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

In the Matter of	)	
Sprint Petition for Declaratory Ruling	)	CC Docket No. 01-92
	)	
Obligation of Incumbent LECs to Load	)	
Numbering Resources Lawfully Acquired	)	
and to Honor Routing and Rating Points	)	
Designated by Interconnecting Carriers	)	

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. ("JSI") hereby files comments in the above captioned matter. On May 9, 2002, Sprint Corporation ("Sprint") filed a petition entitled Sprint Petition for Declaratory Ruling. In said petition Sprint seeks confirmation from the Federal Communications Commission ("FCC") that an incumbent local exchange carrier ("ILEC") may not refuse to load telephone numbering resources of an interconnecting carrier, and an ILEC may not refuse to honor the routing and rating points designated by said interconnecting carrier. On July 18, 2002, the FCC released a Public Notice, DA 02-1740, in which it seeks comments on the Sprint petition. Inasmuch as the Sprint petition raises interconnection and intercarrier compensation issues under consideration in CC Docket No. 01-92, the FCC requests that comments concerning the Sprint petition be filed in CC Docket No. 01-92.

JSI is a consulting firm specializing in regulatory and financial services to more than two hundred ILECs throughout the United States. JSI also provides consulting services for competitive local exchange carriers that provide competitive local exchange services across the nation. Since the Commission seeks comments on a Sprint petition regarding the routing and rating of traffic by ILECs, JSI is an interested party in this proceeding.

After review of the Sprint petition and a filing from BellSouth Corporation and BellSouth Telecommunications Inc. ("BellSouth") entitled Opposition, along with comments of other parties, JSI believes that the issues raised in the Sprint petition contain numerous flaws which when fully examined show that Sprint is attempting to change normal and customary industry practices for the benefit of commercial mobile radio service ("CMRS") providers. While Sprint's attempt is being justified as a "clarification" of existing rules, the case record and industry practice show that Sprint's petition is in fact a request to change existing Commission rules in an attempt to avoid normal and customary costs associated with interconnection. JSI recommends that the FCC reject Sprint's attempt at changing interconnection rules and procedures through a declaratory ruling.

I. Background

Interconnection among telecommunications carriers is not only a convenience but a necessity. Otherwise, telecommunications carriers would only be able to connect their own customers to each other: the industry has "been-there-done-that" in the early days of telecommunications. While interconnection for long-distance or interexchange service has a long history between ILECs and interexchange carriers ("IXCs"), interconnection among competing local telecommunications providers is a relatively new phenomenon that began with the enactment of the Telecommunications Act of 1996 ("Act"). Congress established a general duty of all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[1] In addition to this general duty applied to all telecommunications carriers, Congress imposed on all local exchange carriers the duty to provide "dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays;"[2] and to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[3] Following the hierarchical structure of section 251 that has been noted by this Commission,[4] Congress also imposed certain additional duties on incumbent local exchange carriers within section 251(c). One of these duties is the interconnection duty that requires ILECs to provide, "for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network; (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and Section 252."[5]

It is important to recognize that Congress exempted rural carriers from the additional duties contained within section 251(c) until certain requirements outlined in section 251(f) are met.[6] Because of this explicit exemption from section 251(c) duties, JSI notes that CMRS interconnection with a rural ILEC must use section 251(a): Section 251(c)(2) may apply only after the requirements of section 251(f) are met.

Sprint desires to rate center its NXXs in ILECs' service areas for the purpose of marketing its wireless service. Rate centering NXXs in ILEC areas enables ILEC customers to call Sprint wireless numbers and have these calls treated as local calls. However, Sprint does not find it economical for Sprint to have direct connection with the

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[1] 47 U.S.C. § 251(a)(1).
[2] 47 U.S.C. § 251(b)(3).
[3] 47 U.S.C. § 251(b)(5).
[4] *See* Memorandum Opinion and Order, Federal Communications Commission, *Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc., Complainants, v. AT&T Corporation, Defendant*, 16 FCC Rcd 5726, FCC 01-84, Mar. 13, 2001, ¶ 25.
[5] 47 U.S.C. § 251(c)(2).
[6] *See* 47 U.S.C. § 251(f).

ILECs. In these instances, Sprint typically has a direct connection with the LATA tandem switch that is generally owned by the Regional Bell Operating Company ("RBOC"). In its petition, Sprint is asking the Commission to declare that the ILECs have an obligation to route landline-to-wireless calls to the LATA tandem switch, that resides outside ILECs service area, and rate these calls as local calls for end-user and carrier compensation purposes.

JSI believes that there are a number of flaws with Sprint's claim and submit that rather than reaffirm the Act and Commission rules, Sprint seeks to greatly alter these rules to the benefit of CMRS providers offering services in ILEC areas.

II. Sprint's petition is a request for a change in the current law and not declaration of current law.

JSI encourages the Commission to consider the following facts in resolving the present dispute. While these matters appear to pertain solely to the Sprint BellSouth dispute, JSI believes the general policy sought by Sprint will significantly impact all carriers and consequently all carrier issues should be properly addressed. In the subsequent section, JSI outlines general policy considerations and urges the Commission to adopt these general principles for all telecommunications carriers.

Sprint is asking the Commission to reaffirm a non-existing requirement that all telecommunications carriers have an obligation under the Act to load in their networks telephone numbering resources obtained by carriers and to use the rating and routing points that the carrier holding the numbering resources designates without regard to existing rules and regulations. Sprint errs in stating that it seeks a simple declaration of current law. Sprint is in fact asking the Commission to create a new rule imposing additional obligations on the telecommunications carriers, specifically rural ILECs.

Sprint cites certain industry guidelines in support of its position. Furthermore, it claims that the industry guidelines explicitly permit a CMRS provider to designate a rate point within an ILEC's serving area and a route point outside the ILEC's network for the NXX codes it acquires. The facts presented in this section clearly show that this claim goes well beyond current rules. Furthermore, Sprint's request would impose a financial obligation on ILECs and BellSouth that is not sanctioned by the Act. Sprint would force this obligation on the ILECs when it chooses rate and route points that are not within the same network area of the interconnecting ILEC. As JSI demonstrates in its comments, Sprint's assertions and claims are without merit and the Commission should reject Sprint's request for declaratory ruling.

A. Interconnection practices do not support Sprint's claim

Interconnection governed under section 251(a) requires "all telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." JSI submits that it is essential to distinguish between the "requesting" and the "providing" telecommunications carrier for section 251(a) interconnection. The Commission has already determined that under section 251(a)

interconnection, the providing carrier can choose the method of interconnection based on its own technical and economic choices.[7] The Commission does not permit the requesting carrier, in this case Sprint, to receive section 251(a) interconnection either directly or indirectly based on its own technical and economic choices.

Even when Sprint seeks interconnection under 251(c)(2) of the Act, the interconnection must occur within the providing carrier's network area as established by subpart (b) of this provision. Establishing a rate point inside and a route point outside a carrier's area causes economic difficulties because in many instances the requesting carrier seeks to avoid the financial responsibility of transport and transit services that arise with such a request. JSI recommends that the Commission reject Sprint's attempt at shifting the costs of transport and transit services to the ILECs for these types of calls.

Sprint mistakenly relies on an industry guideline that permits a service provider to request an NXX code with a different rating and routing point. When a CMRS carrier obtains an NXX with a rate point within an ILEC service area, both parties must negotiate an arrangement for the exchange of traffic. The Central Office Code Assignment Guideline requires the applicant for an initial code assignment in a rate center to provide documented proof that the applicant is or will be capable of providing service within 60 days of the number resource activation.[8] This requirement implies that the applicant for the code must make arrangements with the ILEC serving the targeted rate center. This arrangement will enable proper use of the applicant's NXX code.

Accordingly, Sprint should not unilaterally designate a rate point and route point without proper negotiations or arrangements with the ILEC serving the exchange or rate center which Sprint designated in its NXX application. As Sprint points out on pages 3 and 4 of its petition, a landline call originating and terminating in the same rate center is a local call. Under industry guidelines, a CMRS provider seeking to activate an NXX with the rate center designation (rate point) of an ILEC must negotiate an arrangement with the ILEC for exchange of traffic. The ILEC also has a duty to negotiate the exchange of traffic with other telecommunications carriers. Without a traffic exchange agreement confusion arises because the ILEC has no obligation to treat calls to the CMRS carrier's NXX as local and assume the responsibility to transport a local call outside its service area to a LATA tandem designated as the route point by the CMRS carrier.

On page 16 of its petition, Sprint argues that NeuStar has the authority to administer and implement the North American Numbering Plan ("NANP"). Further, Sprint claims that BellSouth has contravened NeuStar's delegated authority by requiring rate and route points with competing carriers to be within BellSouth territory. JSI submits that the Central Office Code Administration Guidelines are at best neutral on this

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[7] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, 15991 (1996). FCC 96-325, ¶ 997 (*Local Competition Order).*

[8] *See* Section 6.1.4 of the Central Office Code (NXX) Assignment Guidelines, June 21, 2002, Industry Numbering Committee Document N0. 95-0407-008.

matter. Sprint relies on Section 6.2.2 of the guidelines in support of its petition. This section states that "Each switching center, each rate center and each POI may have unique V&H coordinates." Section 6.2.2 does not address the instance where these different geographic coordinates conflict with Section 252(c)(2)(b) of the Act: this provision requires that interconnection be established within a LEC network. It is obvious that rate centers and POIs may have different V&H coordinates within a network area: BellSouth does not appear to restrict Sprint within its service territory. However, the fact that the guidelines permit different geographic coordinates does not affirmatively address the present case where Sprint seeks to contravene geographic restrictions established by the section 251(c)(2) of Act.

In a certain respect this case involves transit traffic between two carriers. To the extent that CMRS providers seek to receive a transit traffic service, then CMRS providers should have the necessary transit traffic agreements with the ILEC providing transit service (negotiated or tariffed services) that resolve compensation issues for transport and transit service requested by the CMRS provider. If transit issues cannot be resolved by the transiting carrier and the carrier requesting transit service, the appropriate regulatory authority may need to intervene in order to resolve compensation for transport and transit service. If a CMRS provider chooses to have its local traffic routed to a location outside an ILEC service area, then the CMRS provider must be required to pay for the transport and transit of the traffic to a point outside the ILEC service area.

B. Sprint misapplies the Act and Commission's interconnection rules to support its petition.

Under current interconnection rules a requesting carrier may obtain interconnection pursuant to Section 251 (a) or 251 (c)(2) of the Act. There are no rules supporting Sprint's claim that ILECs have an obligation to transport or make arrangements for the transport of local traffic outside their service area. All telecommunications carriers have the obligation to interconnect directly or indirectly with a requesting telecommunications carrier under section 251(a). The ILECs have the duty for transport and termination of telecommunications traffic under section 251(b)(5). The only section that addresses routing of local traffic (i.e. telephone exchange service) is section 251(c)(2), which imposes on ILECs the duty for the transmission and routing of telephone exchange and exchange access. Moreover, a close inspection of the Act is that even under the most burdensome incumbent LEC interconnection duty under section 251(c)(2), the opportunity for a competitive carrier to dictate the interconnection of an ILEC is limited to any technically feasible point within the ILEC's network and does not require a providing carrier to transport a local call outside of its service area. This is important in the present case because Sprint is attempting to establish a rate point in an ILEC service area and a route point <u>within the BellSouth network</u>. Thus, even Sprint's appeal to section 251(c)(2) for guidance in its petition is misplaced.

Furthermore, JSI submits that for rural carriers, the application of section 251(c)(2) determinations are misplaced because subpart (c) does not apply immediately to rural carriers. Thus, in a general declaration, such as the one Sprint requests, interconnection obligations generally must look to section 251(a). In this context, the

Commission has concluded that it is the choice of the telecommunications carrier to originate and deliver traffic to another carrier in a manner dictated by the providing carrier and not the requesting carrier.[9] Thus, under section 251(a) a rural ILEC as a providing carrier may interconnect with a requesting telecommunications carrier directly or indirectly, as the ILEC deems appropriate.

C. Sprint confuses the terms "type" vs. "method" of interconnection in support of its position on interconnection.

On pages 15-16 of its petition, Sprint argues that interconnecting carriers can choose the type of interconnection based on their most efficient technical and economic choices. Sprint appeals to pre-1996 CMRS rules for the opportunity to select the type of interconnection. Section 20.11 of the Commission's rules was established to permit a CMRS provider the ability to select the type of interconnection deemed appropriate.[10] These types of interconnection refer to Type 1, Type 2A and Type 2B generally. Despite the ability of the CMRS provider to select a certain type of connection, the type of connection addresses the technical aspects of a physical interconnection and does not in any way, nor should it, dictate the method of interconnection, referring to direct or indirect arrangements that have been codified in the Communications Act of 1934, as amended. In support of this claim, JSI cites 47 CFR 20.11(c) which states that "local exchange carriers and commercial mobile radio service providers shall also comply with applicable provisions of Part 51 of this chapter." Section 20.11(a) does not refer to the method of interconnection because this rule was codified prior to the Act, which distinguishes between direct and indirect interconnection. Moreover, the provisions of Part 51 of the Commissions rules are shown to recognize the interconnection duty is limited to within the carrier's network (or service territory).[11]

While it might be accused of gilding the lily, JSI notes that Sprint has misapplied Section 20.11(a) by not stating the entire rule. The rule states that "a local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable." It is precisely the economic unreasonableness to allow CMRS providers to establish unilaterally a rate point in an ILEC exchange area and a route point in an exchange outside the ILEC network that causes JSI to participate in this matter. Sprint has failed to identify these aspects of the rules in its attempt to seek a general declaratory ruling regarding rate and route points. JSI urges the Commission to reject Sprint's request and declare that CMRS rate and route points must reside within the ILECs network area or service territory if the CMRS provider fails to make the necessary transport and transit service arrangements, including financial responsibility for the transport and transit to a point outside the ILEC service territory.

[9] *See First Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996).
[10] *See* 47 CFR 20.11(a)
[11] 47 CFR 51.305(a)(2)

D. Sprint has ignored the Commission's rules in stating that all intraMTA traffic between a LEC and a CMRS provider is subject to reciprocal compensation.

On page 14 of its petition, Sprint claims that Commissions rules specify that all intraMTA calls are subject to reciprocal compensation, not access charges. JSI submits that in making this claim, Sprint has ignored clear Commission guidance regarding this matter. The Commission has prescribed two mutually exclusive compensation regimes: the access-charge regime, which existed prior to the Act, and the post-Act reciprocal compensation regime for local traffic. Congress expressly preserved the access charge regime in Section 251(g) of the Act. The new reciprocal compensation rules adopted by the Commission did not replace the pre-existing access charge rules. Access charges apply to IXC traffic, while reciprocal compensation applies to local service providers such as LECs, CLECs, and CMRS providers. Furthermore, the reciprocal compensation and access charge regimes cannot apply to the same traffic.

Neither Congress nor the Commission expanded the local calling scope of the ILECs, which is contained in the ILECs' General Exchange Tariffs (i.e. Local tariff or equivalent). Instead, Congress and the Commission clearly preserved the access charge regime and stated that reciprocal compensation does not apply to traffic that was subject to access charges prior to the Act. A landline-originated call that was rated as a toll call and subject to access charges prior to the Act and Commission orders, continues to be rated as a toll call subject to access charges under the Act, and nothing in the Act or the Commission's rules changed this treatment.

It is clear that landline-originated calls to numbers rate-centered outside of the ILEC's local calling scope have been and continue to be interexchange toll calls, and as such the ILECs must route these calls to the presubscribed IXC of the calling end-user customer. The ILECs are obligated to rate and route calls under the federal and state-mandated dialing parity and equal access rules, and the ILECs are obligated to provide originating access to IXCs for interexchange (toll) calls for such traffic.

In the *Local Competition Order*, the Commission defined a CMRS local service area as traffic that originates and terminates within the same MTA for the purpose of compensation only. However, the Commission did not stop at this conclusion without also specifying certain qualifying conditions. Based on the complete reading and understanding of all of the relevant rulings and orders, it is clear that the compensation regime applicable to IXC-carried traffic is access charges and not reciprocal compensation.

The following paragraph from the *Local Competition Order* is often quoted partially by CRMS providers, including Sprint. The ILECs submit that a complete reading of paragraph 1043 confirms that intraMTA CMRS traffic does not automatically activate reciprocal compensation.

> "As noted above, CMRS providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local

service areas. We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges. Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges."[12] (Emphasis Supplied)

This paragraph establishes that access charges continue to apply when they have applied to certain types of traffic existing prior to the Act. In this instance, access charges apply for a call within an MTA when the CMRS provider's NXX is rate centered outside the local calling scope of the ILEC end-user customer. The ILEC must abide by dialing parity and equal access obligations and route this traffic to the end-user customer's preferred or primary IXC.

III. JSI Policy Recommendations

A. JSI urges the Commission to adopt the following policy statements as a reaffirmation of existing Commission policy.

1. ILECs do not have an obligation to treat a call as local based on the rate point designation chosen by a CMRS carrier without appropriate arrangements agreed upon between the ILEC and the CMRS carrier.
2. Any CMRS carrier obtaining an NPA/NXX with the rate center designation (rating point) of an ILEC must designate a point of presence within the ILEC's serving area and establish a direct connection with the ILEC, or reach an agreement for indirect connection and arrange for exchange of traffic in a manner that all carriers involved would be compensated properly for the costs incurred for provision of services provided.
3. Upon an ILEC's determination or selection of direct connection for section 251(a) interconnection with respect to ILEC landline originated traffic, direct connection facilities shall be used to exchange landline originated local service area traffic between the ILEC and the CMRS carrier.
4. When the ILEC does not have a tandem, the homing arrangement for the NPA/NXX may be directed to the LATA tandem. This allows calls from IXCs

[12] *Local Competition Order*, ¶ 1043.

and other local service providers to the NPA/NXX to be transited by the LATA tandem company and completed by the CMRS carrier.

5. Local Service Area for landline originated calls must be in accordance with the ILEC's general subscriber service tariff (*i.e.*, local tariff or equivalent). Landline-originated calls to numbers outside the ILEC's local calling scope (as defined in the ILEC's general subscriber service tariff or equivalent) must be routed to the presubscribed IXC of the customer's choice due to dialing parity and equal access obligations of ILECs. IXC-carried traffic is subject to access charges and is not subject to reciprocal compensation.

These positions are in harmony with the various duties of carriers within the Act, current Commission rules and industry standards. These positions also provide the means whereby an interconnection agreement that seeks a different outcome will identify the party responsible for transport or transit services.

B. The Commission should deny Sprint's petition on the ground that it is based on erroneous facts and misinterpretation of the Commissions rules.

For the reasons stated above, the Commission should deny Sprint's petition on the ground that Sprint misrepresented and misinterpreted the Commission's rules in support of its petition.

C. The Commission should reaffirm its rules that govern intra-MTA traffic. Sprint's petition is based on a misinterpretation of the Commissions rules.

Sprint claims that it is incorrect to suggest that intra-MTA traffic involving a CMRS carrier could be subject to access charges.[13] JSI recommends that the Commission correct Sprints misinterpretation by reaffirming its rules that govern intra-MTA traffic. The Commission has recognized that LEC-CMRS traffic carried by an IXC is subject to access charges and not reciprocal compensation even when this traffic originates and terminates within an MTA. The Commission in its *Local Competition Order* states traffic exchanged between a CMRS carrier and a LEC that originates and terminates within the same MTA is subject to reciprocal compensation, unless carried by an IXC.[14] Sprint's attempt to disregard this language should be rejected by a positive statement from the Commission reaffirming its conclusion in the *Local Competition Order*.

IV. Summary

Sprint's petition for declaratory ruling fails to identify properly the pertinent rules for CMRS interconnection and traffic exchange with ILECs. JSI recommends that the Commission reject Sprint's petition and reaffirm the policies outlined above.

[13] *Sprint Reply in Support of Its Declaratory Ruling Petition, June 6, 2002, Page 4.*
[14] *Local Competition Order*, ¶ 1043.

Respectfully submitted,
John Staurulakis, Inc.

August 8, 2002