Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
AT&T and NTCA TDM-to-IP Voice Transition Petitions	)	GN Docket No.12-353
	)	

REPLY COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation ("Sprint") hereby respectfully submits its reply to comments filed on January 28, 2013, in the above-captioned proceeding. The Commission should reject AT&T's proposal to eliminate the pro-competitive aspects of the Telecommunications Act of 1996, including the statutory obligation to interconnect. Likewise, the Commission should reject NTCA's request for additional USF subsidies and its proposal to assess "incentive-based" charges on IP voice traffic. As discussed briefly below, commenting parties have shown that the concessions sought by AT&T and NTCA in their respective petitions are not warranted and are contrary to the public interest.

1. The AT&T Petition Should Be Denied.

AT&T's proposal to conduct undefined "trial runs" of the transition from TDM to IP appears to be nothing more than a request for deregulation, and in particular the removal of its statutory interconnection obligations. There is widespread opposition to AT&T's proposal, with commenting parties raising three important points:

- Sections 251 and 252 of the Telecommunications Act are technology neutral, and the statutory obligations in those sections apply regardless of the technology or

protocol in use. Thus, AT&T cannot use the transition to IP as a basis for evading statutory requirements.

- The RBOCs and other incumbent LECs retain market power over last mile facilities and interconnection, and AT&T in particular has demonstrated a willingness to exercise its market power by refusing to acknowledge an obligation to enter into peer-to-peer IP voice interconnection agreements with competitive carriers. The Commission must address this problem expeditiously, preferably by completing its pending voice interconnection FNPRM.

- Elimination of statutory interconnection obligations would undermine the fundamental premise of the PSTN, negatively affecting call quality and completion and crippling competition in the voice market. Regulatory oversight remains critical to protect consumers and promote competition.

Perhaps the single most interesting fact to emerge from the comments filed in this proceeding is how few, if any, competitive carriers have a peer-to-peer voice IP interconnection agreement with an RBOC, and how AT&T in particular has refused to negotiate with competitive carriers requesting such peer-to-peer agreements pursuant to Section 251.[1] Sprint has no voice IP interconnection agreements with the AT&T or Verizon incumbent LECs, and AT&T has continued to assert that it has no obligation under the Act to interconnect with Sprint on an IP basis.[2] As AT&T stated in Sprint's Illinois arbitration proceeding, "…the interconnection requirement in Section 251(c)(2) of the Telecommunications Act of 1996 does not encompass IP-to-IP interconnection….."[3] AT&T Illinois further asserts that it "does not have an IP network for Sprint to interconnect with"; instead, the IP switching platform is owned by AT&T

[1] *See, e.g.*, comments of Sprint, p. 14; XO, p. 23; CBeyond, Earthlink, Integra, Level 3 and TW Telecom ("Joint CLEC Commenters"), p.13; Peerless Network Inc., p. 9.
[2] *See* Sprint, p. 14 (citing AT&T testimony in an arbitration proceeding between Sprint and AT&T in Illinois, ICC Docket No. 12-0550); *see also*, Peerless Network Inc., p. 9.
[3] Rebuttal testimony of Carl Albright on behalf of AT&T Illinois, ICC Docket No. 12-0550, dated February 12, 2013 ("Albright Rebuttal testimony"), p. 2.

Corp., "which performs the IP data management, including internet routing as well as VOIP call processing and routing."[4]

Although AT&T Illinois admits that it "could" allow Sprint to interconnect with AT&T Illinois on an IP basis, its position is that "Sprint cannot demand that AT&T Illinois do so."[5] Knowing that it must provide non-discriminatory interconnection pursuant to the FCC's rules, 47 C.F.R. §51.305(3) and (4), AT&T resorts to word-play in its Illinois testimony by claiming that "AT&T Illinois and AT&T Corp. do not have IP-to-IP interconnection even though they do have a connection of sorts (in the generic, non-telecommunications sense of that word)."[6] AT&T has yet to explain how AT&T Illinois and AT&T Corp. can have a "connection of sorts" but AT&T Illinois is not required to provide that same interconnection to Sprint or any other requesting carrier that is not affiliated with AT&T Illinois.

It is difficult to credit the argument that Section 251 interconnection obligations do not extend to IP voice traffic. This section of the Act makes no mention of any protocol, IP or otherwise. As the Commission has stated, "…we observe that section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral – they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks."[7] As numerous commenting parties point out, because Sections 251 and 252 are technology-neutral, they encompass both TDM and IP

[4] *Id.*, p. 11.
[5] Direct testimony of Carl Albright on behalf of AT&T Illinois, ICC Docket No. 12-0550, dated December 5, 2012, p. 10.
[6] Albright Rebuttal testimony, p. 9 (parenthetical in original).
[7] *Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663 (2011) ("*ICC/USF Transformation Order and FNPRM*"), para. 1342.

interconnection.[8] Even pending the outcome of the IP voice interconnection FNPRM, the Commission has unequivocally expressed its expectation that carriers will "negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic."[9] Given the current lack of peer-to-peer IP voice interconnection agreements between AT&T and competitive carriers, and AT&T's successful (to date) attempts to parry Section 251 interconnection requests, the Commission should re-iterate its firm expectation that all carriers will in fact negotiate in good faith.

Section 251 is not, of course, the only statutory basis for requiring good faith negotiations for voice IP interconnection. The Commission also could mandate good faith negotiations of peer-to-peer voice IP interconnection agreements pursuant to Section 706, which states that the FCC "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans…utilizing… measures that promote competition", or pursuant to its Title I ancillary jurisdiction.[10] The Commission also is considering whether it has authority under Section 256(a)(2), whose purpose is "to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks."[11]

What cannot be disputed is that the RBOCs' refusal, or at least reluctance, to enter into peer-to-peer IP interconnection agreements with competitive carriers would have

[8] *See, e.g.*, Sprint, p. 15; State Members of the Federal-State Joint Board on Universal Service, p. 9; Public Knowledge, p. 5; Joint CLEC Commenters, p. 2; CCA, pp. 3, 8; T-Mobile, p. 3; XO, p. 12; Peerless Network Inc., p. 4; Nebraska Rural Independent Companies, p. 6; NTCA Petition, p. iii; Comptel, p. 4.
[9] *ICC/USF Transformation Order and FNPRM*, paras. 1011 and 1344.
[10] *See, e.g.*, Sprint's filings in the *ICC/USF Transformation* proceeding (WC Docket No. 10-90 *et al.*): comments on the *FNPRM* filed February 24, 2012, pp. 6-8; reply comments on the NPRM filed May 23, 2011, Appendix D.
[11] *ICC/USF Transformation FNPRM*, para. 1356.

highly adverse consequences, particularly if the RBOCs are allowed to retire their TDM networks haphazardly. The PSTN is a network of networks, with the RBOCs retaining dominance over key segments of the PSTN.[12] An interruption in the seamless interconnection of any of these networks, and/or allowing interconnection only at rates, terms and conditions which are unjust or unreasonable, particularly by the largest and dominant incumbent LECs, would undermine competition, raise costs and harm consumers. Consumers and businesses would not be assured that their voice traffic would continue to be delivered; competitive interexchange and wireless carriers could be denied interconnection or allowed interconnection only at rates that are so high and terms that are so unreasonable as to drive up rates or eliminate them as competitors; even smaller LECs (incumbent and competitive) could be denied just and reasonable interconnection with their larger brethren. All of this is contrary to the fundamental public interest principles of the Telecommunications Act.

Based on the maxim that "actions speak louder than words," the current situation speaks loudly and clearly of the need for on-going involvement by the FCC to promote IP interconnection in a way that ensures competition and protects consumers. Protestations from incumbent LECs notwithstanding, market forces alone cannot be relied upon to achieve what all parties agree is a desirable outcome – the use of vastly more efficient IP technology to transmit voice traffic seamlessly across the many networks that comprise the PSTN. At a minimum, the Commission must immediately and explicitly re-affirm that Sections 251 and 252 apply to IP voice interconnection, and expeditiously establish

[12] As several commenting parties point out, the RBOCs retain substantial market power and dominance over last mile, special access, and wholesale interconnection facilities. *See, e.g.*, Sprint, p. 12; Ad Hoc, p. 4; Telepacific, p. 2; T-Mobile, p. 3; XO, pp. 5, 25; Peerless Network Inc., pp. 8-10; Joint CLEC Commenters, p. 3.

minimum default IP voice interconnection rules in the pending *ICC/USF Transformation FNPRM*.

2. NTCA's Request for Additional USF and "Incentive-Based" Charges Must Be Denied

With the exception of other incumbent rural LECs, there was scant support for NTCA's request for regulatory incentives -- in the form of additional USF and authorization to assess "incentive-based" charges on IP voice traffic -- to deploy broadband and to exchange voice traffic on an IP basis. As various competitive carriers explained, grant of NTCA's request to assess access charge-like fees on IP voice traffic would be a huge step backwards from the economically more efficient bill-and-keep regime mandated by the Commission, and is unwarranted on the basis of cost-causation.[13] Grant of NTCA's request for additional USF would be similarly adverse, threatening the viability of the fund and increasing the already substantial burden on fund contributors. Indeed, given the network efficiencies which IP generates, and the subscriber benefits enabled by IP voice interconnection, it is not clear why RLECs need any additional incentives to interconnect via IP.[14] The Commission should therefore decline NTCA's request for additional USF and for authorization to charge "incentive-based" charges on voice IP traffic.

[13] *See, e.g.*, Sprint, p. 21; CTIA, p. 9; NCTA, p. 13.
[14] *Id.*

Respectfully submitted,

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