

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

* * * * *

CAMBRIDGE TELEPHONE COMPANY	)	Docket Nos. 05-0259
C-R TELEPHONE COMPANY	)	05-0260
THE EL PASO TELEPHONE COMPANY	)	05-0261
GENESEO TELEPHONE COMPANY	)	05-0262
HENRY COUNTY TELEPHONE COMPANY	)	05-0263
MID CENTURY TELEPHONE COMPANY	)	05-0264
REYNOLDS TELEPHONE COMPANY	)	05-0265
METAMORA TELEPHONE COMPANY	)	05-0270
HARRISONVILLE TELEPHONE COMPANY	)	05-0275
MARSEILLES TELEPHONE COMPANY	)	05-0277
VIOLA HOME TELEPHONE COMPANY	)	05-0298
)	
Petitions for Declaratory Relief and/or Suspension or	)	(Cons.)
Modification Relating to Certain Duties under Sections 251 (b))	
and (c) of the Federal Telecommunications Act, pursuant to)	
Section 251(f)(2) of that Act; and for any other necessary or)	
<u>appropriate relief.</u>)	

SPRINT COMMUNICATIONS L.P. D/B/A
SPRINT COMMUNICATIONS COMPANY L.P.'S
BRIEF ON EXCEPTIONS

* * * **ORAL ARGUMENT REQUESTED** * * *

Sprint Communications L.P. d/b/a Sprint Communications Company L.P. (“Sprint”), by and through its attorneys, and pursuant to Section 200.830 of the Commission’s Rules of Practice,¹ respectfully submits, to the Illinois Commerce Commission (“ICC” or “Commission”), its Brief on Exceptions to the Administrative Law Judge’s Proposed Order, filed herein on May 13, 2005 (“Proposed Order”).

¹ 83 Ill. Adm. Code 200.830.

I. INTRODUCTION

The Proposed Order correctly notes, “Sprint and MCC’s interest in competing in certain of the more rural exchanges in Illinois is significant in that it represents one of the first, if not the first, competitive landline ventures into the relevant exchanges.”² However, the Proposed Order soundly discourages “one of the first, if not the first, competitive landline ventures into the relevant exchanges,” despite contending to the contrary that “the Commission in no way wishes to discourage those who would like to offer competitive local exchange services to Illinois’ more rural telephone customers.”

Applying a constrained reading of legacy regulatory concepts, and ignoring the pro-competitive purposes and policies of the Federal Telecommunications Act, the Administrative Law Judge (“ALJ”) has recommended that the Commission issue a declaratory ruling that Sprint is not a telecommunications carrier and that the above-captioned eleven Rural Incumbent Local Exchange Carriers operating in the State of Illinois (collectively, the “Petitioners”), have no duty under Sections 251(b)(2) and (5) of the Federal Telecommunications Act of 1996³ (the “Act”) to negotiate reciprocal compensation or local number portability and no duty under Section 251(c) of the Act to negotiate an agreement⁴ with Sprint for interconnection that would permit Sprint to continue the provision of local telecommunications service elsewhere in Illinois and enable the provision of local telecommunications service in rural incumbent local exchange carriers’ service territories.

² ALJ’s Proposed Order, p 11.

³ 47 U.S.C. §§ 251(b)(2) and (5).

⁴ Sprint has not sought Interconnection under Section 251(c) of the Act.

The ALJ's Proposed Order hinges on an incorrect interpretation of the Act, Federal Communications Commission ("FCC") rules, and case law regarding a determination of whether or not Sprint is a requesting telecommunications carrier under the Act. The Proposed Order particularly relied on an incorrect application of the case of *Virgin Islands Telephone Corporation v. FCC*.⁵ The Commission should reject the ALJ's recommendation because Sprint is a requesting telecommunications carrier, and to find otherwise would be contrary to (1) "the policy of the State of Illinois that the implementation and enforcement of policies that promote effective and sustained competition in all telecommunications service markets should be encouraged."⁶ (2) the pro-competitive purposes of the Act, and (3) this Commission's prior determinations. Sprint respectfully requests that this Commission reverse the proposed determination of the ALJ, and deny the Petitioners' requests for Declaratory Rulings. Instead, the Commission should rule that the Petitioners have a duty to interconnect directly or indirectly with Sprint pursuant to Section 251(l)(a) of the Act.⁷

A. Description of Sprint's Proposed Telecommunications Services

Sprint seeks to interconnect with the Petitioners to offer competitive alternatives in telecommunications services to consumers in rural Illinois through a business model in which Sprint provides telecommunications services to end-users through the marketing efforts of other competitive service providers seeking to offer local voice service. Specifically, in Illinois, Sprint

⁵ 198 F.3rd 921 (D.C. Cir. 1999).

⁶ *Z-Tel Communications, Inc. v. Illinois Bell Telephone Company*, ICC Docket No. 02-0160, Feb. 27, 2002. *See also, In the Matter of Verizon North, Inc.*, ICC Docket No. 02-0560, June 24, 2003; *Citizens Utility Board v. Illinois Bell Telephone Company*, ICC Docket No. 00-0043, Jan. 23, 2001.

⁷ 47 U.S.C. § 251(a)(1).

has entered into a business arrangement with MCC Telephony of Illinois, Inc.⁸ (“MCC”) to support its offering of local and long distance voice services to the general public in the rural service territories of the Petitioners.

Sprint and MCC, an affiliate of Mediacom, have entered into a business relationship pursuant to which Sprint and MCC will jointly provide the network and functions needed for MCC’s competitive telecommunications services including local and long distance service to MCC’s customers within multiple states including Illinois. This relationship enables MCC to enter and compete in the local and long distance voice market without having to “build” a complete telephone company. It allows Sprint to enter and compete in the local and long distance voice markets in the Petitioners’ rural exchanges without having to lease last mile loops or unbundled network elements from the Petitioners. In effect, MCC will outsource much of the network functionality, operations and back-office systems to Sprint. While MCC will provide the “last mile” portion of the network which includes the MCC hybrid fiber coax facilities, the same facilities it uses to provide video and broadband Internet access, Sprint will provide all public switched telephone network (PSTN) interconnection utilizing Sprint’s switch⁹ (MCC does not own or provide its own switching), Sprint’s CLEC status, and the interconnection agreements Sprint has or, provided that the ALJ’s proposed order is rejected, will be negotiating with the rural incumbent local exchange carriers. Service will be provided in MCC’s name and MCC will be responsible for its local network, marketing and sales, end-user billing, customer service and installation. Sprint will provide all number acquisition by using existing numbers or acquiring

⁸ MCC received a Certificate to operate as a provider of resold and facilities-based interexchange and local telecommunications services, statewide in the State of Illinois in ICC Docket No. 04-0601.

new numbers and will provide all number administration functions including the filing of number utilization reports (NRUF) with the North American Numbering Plan Administrator (NANPA). Sprint will perform the porting function whether the port is from the Incumbent Local Exchange Carrier (“ILEC”) or a Competitive Local Exchange Carrier (“CLEC”) to Sprint or vice versa. Sprint will also be responsible for all inter-carrier compensation including exchange access and reciprocal compensation. Sprint will be responsible for such direct end-user services as operator services, directory assistance, and directory assistance call completion. Sprint will also provision 911 circuits to the appropriate Public Safety Answering Points (PSAP) through the ILEC selective routers, perform 911 database administration and negotiate contracts with PSAPs where necessary. Finally, Sprint will place directory listings, on behalf of the end-use customers, in the ILEC or third-party directories. It is clear that Sprint is providing every component of the local service purchased by end users.

The complex nature of providing competitive telephone exchange service can be simplified into five distinct network components: the CLEC local loop (provided by MCC), the end office switch (provided by Sprint), the interconnection trunks (provided by Sprint through its relationships with ILECs), the ILEC switch, and the ILEC loop. The only difference between the market entry model being proposed by Sprint and MCC as compared to a traditional CLEC market entry model, is that the network and functions needed for the telecommunications services are being jointly provisioned and offered under MCC’s name, with Sprint acting as a “silent partner” providing the end office switching and interconnection to the end-users. In

⁹ Sprint will be directly billing interexchange carriers for the any traffic carried to the proposed end users.

effect, Sprint will be offering “telephone exchange service,” as that term is defined in Section 3 of the Act:

Telephone Exchange Service — The term “telephone exchange service” means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunication service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.¹⁰

Sprint has relationships with other cable companies utilizing this same market entry model with Wide Open West, Time Warner Cable, Wave Broadband, Blue Ridge Communications and others not publicly announced serving over 300,000 customers across over a dozen states including Illinois, primarily in territories where regional bell operating companies (“RBOCs”) are the incumbent local exchange carriers (“ILECs”). This model is not new to Sprint or other carriers,¹¹ and is only now being challenged as Sprint attempts to bring competition to the customers of rural local exchange carriers—customers who have no competitive alternatives for land-line telephone service.

II. SPRINT’S MODEL FOR COMPETITION IN RURAL AREAS OF ILLINOIS IS IN THE PUBLIC INTEREST

Congress, the FCC, and this Commission have provided the framework that allows local competition to take many different forms. The Act gives a local exchange carrier the option of

¹⁰ 47 U.S.C. § 153(47).

self-provisioning its service, reselling the telecommunications services of an ILEC or purchasing UNEs from an ILEC, or reselling the telecommunications services of another local exchange carrier.¹² The FCC has recognized the existence of a wholesale or third-party market for various network functions or elements by including their existence in its impairment criteria for ILEC unbundling rules.¹³ Furthermore, the FCC has interpreted the will of Congress to mean it should look for innovative ways to encourage the development of facilities-based local competition by removing regulatory barriers to market entry.¹⁴ Together Congress and the FCC recognize the importance of providing competitive local exchange carriers flexibility in how they deploy their services. This Commission has always been in the forefront in recognizing new and innovative ways of delivering basic local exchange service.¹⁵

A local exchange carrier must provide three network elements or functions in order to provide local service. It must be able to provide a connection to the customer premise, *e.g.*, a

¹¹ Level 3 Communications, LLC and Illinois Bell Telephone Company (SBC Illinois) recently filed, with the Commission, for approval of the first Amendment to their Interconnection Agreement that would effectuate Level 3's ability to use this same market entry model in SBC Illinois territory. *See*, ICC Docket No. 05-0178 (Commission approval is pending, however, Staff has recommended approval of this Amendment).

¹² Sections 251(c)(3) and (4) of the Act allow for resale and unbundling of the ILEC network and Section 251(b)(1) allows for resale of non-incumbent LEC telecommunications services.

¹³ *In the Matter of Unbundled Access to Network Elements*, FCC Docket No. 04-290, Order on Remand, Feb. 4, 2005, including, but not limited to ¶¶ 113, 114, 116, 117, 122, 126, 127, and 134.

¹⁴ FCC 04-267, Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, para. 2 and FCC 05-20 Administration of the North American Numbering Plan, para. 6.

¹⁵ *See e.g.*, 1999 discussion of Cable Telephony in *Illinois Bell Telephone Company: Proposed modifications to terms and conditions governing the provision of special construction arrangements*, ICC Docket No. 98-0770, Order, May 4, 1999; 1985 discussion of Wireless Pay Telephones in *Illinois Bell Telephone Company: Proposed Rates, Rules and Regulations for Customer Provided Pay Telephone Service Applicable in All Exchanges of Illinois Bell Telephone Company*, ICC Docket No. 84-0464, Interim Order, April 24, 1985.

loop. It must provide an end office switching function and it must be able to interconnect to the public switched telephone network. The flexibility provided by the framework of the Act and FCC rules allows a CLEC to provide these three network elements or functions in one of three ways, provide them itself, acquire them from the ILEC or acquire them from a third-party. The latter two can be considered outsourcing. It is consistent with good telecommunications policy to also allow a CLEC to use any combination of self-provisioning and outsourcing to the ILEC or third-party. The option chosen by Sprint and the cable companies it has contracted with is to have the cable company self-provision the local loop and outsource the switching and interconnection services from a third-party, Sprint. The only aspect of this arrangement that is being questioned by the Petitioners is Sprint's right to interconnect with them for the exchange of local traffic.¹⁶ It is inconsistent to allow a competitive local service provider to purchase switching from a third-party while at the same time not allowing that third-party to interconnect for local traffic exchange. Such a restriction would require the competitive local service provider to reinsert itself between the third-party switch and the ILEC..

The chart below illustrates different models for the provision of local exchange service as discussed above. The highlighted section of the chart illustrates the model chosen by Sprint and the cable companies with whom it has contracted. There are numerous examples of federal and state legislative and regulatory public policy/public interest statements supporting innovative forms of local competition including outsourcing. Just as importantly there are no explicit or implicit laws, rules or public policy statements that prohibit any of these models in the context of a service provider seeking to provide basic local service. This suggests that this Commission

¹⁶ As noted above, Sprint has interconnected with RBOCs and large independent ILECs for the purpose of exchanging local traffic for cable company local exchange service end users in

should err on the side of promoting, rather than prohibiting or hindering, innovative forms of market entry.

	Functions necessary to provide local service				
	CLEC Loop	CLEC EO Switching	Interconnection	ILEC EO Switching	ILEC Loop
Alternative Sources	Self Provision	Self Provision	Self Provision	N/A	N/A
	From ILEC	From ILEC	From ILEC	N/A	N/A
	From ILEC	Self Provision	From ILEC	N/A	N/A
	Self Provision	From ILEC	From ILEC	N/A	N/A
	3 rd Party	Self Provision	From ILEC	N/A	N/A
	Self Provision	3 rd Party	3 rd Party	N/A	N/A
	3 rd Party	3 rd Party	3 rd Party	N/A	N/A

The FCC has recognized the introduction of this model into telecommunications competition. In its recent Triennial Review Remand Order, the FCC contemplated and relied upon the presence of a third party market for its impairment analysis. In establishing the high capacity loop and transport impairment trigger analysis, the FCC “evaluate[d] a requesting carrier's ability to utilize third-party alternatives to high-capacity loops, or to self-deploy such loops, to serve particular locations in an economic manner.”¹⁷ The FCC had previously used the presence of alternative local switching providers for the initial Triennial Review Order unbundled switching impairment analysis. The Petitioners in the instant case would have us believe that the FCC considered, and encouraged, 3rd party switching providers, but then would have required the CLEC that purchased the 3rd party switching to interconnect themselves with

Illinois and other states.

¹⁷ *In the Matter of Unbundled Access to Network Elements*, FCC Docket No. 04-290, Order on Remand, Feb. 4, 2005, ¶146.

the ILEC. Such a result would be contrary to public policy of fostering telecommunications competition. Further, and as illustrated in the above table, the competition that Sprint would be bringing to the end-users in the Petitioners' territory would not require the Petitioners to provide unbundled access to network elements; would not require the Petitioners to provide resale of basic local exchange service; and, would not require the Petitioners to provide collocation of equipment necessary for interconnection between the Petitioners' networks and Sprint.¹⁸ Thus, the Petitioners' sole issue with Sprint's proposed telecommunications services, and interconnection, is a fear of competition.

III. THE ALJ MISINTERPRETED AND MISAPPLIED THE *VIRGIN ISLANDS TELEPHONE* DECISION IN ITS DETERMINATION OF THE DEFINITION OF TELECOMMUNICATIONS SERVICES

The ALJ's determination that Sprint is not providing a telecommunications service, as that term is defined in Section 153(46) of the Act,¹⁹ is erroneous. In support of this erroneous result, the ALJ relied almost exclusively on *Virgin Islands Telephone Corporation v FCC*.²⁰ The Proposed Order incorrectly interprets *Virgin Islands Telephone* in concluding that because Sprint is providing its services to a third party rather than providing them directly to the public it is not a telecommunications carrier. In *Virgin Islands Telephone*, the D.C. Circuit Court upheld the FCC's decision to grant AT&T-SSI cable landing rights as a noncommon carrier. Virgin Island Telephone Corporation appealed the decision arguing that the FCC "ignored Congress' clear direction in the 1996 Act to apply a new regime for distinguishing between common carrier and private carrier services" when it found that AT&T-SSI was not a telecommunications carrier

¹⁸ Thus Sprint has not requested Interconnection pursuant to Section 251(c) of the Act.

¹⁹ 47 U.S.C. § 153(46).

²⁰ 198 F.3d 921 (D.C. Cir. 1999) (hereinafter, "*Virgin Islands Telephone*").

under the Act.²¹ The D.C. Circuit disagreed with Virgin Islands Telephone Corporation, finding that it was reasonable for the FCC to interpret “telecommunications services” as essentially the same thing as “common carrier”, and thus governed by the framework previously established in *National Association of Regulatory Utility Commissioners v. FCC*²² (“NARUC I”).

Under the two-prong test established in *NARUC I*, “common carrier status turns on:

- 1) whether the carrier holds ‘himself out to serve indifferently all potential users’; and,
- 2) whether the carrier allows the customers to transmit intelligence of their own design and choosing.”²³

The FCC applied the foregoing test and concluded that ATT-SSI was a private carrier for purposes of its cable landing operations. In upholding the FCC, the D.C. Circuit Court emphasized that the critical issue was whether AT&T-SSI offered its services indiscriminately in a way that made it a common carrier.

Virgin Islands Telephone represented one of the first court interpretations of the terms “telecommunications carrier” and “telecommunications service” as those terms had been introduced by Congress in the Act. The Act defined these two terms as:

The term “telecommunications carrier” means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.²⁴

²¹ *Id.* at 922.

²² 525 F.2d 630 (1976) (NARUC I). This case predates the adoption of the Act.

²³ *United States Telecom Association v FCC*, 295 F.3d 1326, 1329 (D.C. Cir. 2002).

²⁴ 47 U.S.C. § 153(44).

* * * * *

The term “telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.²⁵

The Proposed Order adopts the Petitioners’ arguments that these two terms, plus the test for common carrier status under *NARUC I*, the ALJ and Petitioners argue, determine whether or not the Petitioners should be required “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers,”²⁶ such as Sprint. However, a close examination of the differences between AT&T-SSI, and the submarine cable service, discussed in *Virgin Islands Telephone* and Sprint’s proposed provision of telecommunications services in conjunction with MCC, demonstrates that Sprint is indeed “offering [] telecommunications for a fee . . . to such classes of users as to be effectively available directly to the public.”

In upholding the FCC’s decision in *Virgin Islands Telephone*, the Court noted the FCC’s consideration of “whether a service is effectively available directly to the public depends on the type, nature, and scope of users for whom the service is intended and whether it is available to ‘a significantly restricted class of users.’”²⁷ The FCC found that AT&T-SSI was not offering its service to the general public because it:

will make available bulk capacity in its system to a significantly restricted class of users, including common carrier cable consortia, common carriers, and large businesses. Potential users are further limited because only consortia, common carriers, and large businesses with capacity in interconnecting cables or other facilities and, in many cases, operating agreements with foreign

²⁵ 47 U.S.C. § 153(46).

²⁶ 47 U.S.C. § 251(a)(1).

²⁷ 198 F. 3d at 924.

operators, will be able to make use of the cable as a practical matter.²⁸

The ALJ, without the basis of any evidentiary hearings, incorrectly found that Sprint was likewise situated to AT&T-SSI because, in his opinion, “Sprint is not serving the public directly and instead is providing its services to MCC, which is the entity directly serving the public.”²⁹ The ALJ and the Petitioners erroneously interpreted this to mean “that making telecommunications ‘effectively available directly to the public’ so as to constitute a telecommunications service can not be done through a third-party that is the entity actually/directly serving the public.”³⁰

However, the Proposed Order does not note, nor discuss, the many distinguishing factors between *Virgin Islands Telephone* and the services Sprint proposes to offer. The nature of the services that Sprint seeks to provide in the Petitioners’ territories clearly demonstrates that Sprint will be providing services that will be “effectively available directly to the public” and not to “a significantly restricted class of users,” which the Petitioners imply would be MCC alone. Sprint’s telephone exchange services and other telecommunications services will include the following:

- local telephone service to that subset of the general public consisting of MCC’s cable customers;³¹
- long distance service to local telephone service to that subset of the general public consisting of MCC’s cable customers;
- public switched telephone network (PSTN) interconnection to that subset of the general public consisting of MCC’s cable customers;³²

²⁸ *Id.*

²⁹ ALJ’s Proposed Order, p 11.

³⁰ *Id.*

³¹ Sprint will invoice MCC for this service, and expects that MCC will directly bill the end-user.

- telephone number allocation to that subset of the general public consisting of MCC's cable customers;
- 911 circuits to the appropriate Public Safety Answering Points (PSAP) for that subset of the general public consisting of MCC's cable customers;
- 911 database administration for that subset of the general public consisting of MCC's cable customers;
- directory listings for that subset of the general public consisting of MCC's cable customers;
- ordering of directories for that subset of the general public consisting of MCC's cable customers;
- directory assistance call completion services; and,
- intercarrier compensation functions, including reciprocal compensation for the termination of local telephone calls.³³

Sprint is not offering these services to a significantly restricted class of users, but to the general public, through MCC's cable network. Thus, Sprint falls within the definition of telecommunications provider and Sprint's services fall within the definition of telecommunications service under the Act. In addition, Sprint will be offering exchange access service,³⁴ in its own name. Sprint's offering of Telephone Exchange Service qualifies it as a

³² Sprint will invoice MCC for this service, and expects that MCC will directly bill the end-user.

³³ Sprint fully intends to pay the rural incumbent local exchange carriers for the transport and termination of local telephone calls made from MCC/Sprint's customers to the incumbent's customers. Naturally, Sprint anticipates that this compensation will be reciprocal, as provided for in Section 251(b)(5) of the Act.

³⁴ Defined under the act as "Exchange Access – The term 'exchange access' means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. 153(16).

Telecommunications Carrier. Furthermore, either service, the telephone exchange service or the exchange access service qualifies Sprint as a Local Exchange Carrier.³⁵

If the ruling in the Proposed Order is dependent on a belief that Sprint will be offering its services solely on a wholesale basis, which Sprint disputes, the *Virgin Island Telephone* court specifically rejected the wholesale/retail distinction as a basis for making a determination of whether or not a carrier is a common carrier. The Court found:

[t]he term ‘telecommunications service’ was not intended to create a retail/wholesale distinction . . . neither the Commission nor the courts . . . (have construed) ‘the public’ as limited to end-users of a service . . . the Commission never relied on a wholesale-retail distinction; the focus of its analysis is on whether AT&T-SSI offered its services indiscriminately in a way that made it a common carrier . . . and *the fact that AT&T-SSI could be characterized as a wholesaler was never dispositive.*³⁶

Having established that Sprint may provide telecommunications either on a retail or wholesale basis, the next step is to apply the test enunciated by the FCC and endorsed by the D.C. Circuit court to the services Sprint provides to its potential users, including cable companies such as MCC. As discussed herein, Sprint is a telecommunications carrier because it offers telecommunications indifferently to all its potential users without regulating the content of their communications.

³⁵ Defined under the Act as “Local Exchange Carrier” – The term ‘local exchange carrier’ means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332 (c), except to the extent that the Commission finds that such service should be included in the definition of such term.” 47 U.S.C. 153(26).

³⁶ *Virgin Islands Telephone*, 198 F.3d at 929 (emphasis added).

The Proposed Order also fails to recognize that this very Commission has previously rejected just such a rigid interpretation and application of *Virgin Islands Telephone* in its Arbitration Decision in *SCC Communications Corp. v SBC Communications*.³⁷

B. This Commission Rejected Petitioners' Theories in The Petition of SCC Communications Corp for Arbitration with SBC Communications, Inc.

One of the only state commission decisions to cite *Virgin Island Telephone* in consideration of whether a “non-traditional” telecommunications carrier was entitled to interconnection services from an incumbent carrier was an arbitration decision of this very Commission. In the *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*,³⁸ the Commission dealt with a telecommunications carrier that primarily provides aggregation and transportation that enhances a 9-1-1 call.

In that docket, the Commission considered a similar argument to that made by the Petitioners in the instant proceeding:

Ameritech contends that SCC is not entitled to arbitration under TA 96 because, according to Ameritech, SCC is not a telecommunications carrier, as defined by federal law. Ameritech argues that only agreements between ILECs and telecommunications carriers are arbitrable by state public utility commissions, such as the Illinois Commerce Commission. Ameritech also argues that SCC does not intend to provide traditional dial-up exchange services and it does not offer its services to the public because many of SCC's customers are ILECs and competitive local exchange carriers (“CLECs”). It contends, essentially, that SCC provides wholesale services, not retail services, which, according to Ameritech, are not services offered to the public. Ameritech argues that because SCC does not provide traditional dial-up services, SCC is not seeking interconnection as

³⁷ ICC Docket No. 00-0769, Arbitration Decision, March 21, 2001.

³⁸ ICC Docket No. 00-0769, Arbitration Decision, Mar. 21, 2001.

is defined by federal law, and therefore, SCC is not entitled to arbitration under the 1996 Act.³⁹

The Commission noted in the SCC Arbitration that, “If SCC does not fall within the purview of federal laws defining the telephone services TA 96 governs, this Commission lacks jurisdiction to entertain SCC’s arbitration petition.”⁴⁰ The Commission analyzed the services to be offered by SCC and found that “SCC is a telecommunications carrier. Its services and technology are available on an indiscriminate basis to those entities to whom it can be of use.”⁴¹

The Commission further distinguished *Virgin Islands Telephone* and found that it was not factually on point.

[In *Virgin Island Telephone*] the FCC found that neither prong of the NARUC I test was applicable to AT&T-SSI’s proposed system, because AT&T-SSI’s main service was to provide hardware, lay cable and lease space to cable consortia, common carriers and large businesses with the capacity to interconnect to its proposed cable, on an individualized basis. *Virgin Islands*, 198 F.3d 921-24. Nothing in *Virgin Islands* indicated that the cable laid was regulated in the same manner that SCC is in Illinois where it is certificated, and therefore, must abide by filed tariffs. Moreover, the evidence here established that SCC provides telecommunications services, on an ongoing basis, that facilitate, enhance and advance the provision of emergency services. SCC is continually and indiscriminately transporting 9-1-1 calls for anyone who dials 9-1-1.⁴²

Sprint, like SCC, will be providing “telecommunications services, on an ongoing basis, that facilitate, enhance and advance the provision of” basic local exchange services continually and indiscriminately to any MCC cable customer who chooses to purchase the service. Thus, to be consistent with its prior decision in *SCC*, the Commission must reverse the finding in the

³⁹ ICC Docket No. 00-0769, Arbitration Decision, Mar. 21, 2001, p. 3.

⁴⁰ *Id.* at 4.

⁴¹ *Id.* at 8.

Proposed Order that Sprint is not a telecommunications carrier providing telecommunications services.

C. *United States Telecom Association v. FCC Also Rejected Petitioner’s Rigid Definition of Telecommunications Carrier*

Another case examining whether or not a “non-traditional” carrier was a common carrier under the Act, involved a state telecommunications network in Iowa that had applied for Universal Service support under Section 254 of the Act.⁴³ In *United States Telecom Association v. FCC*,⁴⁴ the D.C. Circuit Court examined whether a restricted audience for a telecommunications carrier’s service would exclude that carrier from common carrier or telecommunications carrier status. The FCC had held that Iowa’s state Communications Network (“ICN”) was a telecommunications carrier based on the *NARUC I* two-prong test. The United States Telecom Association argued:

because Iowa law greatly restricts the universe of the network’s authorized users, ICN fails to satisfy the first prong of the common carrier test: that the carrier hold itself out to serve indifferently “all potential users.” . . . [and that] a carrier cannot satisfy this prong unless it holds itself out to “the public.” *See NARUC I, 525 F.2d at 640.* And ICN’s “class of legally authorized users,” USTA maintains, “is not broad enough to be considered a portion of ‘the public.’”⁴⁵

The Court agreed with the FCC noting that “NARUC I can be read as approving the general rule that a carrier offering its services only to a legally defined class of users may still be a common carrier if it holds itself out indiscriminately to serve all within that class.”⁴⁶ Thus,

⁴² *Id.* at 8.

⁴³ 47 U.S.C. § 254.

⁴⁴ 295 F.3d 1326 (D.C. Cir. 2002).

⁴⁵ *Id.* at 1332.

⁴⁶ *Id.* at 1333.

even if Sprint were offering services directly to MCC, which Sprint maintains it is not exclusively doing, Sprint would still be considered a common carrier, and thus by inference a telecommunications carrier entitled to interconnection because Sprint has relationships with other cable companies utilizing this same market entry model—Wide Wide Open West, Time Warner Cable, Wave Broadband, Blue Ridge Communications and others not publicly announced serving over 300,000 customers across over a dozen states including Illinois.

Sprint offers its services indiscriminately to all entities that are capable of providing their own last mile facilities, *e.g.*, a cable company. Although the terms can vary based on the specific business conditions relating to scale, geographic differences, etc., the terms and conditions being offered to the various service providers are essentially the same. This is further evidenced by the fact that Sprint has entered into agreements with two cable companies that have a small amount of overlap in their serving areas. One company is the incumbent cable operator and the other is a facilities-based over-builder.⁴⁷

In *United States Telecom Association*, the D.C. Circuit also examined the second prong of the *NARUC I* test for common carrier status—“whether the carrier allows the customers to transmit intelligence of their own design and choosing.”⁴⁸ This prong of the test essentially mirrors the definition of Telecommunications in the Act. The Act defines Telecommunications as the transmission, between or among points specified by the user, of information of the user’s choosing without change in the form or content of the information as sent and received.⁴⁹ The D.C. Circuit Court stated in *United States Telecom Association* that this prong of the test is

⁴⁷ See, Patterson Affidavit, attached hereto.

⁴⁸ *United States Telecom Association v FCC*, 295 F.3d 1326, 1329 (D.C. Cir. 2002).

⁴⁹ 47 U.S.C. § 153(43).

intended to confine common carrier status to operators that do not regulate the content of their customers' communications.⁵⁰ Sprint clearly meets this prong of the common carrier test.

D. The Ohio Commission Rejected Petitioners' Rigid Interpretation of the Definition of Telecommunications Carrier and Supports Definition of Sprint As A Telecommunications Carrier

The Proposed Order supports the Petitioners contention that a decision by the Public Utility Commission of Ohio ("PUCO") on a similar issue as in the instant docket "is simply wrong"⁵¹ and dismisses this PUCO decision as "unexplainable."⁵² The Proposed Order apparently overlooks the obvious explanation that the Ohio Commission did not discuss *Virgin Islands Telephone* because it just isn't applicable, as we have shown here.

PUCO's decision rejected the same arguments the Petitioners in this case make and reject those arguments adopted by the ALJ in his Proposed Order. In the PUCO docket,⁵³ similarly situated small rural incumbent LECs sought exemptions under Section 251(f)(1) and (2) of the Act when confronted with an arrangement between MCIMetro Access Transmission Services, LCC, Intermedia Communications, Inc., and Time Warner Cable Information Services (Ohio), LLC similar to the arrangement between Sprint and MCC. PUCO rejected the argument by rural ILECs that since MCIMetro Access would not be providing the interconnected services it sought to negotiate directly to the public, it did not meet the definition of telecommunications carrier under Section 251 of the Act. PUCO found that MCIMetro Access, which provides

⁵⁰ *United States Telecom Association*, 295 F.3d at 1335.

⁵¹ ALJ's Proposed Order, p. 7.

⁵² "The Commission can not explain the PUCO's decision." *Id.* at 11.

⁵³ *In the Matter of the Application and Petition in Accordance With Section II.A.2.b. of the Local Guidelines Filed by: The Champaign Telephone Company et al. 04-1494-TP-UNC et seq., Finding and Order, January 26, 2005; Order on Rehearing, April 13, 2005.*

telecommunications services to cable companies was entitled to interconnect with the petitioning rural ILECs observing that:

MCI is a certificated carrier in the state of Ohio. As such, MCI is a provider of telecommunications services and is qualified to submit an interconnection request to Applicants. Further, the Commission finds that MCI is acting in a role no different than other telecommunications carriers whose network could interconnect with Applicants so that traffic is terminated to and from each network and across networks. Therefore, the Commission disagrees with Applicants that MCI is not a telecommunications carrier and that Applicants have no duty to interconnect with MCI.⁵⁴

Moreover, in its recent Order on Rehearing dated April 13, 2005, the PUCO denied rehearing on the issue of whether MCI was providing telecommunications service. The Order on Rehearing states as follows:

The Commission denies rehearing on Applicants' fifth assignment of error. The Commission agrees with Applicants that 47 U.S.C. § 251(a)(1) and (c)(2) require Applicants to interconnect with other "telecommunications carriers" and that 47 U.S.C. §153(44) defines a "telecommunications carrier" as "any provider of telecommunications services." The Commission also observes, as do Applicants, that the 47 U.S.C. §153 definition of "telecommunications service" is "the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available to the public, regardless of the facilities used." Applying this definition to MCI and its BFR, the Commission notes that MCI will doubtless collect a fee for providing telecommunications via interconnection with Applicants. Further, MCI's arrangements with Time Warner will make the interconnection and services that MCI negotiates with Applicants

⁵⁴ *In the Matter of the Application and Petition in Accordance With Section II.A.2.b. of the Local Guidelines Filed by: The Champaign Telephone Company et al. 04-1494-TP-UNC et seq., Finding and Order, January 26, 2005, ¶ 7.*

“effectively available to the public, regardless of the facilities used.”⁵⁵

Like MCI, Sprint will be providing interconnection, for a fee, to access the PSTN. Also, like MCI, Sprint’s proposed interconnection agreement with the Petitioners places Sprint in the same position as other intermediate carriers whose interconnections terminate traffic to and from each network and across networks. Accordingly, the Petitioners have a duty to interconnect with Sprint and to fulfill their obligations under Section 251(b) of the Act. The Commission should reverse the Proposed Order.

E. *Qwest Communications Corp v. City of Berkeley* Also Rejected a Rigid Definition of Telecommunications Provider

In *Qwest Communications Corp. v. City of Berkeley*,⁵⁶ Qwest challenged a City Telecommunications Ordinance that purported to regulate telecommunications services using public rights of ways on the grounds that such would be preempted by the Act. The City filed a motion to dismiss, arguing that because Qwest was serving a single customer in the city, Lawrence Berkeley National Laboratory (“LBN Laboratory”), Qwest was not a telecommunications carrier under the Act and thus the Act did not apply. The City rationalized that because Qwest’s contract with LBN Laboratory resulted from a competitive bidding process – which suggests that the business decision was intended to make individualized business decision – it did not involve telecommunications services under the standards established in *NARUC I* and *Virgin Islands Telephone*. The Court disagreed and found that it was permissible

⁵⁵ *In the Matter of the Application and Petition in Accordance With Section II.A.2.b. of the Local Guidelines Filed by: The Champaign Telephone Company et al. 04-1494-TP-UNC et seq., Order on Rehearing, April 13, 2005, ¶15.*

⁵⁶ 146 F. Supp. 2d 1081 (N.D. Cal 2001).

to enter into separate agreements with customers and maintain a carrier's status as a "telecommunications" or "common carrier."

The City focuses too narrowly on the type of service Qwest is offering to LBN Laboratory. Common carrier service does not require that the particular services offered be made practically available to the entire public. "[A] specialized carrier [**30] whose service is of possible use to only a fraction of the population may nonetheless be a common carrier if he holds himself out to serve indifferently all potential users" Consequently, the fact that the LBN Laboratory contract resulted from a competitive bidding process and contemplates tailored services does not mean that Qwest intends to offer non-common carrier services. (A common carrier may enter into separate agreements with each of its customers if it does not charge negotiated individual rates and terms); ("A common carrier may supplement its generic offerings with offerings that are designed to meet the needs of a particular customer or limited number of customers without violating the unreasonable discrimination prohibition if that carrier makes that more customized offering available to anyone who might find it useful and the offering is not otherwise unlawfully discriminatory.")⁵⁷

Thus, as long as Sprint offers its services indiscriminately to entities that are capable of providing their own last mile facilities, *e.g.*, a cable company, it may enter into separate agreements with users and maintain its status as a common carrier.

F. The FCC's Determination in Regarding the Provision of Directory Listing Information Under the Act Supports Sprint's Position That it is Entitled to Interconnection

Moreover, a ruling by the FCC, regarding the provision of directory listing information under the Act, supports Sprint's position that it is a telecommunications carrier entitled to interconnection services under Section 251 (b)(2). Specifically, the FCC held that a directory assistance providers' provision of "call completion" entitled the provider to nondiscriminatory directory assistance database access under §251(b)(3), whether or not the provider was certified

⁵⁷ *Id.* at 1096 (citation omitted).

by the state as a CLEC.⁵⁸ Given that Sprint will be providing much more extensive telecommunications services than the directory assistance provider in the FCC ruling, Sprint is a telecommunications carrier, entitled to interconnection under Section 251 (a) and number portability and reciprocal compensation under Section 251(b) of the Act.

IV. ILLINOIS LAW SUPPORTS INTERCONNECTION BETWEEN SPRINT AND THE RURAL ILEC PETITIONERS.

Not only does Sprint qualify as a telecommunications carrier providing telecommunications services under federal law, it also qualifies under state law. In this regard,

“Telecommunications carrier” means and includes every corporation...that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in the provision of, telecommunications services between points within the State which are specified by the user. . . ⁵⁹

Moreover, Section 203 of the Universal Telephone Service Protection Law of 1985 provides:

“Telecommunications service” means the provision or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of information, by means of electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission and also includes access and interconnection arrangements and services.⁶⁰

⁵⁸ *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC-Docket No. 99-273, First Report and Order, 2001 FCC Lexis 473, ¶ 18 (2001).

⁵⁹ 220 ILCS 5/13-202.

⁶⁰ 220 ILCS 5/13-203.

Sprint’s proposed service offerings clearly fall within the definitions above. Moreover, there is nothing in this language to suggest that telecommunications services must be provided by an “ultimate provider to end-users” as the Petitioners suggest. The focus of both the state and federal definitions of telecommunications services is primarily upon the services being provided rather than the provider of those services. Since Sprint is providing telecommunications services, the Petitioners have a duty to interconnect directly or indirectly with Sprint and to fulfill their duties as enumerated in Section 251(b) of the Act. While unwilling to interconnect with Sprint, several of the Petitioners, as well as other Illinois rural LECs are willing to interconnect with other carriers, including Sprint Spectrum, L.P. – IL and Sprint PCS. And, in fact the rural LECs have initiated such interconnection negotiation.⁶¹

The Proposed Order concludes with the statement:

. . . the Commission in no way wishes to discourage those who would like to offer competitive local exchange services to Illinois’ more rural telephone customers. Nor should this statement or any other aspect of this Order, however, be construed as an indication as to how the Commission would rule on a future request for a suspension or modification pursuant to Section 251(f)(2) of the Federal Act. The Commission continues to urge all Illinois telecommunications carriers to cooperate in providing competitive telecommunications services to consumers.⁶²

Yet the Proposed Order fails to acknowledge that the Illinois General Assembly has implicitly charged this Commission with the fostering of competition. A failure to look beyond the constrained reading of legacy regulatory concepts to find that Sprint is entitled to interconnection with the Petitioners is in opposition to the General Assembly’s finding that

⁶¹ Requests for negotiations initiated by Petitioners, MidCentury Telephone Company and Marseilles Telephone Company, as well as rural LECs LaHarpe Telephone Company, McDonough Telephone Cooperative, and McNabb Telephone Co., are attached hereto as Attachment A.

“protection of the public interest requires changes in the regulation of telecommunications carriers and services to ensure, to the maximum feasible extent, the reasonable and timely development of effective competition in all telecommunications service markets.”⁶³

It cannot be disputed that no effective competition for landline service has developed in Petitioners’ service territory. It is the policy of the State of Illinois that,

“consistent with the protection of consumers of telecommunications services and the furtherance of other public interest goals, competition in all telecommunications service markets should be pursued as a substitute for regulation in determining the variety, quality and price of telecommunications services and that the economic burdens of regulation should be reduced to the extent possible consistent with the furtherance of market competition and protection of the public interest.”⁶⁴

Based on this policy, this Commission is obligated to refrain from taking overt steps to hinder the development of competition, which would be the result of the adoption of the Proposed Order.

⁶² ALJ’s Proposed Order, p 11.

⁶³ 220 ILCS 5/13-102(g) (2005).

⁶⁴ 220 ILCS 5/13-103(b) (2004).

V. CONCLUSION

WHEREFORE, Sprint respectfully requests that the Illinois Commerce Commission issue an order declaring that Sprint is a telecommunications carrier providing telecommunications services under both federal and Illinois law, and that, accordingly, the Petitioners are required under law to provide interconnection to Sprint for the provision of telecommunications services to other service providers. Sprint also respectfully requests that the Commission substitute Sprint's proposed order, attached hereto, for the ALJ's Proposed Order and require the Petitioners to enter into interconnection agreements with Sprint.

Respectfully submitted,

CLARK HILL PLC

By:

Kenneth A. Schiffman, Esq.
Monica M. Barone, Esq.
Mailstop: KSOPHN0212-2A303
Sprint
6450 Sprint Parkway
Overland Park, KS 66251

Karen R. Sistrunk, Esq.
Jennifer A. Duane, Esq.
Sprint
401 9th Street NW, Suite 400
Washington, D.C. 20004

E-Mail: kenneth.schifman@mail.sprint.com
monica.barone@mail.sprint.com
jennifer.a.duane@mail.sprint.com
karen.r.sistrunk@mail.sprint.com

Roderick S. Coy, Esq.
Brian M. Ziff, Esq. (ARDC No. 6239688)
Haran C. Rashes, Esq.
212 East Grand River Avenue
Lansing, Michigan 48906-4328
(517) 318-3100
(517) 318-3099 Fax

E-Mail: rcoy@clarkhill.com
hrashes@clarkhill.com
bziff@clarkhill.com

Attorneys For
Sprint Communications L.P. d/b/a
Sprint Communications Company L.P.

Date: May 19, 2005

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

* * * * *

CAMBRIDGE TELEPHONE COMPANY	)	Docket Nos. 05-0259
C-R TELEPHONE COMPANY	)	05-0260
THE EL PASO TELEPHONE COMPANY	)	05-0261
GENESEO TELEPHONE COMPANY	)	05-0262
HENRY COUNTY TELEPHONE COMPANY	)	05-0263
MID CENTURY TELEPHONE COMPANY	)	05-0264
REYNOLDS TELEPHONE COMPANY	)	05-0265
METAMORA TELEPHONE COMPANY	)	05-0270
HARRISONVILLE TELEPHONE COMPANY	)	05-0275
MARSEILLES TELEPHONE COMPANY	)	05-0277
VIOLA HOME TELEPHONE COMPANY	)	05-0298
)	
Petitions for Declaratory Relief and/or Suspension or	)	(Cons.)
Modification Relating to Certain Duties under Sections 251 (b))	
and (c) of the Federal Telecommunications Act, pursuant to)	
Section 251(f)(2) of that Act; and for any other necessary or)	
<u>appropriate relief.</u>)	

SPRINT COMMUNICATIONS L.P. D/B/A
SPRINT COMMUNICATIONS COMPANY L.P.'S
BRIEF ON EXCEPTIONS

ATTACHMENT A

REQUESTS FOR INTERCONNECTION FROM PETITIONERS



MID CENTURY TELEPHONE COOPERATIVE

1055 W LOCUST • P.O. BOX 479 • CANTON, IL 61520 • 877-643-2368 • FAX 309-783-3297
MORE THAN A TELEPHONE COMPANY

April 21, 2005

Karen Riepenkroger
Sprint PCS
6000 Sprint Parkway
Overland Park, KS 66251

Dear Ms. Riepenkroger:

Mid Century Telephone Cooperative, Inc. hereby requests commencement of negotiations of a traffic compensation agreement with Sprint PCS pursuant to Section 251(b) of the Telecommunications Act of 1996. Also, Mid Century Telephone Cooperative, Inc. requests interim transport and termination pricing pursuant C.F.R., Title 47, Section 51.715, as recently allowed by the FCC in CC Docket No. 01-92 through modification to C.F.R., Title 47, Section 20.11.

Under an agreement pending resolution of NEGO or arbitration.

Please respond to this letter within 10 business days indicating the name and contact information for the person(s) who will be responsible for negotiations on behalf of Sprint PCS.

Sincerely,

Russell D. Schrodt
General Manager

what this say

April	5
MAY	31
June	30
July	31
August	31
<hr/>	
	128
9-	7
<hr/>	
	135

THH THH THH THH

-05



MARSEILLES TELEPHONE COMPANY

4-27-05

244 LINCOLN ST. • MARSEILLES, IL 61341-0247
815-795-5161 • 800-227-5161
FAX 815-795-6515
EMAIL: info@mtco.com

April 27, 2005

Karen Riepenkroger
Sprint Spectrum L.P. - IL
6000 Sprint Parkway
KSOPHP0502
Overland Park, KS 66251

9-14-05
135 = 9-9-05
160 = ~~10-4-05~~
10-9-05

Dear Ms. Riepenkroger:

Marseilles Telephone Company (Marseilles) hereby requests commencement of negotiations of a traffic compensation agreement with Sprint Spectrum L.P. - IL pursuant to Section 251(b) of the Telecommunications Act of 1996. Also, Marseilles requests interim transport and termination pricing pursuant C.F.R., Title 47, Section 51.715, as recently allowed by the FCC in CC Docket No. 01-92 through modification to C.F.R., Title 47, Section 20.11.

Please respond to this letter within 10 business days indicating the name and contact information for the person(s) who will be responsible for negotiations on behalf of Sprint Spectrum L.P. - IL.

Sincerely,

Ann E. Dickerson
Chief Financial Officer

LaHarpe Telephone Company, Inc.

4-28-05

104 North Center Street
P.O. Box 462
LaHarpe, Illinois 61450

ph. 217-659-7721
fx. 217-659-7727

April 28, 2005

135 = 9-14-05
160 = 10-8-05
9

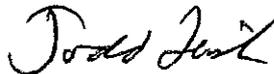
Karen Riepenkroger
Sprint PCS
6000 Sprint Parkway
Overland Park, KS 66251

Dear Ms. Riepenkroger:

LaHarpe Telephone Company, Inc. (LTC) hereby requests commencement of negotiations of a traffic compensation agreement with Sprint Spectrum L.P.-IL (SPRINT) pursuant to Section 251(b) of the Telecommunications Act of 1996. Also, LTC requests interim transport and termination pricing pursuant C.F.R., Title 47, Section 51.715, as recently allowed by the FCC in CC Docket No. 01-92 through modification to C.F.R., Title 47, Section 20.11.

Please respond to this letter within 10 business days indicating the name and contact information for the person(s) who will be responsible for negotiations on behalf of SPRINT.

Sincerely,



Todd Irish
President



4-28-05

Norman T. Welker, President

P.O. Box 359 • Colchester, Illinois 62326 • 309/776-3211 • Fax: 309/776-3299 • www.mdtc.net

April 28, 2005

VIA FEDEX NEXT DAY

KAREN RIEPENKROGER
SPRINT PCS
6000 SPRINT PARKWAY
OVERLAND PARK, KS 66251

135 = 9¹⁴-10-05
160 = 10⁹-8-05

Dear MS. Riepenkroger:

McDonough Telephone Cooperative (McDonough) hereby requests commencement of negotiations of a traffic compensation agreement with Sprint PCS Wireless Company (Sprint) pursuant to Section 251(b) of the Telecommunications Act of 1996. Also, McDonough Telephone requests interim transport and termination pricing pursuant C.F.R., Title 47, Section 51.715, as recently allowed by the FCC in CC Docket No. 01-92 through modification to C.F.R., Title 47, Section 20.11.

Please respond to this letter within 10 business days indicating the name and contact information for the person(s) who will be responsible for negotiations on behalf of Sprint.

Sincerely,
McDonough Telephone Cooperative

A handwritten signature in cursive script that reads 'Norman T. Welker'.

Norman T Welker, President

"Our service . . . a reflection and a pledge"

NTCA 
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
MEMBER

4-26-05

MC NABB TELEPHONE CO

April 26, 2005

135 = 9-8-05
160 = 10-3-05

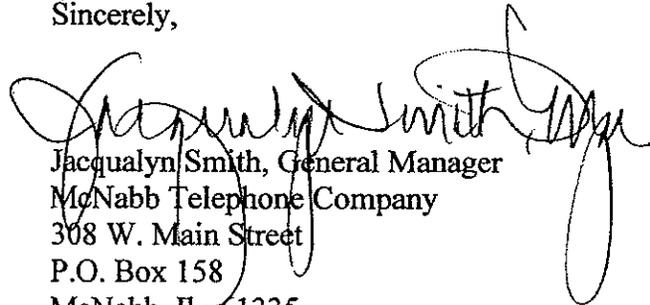
Karen Riepenkroger
Sprint PCS
6000 Sprint Parkway
Overland Park, KS 66251

Dear Ms Riepenkroger:

McNabb Telephone Company hereby requests commencement of negotiations of a traffic compensation agreement with Sprint PCS pursuant to Section 251(b) of the Telecommunications Act of 1996. Also, McNabb Telephone Company requests interim transport and termination pricing pursuant C.F.R., Title 47, Section 51.715, as recently allowed by the FCC in CC Docket No. 01-92 through modification to C.F.R., Title 47, Section 20.11.

Please respond to this letter within 10 business days indicating the name and contact information for the person(s) who will be responsible for negotiations on behalf of Sprint PCS.

Sincerely,


Jacquelyn Smith, General Manager
McNabb Telephone Company
308 W. Main Street
P.O. Box 158
McNabb, IL 61335

308 W. Main Street
P.O. Box 158
McNabb, IL 61335

Phone: 815-882-2201
Fax: 815-882-2141
Email: jsmith@nabbnet.com

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

* * * * *

CAMBRIDGE TELEPHONE COMPANY	)	Docket Nos. 05-0259
C-R TELEPHONE COMPANY	)	05-0260
THE EL PASO TELEPHONE COMPANY	)	05-0261
GENESEO TELEPHONE COMPANY	)	05-0262
HENRY COUNTY TELEPHONE COMPANY	)	05-0263
MID CENTURY TELEPHONE COMPANY	)	05-0264
REYNOLDS TELEPHONE COMPANY	)	05-0265
METAMORA TELEPHONE COMPANY	)	05-0270
HARRISONVILLE TELEPHONE COMPANY	)	05-0275
MARSEILLES TELEPHONE COMPANY	)	05-0277
VIOLA HOME TELEPHONE COMPANY	)	05-0298
)	
Petitions for Declaratory Relief and/or Suspension or	)	(Cons.)
Modification Relating to Certain Duties under Sections 251 (b))	
and (c) of the Federal Telecommunications Act, pursuant to)	
Section 251(f)(2) of that Act; and for any other necessary or)	
<u>appropriate relief.</u>)	

SPRINT COMMUNICATIONS L.P. D/B/A
SPRINT COMMUNICATIONS COMPANY L.P.'S
BRIEF ON EXCEPTIONS

ATTACHMENT B

AFFIDAVIT OF JAMES PATTERSON

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

* * * * *

CAMBRIDGE TELEPHONE COMPANY	)	Docket Nos. 05-0259
C-R TELEPHONE COMPANY	)	05-0260
THE EL PASO TELEPHONE COMPANY	)	05-0261
GENESEO TELEPHONE COMPANY	)	05-0262
HENRY COUNTY TELEPHONE COMPANY	)	05-0263
MID CENTURY TELEPHONE COMPANY	)	05-0264
REYNOLDS TELEPHONE COMPANY	)	05-0265
METAMORA TELEPHONE COMPANY	)	05-0270
HARRISONVILLE TELEPHONE COMPANY	)	05-0275
MARSEILLES TELEPHONE COMPANY	)	05-0277
VIOLA HOME TELEPHONE COMPANY	)	05-0298

Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under Sections 251 (b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for any other necessary or appropriate relief. (Cons.)

AFFIDAVIT OF JAMES D. PATTERSON
ON BEHALF OF SPRINT COMMUNICATIONS COMPANY, L.P.
D/B/A SPRINT COMMUNICATIONS COMPANY, L.P.

James D. Patterson being duly sworn upon oath, deposes and states as follows:

- I am employed by Sprint as Vice President – Carrier & Wholesale Markets a position I have held since October 2003. In this role, I am responsible for providing solutions to wholesale and carrier customers that leverage Sprint’s diverse portfolio. This included the role of purchaser and planner of access solutions for Sprint, including Special Customer Arrangements, Sprint’s Metropolitan Area Network (MAN) planning, Carrier Hotel planning, Access Communications, Directional Planning, and Regulatory & Local Exchange Carrier Management. In 2005, I acquired the responsibility for the Cable

Solutions segment as well. By utilizing a combination of wireline and wireless assets, Sprint is uniquely positioned to partner with the cable industry. Prior to this, I was the Finance Officer for Sprint E|Solutions, where I oversaw integration of the Parinet (professional services) financial operations, managed special pricing for IP hosting and professional services products, and supported the negotiation of several large account acquisitions and renewals. I have also held director positions in Finance and Program Management in my 11 years at Sprint. Prior to joining Sprint, I was a consultant with Andersen Consulting (now Accenture), where I specialized in designing, installing and maintaining operating systems for the financial services industry. I hold a bachelor's degree in economics from Davidson College, an MBA from the University of Virginia, and have studied British literature and economic history at Cambridge University.

2. The purpose of my affidavit is to describe Sprint's cable initiative, to advise the Illinois Commerce Commission that Sprint offers its services indifferently to all service providers including cable companies in the state of Illinois and that Sprint does not alter the content of the communications in question in any manner.
3. Sprint's cable initiative is an undertaking in which Sprint is seeking strategic relationships with service providers, including cable companies, whereby Sprint and the service provider combine resources and capabilities to offer consumers a compelling competitive choice for local and long distance service. This market entry model has seen tremendous success over the past several months, as demonstrated by the success of signing up over 300,000 subscribers nationwide. Sprint currently has agreements with two cable companies serving Illinois. These

two companies serve over 830,000 households in over 100 communities within the state of Illinois, each of which will benefit from being offered a facilities-based alternative to the incumbent local exchange provider.

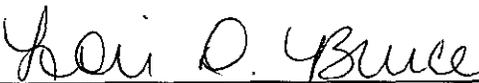
4. Sprint offers its telecommunications services indifferently to entities that are capable of providing their own last mile facilities, e.g., a cable company. Although the terms can vary based on the specific business conditions relating to scale, geographic differences, etc., the terms and conditions being offered to the various service providers are essentially the same. Sprint's indifference is evidenced by the fact that Sprint has entered into agreements with two cable companies that have a small amount of overlap in their serving areas. One company is the incumbent cable operator and the other is a facilities-based over-builder. Sprint has also proposed solutions to companies where there was considerable overlap in serving areas. As further evidence that Sprint offers its service indifferently, Sprint has existing agreements with cable companies serving within Sprint's own incumbent local exchange carrier franchise territory.
5. The telecommunications service Sprint provides does not alter the content of the voice communications between end users. There may be the requirement for the use of different technologies or protocols as the voice communications traverses the network from source to destination, but the fact remains that the voice that is spoken on one end is the voice that is heard on the other end.
6. This concludes my Affidavit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


James D. Patterson

COUNTY OF JOHNSON)
) ss:
STATE OF KANSAS)

SUBSCRIBED AND SWORN BEFORE ME this 19th day of May, 2005.


Notary Public

My commission expires: NOV. 13 2008

