STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Complaint of Ontario Telephone Company Inc. and Trumansburg Telephone Company, Inc. Against Sprint Communications Company, L.P. Concerning Refusal to Pay Intrastate Access Charges.

Case 14-C-0568

SPRINT COMMUNICATIONS COMPANY L.P.'S MOTION TO DISMISS OR STAY THIS ACTION PENDING RESOLUTION OF *IN RE: INTRAMTA SWITCHED ACCESS CHARGES LITIGATION,* MDL CASE NO. 2587 (N.D. TEXAS)

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Pursuant to Section 3.6 of the Public Service Commission's (the "Commission") rules (16 NYCRR § 3.6),Sprint Communications Company L.P. ("Sprint") respectfully moves to dismiss or stay the Complaint action of Ontario Telephone Company, Inc. ("Ontario") and Trumansburg Telephone Company, Inc. ("Trumansburg") (together the "Complainants"). A large portion of the intrastate access charges at issue in this action include charges improperly assessed on intraMTA calls. Before this action was filed, both Sprint and Ontario were already parties to a federal multidistrict litigation ("MDL") regarding that issue, *In Re: IntraMTA Switched Access Charges Litigation,* MDL Case No. 2587 (N.D. Tex.) (the "MDL Court"). The MDL Court has indicated that it intends to decide the legal issues for the intraMTA traffic near the end of summer. Dismissing or staying this case until the MDL Court resolves that issue will substantially simplify this proceeding, conserving both the Commission's and the parties' resources. Accordingly, Sprint respectfully requests that the Commission dismiss or stay this complaint action until the MDL Court has issued its ruling on the propriety of assessing switched

access charges to intraMTA calls. Sprint promptly will inform the Commission when the MDL Court issues its ruling.

I. FACT BACKGROUND

On December 30, 2014, Ontario and Trumansburg filed their Complaint with the Commission regarding intrastate access charges that Sprint has disputed and not paid.[1] Sprint disputes the charges for two reasons, as follows.

A. Sprint Disputes Some of the Charges Because the Calls Bear the Indicia of Traffic Pumping, also Known as Access Stimulation.

The Complaint inaccurately alleges that Sprint disputed the charges because of large call volumes (Complaint ¶ 9), but later recognizes one aspect of the dispute concerns "call stimulation." *Id.* ¶ 13. Sprint disputes the applicability of access charges because Ontario and Trumansburg appear to have been traffic pumping (also known as access stimulation). In a nutshell, access stimulation is an arbitrage scheme engaged in by local exchange carriers ("LECs") with free calling service companies ("FCSCs"), which inflates access charges to interexchange carriers ("IXCs") that the LECs and FCSCs then share. *Qwest Commc'ns Co., LLC v. N. Valley Commc'ns, LLC,* 26 FCC Rcd 8332 n. 1 (2011), *aff'd, N. Valley Commc'ns, LLC v. FCC,* 717 F.3d 1017 (D.C. Cir. 2013).[2] *See also In re Connect Am. Fund,* 26 FCC Rcd 17663 ¶¶ 648, 657, 664, 666 (2011) (Report and Order and Notice of Further Rulemaking,

[1] Because Sprint is moving to dismiss or in the alternative to stay this action, Sprint has not yet filed a formal answer responding to the Complaint paragraph by paragraph. To the extent the Commission deems a direct response to the Complaint's allegations necessary at this stage, Sprint responds: other than the Complaint's paragraphs identifying the parties (¶¶ 1, 2, and 4), Sprint denies all of Ontario and Trumansburg's allegations. After the Commission rules on this Motion, if the Commission does not grant the Motion, Sprint will file an answer to the Complaint.

[2] "As described by th[e FCC], 'access stimulation' is an 'arbitrage scheme' by which a telecommunications carrier 'enters into an arrangement with a provider of high volume operations such as chat lines, adult entertainment calls, and 'free' conference calls' in order to generate elevated traffic volumes and maximize access charge revenues." *Qwest v. N. Valley*, 26 FCC Rcd 8332 at n. 1 (quoting *Connect America,* Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4758 ¶ 636 (2011)); *see also Connect America* ¶ 656.

"*Connect America*"), *aff'd, In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *other subsequent history omitted* ("arbitrage schemes," "access stimulation schemes"). *See also Qwest Commc'ns Co. v. Aventure Commc'ns Technology, LLC*, -- F. Supp. 3d --, Civ. 07-78-JEG-RAW, 2015 WL 711154, at *30-31 (S.D. Iowa Feb. 17, 2015) (quoting *Connect America*).

For incumbent LECs, such as Ontario and Trumansburg (Complaint ¶¶ 3, 4), switched access charges can only be assessed subject to filed and effective intrastate access tariffs for calls that meet the express requirements of the tariffs. *See, e.g.*, N.Y. Pub. Serv. Law § 92(1), (2)(a), (2)(d) (carriers must file and follow their tariffs, including as to access services); *Walton v. N.Y. State Dep't of Corr. Servs.*, 921 N.E.2d 145, 157-58 (2009) (concurring op., J. Read) (filed rate doctrine); *XChange Telecom Corp. v. Sprint Spectrum L.P.*, Civ. 14-54-GLS-CFH, 2014 WL 4637042, at *5 n. 10 (N.D.N.Y. Sep. 16, 2014) (citing *Lauer v. N.Y. Tel. Co.*, 231 A.D.2d 126, 129 [3d Dep't 1997] for New York's filed rate doctrine). *Cf., Connect America*, n. 2026 ("a carrier may not impose charges other than those provide for under the terms of its tariff").

In fact, in every complaint action alleging traffic pumping addressed by the FCC to date, the FCC found that traffic pumping LECs were not entitled to assess switched access charges because the LECs had no end user customers, or terminated the calls in exchange areas where either the LEC was not certificated or its tariff did not cover. *See, e.g., In re Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, 24 FCC Rcd 14801 (2009) (Second Order on Reconsideration), *aff'd, Farmers & Merchs. Mut. Tel. of Wayland, Iowa v. FCC*, 668 F.3d 714 (D.C. Cir. 2011); *Qwest Commc'ns Co., LLC v. Sancom, Inc.*, 28 FCC Rcd 1982 (Enf. Bur. 2013); *AT&T Corp. v. All Am. Tel. Co.*, 28 FCC Rcd 3477 (2013), *recon. den'd*, 29 FCC Rcd 6393 (2014). For more than 25 years, FCC regulations have required a paying end user in order for switched access charges to apply. *Qwest v. N. Valley*, 26 FCC Rcd 8332 ¶ 9. "[T]he

Commission has determined that a CLEC may not impose switched access charges *pursuant to tariff* unless it is providing interstate switched exchange access services to its own end users, and that an entity to whom the CLEC offers free service is not an end user." *Qwest v. N. Valley*, 26 FCC Rcd 8332 ¶ 11 (italics in original). The same is true of traffic pumping complaints before state commissions. *Qwest Commc'ns Corp. v. Superior Tel. Coop.*, 2009 WL 3052208, *recon. den'd*, 2011 WL 459685 (Iowa Util. Bd. Feb. 4, 2011), *aff'd sub nom., Farmers & Merchs. Mut. Tel. Co. of Wayland v. Iowa Util. Bd.*, No. 11–1899, 2013 WL 535594, 829 N.W.2d 190 (Table) (Iowa Ct. App. Feb. 13, 2013), *application for further review denied.*

Ontario and Trumansburg try to overcome the overwhelming precedent by stating that their intrastate access tariff differs from the NECA tariffs at issue in the FCC cases, in how the tariff defines "end user," but they do not describe how the definition materially differs. For the requirement that an end user pay for services, the FCC has interpreted more than just the NECA tariff definition of end user – it found this requirement in 47 U.S.C. § 153(53), the definition of telecommunications service and 47 C.F.R. § 69.2(m), the definition of end user. The FCC has found the same paying end user requirement in tariffs that defined an end user on the one hand as a person who "subscribes" to the service under the terms of the tariff, and on the other hand, as a person who "uses" the service under the terms of the tariff. *AT&T Corp. v. YMax Commc'ns Corp.*, 26 FCC Rcd 5742 ¶ 17, n. 82 (2011). The FCC has also found the same requirement that end users be paying customers when the tariffs defined end users as "[u]sers of local telecommunications carriers [sic] services who are not carriers." *AT&T v. All Am.*, 28 FCC Rcd. 3477 ¶ 38, n. 165.

The Commission also found a much earlier but similar scheme of inflating tariffed intercarrier charges was unlawful. *Black Radio Network Inc. v. Pub. Serv. Comm'n of N.Y.*, 685

N.Y.S.2d 816, 818-19 (N.Y. App. Div. 1999). In that case, the Commission held that even if the calls otherwise met the LEC's tariff definitions for intercarrier charges (in that case, end user charges that the LEC's tariff provided it would share with the information provider whose pay per call number the LEC's end user had called), the tariff charges did not apply when the information providers self-generated the calls, a practice that the Commission referred to as "call pumping." *Id.* at 817-19.

While this Motion is not intended to answer every contention in the Complaint, it bears noting that the issue is not, as the Complainants suggest, a question of simply large volume customers. Complaint ¶¶ 9, 15. The question with traffic pumping is instead whether the companies that generated the traffic were ever end user customers, had end user premises, and had their calls terminated within a certificated exchange area covered by their tariffs. In connection with their contention of "large volume customers," Ontario and Trumansburg try and justify their position by citing to *XChange Telecom*, Case 07-C-1541, *Complaint of XChange Telecom, Inc. Against Sprint Nextel Corporation for Refusal to Pay Terminating Compensation*, Order Denying Requests for Rehearing and Granting Request for Rehearing in Part and Denying in all Other Respects (Feb. 17, 2012),[3] the order on reconsideration of *XChange Telecom, Inc. v. Sprint Nextel Corp.*, Cases 07-C-1541, *Complaint of XChange Telecom, Inc. Against Sprint Nextel Corporation for Refusal to Pay Terminating Compensation*, Order Granting Motion to Dismiss in Part and Denying in Part and Granting Complaint in Part and Denying on Part (Feb. 4, 2010). That case is inapposite. As the Complainants note, the case concerned reciprocal compensation applicable to local calls, not access charges applicable to toll calls. In the order on reconsideration, the Commission expressly distinguished toll traffic:

[3] The Complaint refers to this order as dated Feb. 17, 2002. Complaint ¶ 15. This appears to be a typographical error.

> We reject the argument that switched access rates apply here. Intra-MTA calls from Sprint to XChange are jurisdictionally local calls. Switched carrier access charges are intended to apply to toll calls and to interexchange carriers who use portions of the LEC's network to originate and terminate toll calls. Allowing switched access charges here would be inappropriate.

Complaint of XChange Telecom, Inc. Against Sprint Nextel Corporation for Refusal to Pay Terminating Compensation, Order Denying Requests for Rehearing and Granting Request for Rehearing in Part and Denying in all Other Respects (Feb. 17, 2012), at 17 (footnotes omitted).

Finally, Sprint notes that traffic pumping cases involve a fact-specific application of the LEC's access tariffs for whether the FCSC was an end user customer, whether the calls terminated to an end user premises, and whether the calls terminated in an exchange where the LEC was both certificated and its tariff applied. *See, e.g., Farmers,* 24 FCC Rcd. 14801 ¶¶ 10-20; *Sancom,* 28 FCC Rcd. 1982 ¶¶ 11-24; *AT&T v. All Am.*, 28 FCC Rcd. 3477 ¶¶ 10-21, 34-41. The analysis can be highly fact dependent and can require significant discovery. *See, e.g., XChange Telecom Corp. v. Sprint Spectrum L.P.*, Civ. 14-54-GLS-CFH, 2015 WL 773752 at *9-19 (N.D.N.Y. Feb. 24, 2015) (compelling discovery Sprint sought primarily regarding traffic pumping issues; collecting several cases). In the event the Commission does not dismiss the Complaint, Sprint requests that the Commission assign an Administrative Law Judge so that the facts necessary for the case can be pursued through discovery, and possibly presented in a contested case format.

B. Sprint Also Disputes Most of the Charges at Issue Because the Calls Are IntraMTA and Thus, Under the FCC's Rules, Not Subject to Access Charges.

In addition to the traffic pumping dispute, Sprint also disputes most of the access charges assessed by the Complainants because the calls are intraMTA. Ontario and Trumansburg bill Sprint Communications Company L.P. – the traditional long distance carrier arm of several Sprint companies – switched access charges on all calls that they deliver to or receive from a Sprint Communications' Feature Group D facility, incorrectly assuming that all calls delivered

over such facilities are subject to such charges. In reality, when calls are delivered to or received from wireless carriers (*i.e.*, CMRS carriers; there are several Sprint wireless companies in New York, such as Sprint Spectrum L.P., Nextel of New York, Inc. and Nextel Partners of Upstate New York, Inc.), and such calls originate and terminate in the same Major Trading Area or "MTA," they are not subject to switched access charges. This concept is true even when the CMRS calls are handed to an intermediate interexchange carrier, like Sprint Communications, for ultimate delivery over a Feature Group D facility.

As the Commission is aware, calls that originate from or terminate to a cellular telephone are known as "CMRS calls." The jurisdictions of CMRS calls are determined in two separate ways. First, one determines whether the CMRS call originated and terminated in the same MTA (intraMTA) or different MTAs (interMTA). Second, one determines whether the CMRS call originated and terminated in the same state (intrastate) or different states (interstate).

Irrespective of jurisdiction, CMRS calls can be exchanged directly between CMRS carriers (such as Sprint Spectrum, Nextel NY or Nextel Partners) and local exchange carriers (such as Ontario and Trumansburg), or indirectly, meaning the call traverses the network of another intermediate carrier (such as Sprint Communications). When Ontario and Trumansburg hand calls to Sprint Communications for delivery to CMRS carriers ("CMRS terminating"), or when CMRS carriers hand calls to Sprint Communications for delivery to Ontario and Trumansburg ("CMRS originating"), Sprint Communications generally transports the calls over what are known as Feature Group D facilities.

In 1996, the Federal Communications Commission ("FCC") promulgated rules that stated: "Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area" is local and

subject to reciprocal compensation, not access charges. 47 C.F.R. § 51.701(b)(2) (1996). On December 29, 2011, the rule was modified to state that "[t]elecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area" was "non-access traffic." *Id.* (2011).

In 1996, FCC rules also stated a "LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b) (1996). In 2001, the FCC amended the rule to omit the word "local," so that the rule read: a "LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b) (2001).[4] ***Thus, it is not surprising that the Commission already determined, as noted above, that "Intra-MTA calls from Sprint to XChange are jurisdictionally local calls…. Switched carrier access charges are intended to apply to toll calls and to interexchange carriers who use portions of the LEC's network to originate and terminate toll calls. Allowing switched access charges here would be inappropriate."*** *XChange v. Sprint Nextel*, Case 07-C-1541, 09-C-0370, 2012 WL 1066421 at 7 (footnotes omitted; emphasis added).

The FCC and numerous circuit courts have already held that irrespective of whether CMRS calls traverse an intermediate carrier, and irrespective of whether the same calls are transported over a Feature Group D facility, the aforementioned rules apply, and intraMTA calls are never subject to switched access charges. *See, e.g., Connect America*, 26 FCC Rcd. 17663 ¶¶ 1004, 1007 (2011) (affirmed regarding this issue, *In re FCC 11-161*, 753 F.3d at 1152-53); *W. Radio Servs. Co. v. Qwest Corp*., 678 F.3d 970 (9th Cir. 2012), *cert. den'd*, __ U.S. __, 133 S. Ct. 758 (2012); *Iowa Network Servs., Inc. v. Qwest Corp*., 466 F.3d 1091 (8th Cir. 2006); *Alma*

[4] In 2011, Rule 51.703(b) was modified slightly to state that a "LEC may not assess charges on any other telecommunications carrier for Non–Access Telecommunications Traffic that originates on the LEC's network." *Id.* (2011). The rule has the same meaning.

Commc'ns Co. v. Mo. Pub. Serv. Comm'n, 490 F.3d 619 (8th Cir. 2007); *Rural Iowa Indep. Tel. Ass'n v. Iowa Utils. Bd.*, 476 F.3d 572, 573-74 (8th Cir. 2007); *Atlas Tel. Co. v. Okla. Corp. Comm'n*, 400 F.3d 1256, 1264-65 (10th Cir. 2005); *3 Rivers Tel. Coop., Inc. v. U.S. West Commc'ns, Inc.*, No. CV 99-80-GF-CSO, 2003 WL 24249671, at *17 (D. Mont. 2003) (ruling that Paragraph 1036 of *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 [1996] [First Report and Order] "makes no distinction, with respect to CMRS traffic that originates and terminates in the same MTA, between traffic that flows between two carriers or among three or more carriers before termination. This traffic is all 'local' traffic subject to the reciprocal compensation scheme."). Thus, Sprint disputes the assessment of intrastate access charges for all intraMTA calls, because Ontario and Trumansburg should not have billed Sprint access charges on those calls.

According to Sprint's preliminary analysis, most of the traffic at issue here is intraMTA. Specifically, Ontario seeks $233,059.18 in damages.[5] Complaint ¶ 7. Sprint's preliminary calculations are that Ontario improperly billed it $188,292.65 in access charges on intraMTA calls. Trumansburg seeks damages of $17,405.90 in unpaid charges.[6] *Id.* ¶ 6. However, Sprint's calculations show that Trumansburg improperly billed $25,366.46 on intraMTA calls. If Sprint succeeds on its intraMTA claims before the MDL Panel, it will leave a dispute of less than $50,000 for Ontario, and no dispute for Trumansburg.

[5] Sprint also disputes the claim of $159,625.28 in ¶ 7 in late fees by Ontario as late fees are inapplicable on disputed amounts.

[6] Sprint also disputes the claim of $6,682.31 in ¶ 6 in late fees by Trumansburg as late fees are inapplicable on disputed amounts.

C. An MDL Action Is Pending to Decide Whether Carriers Can Assess Access Charges on IntraMTA Calls Carried Over Feature Group D Facilities.

Well before Ontario and Trumansburg filed their Complaint with the Commission, Sprint had brought actions in several federal district courts seeking damages from intrastate and interstate access charges that several LECs had unlawfully imposed on intraMTA calls, including *Sprint Communications Company, L.P. v. Verizon New England, Inc.,* Civ. 14-3453-JMF (N.D.N.Y.). Also well before Ontario and Trumansburg's Complaint to the Commission, Verizon brought the same type of claims in several federal district courts. Ontario is one of the LECs whom Verizon sued on this basis. *MCI Commc'ns Servs., Inc., et al. v. Alteva of Warwick LLC*, Civ. 14-7188 (S.D.N.Y.).

Some of the defendants in the intraMTA actions petitioned to have the cases consolidated in a multidistrict litigation under 28 U.S.C. § 1407. On December 16, 2014, the United States Judicial Panel on Multidistrict Litigation consolidated the above Verizon and Sprint cases (among others) into a multidistrict litigation case that the Panel assigned to the Northern District of Texas for pretrial proceedings. *In re: IntraMTA Switched Access Charges Litig.*, -- F. Supp. 3d --, No. MDL 2587, 2014 WL 7263472 (U.S. Jud. Pan. Mult. Lit. Dec. 16, 2014) ("December 16 Order"). Thus both Sprint and Ontario have been parties in the MDL case since its formation. Motion to Dismiss briefing on the legal issue of whether LECs can impose access charges on intraMTA traffic when the call traverses an interexchange carrier's network begins on May 1, 2015 and will be concluded by the end of July 2015. ***Exhibit A***. (Case Management and Scheduling Order No. 2, Document 83). The MDL Court, in effort to reach as decision as soon as possible, stated that "[t]he court will attempt to schedule oral argument promptly after the last Rule 12 reply brief is filed." The court also stated verbally that it plans to issue a ruling by the end of the summer.

Sprint had not brought a federal court intraMTA action against Ontario or Trumansburg in 2014. However, it makes little sense for the MDL Court to issue a legal ruling that will affect both Sprint and Ontario even though they did not originally have claims against each other in the MDL case, and on the other hand for Ontario and Trumansburg to bring this action against Sprint as though the MDL case has no bearing on these charges. Accordingly, on March 20, 2015, Sprint filed an action against Ontario Telephone and Trumansburg in federal district court on the intraMTA issue. *Sprint Commc'ns Co. L.P. v. Ontario Tel. Co., Inc. and Trumansburg Tel. Co., Inc.,* Civ. 15-2126-JMF (S.D.N.Y.). A copy of Sprint's complaint is attached as ***Exhibit B.*** With its complaint, Sprint notified the Southern District of New York of the MDL action as a related case, and that lawsuit will be consolidated with the MDL.[7]

II. ARGUMENT: THE COMMISSION SHOULD DISMISS OR STAY THIS ACTION WITHOUT PREJUDICE TO THE COMPLAINANTS REFILING IT AFTER THE MDL COURT ISSUES ITS RULING.

Sprint requests that the Commission exercise its discretion to stay, or dismiss without prejudice to refiling, this action pending the MDL Court's legal ruling on the intraMTA issue. According to the Commission,

> We have broad discretion to decide whether to grant or decline parties' requests to stay our own proceedings. As our prior orders cited by both parties show, prudential and policy reasons guide our decisions on motions for stays.

Case 07-C-1332, *In re Proceeding as to Neutral Tandem-N.Y., LLC and Level 3 Commc'ns, LLC for Transport and Termination Servs.,* Order Denying Stay (Mar. 20, 2008), at 4 (note omitted, citing N.Y. PSL § 23[1]).

Recognizing that in general the Commission has a "practice of prosecuting our own proceedings despite the pendency of claims under the 1996 Act in other forums," *Id.,* the Commission should dismiss without prejudice or stay this proceeding in light of (a) comity

[7] A Notice of related Case is to be filed on this same date, March 27, 2015.

toward the MDL Court's jurisdiction to rule on the intraMTA legal issues for all consolidated actions, and (b) efficiency for both the Commission and the parties.

Comity for the federal MDL Court supports abstention from the Commission in this case. For instance, *Richman v. Consol. Gas Co. of N.Y.*, 114 A.D. 216, 223-25 (N.Y. App. Div. 1906), implies that when the plaintiff in a state court action is also a party in a federal court action relating to the same issue, the state court should abstain based on principles of comity. "Comity between state and federal authorities, and the sanctity of decisions of federal and state agencies founded for like objectives, should deter a state … agency from acting as an appellate court over the decisions of a federal … agency." *Lande v. McGoldrick*, 132 N.Y.S.2d 661, 662-63 (Sup. Ct. Kings Cty. Special Term 1954). *Cf.*, N.Y. Comp. Codes R. & Regs. tit. 16 § 3.1 ("Any person submitting an application that is subject also to the jurisdiction of a Federal agency … shall state in the application whether a corresponding application has been submitted to that other agency (or when it will be submitted) and what action, if any, has been taken on it."). "[A] decision of a federal court interpreting a federal statute … is compelling authority when considered by a state court interpreting the same statute." *McGhee v. City of New York*, No. 113614/01, 2002 WL 1969260, at *2-3 (N.Y. Sup. Ct. Aug. 5, 2002) (citing McKinney's Cons. Laws of NY, Book 1, Statutes § 261).

In this case, the Judicial Panel on Multidistrict Litigation found:

> [T]hese 28 actions involve common questions of fact, and that centralization in the Northern District of Texas will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The subject actions share factual issues arising from allegations that defendant LECs improperly billed Verizon and Sprint for switched access charges for IntraMTA calls—calls originated and terminated in the same major trading area. Centralization will eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary.
>
> * * *

> We also are persuaded that **centralization will lessen the risk of inconsistent pretrial rulings on, for example, whether certain legal issues in this litigation should be referred to the Federal Communications Commission**.

Dec. 16, 2014 Order at 2 (emphasis added).

If the Commission were to decide factual or legal issues in this matter related to the intraMTA dispute, it would effectively deprive the MDL Court of one of the main reasons that the federal cases were consolidated: the need for nationwide uniformity regarding the FCC's intraMTA rule.[8] This is an important reason to exercise comity. *See, e.g., McGhee,* 2002 WL 1969260, at *2 ("given the identity both of issue and fact pattern actually litigated in the federal action and the need for uniform national standards for defining terms in a federal statute, comity requires this Court to defer to the federal court's determination of a WEP participant's status under the federal statutory scheme.").

Abstention is also important to conserve the Commission's and parties' resources in this case. This action involves the same intraMTA issues as the MDL case. In such circumstances, courts stay actions to await the MDL court's ruling:

> A stay is warranted here because the facts and legal issues presented in this case overlap extensively with those in the Google MDL. Both actions involve allegations that defendants used computer code to circumvent the privacy settings on plaintiffs' Safari browsers to allow placement of third-party tracking cookies on plaintiffs' computing devices, with the goal of increasing advertising revenue. Moreover, both actions involve claims under the same three federal statutes. Common legal questions include whether the injuries alleged are sufficient to confer Article III standing and whether uniform resource locators ("URLs") can contain "content" for purposes of the Wiretap Act.
>
> Resolution of these issues by the Third Circuit in the Google MDL will offer valuable guidance in the present case.

Mount v. PulsePoint, Inc., Civ. 13-6592-NRB, 2014 WL 902965, at *1-2 (S.D.N.Y. Mar. 5, 2014).

[8] Sprint has not moved the MDL Court for a stay of this proceeding or to enjoin Ontario or Trumansburg, because Sprint is first seeking dismissal or stay from the Commission by this Motion.

According to Sprint's current analysis of its traffic with Ontario and Trumansburg, the damages it seeks for intraMTA calls is just under 80 percent of the damages Ontario seeks and more than 100 percent of what Trumansburg seeks. Once the MDL Panel issues its ruling, it would easily render this dispute either moot or one that would not make financial sense for any of the parties to litigate. Dismissing the case until after the MDL Court's ruling would allow the parties to conserve resources – the MDL Court's ruling will be dispositive as to the lion's share of the charges. In this regard, the case is in stark contrast to the Neutral Tandem case in which the Commission denied a stay request based on pending federal litigation. Case 07-C-1332, *In re Proceeding as to Neutral Tandem-N.Y., LLC and Level 3 Commc'ns, LLC for Transport and Termination Servs.,* Order Denying Stay (Mar. 20, 2008), at 6 ("we observe that the legal issues to be developed in this proceeding substantially differ from the federal preemption issues that Level 3 has raised in its pending action before the District Court"). Regardless of settlement prospects, discovery or further briefing in this case should await the MDL Court's ruling because it will be most cost-effective for the parties to analyze the Call Detail Records once instead of twice for both factual bases that support Sprint's disputes to the invoices rendered by Ontario and Trumansburg (traffic pumping and intraMTA).

Dismissal with leave to refile would not prejudice Ontario or Trumansburg. There is extensive FCC and Circuit Court support for Sprint's position that access charges do not apply to intraMTA calls. *See supra* at 8-9. The same is true of Sprint's dispute regarding traffic pumping. *Supra* at 3-5. In addition, the statute of limitations for the intrastate traffic is 6 years. N.Y. CPLR § 213(2). The charges that Ontario and Trumansburg seek in this action date respectively from January 2010 and August 2012. Complaint ¶¶ 6, 7. Since the MDL Court has indicated that it plans to rule by the end of this summer, the statute of limitations is not an issue

for either Ontario or Trumansburg. After that ruling issues, Ontario and Trumansburg could decide whether to refile their Complaint with the Commission.

As an alternative to dismissal without prejudice, the Commission should stay this action until the MDL Court determines the intraMTA legal issues. Staying the case will conserve the Commission's and parties' resources while the MDL Court decides the intraMTA legal issues. Staying this case would also be consistent with the principles of comity between federal and state tribunals and would prevent the potential for inconsistent rulings. To keep the Commission informed of the progress of the MDL Court, Sprint commits to providing the Commission within ten (10) days of issuance the MDL Court's Ruling on the intraMTA legal issues.

III. CONCLUSION

For each of the reasons stated above, the Commission should grant Sprint's motion to dismiss without prejudice or to stay this proceeding until the MDL Court issues its ruling on the intraMTA legal issues. In the event the Commission does not dismiss the Complaint, Sprint requests the appointment of an Administrative Law Judge.

Respectfully submitted this 27th day of March 2015.

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CERTIFICATE OF SERVICE

The undersigned certifies that this 27th day of March 2015, the foregoing document and attachments have been served to counsel of record for the Complainants Ontario Telephone Company, Inc. and Trumansburg Telephone Company, Inc., via e-filing at the Commission:

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: INTRAMTA SWITCHED ACCESS CHARGES LITIGATION	§	
	§	Civil Action No. 3:14-MD-2587-D
	§	(MDL No. 2587)
THIS DOCUMENT RELATES TO ALL CASES	§	

CASE MANAGEMENT AND SCHEDULING ORDER NO. 2

The court has considered defendants' March 4, 2015 second joint status report regarding proposed page limits, plaintiffs' March 13, 2015 joint filing regarding page limits in response to defendants' filing on same, defendant LECs' March 19, 2015 reply to Sprint and Verizon's joint filing regarding page limits, and the parties' March 20, 2015 joint filing regarding revised briefing scheduling. The court now enters case management and scheduling order No. 2, which pertains to scheduling amended complaints and scheduling and briefing Fed. R. Civ. P. 12 motions.

I

Schedule

The court approves the proposed schedule set out in the parties' March 20, 2015 joint filing regarding revised briefing scheduling. Because the court is approving in § II of this order the filing of briefs by defendants that may collectively exceed 100 total pages, it also approves plaintiffs' request for an additional 14 days to file opposition briefs, if the briefing on defendants' initial motions collectively totals more than 100 pages.

The court will attempt to schedule oral argument promptly after the last Rule 12 reply brief is filed. Due to the court's summer trial schedule, it is probable that the argument will be conducted on a Friday afternoon. To avoid dates when attorneys with speaking roles at oral argument are

unavailable, the court will consider the views of plaintiffs' counsel and lead counsel for defendants before setting the argument date.

The court intends at this time to hear oral argument only on defendants' Rule 12(b)(6) motions. After considering the views of plaintiffs' counsel and lead counsel for defendants, it will determine how many attorneys per side who will be permitted to present oral argument. Unless the attorneys for the affected parties are notified otherwise, the other Rule 12 motions will be decided without oral argument.

II

Briefing Requirements

A. Defendants' Joint Brief.

In support of their respective Rule 12(b)(6) motions, defendants may file a joint brief, not to exceed 75 pages, that contains arguments common to many or all defendants. The brief must be filed in the Master Docket in this litigation, Civil Action No. 3:14-MD-2587-D.

B. Defendants' Supplemental Briefs.

A defendant who relies on one or more individual issues to support its Rule 12(b)(6) motion may file a supplemental brief, not to exceed 10 pages. The brief must be filed in the Master Docket in this litigation.

C. Defendants' Briefs in Support of Other Rule 12 Motions.

A defendant who moves for relief under a provision of Rule 12 other than Rule 12(b)(6) may file a separate motion. The supporting brief must not exceed 25 pages, as provided in N.D. Tex. Civ. R. 7.2(c), and must be filed in the individual case or cases in which it applies, not in the Master Docket in this litigation.

D. Notice of Non-Joinder.

A defendant who disagrees with an argument in defendants' joint brief or another defendant's supplemental brief may file a notice of non-joinder. The notice must be filed in the Master Docket in this litigation, must contain the substance of the disagreement, and, without leave of court, must not exceed 10 pages. Unless plaintiffs obtain leave of court to respond separately to a notice of non-joinder, any response must be contained in an opposition brief permitted in § II(E).

E. Plaintiffs' Opposition Briefs.

In response to each motion, plaintiffs may file an opposition brief that does exceed the limit imposed on defendants' corresponding brief (i.e., 75 pages, 10 pages, or 25 pages). The brief must be filed in the Master Docket in this litigation, or in the individual case or cases in which it applies, according to where the brief to which it responds was filed.

F. Defendants' Reply Briefs.

Defendants may file a reply brief of 38 pages in support of their joint motion, to which a 75-page limit applies to the opening brief. A defendant may file a reply brief of 5 pages in support of a motion to which a 10-page limit applies to the opening brief, and a reply brief of 10 pages in support of a motion to which a 25-page limit applies to the opening brief under N.D. Tex. Civ. R. 7.2(c).

G. How Pages are Counted.

When counting pages of a brief to determine the permissible limit, every page counts except a page that contains the table of contents or the table of authorities required by N.D. Tex. Civ. R.

7.2(d).

SO ORDERED.

March 23, 2015.

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPRINT COMMUNICATIONS COMPANY L.P., Plaintiff, v. ONTARIO TELEPHONE COMPANY, INC.; and TRUMANSBURG TELEPHONE COMPANY, INC. Defendants.	CIVIL ACTION NO. 15 CV 2126 **COMPLAINT**

COMPLAINT

Sprint Communications Company L.P. ("Sprint"), by and through its attorneys, brings this Complaint against Defendants Ontario Telephone Company, Inc. ("Ontario Telephone") and Trumansburg Telephone Company, Inc. ("Trumansburg Telephone") as follows:

INTRODUCTION

1. This lawsuit concerns the exchange of wireless communications between Commercial Mobile Radio Service ("CMRS") carriers and the Defendants where Sprint acts as an intermediary carrier. Since 1996, the Federal Communications Commission ("FCC") has made plain that CMRS calls which originate and terminate in the same "Major Trading Area" or "MTA" (*i.e.*, intraMTA calls) are not subject to switched access charges. Despite this clear recitation of law, and reiteration of the point by the FCC and federal courts, Defendants charge Sprint originating and terminating switched access charges on intraMTA calls from their

interstate and intrastate switched access tariffs. Sprint seeks a refund of these improper charges and a judicial declaration that Defendants must cease and desist this illegal practice.

2. The telecommunications industry was historically comprised of local and long distance carriers that provided wireline service. State public utilities commissions, such as the New York State Public Service Commission, defined the boundaries of the local exchange areas: wireline calls originating (*i.e.*, made) and terminating (*i.e.*, received) within a local exchange were local calls and those originating and terminating in different local exchanges (*i.e.*, interexchange calls) were long distance calls.

3. In most instances, local exchange carriers ("LECs") – like Defendants – owned the facilities (otherwise known as a "common line" or "loop") connected to each end user's home or business. As a result, the LECs charged long distance carriers (also referred to as "interexchange carriers" or "IXCs") like Sprint "originating switched access charges" to originate a long distance toll call, and "terminating switched access charges" for the use of that common line to terminate a long distance toll call.

4. The LECs, subject to supervision of regulators, defined the rates, terms and conditions under which they would assess switched access charges on calls originated for or terminated for long distance carriers. These rates, terms and conditions were set forth in each LEC's access tariffs: interstate access tariffs were filed with the Federal Communications Commission ("FCC"), and intrastate access tariffs were filed with state public utilities commissions, such as the New York State Public Service Commission.

5. When wireless service entered the commercial market, the FCC defined different boundaries to determine when a wireless call – otherwise known as a Commercial Mobile Radio

Service or "CMRS" call – is considered a local call. A wireless call is one that originates from or terminates to a CMRS provider (hereinafter "CMRS calls").

6. The FCC decided to use the largest wireless license area at that time – the Major Trading Area or "MTA" – as the area within which calls would always be deemed local. ***See Exhibit 1*** for an MTA Map. Calls originated and terminated in the same MTA ("intraMTA") are considered local calls.

7. Over a period of years beginning with the First Report and Order in 1996, the FCC has issued rules and decisions stating that intraMTA calls are not subject to switched access charges. Numerous federal courts have uniformly upheld these rules and decisions. Despite this, LECs like the Defendants continue to assess tariffed switched access charges on Sprint in violation of law and in breach of their interstate and/or intrastate access tariffs.

8. Defendants' illegal and improper billings on intraMTA calls have caused Sprint substantial damages in violation of the Defendants' interstate and intrastate access tariffs and the federal Communications Act. Sprint seeks to obtain money damages as well as its reasonable attorneys' fees and costs incurred in prosecuting this action.

PARTIES

9. Sprint is a Delaware limited partnership. Sprint's general and limited partners and their place of incorporation are as follows: US Telcom, Inc. is a Kansas corporation with its principal place of business in Kansas; UCOM, Inc. is a Missouri Corporation with its principal place of business in Kansas; Utelcom, Inc. is a Kansas Corporation with its principal place of business in Kansas; and, Sprint International Communications Corporation is a Delaware corporation with its principal place of business in Kansas. At all times relevant, Sprint is and has been qualified and registered to do business in the state of New York.

10. Defendant Ontario Telephone Company, Inc. is a corporation organized under the laws of New York with its principal offices located at 75 Main Street, Phelps, New York 14532. Ontario Telephone is a LEC which: (a) at all times relevant, is and has been qualified and registered to do business in the state of New York; and (b) conducts operations in New York. Ontario Telephone billed Sprint interstate and intrastate switched access charges on intraMTA calls that originated in and/or terminated in the state of New York, including calls that originated in and/or terminated in counties located within the Southern District of New York.

11. Defendant Trumansburg Telephone Company, Inc. is a corporation organized under the laws of New York with its principal offices located at 7890 Lehigh Crossing, Victor, New York 14564. Trumansburg Telephone is a LEC which: (a) at all times relevant, is and has been qualified and registered to do business in the state of New York; and (b) conducts operations in New York. Trumansburg Telephone billed Sprint interstate and intrastate switched access charges on intraMTA calls that originated in and/or terminated in the state of New York, including calls that originated in and/or terminated in counties located within the Southern District of New York.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over Defendants as they conduct or have conducted continuous, systematic and routine business within the state of New York. Defendants billed Sprint switched access charges improperly on intraMTA calls that originated and terminated within the state of New York and therefore caused injury within the state of New York.

13. This Court has original jurisdiction over the Defendants pursuant to 28 U.S.C. §§ 1331 and 47 U.S.C. §§ 206 and 207, because several of Sprint's claims arise under the Communications Act of 1934, a law of the United States, and the regulations promulgated

pursuant thereto. Specifically, the Court has jurisdiction pursuant to these provisions because the Defendants billed Sprint improperly on intraMTA calls in violation of FCC rules and pursuant to their interstate access tariffs, which violate the Communications Act and the FCC's rules.

14. Defendants also billed Sprint improperly on intraMTA calls pursuant to their intrastate access tariffs. The Court also has supplemental jurisdiction over these pendent state law claims pursuant to 28 U.S.C. § 1367(a).

15. This Court also has jurisdiction over Sprint's request for declaratory relief under 28 U.S.C. §§ 2201 and 2202.

16. Venue is proper in this judicial district under 28 U.S.C. § 1391. Defendants have conducted and continue to conduct business in the state of New York, are subject to personal jurisdiction in the Southern District of New York, and therefore "reside" in the Southern District of New York within the meaning of 28 U.S.C. § 1391(b) and (c).

DEFENDANTS' CONDUCT CONCERNING INTRAMTA CALLS

A. IntraMTA Calls Are Never Subject To Switched Access Charges

17. IntraMTA calls may originate and terminate in the same state ("intrastate") or different states ("interstate"). Both Defendants billed Sprint improperly out of their intrastate access tariffs and interstate access tariffs.

18. CMRS calls can be exchanged directly between CMRS carriers and LECs (such as the Defendants), or indirectly, meaning the call traverses the network of an intermediate carrier (such as Sprint).

19. When the Defendants hand calls to Sprint for ultimate delivery to a CMRS carrier ("CMRS terminating"), or when CMRS carriers hand calls to Sprint for ultimate delivery to

Defendants ("CMRS originating"), Sprint generally carries the calls over what are known as Feature Group D trunks.

20. In 1996, the FCC promulgated rules that stated "Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area" is intraMTA and subject to reciprocal compensation, not access charges. 47 C.F.R. § 51.701(b)(2) (1996). On December 29, 2011, the rule was modified to state that "[t]elecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area" (*i.e.*, intraMTA traffic) was "non-access traffic." *Id.* (2011).

21. From 2001 to December 29, 2011, "Telecommunications traffic" was defined in relevant part as that exchanged between a LEC and a CMRS provider that "originates and terminates within the same Major Trading Area...." 47 C.F.R. § 51.701(b)(2) (2001). In 2011, the FCC modified this rule slightly to instead define the term to be "Non-Access Telecommunications Traffic." *Id.* (2011).

22. In 1996, FCC rules also stated a "LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b) (1996). In 2001, the FCC amended the rule to omit the word "local," so that the rule read: a "LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b) (2001). In 2011, that rule was modified slightly to state that a "LEC may not assess charges on any other telecommunications carrier for Non-Access Telecommunications Traffic that originates on the LEC's network." *Id.* (2011).

23. In 1996, the FCC also issued its "First Report and Order" implementing the local competition provisions in the Telecommunications Act of 1996. In that voluminous decision, the FCC stated:

> 1034. We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area, as defined in the following paragraph. We disagree with Frontier's contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC -- collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. . . .
>
> 1035. With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. . . .
>
> 1036. On the other hand, in light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5). Different types of wireless carriers have different FCC-authorized licensed territories, the largest of which is the "Major Trading Area" (MTA). Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (*i.e.*, MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.

In re Implementation of the Local Competition Provisions of the Telecomms. Act of 1996, 11 FCC Rcd 15499 ¶¶ 1034-1036 (1996) (subsequent history omitted) (footnotes omitted) ("*First Report and Order*").

24. Federal courts have uniformly held that, irrespective of whether CMRS originating or CMRS terminating calls traverse an intermediate carrier, and irrespective of whether the same

calls are transported over a Feature Group D facility, the aforementioned rules apply, and intraMTA calls are never subject to switched access charges. *See, e.g., Iowa Network Servs., Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006); *Alma Commc'ns Co. v. Mo. Pub. Serv. Comm'n*, 490 F.3d 619 (8th Cir. 2007).

25. In November 2011, the FCC issued its *Connect America* decision, *In re Connect America Fund*, 26 FCC Rcd 17663 (2011) (Report and Order and Notice of Further Rulemaking) ("*Connect America*"), *final rules published*, 76 Fed. Reg. 73830 (Nov. 29, 2011), *recon. in part*, 2011 WL 6778613 (Dec. 23, 2011) (subsequent history omitted), and the FCC reiterated that intraMTA traffic is not subject to switched access charges, irrespective of whether the call is carried by an intermediate IXC. Specifically:

> 1003. In the *Local Competition First Report and Order*, the Commission stated that calls between a LEC and a CMRS provider that originate and terminate within the same Major Trading Area (MTA) at the time that the call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. . . .
>
> 1004. The record presents several issues regarding the scope and interpretation of the intraMTA rule. Because the changes we adopt in this Order maintain, during the transition, distinctions in the compensation available under the reciprocal compensation regime and compensation owed under the access regime, parties must continue to rely on the intraMTA rule to define the scope of LEC-CMRS traffic that falls under the reciprocal compensation regime. ***We therefore take this opportunity to remove any ambiguity regarding the interpretation of the intraMTA rule.***
>
> ***
>
> 1007. In a further pending dispute, some LECs have argued that if completing a call to a CMRS provider requires a LEC to route the call to an intermediary carrier outside the LEC's local calling area,[FN2129] the call is subject to access charges, not reciprocal compensation, even if the call originates and terminates within the same MTA. One commenter in this proceeding asks us to affirm that such traffic is subject to reciprocal compensation. ***We therefore clarify that the intraMTA rule means that all traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation regardless of***

whether or not the call is, prior to termination, routed to a point located outside that MTA or outside the local calling area of the LEC.[FN2132] ***Similarly, intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier.***[FN2133]

> FN2129. This occurs when the LEC and CMRS provider are "indirectly interconnected," i.e. when there is a third carrier to which they both have direct connections, and which is then used as a conduit for the exchange of traffic between them.
>
> FN2132. . . . We find that the potential implementation issues raised by Vantage Point do not warrant a different construction of the intraMTA rule than what we adopt above. Although Vantage Point questions whether the intraMTA rule is feasible when a call is routed through interexchange carriers, many incumbent LECs have already, pursuant to state commission and appellate court decisions, extended reciprocal compensation arrangements with CMRS providers to intraMTA traffic without regard to whether a call is routed through interexchange carriers. *See, e.g.*, *Alma Communications Co. v. Missouri Public Service Comm'n*, 490 F.3d 619, 623-34 (8th Cir. 2007) (noting and affirming arbitration decision requiring incumbent LEC to compensate CMRS provider for costs incurred in transporting and terminating land-line to cell-phone calls placed to cell phones within the same MTA, even if those calls were routed through a long-distance carrier); *Atlas Telephone Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256 (10th Cir. 2005). Further, while Vantage Point asserts that it is not currently possible to determine if a call is interMTA or intraMTA, Vantage Point Oct. 21, 2011 Ex Parte Letter at 2-3, the Commission addressed this concern when it adopted the rule. *See Local Competition First Report and Order*, 11 FCC Rcd at 16017, para. 1044 (stating that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples).
>
> FN2133. *See* Sprint Nextel Section XV Comments at 22-23 (arguing that the Commission should reaffirm that all intraMTA traffic to or from a CMRS provider is subject to reciprocal compensation). ***This clarification is consistent with how the intraMTA rule has been interpreted by the federal appellate courts***. *See Alma Communications Co. v. Missouri Public Service Comm'n*, 490 F.3d 619 (8th Cir. 2007); *Iowa Network Services, Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006); *Atlas Telephone Co. v. Oklahoma Corp. Commission,* 400 F.3d 1256 (10th Cir. 2005).

Connect America ¶¶ 1003-1007 (emphasis added) (certain footnotes omitted).

26. Given the FCC rules and decisions as well as the federal court decisions, liability on each of Sprint's claims presents an identical question of law, and none of the legal issues or related claims should require unique or individualized proof to establish liability.

B. Defendants Improperly Billed Sprint Switched Access Charges On IntraMTA Calls From Their Interstate and Intrastate Tariffs.

27. At all relevant times, Defendants Ontario Telephone and Trumansburg Telephone opted into NECA Tariff No. 5, an interstate access tariff on file with the FCC. At all relevant times, that tariff contained the following pertinent provisions:

a. Section 2.4.l(D)(l) – "A good faith dispute requires the customer to provide a written claim to the Telephone Company. * * * Such claim must identify in detail the basis for the dispute, and if the customer withholds the disputed amounts, it must identify the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed to permit the Telephone Company to investigate the merits of the dispute."

b. Section 2.4.l(D)(5) – "If the customer pays the bill in full by the payment due date, and later initiates a billing dispute within ninety (90) days of the payment due date, penalty interest may be applicable. (a) If the billing dispute is resolved in favor of the customer, the customer shall receive a credit from the Telephone Company. This credit will be an amount equal to the disputed amount resolved in the customer's favor times a penalty factor. This amount will apply from the date of the customer's payment through the date on which the customer receives the disputed amount credit from the Telephone Company."

c. Section 2.4.1(D)(6) – "If the customer pays the bill in full by the payment due date, and later initiates a billing dispute after (90) days of the payment due date, penalty interest may be applicable (a) If the billing dispute is resolved in favor of the customer, the customer shall receive a credit from the Telephone Company. This credit will be an amount equal to the disputed amount resolved in the customer's favor times a penalty factor. This amount will apply from the date of the dispute through the date on which the customer receives the disputed amount credit from the Telephone Company."

d. Section 2.1.8(A) – "If a customer fails to comply with Section … 2.4.1 … including any customer's failure to make payments on the date and times therein specified, the Telephone Company may, on thirty (30) calendar days written notice by Certified U.S. Mail or overnight delivery to the person designated by that customer to receive such notices of noncompliance, take the following actions:

- refuse additional applications for service and/or refuse to complete any pending orders for service, and/or
- discontinue the provision of service to the customer.

In the case of discontinuance all applicable charges, including termination charges, shall become due."

28. At all relevant times, Defendants each had an intrastate access tariff on file with the New York State Public Service Commission. Defendants billed Sprint originating and/or terminating switched access charges on intrastate, intraMTA calls from their respective New York tariffs in violation of law.

29. Upon information and belief, Defendants' intrastate access tariffs filed with the New York Public Service Commission contain substantially identical provisions as those contained in their interstate access tariffs (*see supra* ¶ 28, including subparagraphs).

30. In the spring of 2014, Sprint satisfied the requirements of Section 2.4.1(D)(1) from NECA Tariff No. 5 (as well as similar provisions from Defendants' intrastate access tariffs) by providing Defendants with written dispute letters.

31. Sprint is explicitly authorized pursuant to Section 2.4.1(D)(6) from NECA Tariff No. 5 (as well as similar provisions from Defendants' intrastate access tariffs) to seek reimbursement of improperly paid originating and/or terminating switched access charges improperly billed by Defendants.

32. Sprint is authorized by federal law to pursue all originating and/or terminating switched access charges on intraMTA calls improperly billed by Defendants under their respective intrastate access tariffs.

33. Defendants do not have negotiated contracts with Sprint for access related services.

34. These improper billings have caused Sprint substantial damages, and continue to generate additional damages.

COUNT I
47 U.S.C. §§ 206, 207 Claim for Violation of 47 U.S.C. § 201(b) (Interstate IntraMTA Calling)

35. Sprint repeats and realleges each and every allegation of paragraphs 1 through 34 above, and incorporates them by reference as though fully set forth herein.

36. Defendants are common carriers and have engaged in an unjust and unreasonable practice in connection with their duties as common carriers under Section 201(b); namely, they

improperly billed Sprint originating and terminating switched access charges from their interstate tariffs on interstate, intraMTA calls.

37. The FCC's rules and decisions, as affirmed by federal courts, make plain that the Defendants' filed interstate access tariffs do not provide Defendants with a basis to charge or collect interstate access charges from Sprint on intraMTA traffic.

38. The FCC has stated in its rules, and in many decisions, that a LEC engages in an unjust and unreasonable practice under Section 201(b) when it (a) bills an interexchange carrier for tariffed access charges without a basis to do so under its tariff (*see, e.g., Qwest Commc'ns Corp. v. Farmers and Merchs. Mut. Tel. Co.,* 24 FCC Rcd 14801 (2009), *aff'd sub nom., Farmers and Merchs. Mut. Tel. of Wayland v. FCC,* 668 F.3d 714 (D. C. Cir. 2011); *AT&T Corp. v. All Am. Tel. Co.,* 28 FCC Rcd 3477 (2013)) or (b) charges a carrier for intraMTA CMRS traffic from the LEC's network. *See, e.g., In re TSR Wireless, LLC v. US WEST Commc'ns,* 15 FCC Rcd. 11166 ¶ 29 (2000); 47 C.F.R. §§ 51.701, 51.703.

39. Defendants, therefore, engaged in unjust and unreasonable practices in connection with their provision of interstate communication services, in violation of their common carrier obligations.

40. Defendants' violations of Section 201(b) have caused Sprint to suffer actual and consequential economic damages in an amount that Sprint will prove at trial. Sprint therefore has the right to sue for its actual damages resulting from the Defendants' violations of Section 201(b), pursuant to Sections 206 and 207 of Title 47 of the United States Code. Pursuant to Section 206, Sprint also seeks its reasonable attorneys' fees and costs incurred in this litigation.

COUNT II
47 U.S.C. §§ 206, 207 Claim for Violation of 47 U.S.C. § 203 (Interstate IntraMTA Calling)

41. Sprint repeats and realleges each and every allegation of paragraphs 1 through 40 above, and incorporates them by reference as though fully set forth herein.

42. Defendants' interstate access tariffs do not exempt intraMTA calls. As a result, the interstate access tariffs conflict with FCC rules and are *ultra vires*. *See, e.g., Iowa Network Servs. v. Qwest*, 385 F. Supp. 2d 850, 899-900 (S.D. Iowa 2005), *aff'd*, 466 F.3d 1091 (8th Cir. 2006). *Cf., Paetec Commc'ns, Inc. v. MCI Commc'ns Serv., Inc.*, 712 F. Supp. 2d 405, 416-17 (E.D. Pa. 2010), *appeal dismissed; Paetec Commc'ns Inc. v. CommPartners, LLC*, 2010 WL 1767193, at *4-5 (D.D.C. Feb. 18, 2010), *appeal dismissed*; *Global NAPs v. FCC*, 247 F.3d 252, 260 (D.C. Cir. 2001) ("tariffs still must comply with the applicable statutory and regulatory requirements"). Defendants cannot bill or collect tariffed charges on the intraMTA traffic.

43. Defendants' billing of charges that are *ultra vires* of the Communications Act violate Sections 203(a) and (c).

44. Defendants' violations of Section 203 caused Sprint to suffer actual and consequential economic damages in an amount that Sprint will prove at trial. Sprint therefore has the right to sue for its actual damages resulting from the Defendants' violations of Section 203, pursuant to Sections 206 and 207 of Title 47 of the United States Code. Pursuant to Section 206, Sprint also seeks its reasonable attorneys' fees and costs incurred in this litigation.

COUNT III
(Breach of Contract/Interstate IntraMTA Calling)

45. Sprint repeats and realleges each and every allegation of paragraphs 1 through 44 above, and incorporates them by reference as though fully set forth herein.

46. Defendants' interstate switched access tariffs constitute contracts with any purchaser of services from the tariff, which includes Sprint.

47. Defendants are charging Sprint switched access charges on interstate calls that do not qualify for such charges, in violation of its interstate access tariff.

48. Defendants are in breach of their tariff provisions when they bills Sprint for interstate calls as they do not qualify for such charges. To the extent the tariff purports to allow such charges, it is unenforceable.

49. As a direct and proximate result of the Defendants' conduct as alleged above, Sprint has been damaged in an amount to be proven at trial.

COUNT IV
(Breach of Contract/Intrastate IntraMTA Calling (New York))

50. Sprint repeats and realleges each and every allegation of paragraphs 1 through 49 above, and incorporates them by reference as though fully set forth herein.

51. Defendants' intrastate switched access tariffs on file with the New York State Public Service Commission constitute contracts between Defendants and any purchaser of services from the tariffs, which includes Sprint.

52. Defendants are charging Sprint switched access charges on intraMTA calls that do not qualify for such charges, in violation of their respective New York intrastate access tariffs. To the extent the tariffs purport to allow such charges, they are unenforceable.

53. Defendants are in breach of their New York tariff provisions when they bill Sprint for intraMTA calls as they do not qualify for such charges.

54. As a direct and proximate result of Defendants' conduct as alleged above, Sprint has been damaged in an amount to be proven at trial.

COUNT V
(Declaratory Relief)

55. Sprint repeats and realleges each and every allegation of paragraphs 1 through 54 above, and incorporates them by reference as though fully set forth herein.

56. The access invoices that the Defendants submit to Sprint seeking to collect intrastate switched access charges on intraMTA calling are illegal and improper. The inclusion of these access charges in bills submitted to Sprint violates the Defendants' intrastate access tariffs, the Communications Act, and the FCC's implementing rules.

57. Sprint is entitled to judgment under 28 U.S.C. § 2201(a) declaring that, *inter alia*:

a. Sprint is not responsible for paying intrastate access charges on intraMTA calls;

b. Defendants must either create a process that does not assess switched access charges on intraMTA calls, or use a traffic study, as contemplated by First Report and Order ¶ 1044, to assess the percentage of their calling that is intraMTA and prospectively submit access bills that subtract that percentage of calling from the access invoices submitted to Sprint.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Sprint Communications Company L.P. respectfully requests that judgment be entered for Sprint Communications Company L.P. on each and all of its claims, together with appropriate damages, reasonable costs and fees, including attorneys' fees and expert fees, and interest together with such other and further relief as the Court may deem just and equitable under the circumstances.

Respectfully submitted,

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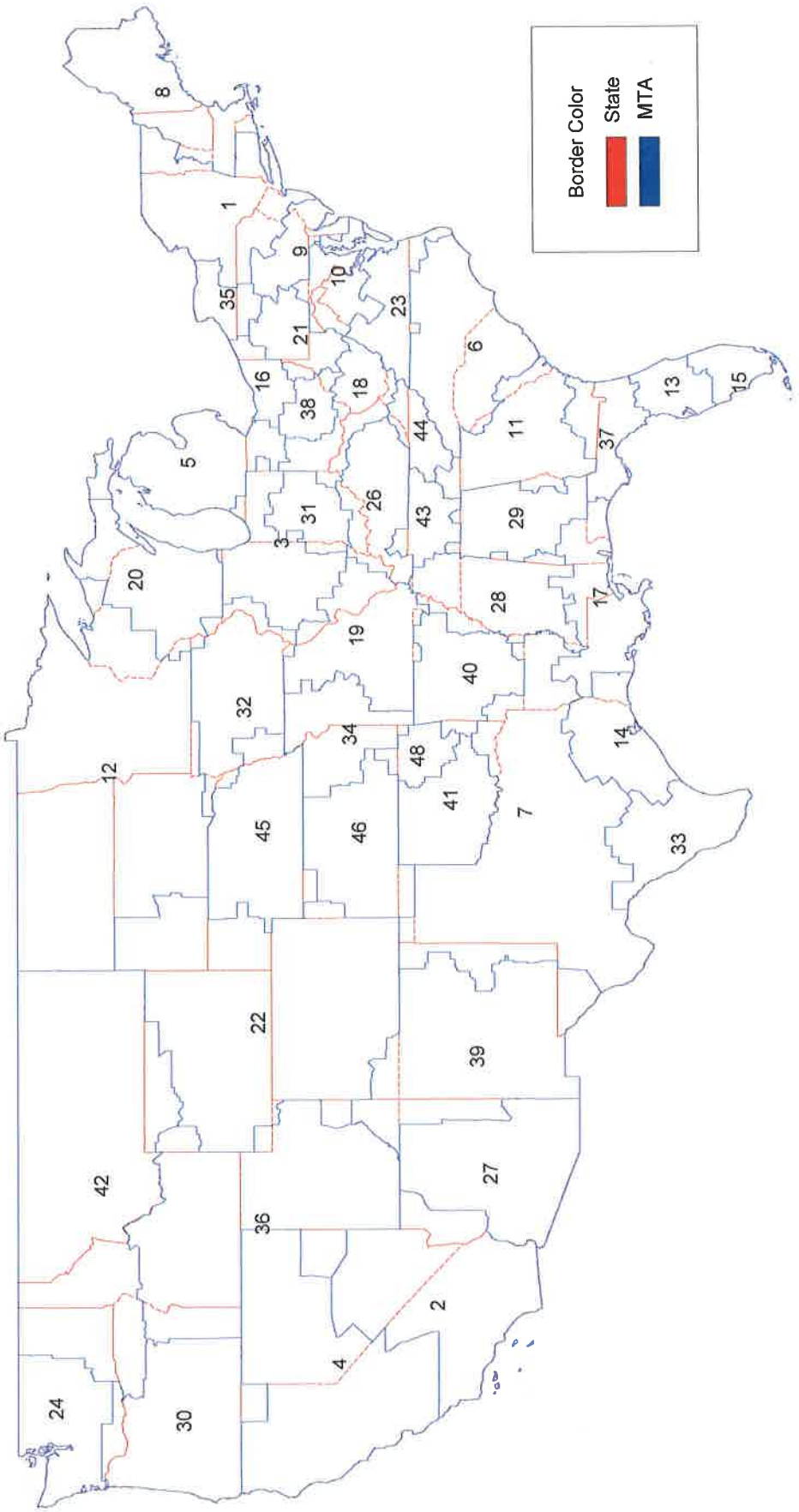
March 20, 2015

Exhibit No. 1

The 51 Major Trading Areas (MTAs)



MTA-Like areas not shown:
M25 Puerto Rico & US Virgin Islands
M49 Alaska
M50 Guam and Northern Mariana Islands
M51 American Samoa