



September 23, 2013

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

**Re: Ex Parte Communication
WC Docket No. 10-90
WC Docket No. 13-5**

Dear Ms. Dortch:

On September 19, 2013, Charles McKee, Norina Moy and I of Sprint Corporation met with Julie Veach, Lisa Gelb, Deena Shetler, and Jamie Susskind of the Wireline Competition Bureau; Kalpak Gude, Randy Clarke, and Victoria Goldberg of the Wireline Competition Bureau/Pricing Policy Division; William Dever, Melissa Kirkel (by telephone), and Timothy Stelzig of the Wireline Competition Bureau/Competition Policy Division; Sean Lev, General Counsel; Stephanie Weiner, Associate General Counsel; and Jonathan Chambers, Office of Strategic Planning and Policy Analysis. Consistent with its filings in the above-captioned proceeding, Sprint raised the following points:

Sprint discussed the on-going transition to IP-based services and the impediments that it is facing in attempting to negotiate interconnection agreements for the exchange of IP voice traffic with the major incumbent local exchange carriers. These impediments are delaying the industry's transition to the exchange of voice traffic in IP format. Sprint requested that the Commission reiterate the statements made in the Connect America Fund Order that Sections 251 and 252 are "technology neutral," *In the Matter of Connect America Fund*, WC Docket No. 10-90 (Nov. 18, 2011) ("*CAF Order*") ¶¶ 1342, 1352, 1381, and provide express guidance that state commissions can require IP interconnection under Section 251. Sprint noted that it has arbitration proceedings ongoing with AT&T in Michigan and that Sprint recently appealed an order from the Illinois Commerce Commission in which the ICC stated that the FCC had not ruled that IP interconnection could be compelled pursuant to Section 251 and declined to decide the issue. Sprint also noted that a related issue is before the Massachusetts Department of Telecommunications and Cable.

Sprint pointed out that the gradual reduction in terminating access rates for end-office switching to zero under the CAF Order will not moot the IP interconnection issue because the major ILECs refuse to concede that IP interconnection is subject to the rate reductions provided in that order. Sprint stated that the ILECs have major financial incentives to preserve their existing revenues and to exercise their market power to force competitors to purchase an interconnection product rather than interconnect as telecommunications carriers under Section 251 at cost-based TELRIC rates.

Sprint noted that AT&T claims that its IP voice services are beyond the regulatory authority of state commissions because they are provided only by a non-ILEC corporate entity and the ILEC has no IP-capable equipment that can be interconnected with a requesting carrier. This arrangement requires local calls in Michigan from an AT&T TDM customer to an AT&T VoIP customer also in Michigan to leave the state to be converted from TDM to IP by an AT&T affiliate in Pennsylvania. AT&T argued to the Michigan Public Service Commission in a filing on Aug. 16, 2013, (Docket No. U-17349 at 15), that AT&T's IP services are beyond the scope of Michigan's regulatory authority because the services are provided by a company that is "an aunt of AT&T Michigan." We explained why the decision in *Ass'n of Communications Enterprises vs. FCC*, 235 F.3d 662 (D.C. Cir. 2001) ("*ASCENT*"), which held that ILECs cannot avoid regulation by transferring functions to a subsidiary, is applicable even though the AT&T companies are in a corporate aunt/niece relationship rather than a parent/child relationship. We urged the Commission to clarify that ILECs may not evade their Section 251/252 obligations by housing their IP capabilities in a non-ILEC corporate affiliate.

Sprint noted that AT&T's ILECs in the BellSouth territories have sought to discontinue an IP interconnection service that is offered in their interstate tariffs. We discussed whether AT&T's inclusion of that service in its tariffs is tantamount to a concession that IP interconnection is technically feasible and a regulated telecommunications service.

Sprint stated that the Commission could mandate voice IP interconnection under Section 251 without classifying VoIP as a telecommunications service or information service. Sprint noted that the FCC issued rules about VoIP rates in the CAF Order without making such a classification. Specifically in that order, at paragraph 761 the Commission found that 251(b)(5) includes "all telecommunications." Later in the Order, the FCC specifically ordered that "[w]e thus are not persuaded by claims that the prospective VoIP-PSTN intercarrier compensation regime must categorically exclude traffic from VoIP services that are claimed to be information services." *Id.* at 954 and fn 1935. Excerpts of Sprint's previous legal arguments about the Commission's legal authority to apply Section 251/252 interconnection obligations to voice IP traffic are attached to this letter.

We also discussed that under 47 C.F.R. § 51.100(b), a carrier that interconnects under section 251 can also offer information services under those connections so long as it is offering telecommunications services as well through the same arrangement.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced dockets. If you have any questions, please feel free to contact me at (703) 592-2560.

Sincerely,

/s/ Keith C. Buell

Keith C. Buell
Senior Counsel

Attachment

cc: Julie Veach
Lisa Gelb
Deena Shetler
Jamie Susskind
Kalpak Gude
Randy Clarke
Victoria Goldberg
William Dever
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Sean Lev
Stephanie Weiner
Jonathan Chambers