

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding to Examine Issues Related to a) **CASE 09-M-0527**
Universal Service Fund)

SPRINT'S STATEMENT IN OPPOSITION TO PHASE III JOINT PROPOSAL

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Introduction

Sprint Nextel Corporation ("Sprint"), pursuant to the Ruling in Phase III Procedure by Howard A. Jack, Administrative Law Judge issued on December 7, 2012 in Case 09-M-0527, hereby respectfully submits its initial statement in opposition to the Phase III Joint Proposal ("LEC Proposal").

Despite its advocacy for immediate reform of originating access rates in recent comments to the FCC, Verizon leads this proposal to delay reform of the intrastate switched access rates in New York. Intrastate access reform is essential to the development of a fully competitive telecommunications market. Over the past decade, the payers of high switched access rates have tried several times via petitions to achieve access reform here in New York. After this long wait, as part of its agreement in the Joint Proposal in Phase II, all parties including the access payers agreed that absent a consensus, unresolved issues including originating access reform would be addressed in litigation in Phase III. Now the access collecting LECs have filed a proposal that is inconsistent with the Phase II agreement in an effort to delay reform further. They point

to pending reform by the FCC¹ as if it is a new development. The possibility that the FCC may address originating access rates was known when the Joint Proposal in Phase II was signed. Further reform at the FCC is uncertain and may take many years just like the changes that impact terminating rates. There should be no further delays in reforming New York intrastate originating access rates. All parties should have the opportunity to present a case for or against access reform to the Commission as soon as possible.

I. LEC Requests To Delay Originating Access Reform In New York Is Inconsistent With Their Public Policy Comments To The FCC

While the large LECs are putting up barriers to reform in New York, many are advocating for reform of originating access rates with the FCC. As documented below, many of the large LECs take public policy positions here in New York that are very different from the positions taken at the FCC. For example, at the FCC Verizon states:

“There is no reason for the Commission to stop intercarrier compensation reform at the terminating side of rates. Originating access charges remain too high in many cases and should be reduced just as the Commission required for terminating access (footnote omitted).”²

“Further delay in adopting a framework to transition down originating access charges would be inconsistent with the latest Commission reforms and policies.”³

At the FCC, Time Warner Cable states:

“The FNPRM suggests that originating access reform should proceed pursuant to an entirely separate timetable from terminating access, perhaps commencing only after the transition for terminating access is complete. It also asks whether the states should be allowed a greater role in managing the transition for originating access. But there is no reason to adopt a substantially different approach for originating access, either in terms of the timing of rate reductions or with respect to the role of the states. The costs and functions associated with terminating and

¹ *In the Matter of Connect America Fund, et seq.* - WC Docket Nos. 10-90 et al., FCC 11-161, 26 FCC Rcd 17663 (2011), Report and Order and Further Notice of Proposal Rulemaking “(USF/ICC Transformation Order”).

² See USF/ICC Transformation Order FNPRM, Verizon Comments at page 4 filed February 24, 2012.

³ See USF/ICC Transformation Order FNPRM, Verizon Reply Comments at page 4 filed March 30, 2012.

originating access are the same, and the policy rationales for reducing terminating rates apply equally to originating rates. (footnotes omitted)”⁴

And Comcast states:

“First, the Commission should adopt a national, uniform transition plan for both interstate and intrastate originating access charges.”⁵

Clearly, the largest LECs advocating delay here in New York believe originating access rates must be reformed and that reform should not wait for the terminating transition to be completed. These carriers Federal advocacy positions are correct and consistent with those of the access payers in this case, Sprint and AT&T.

II. Originating Access Rate Reform At The FCC Is Unlikely In The Near Future

After more than a decade of indecision, the FCC has finally taken action to reform a subset of switched access rates, terminating end office access rates.⁶ Numerous industry proposals as well as significant efforts by the FCC and industry participants were necessary to get the limited reform of the terminating compensation system. Although the FCC accepted further comments on possible additional reforms including originating access rates, further reform at the federal level is not a certainty. And the timeframe for originating access reform might not begin for quite some time.⁷ Indeed, the Further Notice of Proposed Rulemaking openly considers deferring the transition of originating access rates to bill and keep to the states.⁸ The FCC envisions state access reform as a possible outcome. The New York Commission has the authority to address

⁴See *USF/ICC Transformation Order* FNPRM Time Warner Cable Inc., Comments filed February 24, 2012 at pages 18-19.

⁵ See *USF/ICC Transformation Order* FNPRM Comcast Corporation, Comments filed February 24, 2012 at page 4.

⁶*USF/ICC Transformation Order*, ¶ 800 and 801 (detailing transition path for terminating end office switching and certain transport rate).

⁷ *USF/ICC Transformation Order* at ¶1299 (FCC asks whether a transition schedule be established for originating access only after the transition is complete to bill and keep for terminating rates, i.e. transition may not begin until 2018 for price cap carriers and 2020 for rate of return carriers.)

⁸ *USF/ICC Transformation Order*, ¶1302.

intrastate originating access rates. Sprint believes the Commission should exercise its authority to reform intrastate originating access rates.

III. All Parties To The Phase II Joint Proposal Understood Litigation Of The Access Issues Was a Possible Outcome in Phase III

To facilitate the Completion of Phase II, the parties negotiated a settlement that required each party to give on some issues and take on others. Like any negotiation, no party was happy with all outcomes in the settlement but the overall package was acceptable to all. One aspect of the settlement that was important for the access payers was the opportunity to finally have its day in court to advocate for access reform if the parties could not resolve issues themselves. The access purchasers were willing to give on other issues in the Phase II Joint Proposal for this opportunity. The access collectors are now trying to back out of this aspect of the agreement. The Commission cannot allow the LECs to pick and choose the aspects of the Phase II Joint Proposal that will be enforced. All aspects of the proposal should be implemented. The access proceeding must move forward as the Phase II Joint Proposal mandated.

IV. FCC's Transition Of Access Charges On IP Traffic Will Cause Competitive Distortion Unless Intrastate Originating Access Rates Are Set Equal To Interstate By 7-1-14

The Commission should consider reductions to originating access rates as a means to incent the deployment of IP networks as inaction allows LECs to charge inflated intrastate originating access rates on traffic which originates and terminates in TDM until the FCC acts. In the original *USF/ICC Transformation Order*, the FCC required LECs originating calls in TDM format and terminated to customers in IP format

to charge interstate rate levels.⁹ In its Second Order on Reconsideration, the FCC instead permitted LECs to continue to charge intrastate rates for TDM to IP calls that remain within a state for a limited time, until June 30, 2014.¹⁰ As of July 1, 2014, a LEC may only charge rates equal to its interstate access rates for calls originating in TDM format and terminated to customers in IP format. But calls originated in TDM and terminated in TDM remain subject to intrastate originating access rates and are not subject to any mandated FCC transition to bill and keep like terminating rates are. Absent action by the FCC or the states, this rule allows TDM providers to continue to charge inflated originating access rates indefinitely for traffic that is terminated in TDM after July 1, 2014. These high rates that far exceed the cost of the function will provide a disincentive for LECs to employ IP and will unduly competitively advantage the LEC that does not employ IP. Not only is this contrary to the FCC's policy to incent the deployment of IP networks,¹¹ but the LEC will be able to use the access profits to suppress its retail rates or simply pocket the windfall profits. Alternatively, the commission can reduce originating intrastate access rates for TDM and correspondingly provide incentives to deploy IP and reduce these market distortions.

V. LEC Affiliated IXCs Limit the Magnitude of the Financial Change for the LECs

Today, LECs provide long distance voice services to the vast majority of the local telephone customers. Accordingly, the vast majority of access charges on 1+ dialed toll calls are an intra-company financial transaction. The access charges are revenues to the LEC and expenses to the affiliated IXC; but when the financial statements of the

⁹ USF/ICC Transformation Order, ¶1960.

¹⁰ Intrastate originating end office rates for TDM to IP calls will be set at interstate rate levels on 7-1-14, See, *USF/ICC Transformation Order*, Second Order on Reconsideration, FCC 12-47 (Released April 25, 2012) at ¶30.

¹¹ *USF/ICC Transformation Order*, ¶ 968.

LEC and expenses to the affiliated IXC; but when the financial statements of the corporation are prepared, these transactions within the company are eliminated. Comcast recognized this reality when it advocated the following at the FCC:

“..., the Commission should not permit incumbent LECs to recover revenues from the CAF and ARC based on originating access minutes of use destined for an affiliated entity. In those instances, originating access charges are more of “an imputation” than “a real payment”.¹²

The access revenue reduction net of the charges to affiliated carriers is likely quite small. Data collection provided via a litigated proceeding would easily document the true magnitude of the revenue change.

Summary

Intrastate access reform in New York is long overdue. For years and years, LECs have been permitted to charge rates that are far above the actual cost of the function provided on both originating and terminating access. While the FCC has implemented a means forward for certain terminating access rates, it delayed action on originating access. In the context of this proceeding, the Commission has the authority to review originating access rates. For all of the reasons discussed above, delay tactics should not be rewarded and access payers should receive the benefit of the bargain negotiated in the Phase II Joint Proposal. The LECs should be required to justify their originating intrastate access rates in a litigated proceeding.

January 4, 2013

Respectfully submitted,
Sprint Nextel Corporation

¹² See *USF/ICC Transformation Order* FNPRM Comcast Corporation, Comments filed February 24, 2012 at page 5.



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing State in Opposition has been delivered electronically to the Active Parties listed in this docket, this 4th day of January, 2013:

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