

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) files these Reply Comments in accordance with the Wireline Competition Bureau (WCB) of the Federal Communications Commission (FCC or Commission) Notice of April 30, 2012 (DA 12-681) that established deadlines for the submission of Comments on June 14, 2012 and of Reply Comments on July 16, 2012.

The Pa. PUC appreciates the opportunity to file these Reply Comments. As an initial matter, these Pa. PUC Reply Comments should not be construed as binding on the Pa. PUC in any matter brought before the Pa. PUC for adjudication. Moreover, these Pa. PUC Reply Comments could change in response to later events, including Ex Parte submissions to the Commission, the review of other Reply Comments, and other legal or regulatory developments at the state or federal level.

The Pa. PUC generally supports the initial Comments that oppose the Sprint Petition. The Pa. PUC strongly agrees with the Comments of the Iowa Utilities Board (IUB Comments) that very succinctly describe the legally unfounded and technically unsustainable effects that would result from the intrastate regulation of telecommunications carriers and services if the Commission were to grant the Sprint Petition. Grant of the Sprint Petition will violate sound decisions that have been reached not only by the IUB but also by numerous other State utility commissions including the Pa. PUC in intrastate intercarrier compensation disputes. Furthermore, grant of the Sprint Petition will also violate independent statutory Pennsylvania law

as well as the Pa. PUC's own Order that permitted Sprint to operate within Pennsylvania as a wholesale access competitive local exchange carrier (CLEC). Finally, the Sprint Petition essentially seeks reconsideration or modification of the Commission's rulings in the USF/ICC Transformation Order<sup>1</sup> albeit through the use of an improper procedural vehicle.

Although the Pa. PUC Reply Comments rely on and reference the Commission's USF/ICC Transformation Order, they should not be construed as a waiver of any appellate rights that the Pa. PUC maintains against this FCC ruling.<sup>2</sup>

#### **I. Sprint's Petition Unduly Undermines Lawful Intrastate Jurisdictional Authority**

Sprint's Petition unduly and impermissibly undermines lawful intrastate jurisdictional authority that is exercised over matters of intercarrier compensation by State commissions such as the Pa. PUC and the IUB. Sprint's approach is not novel or unique. Various State commissions have successfully dealt with intercarrier compensation disputes where a number of carriers have attempted to avoid their lawful intrastate access payment obligations by claiming that the traffic they transported and terminated in the physical switched carrier access networks of other directly or indirectly interconnected carriers included voice over the Internet Protocol (VoIP) calls that, somehow, are not subject to then applicable intrastate intercarrier compensation regimes and associated tariffs. Various State commissions reached a number of rulings in this area through the use of applicable state and federal law well in advance of the Commission's USF/ICC Transformation Order. The Pa. PUC and the IUB are no exceptions. The Commission's USF/ICC Transformation Order that initially became effective on December 29, 2011 has left these State commission rulings undisturbed and has modified them only on a prospective basis.<sup>3</sup>

The nearly identical legal and technical intercarrier compensation issues involving the transmission and termination of VoIP traffic contained in the Sprint Petition were litigated and decided by the Pa. PUC after in-person evidentiary hearings in *Palmerton Tel. Co. v. Global*

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<sup>1</sup> *In re Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, (FCC Rel. Nov. 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-161, 26 FCC Red 17663 (2011) (USF/ICC Transformation Order and subsequent related FCC rulings).

<sup>2</sup> *Pa. Pub. Util. Comm'n v. FCC*, Docket No. 11-9585 (10<sup>th</sup> Cir., December 5, 2011).

<sup>3</sup> Whether the FCC's approach is legally sustainable may and will be argued in the pending federal appeals of the USF/ICC Transformation Order. *Id.*

*NAPs South, Inc., et al.*<sup>4</sup> Through the use of applicable federal law and independent Pennsylvania statutory authority, the Pa. PUC conclusively established that the Global NAPs (GNAPs) transport and delivery of intrastate long-distance traffic inclusive of VoIP calls to the switched access network facilities of Palmerton Telephone Company (a rural incumbent local exchange carrier or ILEC) for termination was a common carrier telecommunications service subject to Palmerton Telephone's lawfully established intrastate switched carrier access tariffs. The Pa. PUC found GNAPs lawfully liable for unpaid intrastate switched carrier access charge amounts and imposed a civil penalty. GNAPs sought Declaratory Ruling and federal Preemption relief from the Commission through the use of substantially the same arguments that are used in the Sprint Petition.<sup>5</sup> The USF/ICC Transformation Order explicitly applied the FCC's new regime of intercarrier compensation relating to VoIP traffic on a prospective basis only thus leaving the Pa. PUC GNAPs Order undisturbed for the time period prior to the effective date of the Commission's November 18, 2011 ruling.<sup>6</sup> GNAPs has formally ceased operating as a CLEC within the Commonwealth of Pennsylvania.<sup>7</sup>

The Pa. PUC notes with approval the IUB Comments addressing the Sprint Petition unfounded claims and requests for relief alleging that "because VoIP [Voice over the Internet Protocol] originated traffic is jurisdictionally interstate, intrastate access tariffs cannot impose compensation obligations with respect to that traffic, even if those calls originate and terminate in the same state" (Sprint Petition at 3), and that "under no circumstances could intrastate access charges apply to VoIP-originated traffic that is jurisdictionally interstate" (Sprint Petition at 13):

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<sup>4</sup> *Palmerton Tel. Co. v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other affiliates*, Docket No. C-2009-2093336, Order entered March 16, 2010 (Pa. PUC GNAPs Order and also Appendix A). See also USF/ICC Transformation Order, ¶ 935 and n. 1880, *slip op.* at 341, 26 FCC Rcd 18004.

<sup>5</sup> *In re Global NAPs Petition for Declaratory Ruling and for Preemption of the Pennsylvania, New Hampshire and Maryland State Commissions*, WC Docket No. 10-60, filed March 5, 2010; Pa. PUC Initial Comments filed April 2, 2010; Pa. PUC Reply Comments filed April 12, 2010. See also USF/ICC Transformation Order, n. 2044, *slip op.* at 367, 26 FCC Rcd 18030.

<sup>6</sup> "Because our transitional intercarrier compensation framework for VoIP-PSTN [public switched telecommunications network] declines to apply all existing intercarrier compensation regimes as they currently exist, Global NAPs's and Vaya's petitions are granted in part and AT&T's is denied in part." USF/ICC Transformation Order, ¶ 975, *slip op.* at 367, 26 FCC Rcd 18030 (footnote omitted). See also ¶ 944, *slip op.* at 345, 26 FCC Rcd 18008; CenturyLink's Comments in Opposition, WC Docket No. 12-105, at 14.

<sup>7</sup> *Application of Global NAPs South, Inc. for approval of the Abandonment or Discontinuance of Competitive Local Exchange Carrier Services to the Public in the Commonwealth of Pennsylvania*, Docket No. A-2012-2308299, Order entered June 7, 2012.

In the USF/ICC Transformation Order, the Commission explicitly declined to address intercarrier compensation payment obligations for VoIP-PSTN traffic for periods before the effective date of the order. To grant the rulings requested by Sprint, i.e., that VoIP is (and was) an information service not subject to intrastate access tariffs, could potentially disrupt decisions made by multiple state regulatory commissions. Moreover, the requested declaratory rulings would be logically inconsistent with the Commission's treatment of prospective payment obligations for VoIP originated long distance calls. It would make no sense for the Commission to rule that such calls made before December 29, 2011, were not subject to any access tariffs at all, i.e., VoIP was an information service, but going forward VoIP toll calls are now subject to both interstate and intrastate access tariffs.

IUB Comments at 2-3.

The Pa. PUC further notes that Sprint has refused to pay lawful intrastate carrier access charges for the wholesale movement and termination of intrastate VoIP long-distance traffic in the case that was initially adjudicated by the IUB and later appealed by Sprint "to both state and federal court."<sup>8</sup> In a generally similar parallel, GNAPs had refused to pay either intrastate or interstate switched carrier access charges to Palmerton Telephone for the traffic — inclusive of intrastate VoIP toll calls — delivered for termination at Palmerton Telephone's switched access network facilities. In short, by raising claims similar to those contained in the Sprint Petition, GNAPs had attempted to make free use of Palmerton's switched carrier access services and network facilities.<sup>9</sup> The Pa. PUC GNAPs Order extensive evidentiary record largely developed in 2009 had also established the following:

For example, cable companies such as Adelphia, Comcast, and RCN *originate* fixed VoIP or IP-enabled wireline interexchange calls that terminate at Palmerton's PSTN facilities. When Palmerton directly bills these companies under its intrastate carrier access tariff for the termination of these intrastate interexchange calls to its facilities, Palmerton receives the appropriate amount of intercarrier compensation irrespective of whether these fixed VoIP or IP-enabled originated wireline calls have been converted to a TDM [time division multiplexing] protocol prior to their final termination at Palmerton's PSTN facilities. Tr. 519-520. *See also* Palmerton Exh. 12 at 27-28 (Comcast Deposition), and Palmerton Exc. at 30-31.

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<sup>8</sup> IUB Comments at 2-3, and appended *In re Sprint Communications Co. L.P. v. Iowa Telecom. Services, Inc., d/b/a Iowa Telecom.*, Docket No. FCU-2010-0001, Order issued February 4, 2011 (IUB Sprint Order).

<sup>9</sup> "The evidentiary record is clear that GNAPs has not paid *any* access charges to Palmerton, whether interstate or intrastate, and that Palmerton's monetary claim is concentrated on the intrastate portion of the intercarrier compensation dispute at issue that is clearly within the Commission's jurisdiction. Tr. 284, 287." Pa. PUC GNAPs Order at 32 (emphasis in the original).

The same also happens with the fixed VoIP or IP-enabled intrastate inter-exchange wireline calls that Palmerton terminates from its own affiliate Blue Ridge Digital Phone, a cable company, where such calls first transit through Sprint's common carrier telecommunications network prior to reaching Palmerton's PSTN. Sprint pays Palmerton the appropriate intrastate intercarrier compensation. Tr. 518-519, 536. Further, other companies, such as Service Electric, that also engage in the common carrier telecommunications transit transport of intrastate interexchange VoIP or IP-enabled originating wireline traffic behave in a similar and ordinary fashion. Tr. 631-633, 636.

Pa. PUC GNAPs Order at 30-31 (footnotes omitted).

Given that Sprint was willing to abide by lawful and then applicable intrastate switched carrier access tariffs that were relevant to VoIP traffic for considerable periods of time prior to the Commission's adoption of the USF/ICC Transformation Order, the retrospective direct and indirect challenge of these intrastate access tariffs contained in the Sprint Petition is indeed a surprising change of course or perplexing. Sprint, a sophisticated telecommunications common carrier with adequate legal and technical resources, should not have failed — at least until January 2010<sup>10</sup> in the case decided by the IUB — to formally object to the application of relevant intrastate access tariffs on the VoIP traffic that Sprint transported and directly or indirectly terminated at the access network facilities of other carriers. Sprint's motives to wait until April 2012 and resort to the FCC for retroactive rate relief that may implicate multiple intrastate carrier access tariffs on the basis of legal and technical theories that have been rejected by numerous State commissions, federal courts, and the Commission are most questionable.

The main argument presented in the Sprint Petition is that somehow Sprint's handling of VoIP originated traffic is an "information service" and, thus, the termination of such traffic is not subject to the intrastate carrier access mechanisms that existed prior to the FCC's USF/ICC Transformation Order. Numerous State commissions and federal courts have repeatedly rejected this theory on the basis of applicable federal and state law, and extensive evidentiary records that have been developed through live hearings and the cross-examination of expert witnesses.

The Pa. PUC faced similar arguments when it dealt with GNAPs' non-payment of intrastate switched carrier access traffic for termination of traffic inclusive of intrastate long-distance VoIP calls to the access network facilities of a rural ILEC. The Pa. PUC thoroughly

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<sup>10</sup> IUB Sprint Order at 5.

examined the applicable federal standards for the classification of “information services” and ruled these arguments to be unfounded on the basis of the fact-specific evidentiary record. The Pa. PUC conclusively established that GNAPs was not handling any VoIP calls that somehow had received “enhancements” transforming GNAPs’ overall common carrier telecommunications wholesale transport services to “information services.”<sup>11</sup> Although the Pa. PUC’s findings centered on the nomadic VoIP traffic that GNAPs was receiving from other entities and then transporting and terminating to the access network facilities of a rural ILEC, the relevant analysis is equally applicable to the Sprint Petition. Whether the traffic that Sprint handles is originated as VoIP (fixed or otherwise), is transmitted as VoIP through Sprint’s facilities, and terminates in the switched access network facilities of other telecommunications carriers as VoIP or in a time division multiplexing (TDM) protocol is totally immaterial to the wholesale common carrier telecommunications access and transmission service that Sprint provides. The Pennsylvania Commonwealth Court partially relying on relevant FCC decisions had found the following:

The FCC Pole Attachment Decisions hold that the offering of transmission path services on a non-discriminatory basis to the public by a common carrier is telecommunications service. The FCC Pole Attachment Decisions confirm that internet service is an information service, but that the transmission path needed to provide that internet service is a telecommunications service if the transmission path service is offered to the public by a common carrier. Thus, the Commission [Pa. PUC] was correct in determining that transmission path service is a telecommunications service under state [Pennsylvania] and federal law.<sup>12</sup>

The Commission had reached a generally similar conclusion with its *Time Warner* decision:

17. Certain commenters ask us to reach other issues, including the application of section 251(b)(5) and the classification of VoIP services. [*See, e.g.*, Qwest Comments at 6 (“The Nebraska position is obviously dependent on how the Commission ultimately classifies VoIP service”).] We do not find it appropriate or necessary here to resolve the complex issues surrounding the interpretation of Title II more generally or the subsections of section 251 more specifically that the Commission is currently addressing elsewhere on more comprehensive records. [*See, e.g., Developing a Unified Intercarrier Compensa-*

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<sup>11</sup> Pa. PUC GNAPs Order at 35-38.

<sup>12</sup> Pa. PUC GNAPs Order at 10-11, quoting from *Rural Tel. Co. Coalition v. Pa. Pub. Util. Comm’n*, 941 A.2d 751, 758 (Pa. Cmwlth. 2008). The Pennsylvania Commonwealth Court relied on the following FCC decisions: *In re Fiber Technology Networks, L.L.C. v. North Pittsburgh Tel. Co.*, FCC File No. EB-05-MD-014, 22 FCC Rcd 3392 (2007), 2007 FCC LEXIS 1593 (February 23, 2007); *In re DQE Communications Network Services, LLC v. North Pittsburgh Tel. Co.*, FCC File No. EB-05-MD-027, 22 FCC Rcd 2112 (2007), 2007 FCC LEXIS 1066 (February 2, 2007) (collectively FCC Pole Attachment Decisions).

*tion Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd 4685 (2005).] For example, the question concerning the proper statutory classification of VoIP remains pending in the *IP-Enabled Services* docket. [*IP-Enabled Services*, 20 FCC Rcd at 10245.] Similarly, we disagree with the assertions that it is necessary to complete the proceedings pending in the IP-enabled services, intercarrier compensation, and universal service dockets in order to take action on or instead of taking action on this Petition. [*See, e.g.*, NTCA Reply Comments at 5-6.] Moreover, in this declaratory ruling proceeding we do not find it appropriate to revisit any state commission's evidentiary assessment of whether an entity demonstrated that it held itself out to the public sufficiently to be deemed a common carrier under well-established case law. In the particular wholesale/retail provider relationship described by Time Warner in the instant petition, the wholesale telecommunications carriers have assumed responsibility for compensating the incumbent LEC for the termination of traffic under a section 251 arrangement between those two parties. We make such an arrangement an explicit condition to the section 251 rights provided herein. [*See, e.g.*, Verizon Comments at 2 (stating that one of the wholesale services it provides to Time Warner Cable is "administration, payment, and collection of intercarrier compensation, including exchange access and reciprocal compensation"); Sprint Nextel Comments at 5 (offering to provide for its wholesale customers "inter-carrier compensation, including exchange access and reciprocal compensation").] We do not, however, prejudge the Commission's determination of what compensation is appropriate, or any other issues pending in the *Inter-carrier Compensation* docket.

*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*, WC Docket No. 06-55 (FCC March 1, 2007), Memorandum Opinion and Order, DA-07-709, *slip op.*, ¶ 17, at 11 (*Time Warner* FCC Decision, original FCC footnotes in brackets). *See also* Pa. PUC GNAPs Order at 12-13; CenturyLink's Comments In Opposition, WC Docket No. 12-105 at 23-24 (citing *Time Warner* FCC Decision, ¶¶ 9-12); AT&T Comments, WC Docket No. 12-105, at 7 (citing *Time Warner* FCC Decision, and Sprint Nextel Comments in the *Time Warner* proceeding).

Since Sprint provides a telecommunications common carrier wholesale access and transport service, the traffic that Sprint carried and terminated at the switched carrier access networks of other telecommunications carriers prior to the effective date of the FCC's USF/ICC Transformation Order was lawfully subject to the appropriate intrastate and interstate access tariffs.

## II. Sprint's Request For Retroactive Rate Relief Violates Independent State Law And Federal Preemption Cannot Be Exercised In This Matter

Sprint's request for retroactive rate relief violates independent State law and applicable directives of State utility commissions that authorized Sprint to operate as a wholesale access CLEC in their respective jurisdictions. It is totally unclear at this time if Sprint's Petition is intended to be of limited applicability only to the relevant tariffs and operations of the Century-Link ILEC subsidiaries or affiliates enumerated in the pending case of *CenturyLink of Chatham, LLC, et al. v. Sprint Com. Co. LP*, Civil Action No. 09-1951, W.D.LA. Nevertheless, the Pa. PUC and other State utility commissions have strong and lawful interests in upholding independent state laws and enforcing intrastate carrier access tariffs that were in effect prior to the implementation of the FCC's USF/ICC Transformation Order.<sup>13</sup> The application of intrastate switched carrier access tariffs for terminating long-distance VoIP call traffic has been deemed to be lawful and under the jurisdiction of the Pa. PUC.<sup>14</sup> Pennsylvania's Voice-Over-Internet Protocol Freedom Act, P.L. 627 of 2008, 73 P.S. § 2251.1 *et seq.*, clearly provides that the Pa. PUC retains jurisdiction over "[s]witched network access rates or other intercarrier compensation rates for interexchange services provided by a local exchange telecommunications company."<sup>15</sup> Furthermore, Pennsylvania law prohibits the non-payment of intrastate access charges for interexchange services.<sup>16</sup>

Assuming *arguendo* that the Commission grants the basic elements of the Sprint Petition for retroactive rate relief, this can provide the basis for complex and lengthy litigation in many State jurisdictions and the federal level that would involve multiple "me too" claims by numerous carriers. This will take place while both the States and the FCC are engaged in the multi-year implementation of the Commission's USF/ICC Transformation Order and in numerous other proceedings. This is not the best way to conserve State, Commission, and regulated industry resources while implementing a stable and predictable intercarrier compensation regime. Furthermore, the Pa. PUC and other State utility commissions will not be able to

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<sup>13</sup> IUB Comments, WC Docket No. 12-105, at 3.

<sup>14</sup> Pa. PUC GNAPs Order.

<sup>15</sup> 73 P.S. § 2251.6(1)(iv). *See also* Pa. PUC GNAPs Order at 25-26. This Pennsylvania statute defines the boundaries of the Pa. PUC jurisdiction with respect to *retail* IP-based services including VoIP, but does not limit the jurisdiction of the Pa. PUC to deal with wholesale intrastate access and intercarrier compensation issues where VoIP traffic may be involved.

<sup>16</sup> 66 Pa. C.S. § 3017(b) ("Refusal to pay access charges prohibited — No person or entity may refuse to pay tariffed access charges for interexchange services provided by a local exchange telecommunications company.")

engage in unlawful retroactive ratemaking in situations where particular intrastate carrier access tariffs have not been lawfully and timely contested under independent State law prior to the implementation of the FCC's USF/ICC Transformation Order. Nor can a favorable Commission ruling on the Sprint Petition can legitimately force such action on the part of the Pa. PUC and other State utility commissions because such an FCC ruling cannot lawfully have federal pre-emptive effects.

The Sprint Petition in itself has not made an adequate and compelling case that any favorable FCC ruling can and should have federal preemptive effects on the intrastate jurisdiction of the Pa. PUC and other similarly situated State utility commissions. The Sprint Petition does not meet the FCC's preemption test. Section 252(d) directs the FCC to preempt, to the extent necessary, the enforcement of any State or local statute, regulation, or legal requirement that is proscribed by Section 253(a) and is outside the authority reserved for State and local governments under Section 253(b). Section 253(a), 47 U.S.C. § 253(a), provides:

[n]o State or local statute or regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Section 253(b), 47 U.S.C. § 253(b), provides that nothing in Section 253:

Shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications, and safeguard the rights of consumers.

The FCC's approach in making preemption determinations is very careful and mindful of the precarious balance between state and federal regulation. The FCC has long had a two-part test for determining whether to preempt a state. The FCC first determines whether the legal requirements are proscribed by the terms of Section 253(a). If the FCC finds that the provisions are proscribed by Section 253(a), considered in isolation, the FCC next determines whether they fall within the exception to Section 253(a) set forth in Section 253(b). The FCC only preempts if the requirements are impermissible under Section 253(a) and do not satisfy the requirements of Section 253(b). Importantly, the FCC does not preempt if the requirement proscribes Section 253(a) but meets Section 253(b) considered in isolation.<sup>17</sup> In addition, the

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<sup>17</sup> *In re: Silver Star Telephone Company*, Docket No. CCB Pol 97-1 (September 24, 1997), paragraph 38.

FCC does not preempt if the requirement is competitively neutral and is necessary to advance certain specified public interest objectives.<sup>18</sup>

The FCC previously rejected attempts to preempt Pennsylvania law based on claims that Pennsylvania law on the legal treatment of wholesale service was inconsistent with federal law.<sup>19</sup> The FCC rejected that claim and found that Pennsylvania law was entirely consistent with federal law in holding that wholesale and retail service constituted “telecommunications” service, particularly in the FCC Pole Attachment Decisions.

In the FCC Pole Attachment Decisions, the Commission examined Pennsylvania law and concluded that Pennsylvania, like federal law, recognized that wholesale common carrier service constituted “telecommunications” under state and federal law. Incumbent carriers cannot refuse access to Section 251, 47 U.S.C. § 251, pole attachment rights simply because the transmission path services provided by a common carrier wholesale provider may accommodate “information services.” The FCC made that determination by reliance on the *Time Warner* approach. That same approach is appropriate here.

The FCC reasoned that wholesale service provided by a common carrier provider is “telecommunications” even if the services provided over that wholesale intercarrier connection may not be telecommunications. The Commission’s holdings in *Time Warner* and the Pole Attachment Decisions do not stand for the proposition that a state-certificated common carrier provider of wholesale access service is not responsible for remitting compensation to other carriers for services rendered.

Pennsylvania relies on FCC precedent to certificate competitive providers of common carrier wholesale service in service territories regardless of the nature of the services provided over that network. Pennsylvania has preceded the FCC in determining that common carrier wholesale access service is telecommunications.<sup>20</sup>

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<sup>18</sup> *In re: American Communications Services, Inc.*, Docket No. 97-100 (December 23, 1999), paragraph 9.

<sup>19</sup> *In the Matter of DQE Communications, Inc. v. North Pittsburgh Telephone Company*, File No. EB-05-MD-027 (February 2, 2007); *In re: Fiber Technologies Networks, Inc. v. North Pittsburgh Telephone Company*, File No. EB-05-MD-014 (February 23, 2007) (Pennsylvania law and federal law are consistent on wholesale and retail service under state and federal law).

<sup>20</sup> *Rural Tel. Co. Coalition v. Pa. Pub. Util. Comm’n*, 941 A.2d 751 (Pa. Cmwlth. 2008). See also *Application of Sprint Communications Company L.P. For Approval of the Right to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Service Territories of Alltel Pennsylvania, Inc., Commonwealth Telephone Company and Palmerton Telephone Company*, Docket Nos.

The Sprint Petition presents no federal preemption claims that are relevant to the past and prospective exercise of the Pa. PUC intrastate jurisdiction over Sprint's common carrier telecommunications services and operations in Pennsylvania. For example, Sprint has not asserted that its past payments of lawful intrastate carrier access charges within Pennsylvania or any other State has somehow had the effect of prohibiting Sprint from providing any intrastate or interstate telecommunications services. Thus, irrespectively of whether the Commission rules in favor of the key elements of the Sprint Petition, the FCC's decision cannot have preemptive effects on the Pa. PUC and other similarly situated State utility commissions.

The assertions in the Sprint Petition contradict the basis under which Sprint has entered intrastate markets as a wholesale access CLEC telecommunications services provider. In resolving Sprint's contested application for market-entry in Pennsylvania the Pa. PUC noted the following:

The Sprint and Blue Ridge voice service is very different from the non-traditional services that Vonage offers. Most notable is that Sprint is not proposing to offer an Internet service. Unlike Vonage, Sprint is not offering a service that "provides a host of other features and capabilities that allow subscribers to manage their personal communications over the Internet." Sprint and Blue Ridge will be offering a traditional basic local exchange telephone service replacement. The mere fact that Sprint uses Internet Protocol — a particular technology adopted by most of the cable industry for placing voice traffic onto a hybrid fiber coax network — does not render Sprint's service an Internet service. In fact, Sprint's service does not use the Internet. It does not use the public network of interconnected computing systems utilizing the Transmission Control Protocol/Internet Protocol ("TCP/IP") — which is the essential element that allows nontraditional IP Telephone systems such as Vonage to operate. The service Sprint will be providing is in no way associated with Internet access service.

Pa. PUC Sprint Certification Order at 36 (quoting from Sprint Exceptions at 23). *See also* CenturyLink's Comments in Opposition, WC Docket No. 12-105, at 9-10.

Similarly, as a telecommunications common carrier wholesale access CLEC, Sprint voluntarily undertook the obligation to deal with matters relating to "[i]ntercarrier compensation, including exchange access and reciprocal compensation" for the IP-based and VoIP traffic that Sprint

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A-310183F0002AMB, A-310183F0002AMC, Order entered December 1, 2006 (Pa. PUC Sprint Certification Order).

would handle on behalf of its wholesale access cable system customers.<sup>21</sup> Thus, Sprint specifically acknowledged its obligations to abide by lawfully applicable intrastate carrier access tariffs of other telecommunications utilities in Pennsylvania. The Sprint Petition before the Commission is designed to undermine this Pennsylvania-specific obligation on a retroactive basis.

### **III. The Sprint Petition Seeks Modification of the FCC's USF/ICC Transformation Order**

The Sprint Petition seeks modification of the USF/ICC Transformation Order albeit through the use of an improper procedural vehicle for the Commission's retroactive approval of the \$0.0007 per minute of use (MOU) intercarrier compensation rate that Sprint paid to various CenturyLink ILECs instead of jurisdictionally applicable carrier access rates.<sup>22</sup> The Pa. PUC agrees with the Initial Comments in this proceeding that the FCC cannot interpret the applicability of intrastate switched carrier access tariffs or other intrastate intercarrier compensation arrangements that are relevant to traffic that includes VoIP calls and where such applicability is often dependent on fact-specific legal findings by State utility commissions such as the Pa. PUC and the IUB.<sup>23</sup> As it was previously stated, the Commission was well aware of numerous intercarrier compensation disputes that involved VoIP traffic when it decided its USF/ICC Transformation Order. The FCC decided to address the applicable interstate and intrastate intercarrier compensation regime for VoIP traffic only on a prospective basis. Therefore, it would have been more appropriate for Sprint to timely seek reconsideration of the November 18, 2011 USF/ICC Transformation Order itself rather than waiting to seek retroactive rate relief in April 2012, where such retroactive rate relief cannot be lawfully and practically applied on Sprint's intrastate wholesale access telecommunications services.

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<sup>21</sup> Pa. PUC Sprint Certification Order at 6.

<sup>22</sup> Sprint Petition, WC Docket No. 12-105, at 15.

<sup>23</sup> CenturyLink's Comments in Opposition, WC Docket No. 12-105, at 36; National Exchange Carrier Association *et al.* Comments, WC Docket No. 12-105, at 9.

**IV. Conclusion**

For these reasons, the Pa. PUC asks the FCC to reject the Sprint Petition in its entirety.

Respectfully Submitted,  
Pennsylvania Public Utility Commission



Joseph K. Witmer, Esq.  
Assistant Counsel  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
Tel.: (717) 787-3663  
E-Mail: [joswitmer@pa.gov](mailto:joswitmer@pa.gov)

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