

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 appropriate relief.)	

SPRINT COMMUNICATIONS L.P. D/B/A
SPRINT COMMUNICATIONS COMPANY L.P.'S
RESPONSE IN OPPOSITION
TO APPLICATIONS FOR RECONSIDERATION AND REHEARING

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Sprint Communications L.P. d/b/a Sprint Communications Company L.P. (“Sprint”), by and through its attorneys, respectfully submits, to the Illinois Commerce Commission (“ICC” or “Commission”), its Response in Opposition to Applications for Reconsideration and Rehearing filed by Petitioners Metamora Telephone Company, Harrisonville Telephone Company, Marseilles Telephone Company, and Viola Home Telephone Company (“Applicants”), filed on August 11 and 12, 2005.¹

I. SUMMARY OF ARGUMENTS

The Applications for Reconsideration and Rehearing merely restate the same arguments that the Commission ruled upon and argues, for the first time, that the Applicants were denied due process because the Commission relied on the record in this proceeding in denying the Applicants’ request for a declaratory ruling. The record in this proceeding is clear and demonstrates that 1) Sprint is a telecommunications carrier; 2) Sprint intends to effectively provide service on an indiscriminate and indifferent basis to a sufficient class of end-user, 3) the Public Interest supports interconnection between Sprint and the Applicants; 4) Section 251 of the Federal Telecommunications Act requires carriers to interconnect on a direct and indirect basis;

¹ Viola Home Telephone Company filed its Application on August 11, 2005. Metamora Telephone Company, Harrisonville Telephone Company, and Marseilles Telephone Company filed a joint Application on August 12, 2005. Petitioners Cambridge Telephone Company, C-R Telephone Company, The El Paso Telephone Company, Geneseo Telephone Company, Henry County Telephone Company, Mid Century Telephone Company, and Reynolds Telephone Company filed a Petition for Reconsideration on August 5, 2005. Sprint filed a separate response to that Petition for Reconsideration on August 11, 2005.

5) the *Vonage Order* is inapplicable to this proceeding, and 6) Sprint will not be providing Internet Access or Internet based services.

Sprint respectfully requests that the Illinois Commerce Commission issue an order denying the Applicants' request for Reconsideration and uphold its Declaratory Ruling that found "that because Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. is a 'telecommunications carrier,' Petitioners have an obligation to negotiate with Sprint Communications, L.P. d/b/a Sprint Communications Company L.P., or any similarly situated entity, under subsections (a) and (b) of Section 251 of the Federal Telecommunications Act."²

II. INTRODUCTION

In its Order of July 13, 2005,³ the Commission noted that, "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."⁴ In early 2005 Sprint made a request to each of the Petitioners seeking, under Sections 251(b)(2) and (5) of the Federal Telecommunications Act of 1996⁵ (the "Act"), to negotiate terms and conditions for interconnection, reciprocal compensation, and local number portability that would permit Sprint to provide competitive local telecommunications services in the Petitioners' rural local exchange service territories.

Rather than negotiate with Sprint, the Applicants responded by delaying. This delay included filing, with the Commission, Petitions for Suspension or Modification or in the

² Order, p 15.

³ An Administrative amendment to the Order was made on July 19, 2005. This Amendment did not substantively modify the conclusions or holding of the Commission.

⁴ Order, p 11.

⁵ 47 U.S.C. §§ 251(b)(2) and (5).

Alternative for Declaratory Rulings (“Petitions”), pursuant to Section 200.220 of the Commission’s Rules⁶ and Section 251(f)(2) of the Act,⁷ requesting that the Commission find that they had no duty to negotiate with Sprint, because, in their opinion, Sprint was not a telecommunications carrier and, in their opinion, Sprint would “not be providing the interconnected services it seeks to negotiate directly to the public.”⁸ The Commission reached a different conclusion.

The Commission, recognizing that the Petitioners, by filing under Section 251(f)(2) of the Act, had given the Commission a very tight time table in which to issue a decision,⁹ specifically found that “given the manner in which Sprint proposes to serve MCC [Mediacom Communications Corporation], Sprint is a telecommunications carrier in this instance with which Petitioners must negotiate under subsections (a) and (b) of Section 251 of the Federal Act.”¹⁰ The Commission based this conclusion on an extensive analysis of controlling case law and statute, based on extensive briefing by the parties, affidavits provided by Sprint, and oral arguments held before the full commission on June 9, 2005. “In accordance with Section 200.220(h) of the Commission’s rules, the Commission dispose[d] of the requests for the declaratory rulings on the basis of the written submissions before it and the June 9, 2005 oral

⁶ 83 Ill. Adm. Code 200.220.

⁷ 47 U.S.C. § 251(f)(2).

⁸ Applicants’ Petitions, ¶ 27. (The Applicants’ Petitions were virtually identical. For reference purposes quotations from the Petitions will be to the April 20, 2005 Petition of Metamora Telephone Company, Docket No. 05-0270.)

⁹ Under Section 251(f)(2) the Commission was given 180 days to make its determination regarding the Petitioners’ suspension argument. The decision on the Declaratory Ruling was a prerequisite to any potential suspension or modification ruling. Thus the Petitioners, by statute, placed the Commission in a position where it had to complete this proceeding by October 17, 2005.

¹⁰ Order, p. 14.

argument.”¹¹ Now, Petitioners seek more delay by filing Applications for Rehearing and Reconsideration.

Section 200.880(c) of the Commission’s rules requires that “if an application for rehearing alleges new facts, then the application must be filed with a verification. A verification need not be filed with an application for rehearing if the application does not allege new facts.”¹² While Viola’s Application was verified, it makes no reference to any new facts that were not already presented to the Commission. Metamora, Harrisonville, and Marseilles’ Application is unverified and fails to produce any new evidence. The Applications merely restate the same arguments that the Commission ruled upon and argues, for the first time, that the Applicants were denied due process. Thus the Applicants have failed to satisfy the standard for rehearing, even if such were available to them (which it is not), and the Applications should be denied.

III. ARGUMENT

The Applications argue that the Commission’s conclusion that Sprint is a telecommunications is wrong as a matter of law and were allegedly reached in violation of the Applicants’ due process. As further discussed below, the Petitioners’ arguments are incorrect and inappropriately placed before this Commission. Sprint respectfully requests that the Commission dismiss the Petition for Reconsideration and deny the relief requested therein.

A. The undisputed record evidence in this proceeding demonstrates that Sprint intends to provide service on an indiscriminate or indifferent basis.

The Applicants argue that they were denied due process because the Commission relied on Section 220(h): “the Commission may in its sole discretion dispose of a request for a

¹¹ Order, pp. 2-3.

¹² 83 Ill. Adm. Code 200.880(c)

declaratory ruling solely on the basis of the written submissions filed before it.”¹³ *Metamora, et al.*, argues in its petition that this means that:

the Commission made its final decision without taking any evidence and without providing the Petitioners the opportunity to conduct discovery, present evidence in support of their Petitions, and challenge the allegations made by Sprint in the affidavits attached to its responses and other submissions in the prehearing portions of the case.¹⁴

However, the Applicants fail to recognize that the Commission based its decision on the extensive record in this case. As Section 10-13 of the Public Utilities Act provides,

In all proceedings, investigations or hearings conducted by the Commission, except in the disposition of matters which the Commission is authorized to entertain or dispose of on an ex parte basis, any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case, which shall include only the transcript of testimony and exhibits together with all papers and requests filed in the proceeding, including, in contested cases, the documents and information described in Section 10-35 of the Illinois Administrative Procedure Act.¹⁵

The only sworn evidence filed in this proceeding were two signed and sworn affidavits entered by Sprint; one executed on April 28, 2005 by James R. Burt, Sprint’s Director-Regulatory Policy; and, an additional affidavit executed on May 19, 2005, by James D. Patterson, Sprint’s Vice President – Carrier and Wholesale Markets. These affidavits were filed along with, and as part of, Sprint’s pleadings in this docket and thus are part of the record upon which the Commission based its conclusions.¹⁶

¹³ 83 Ill. Adm. Code 200.880(c).

¹⁴ *Metamora, et al.*, Application, p 6.

¹⁵ 220 Ill. Comp. Stat. 10-13 (emphasis added).

¹⁶ 83 Ill Adm. Code 200.700.

The sworn, and undisputed, statements made in these affidavits must be taken at face value by the Commission. The Petitioners could have submitted counter-affidavits but neglected to do so. Section 200.220(g) of the Commission’s rules arguably even required the Petitioners to have filed their own affidavits, if they wanted to make any allegations of fact.¹⁷ Now, having failed in their request for a declaratory ruling, the Applicants seek to delay by, for the first time, arguing that they were denied further by asking to submit evidence that they could have submitted earlier. In its affidavits, Sprint notes that it is providing the proposed telecommunication services through “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 300,000 customers across over a dozen states including Illinois.”¹⁸ As Mr. Patterson stated, under oath:

“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 overbuilder. 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.”

Though the evidence offered by Sprint, which is part of the Commission record, overwhelmingly, and without contradiction, demonstrates that Sprint proposes to offer its service

¹⁷ 83 Ill. Adm. Code 200.220(g).

¹⁸ Burt Affidavit, ¶ 3.

on an indiscriminate and indifferent basis, the Applicants argue otherwise because, at times, the terms that Sprint and the underlying last mile provider enter into can vary based on the specific business conditions relating to scale, geographic differences, etc.. However, 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.¹⁹

The Applicants also argue that the Commission should have taken evidence in this proceeding and held a contested case. Such an argument ignores the Petitioners' previous position on this very issue, in which the Applicants noted to the Commission that "the Administrative Law Judge has given the parties a full and fair opportunity to express their positions."²⁰ Further, the Petitioners, in choosing to file a Petition for Declaratory Ruling, were aware that the Commission could "in its sole discretion dispose of a request for declaratory ruling solely on the basis of the written submissions filed before it."²¹ Though the Petitioners had numerous opportunities to file affidavits in this proceeding, they did not, and Sprint postures, could not, file affidavits that contradict the fact, contained in Sprint's Affidavits, that Sprint will be offering its service on an indiscriminate or indifferent basis to any end-user provider of a "last mile loop".

¹⁹ *See*, Patterson Affidavit.

²⁰ Petitioners' Reply Exceptions, filed May 25, 2005, p 17.

²¹ 83 Ill. Adm. Code 200.220(h).

B. Description of Sprint's Proposed Telecommunications Services

The fact that Sprint offers its services indiscriminately to all entities that are capable of providing their own last mile facilities, *e.g.*, a cable company, is best understood through an examination of how Sprint's services will be offered.

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 has entered into a business arrangement with MCC Telephony of Illinois, Inc.²² ("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 competitive telecommunications services including local and long distance service to customers within multiple states including Illinois. This relationship enables Sprint and MCC leverage their combined resources, capabilities, expertise, assets and market position to enter and compete in the local and long distance voice market without either company 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

²² 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.

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 to customers all public switched telephone network (PSTN) interconnection utilizing Sprint’s switch²³ (MCC does not own or provide its own switching), Sprint’s CLEC status, and the interconnection agreements Sprint 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 telephone numbers to customers by using existing numbers or acquiring new numbers pursuant to North American Numbering Plan Administrator (“NANPA”) guidelines and will provide all number administration functions including the filing of number utilization reports (“NRUF”) with NANPA. Sprint will perform the porting function for customers 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 provide customers with access to 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.

²³ Sprint will be directly billing interexchange carriers for the any traffic carried to the proposed 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 providing the end office switching and interconnection to the end-users. In 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.²⁴

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 500,000 customers across over thirteen states including Illinois, primarily in territories where regional bell operating companies

²⁴ 47 U.S.C. § 153(47).

(“RBOCs”) are the incumbent local exchange carriers (“ILECs”). This model is not new to Sprint or other carriers,²⁵ and as the Commission found in its Order:

“Sprint is a common carrier/telecommunications carrier. While Sprint does not offer its services directly to the public, it does indiscriminately offer its services to a class of users so as to be effectively available to public, meaning it provides services to those capable of providing their own “last mile” facilities. Thus, Sprint meets the first prong of the *NARUC I* test. Sprint also passes the second prong of the *NARUC I* test by not altering the content of voice communications by end-users. Furthermore, the providers of the last mile, in this case MCC, make the service available to anyone in their respective service territories, thus making Sprint’s services effectively available to the public.”²⁶

C. The Commission’s order *correctly* concluded that Sprint will be acting as a “Telecommunications Carrier”

In its Order, the Commission noted that Section 153(46) of the Federal Act defines “telecommunications service” as “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.” In making its finding that Sprint fell within this definition, the Commission analyzed several pertinent court cases, including *Virgin Islands Telephone Corporation v FCC*²⁷, *National Association of Regulatory Utility Commissioners v. FCC*,²⁸ *United States Telecom Association v. FCC*,²⁹ and an Order of the commission in *Petition of SCC*

²⁵ 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).

²⁶ Order, p. 12.

²⁷ 198 F.3d 921 (D.C. Cir. 1999) (hereinafter, “*Virgin Islands Telephone*”).

²⁸ 525 F.2d 630 (1976) (“*NARUC I*”).

²⁹ 295 F.3d 1326 (D.C. Cir. 2002) (“*USTA*”).

*Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*³⁰

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 under the Act.³¹ 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 *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."³²

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.

³⁰ ICC Docket No. 00-0769, Arbitration Decision, Mar. 21, 2001 ("SCC")

³¹ *Id.* at 922.

³² *USTA*, 295 F.3d at 1329.

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.³³

* * * * *

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.³⁴

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

³³ 47 U.S.C. § 153(44).

³⁴ 47 U.S.C. § 153(46).

significantly restricted class of users.’’³⁵ 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 operators, will be able to make use of the cable as a practical matter.³⁶

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;³⁷
- 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;³⁸
- 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;

³⁵ 198 F. 3d at 924.

³⁶ *Id.*

³⁷ Sprint will invoice MCC for this service, and expects that MCC will directly bill the end-user.

³⁸ Sprint will invoice MCC for this service, and expects that MCC will directly bill the end-user.

- 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;
- operator services, directory assistance, and directory assistance call completion services; and,
- intercarrier compensation functions, including reciprocal compensation for the termination of local telephone calls.³⁹

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,⁴⁰ in its own name. Sprint's offering of Telephone Exchange Service qualifies it as a Telecommunications Carrier. Furthermore, either service, the telephone exchange service or the exchange access service qualifies Sprint as a Local Exchange Carrier.⁴¹

³⁹ 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.

⁴⁰ 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).

⁴¹ 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).

The *Virgin Island Telephone* court specifically held that one should look to whether a carrier offered its services indiscriminately in a way that made it a common carrier:

[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.*⁴²

The Commission, in making its determination, made the determination required by *Virgin Islands Telephone* and found that “[w]hile Sprint does not offer its services directly to the public, it does indiscriminately offer its services to a class of users so as to be effectively available to the public, meaning it provides services to those capable of providing their own “last mile” facilities.”

This holding was similar to that of the 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.*⁴³

“In *SCC*, the Commission concluded that SCC, a 9-1-1 and emergency services provider, was a common carrier even though it provided its services directly to ILECs, CLECs, certain State agencies, wireless operators, emergency warning systems and emergency roadside assistance programs. The Commission reached this conclusion even though SCC did not directly serve the general public. The key was the fact that SCC made its services indiscriminately available to those who could use its services.”⁴⁴

⁴² *Virgin Islands Telephone*, 198 F.3d at 929 (emphasis added).

⁴³ ICC Docket No. 00-0769, Arbitration Decision, Mar. 21, 2001.

⁴⁴ Order, p. 12.

In *SCC*, Ameritech made, and the Commission rejected, 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 is defined by federal law, and therefore, *SCC* is not entitled to arbitration under the 1996 Act.⁴⁵

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."⁴⁶ 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."⁴⁷

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

⁴⁵ ICC Docket No. 00-0769, Arbitration Decision, Mar. 21, 2001, p. 3.

⁴⁶ *Id.* at 4.

⁴⁷ *Id.* at 8.

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 9-1-1.⁴⁸

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.

The Commission also noted in its analysis, that “the USTA decision further clarified [the prong of determining that a carrier was a telecommunications carrier if it offered its service indiscriminately], by noting that a carrier offering its services only to a defined class of users may still be considered a common carrier if it holds itself out to indiscriminately serve all within that class.”⁴⁹

In *USTA*, Courts also examined whether or not a “non-traditional” carrier was a common carrier under the Act. *USTA* involved a state telecommunications network in Iowa that had applied for Universal Service support under Section 254 of the Act.⁵⁰ In *USTA* 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:

⁴⁸ *Id.* at 8.

⁴⁹ Order, p. 11, *citing*, *USTA*, 295 F.3d at 1333.

⁵⁰ 47 U.S.C. § 254.

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.'"⁵¹

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."⁵² Thus, 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 500,000 customers across over thirteen states including Illinois. In *USTA*, 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."⁵³ 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.⁵⁴ The D.C. Circuit Court stated in *United States*

⁵¹ *USTA*, 295 F.3d at 1332.

⁵² *Id.* at 1333.

⁵³ *United States Telecom Association v FCC*, 295 F.3d 1326, 1329 (D.C. Cir. 2002).

⁵⁴ 47 U.S.C. § 153(43).

Telecom Association that this prong of the test is intended to confine common carrier status to operators that do not regulate the content of their customers' communications.⁵⁵ Sprint clearly meets this prong of the common carrier test.

D. Last Mile Providers are a sufficient class of customer as to make Sprint's service effectively available to the Public

While the Commission considered and accepted the unrebutted evidence that Sprint offers its services indiscriminately to all entities that are capable of providing their own last mile facilities, *e.g.*, a cable company, the Petitioners' argue, that "the class on which the Commission relied to find that Sprint was selling to a sufficiently large class is not nearly so broad, being only entities that can provide their own last mile facilities."⁵⁶ This argument was also put forth by the Petitioner's attorney during oral arguments, alleging that Sprint's offer of services indiscriminately to all entities that are capable of providing their own last mile facilities "is meaningless in this context in that the number of last-mile providers in the rural ILECs territories is sparse."⁵⁷ This argument fails to take into account the fact that Sprint has no control over how many providers are capable of providing "last mile" facilities in the Petitioners' service territories. The question the Commission was to consider, was not how many entities are there in the class, but rather would Sprint offer service to those entities in the class on an indiscriminate or indifferent basis—and the Commission clearly found that Sprint would.

Further, the argument that the class is too small, is contrary to the holding of the United States District Court for the Northern District of California in *Qwest Communications Corp. v.*

⁵⁵ *United States Telecom Association*, 295 F.3d at 1335.

⁵⁶ Petition for Reconsideration, p. 14.

⁵⁷ 1 Tr 41.

City of Berkeley.⁵⁸ In this case, 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 to enter into separate agreements with customers and maintain a carrier’s status as a “telecommunications” or “common carrier.” The Court held that “[c]ommon carrier service does not require that the particular services offered be made practically available to the entire public. ‘[A] specialized carrier 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’”⁵⁹

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 does not matter how many potential last mile providers or cable companies are available to take Sprint’s service for Sprint to maintain its status as a common carrier.

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

⁵⁹ *Id.* at 1096, *citing*, *National Association of Regulatory Utility Commissioners v. FCC*, 533 F.2d 601, 608-609 (D.C. Cir. 1976).

E. The Public Interest supports interconnection between Sprint and the Petitioners.

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 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.⁶⁰ 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.⁶¹ 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.⁶² 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,⁶³ and the instant Order demonstrates that that tradition continues to this day.

⁶⁰ 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.

⁶¹ *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.

⁶² 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.

⁶³ *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.

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.⁶⁴ Yet the Petitioners argue that this is not in the Public Interest because end-users who already have cable service have access to advanced services.⁶⁵ Such a statement by the Petitioners illustrates that their sole issue with Sprint's proposed telecommunications services, and interconnection, is their fear of competition.

Sprint submits that the Petitioners oppose Sprint's business model and refused to negotiate with Sprint for the provision of telecommunications services required by Sprint to provide services to MCC, because they are aggressively working to maintain their monopoly on telecommunications business in their service territories and making every effort to prevent competition in their service areas.⁶⁶

Fortunately, the Commission saw through this smokescreen and in its Order, states:

“In addition, it seems that the Commission's findings are greatly serving the public interest. Competition in the telecommunications industry has brought about significant technological advances that few who live in rural areas in Illinois have been able to take advantage of. The type of arrangement between MCC and Sprint

⁶⁴ Thus Sprint has not requested Interconnection pursuant to Section 251(c) of the Act.

⁶⁵ Petition for Reconsideration, p. 16.

⁶⁶ *See also*, Petitions for Suspension or Modification of Section 251(b)(2) Requirements of the Federal Telecommunications Act Pursuant to Section 251(f)(2) of said Act; for entry of Interim Order; and for other necessary relief, ICC Docket Nos. 04-0182 (Cambridge), 04-0237 (C-R), 04-0238 (El Paso), 04-0183 (Henry County), 04-0249 (Mid-Century), 04-0206 (Reynolds), 04-0366 (Metamora), 03-0731 (Harrisonville), 04-0365 (Marseilles) and 04-0194 (Viola Home).

potentially allows those in rural areas to benefit from the competitive telecommunications market.”⁶⁷

F. Section 251 of the Act requires telecommunications carriers to interconnect on a direct and indirect basis.

Section 251(a) of the Act⁶⁸ requires each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other carriers. As the Commission correctly determined, Sprint is a telecommunications carrier to whom this duty is owed. Neither Section 251(f)(1)⁶⁹ nor Section 251(f)(2)⁷⁰ of the Act provide the Petitioners with an exemption from their obligation to allow for direct or indirect interconnection. As the Commission noted in its Order, Sprint has not requested interconnection pursuant to Section 251(c). In this regard, Sprint is a facilities-based carrier that does not require access to Section 251(c) provisions such as unbundled network elements (“UNEs”), collocation, and resale. The combined effort of Sprint and the other competitive service providers are much like a wireless carrier in that it owns all of its own facilities and, therefore does not need to take advantage of the rights granted to telecommunications carriers under Section 251(c) to use an incumbent carrier’s network to compete against that incumbent carrier. Accordingly, Sprint requested that the Petitioners fulfill their duty to allow for direct or indirect interconnection under Section 251(a) – a duty for which there is no exemption.

The Commission correctly determined,

251(a)(1) requires a telecommunications carrier “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” 47 U.S.C. §251(a)(1). This section

⁶⁷ Order, p 13.

⁶⁸ 47 U.S.C. § 251(a).

⁶⁹ 47 U.S.C. § 251(f)(1).

⁷⁰ 47 U.S.C. § 251(f)(2).

contains no restrictions on who may interconnect with whom. Because there are no restrictions, the Commission finds that Petitioners must negotiate the terms and conditions for interconnection with Sprint.⁷¹

A failure to negotiate the terms and conditions of Section 251(a) would result in Sprint filing a Petition for Arbitration, pursuant to Section 252 without the ability to give the Commission the benefit of “the position of each of the parties with respect to those [unresolved] issues.”⁷² This is in fact exactly what has happened in Docket No. 05-402. Fortunately for the Commission, in light of its Order, in this docket, requiring negotiation, the Parties, to that docket, have held that arbitration in abeyance to allow the Parties time to negotiate and develop the “the position of each of the parties with respect to those [unresolved] issues.” This will have the result of allowing Commission to much more efficiently resolve the arbitration than it otherwise would have been able to do.

G. Sprint will not be providing Internet access or Internet based services.

The Applicants allege that because, in their sole opinion, “Sprint’s services are entirely interstate in nature”⁷³ the Federal Communications Commission (“FCC”) order asserting federal jurisdiction over Voice Over Internet Protocol (“VoIP”) telephone services “having the same capabilities as [Vonage Holding Corporation’s] DigitalVoice”⁷⁴ applies and this Commission does not have jurisdiction over Sprint’s Petitions for Arbitration. However this assumption fails when one examines the *Vonage Order*. The FCC clearly did not hold that the Vonage Service to

⁷¹ Order, p 13.

⁷² 47 U.S.C. § 252(b)(2)(A)(ii)

⁷³ *Metamora, et al.*, Application, p. 5.

⁷⁴ *FCC Memorandum Opinion and Order, In the Matter of Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Adopted: November 9, 2004 Released: November 12, 2004, ¶46 (“*Vonage Order*”).

be an interstate service. Rather the FCC found that while Vonage's "DigitalVoice clearly enables intrastate communications, it also enables interstate communications. It is therefore a jurisdictionally mixed service, and [the FCC] has exclusive jurisdiction under the Act to determine the policies and rules, if any, that govern the interstate aspect of DigitalVoice service."⁷⁵ Since the FCC did not make a ruling that Vonage's service is interstate, then the Applicants argument that Sprint and MCC's service is interstate is incorrect and the Vonage Order is inapplicable.

Furthermore, as Sprint has repeatedly noted, the Sprint and MCC service is very different from the services Vonage offers. The most notable difference is that **plain and simple, Sprint is not proposing to offer an Internet service.** Sprint is not offering a service that "provides a host of other features and capabilities that allow subscribers to manage their personal communications **over the Internet,**"⁷⁷ which is what Vonage is doing. **What Sprint and MCC will be offering is basic local exchange telephone service.** The mere fact that Sprint uses the Internet Protocol ("IP"), "because it is the protocol supported by the cable industry for placing voice traffic onto a hybrid fiber coax network," does not render Sprint's service an Internet service. In fact Sprint's service does not utilize the Internet, the public network of interconnected computing systems utilizing the Transmission Control Protocol/Internet Protocol ("TCP/IP"),⁷⁸ which is the essential element that allows IP Telephony systems such as Vonage to operate.

⁷⁵ Vonage Order, ¶18.

⁷⁷ Vonage Order, ¶4 (emphasis added).

⁷⁸ For a more detailed description of the Internet and its origins, see, Haran C. Rashes, *The Impact of Telecommunications Competition and the Telecommunications Act of 1996 on Internet Service Providers*, 16 TEMP. ENVTL. L. & TECH. J. 49 (1997).

A detailed understanding of the nature of the telephone calls and how those calls are delivered to the end-user are an essential part of comprehending the differences between the service Sprint will be offering and the service which the Applicants allege Sprint is offering, which the FCC discussed in the *Vonage Order*. As explained in the Mr. Burt's verified affidavit, Sprint will be offering voice telephone service, the facilities for which will be transparent to the end-user. In those instances where Sprint will be providing services in conjunction with cable companies, the discrete components that Sprint will be using to provide the "last mile" portion of the transmission facilities used by Sprint will be the cable provider's cable connection to the home.

When an end-user places a telephone call using the Sprint/Cable solution, that end-user will pick up a standard telephone⁷⁹—which the end-user may choose to purchase at Target, Wal-Mart, or any other retail store. The end-user will dial the telephone, just like an end-user customer of the Petitioners would. The telephone signal will transmit through the standard phone jack in the end-user's home to a device called an embedded multimedia terminal adapter ("EMTA"). The EMTA provides an interface allowing broadband Internet service and cable television to be combined with the telephone service for transmission to the Cable company's Cable Distribution Headend.⁸⁰ At the Headend, these services are again split out and the voice telephone service is sent to Sprint for switching to the proper destination telephone number or

⁷⁹ The FCC refers to a standard telephone as Customer Premises Equipment ("CPE") throughout its various orders, some of which are cited below.

⁸⁰ There may be instances (depending on the type of EMTA selected) where the cable television service is split off prior to the EMTA. However, whether the cable television service is split off prior to the EMTA or at the EMTA, the three services being offered, telephone service, cable television service, and broadband internet service all remain distinct and separate services operating over the same facility.

carrier. The telephone service being provided is a “basic service” of telephone-to-telephone voice service. This basic service will be transparently transmitted over Sprint’s network and, as appropriate, transparently transmitted over interconnected telephone company networks, such as those of the Petitioners. The service Sprint will be providing “is no different than the telephone service customers in RLEC territory have today”⁸¹ and “are in no way associated with Internet access”⁸² service.

There are several important and distinct differences between the service offered as part of the Sprint/MCC offering and Vonage’s DigitalVoice service that legally distinguish it from the service addressed by the FCC in the *Vonage Order*.

- | | |
|--|--|
| <p>1. Vonage service requires “access to a broadband connection to the Internet to use the service”⁸³</p> | <p>The customers of the voice service provided by Sprint and MCC do not need, and are not required, to have connectivity to the Internet.</p> |
| <p>2. Vonage’s service is fully portable; customers may use the service anywhere in the world where they can find a broadband connection to the Internet.⁸⁴</p> | <p>“The voice service provided by Sprint and MCC is not nomadic, the subscribers only use the service in their home.”⁸⁵</p> |
| <p>3. Although [Vonage’s] customers may in some cases attach conventional telephones to the specialized CPE that transmits and receives these IP packets, a conventional telephone alone will not work with Vonage’s service.⁸⁶</p> | <p>The customers of the voice service provided by Sprint and MCC will, in many cases, be able to use their own telephones and their own home’s wiring utilizing an eMTA interface that will allow MCC’s coaxial cable to be utilized as the “last mile”.</p> |

⁸¹ Burt Affidavit, ¶3.

⁸² Verified Testimony of James R. Burt, filed in Docket No. 05-0402, ln. 181.

⁸³ *Vonage Order*, ¶5.

⁸⁴ *Vonage Order*, ¶5.

⁸⁵ Verified Testimony of James R. Burt, filed in Docket No. 05-0402, ln. 218-219.

⁸⁶ *Vonage Order*, ¶7.

- | | |
|---|---|
| <p>4. Vonage’s “outgoing calls originate on the Internet and are routed over the Internet to Vonage’s servers.” and incoming calls are routed “to the Vonage user over the Internet.”⁸⁷</p> <p>5. “A call to a Vonage customer’s NANP number can reach that customer anywhere in the world and does not require the user to remain at a single location.”⁸⁹</p> | <p>The voice service provided by Sprint and MCC does not use or transit the public Internet.⁸⁸</p> <p>Because “the voice service provided by Sprint and MCC is not nomadic, [and] the subscribers only use the service in their home,”⁹⁰ the NANP numbers assigned to Sprint will be used at the customers’ home premises only.</p> |
|---|---|

The FCC recognized that not all voice telephone services that utilize the Internet Protocol would mirror the basic characteristics of Vonage’s DigialVoice service and noted that it would only preempt state regulation to the extent that other services have these same basic characteristics.

Specifically, these basic characteristics include: a requirement for a broadband connection from the user’s location; a need for IP-compatible CPE; and a service offering that includes a suite of integrated capabilities and features, able to be invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically, including enabling them to originate and receive voice communications and access other features and capabilities, even video.⁹¹

The Sprint and MCC offering does not have the majority of these characteristic, and as such the FCC’s preemption should not apply. Further, since the FCC did not exercise jurisdiction over Section 251 interconnection services in the *Vonage Order*, jurisdiction unless

⁸⁷ *Vonage Order*, ¶8.

⁸⁸ Verified Testimony of James R. Burt, filed in Docket No. 05-0402, ln. 214-215 and 287-298.

⁸⁹ *Vonage Order*, ¶9.

⁹⁰ Verified Testimony of James R. Burt, filed in Docket No. 05-0402, ln. 218-219.

⁹¹ *Vonage Order*, ¶32.

and until the FCC finds otherwise, remains with this Commission⁹² and the Applications should be denied.

The Applicants also argue that the United States Supreme Court gave the FCC jurisdiction over Sprint's proposed service in *Nat'l Cable & Telecomms Ass'n v. Brand X Internet Servs.*⁹⁷ In *Brand X*, the Supreme Court reversed the 9th Circuit Court of Appeals and upheld the Federal Communications Commission's determination that broadband Internet service provided by cable companies, also known as cable modem service, is solely an "information service" and not a "telecommunications service." However, the Applicants were incorrect in characterizing Sprint as an "IP provider."⁹⁸ **Plain and simple, Sprint is NOT proposing to offer an Internet service.** What Sprint will be offering is telephone service.

Brand X makes the distinction between IP services, such as cable modem or broadband service, and telephone service very clear.

[A] telephone company "offers" consumers a transparent transmission path that conveys an ordinary-language message, not necessarily the data transmission facilities that also "transmi[t] . . . information of the user's choosing," §153(43), or other physical elements of the facilities used to provide telephone service, like the trunks and switches, or the copper in the wires. What cable companies providing cable modem service and telephone companies providing telephone service "offer" is Internet service

⁹² The FCC specifically declined to rule in the *Vonage Order* on the jurisdiction over "other critical issues such as universal service, intercarrier compensation, section 251 rights and obligations, numbering, disability access, and consumer protection." *Vonage Order*, ¶44.

⁹⁷ ___ U.S. ___; 125 S. Ct. 2688; 162 L. Ed. 2d 820 (2005) (hereinafter, "*Brand X*")

⁹⁸ *Metamora, et al.*, p. 5.

and telephone service respectively—the finished services, though they do so using (or “via”) the discrete components composing the end product, including data transmission.⁹⁹

As explained above and in Mr. Burt’s verified affidavit, Sprint will be offering voice telephone service, the facilities for which will be transparent to the end-user. In those instances where Sprint will be providing services in conjunction with cable companies, the discrete components that Sprint will be using to provide the “last mile” portion of the transmission facilities used by Sprint will be the cable provider’s cable connection to the home.

The telephone service Sprint and MCC will be providing is a “basic service” of telephone-to-telephone voice service. This basic service will be transparently transmitted over Sprint’s network and, as appropriate, transparently transmitted over interconnected telephone company networks, such as those of the Petitioners. The Court recognized the FCC’s finding that this type of transmission was “pure” or “transparent” to the end-user.

In particular, the [FCC] defined “basic service” as “a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information.” By “pure” or “transparent” transmission, the [FCC] meant a communications path that enabled the consumer to transmit an ordinary-language message to another point, with no computer processing or storage of the information, other than the processing or storage needed to convert the message into electronic form and then back into ordinary language for purposes of transmitting it over the network—such as via a telephone or a facsimile. Basic service was subject to common-carrier regulation.¹⁰⁰

By contrast, Internet service is not, in the Court’s opinion, pure and transparent to the end-user, because the consumer is offered “the ability to translate raw Internet data into information they may both view on their personal computers and transmit to other computers

⁹⁹ *Brand X*, ___ U.S. at ___; 125 S. Ct. at 2705; 162 L. Ed. 2d at 844.

¹⁰⁰ *Brand X*, ___ U.S. at ___; 125 S. Ct. at 2697; 162 L. Ed. 2d at 835. (citations omitted).

connected to the Internet.”¹⁰¹ This “offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications,”¹⁰² distinguishes broadband Internet service from the telephone service to be offered by Sprint. “In other words, the [FCC] reasoned that consumers use their cable modems not to transmit information ‘transparently,’ such as by using a telephone, but instead to obtain Internet access.”¹⁰³

Notwithstanding the Applicants’ implication to the contrary, the telephone services Sprint proposes to offer are not the same services addressed in *Brand X*. In the case of Sprint’s telephone service, the end-user’s calls never travel over the Internet, the end-user does not need to have a computer to use the service, the end-user does not need to subscribe to or be a subscriber of “cable modem service” and the service is not mobile. Rather, Sprint plans to utilize the *technology* of VoIP to transmit signals from the end-user’s premises to the connection point. Internet Protocol is simply a set of rules that govern the communication between devices. This protocol, however, is not limited to devices connected to or used to access the Public Internet. In summary, Sprint and MCC will provide plain old telephone service to end-users using VoIP technology; it will not however provide access to the Public Internet, nor is Sprint’s voice service dependent upon the Public Internet. In fact, the cable company marketing Sprint’s service will be offering stand-alone voice services, separate and independently from an end-user’s choice whether or not to purchase cable modem service to access the Internet.¹⁰⁴

¹⁰¹ *Brand X*, ___ U.S. at ___; 125 S. Ct. at 2696; 162 L. Ed. 2d at 834.

¹⁰² *Brand X*, ___ U.S. at ___; 125 S. Ct. at 2697; 162 L. Ed. 2d at 835, at 5; *see also*, 47 U.S.C. § 153(20).

¹⁰³ *Brand X*, ___ U.S. at ___; 125 S. Ct. at 2698; 162 L. Ed. 2d at 836.

¹⁰⁴ *See*, MCC Telephony of Illinois, Inc., IL.C.C. Tariff No. 1, Section 4.3.1.

IV. CONCLUSION

WHEREFORE, for the above-stated reasons, Sprint respectfully requests that the Illinois Commerce Commission issue an order denying the Applications for Reconsideration and Rehearing uphold its Declaratory Ruling that found “that because Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. is a ‘telecommunications carrier,’ Petitioners have an obligation to negotiate with Sprint Communications, L.P. d/b/a Sprint Communications Company L.P., or any similarly situated entity, under subsections (a) and (b) of Section 251 of the federal Telecommunications Act.”¹⁰⁵

Respectfully submitted,

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

Date: August 12, 2005

¹⁰⁵ Order, p 15.

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 appropriate relief.)	

VERIFICATION

James R. Burt, being duly sworn upon oath, deposes and states that he is employed by Sprint as Director – Regulatory Policy and in that capacity has read Sprint Communications L.P. d/b/a Sprint Communications Company L.P.’s August 19, 2005 Response in Opposition to Applications for Reconsideration and Rehearing, in the above-captioned docket and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.



James R. Burt

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



 Notary Public

My Commission expires: May 10, 2009

Karin E. Medlin
NOTARY PUBLIC - STATE OF KANSAS
JOHNSON COUNTY
MY COMMISSION EXPIRES 5-10-09

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 appropriate relief.)	

NOTICE OF FILING

To: Parties of Record

You are hereby notified that on August 19, 2005, I filed, via the electronic e-docket system, with the Chief Clerk of the Illinois Commerce Commission, a Response in Opposition to Applications for Reconsideration and Rehearing, on behalf of Sprint Communications L.P. d/b/a Sprint Communications Company L.P., in the above-captioned docket.

Haran C. Rashes
Clark Hill PLC
212 East Grand River Avenue
Lansing, MI 48906
(517) 318-3100

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 appropriate relief.)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response in Opposition to Applications for Reconsideration and Rehearing, in the above-captioned proceeding, were served upon the parties on the attached service list via Electronic Mail on August 19, 2005.

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Petition of Sprint Communications L.P. d/b/a Sprint Communications Company L.P.'s for
Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers

Docket Nos. 05-0259, *et al.*

Service List

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