that tariffed access charges are properly applied to VoIP-originated calls delivered over the PSTN.

Respectfully submitted,

By: /s/ Genevieve Morelli

Genevieve Morelli
Micah M. Caldwell
ITTA
1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1520
gmorelli@itta.us
mcaldwell@itta.us

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