Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF SPRINT NEXTEL CORPORATION

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Sprint Nextel Corporation ("Sprint"), pursuant to the Public Notice released on August 3, 2011 (DA 11-1348), hereby submits its comments in the above-captioned proceedings regarding recently filed proposals to reform the intercarrier compensation ("ICC") and Universal Service Fund ("USF") regimes.

I. INTRODUCTION AND SUMMARY

In this phase of the ICC/USF reform proceeding, the Commission has asked for comments and supplemental information relating to the reform proposals submitted by

six price cap local exchange carriers (LECs),[1] by a coalition of joint rural associations,[2] and a proposal by the State Members of the Federal-State Universal Service Joint Board.[3]

Sprint emphatically agrees with the comments of many parties urging immediate and expeditious reform of the broken ICC and USF mechanisms (including addressing the costly and serious problem of traffic pumping), and applauds the efforts of all parties that have continued to work in good faith to develop reasonable reform proposals. Sprint urges the Commission to immediately adopt those measures that will promote the competition and innovation that have been constrained by the legacy access charge and universal service fund regimes. On the other hand, proposals which extend or expand the access and universal service regimes in order to protect historical revenues and profits at the expense of consumers and competitors should be rejected. Instead, those proposals which encourage and reward network efficiency, spur innovation, and promote competition should be adopted.

Reform is critical to address the many inefficiencies and disputes associated with legacy PSTN traffic; reform is even more critical to promote and ensure the deployment of new broadband technology and services to the entire nation. Section 706 of the Act directs the Commission to "...encourage the deployment on a reasonable and timely basis

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[1] *See* Letter from AT&T, CenturyLink, FairPoint, Frontier, Verizon and Windstream filed in WC Docket No. 10-90 *et al.* on July 29, 2011, proposing their "America's Broadband Connectivity Plan" for price cap LECs (the "ABC Plan").

[2] *See* Letter from AT&T, CenturyLink, FairPoint, Frontier, Verizon and Windstream, USTA, NTCA, OPASTCO and WTA filed in WC Docket No. 10-90 *et al.* on July 29, 2011, proposing an ICC/USF reform plan for rate-of-return (RoR) LECs (the "RLEC Plan").

[3] *See* Comments filed by the State Members in WC Docket No. 10-90 *et al.* on May 2, 2011. Because Sprint previously responded to the State Members' proposal (*see* Sprint reply comments in WC Docket No. 10-90 *et al.* filed May 23, 2011, pp. 31-40), Sprint's comments here are primarily focused on the ABC Plan and the RLEC Plan.

of advanced telecommunications capability to all Americans...." The National Broadband Plan (NBP) set forth a detailed strategy to meet this mandate. To ensure consistency with Section 706 and the National Broadband Plan, any ICC/USF reform plan must include the following elements and characteristics:

- Adoption of a few high-level IP voice interconnection rules;
- An expedited transition to bill-and-keep, or, at most, to a very low uniform terminating rate, for as many rate elements as possible;
- Application of bill-and-keep, or at most a rate of $.0007 (certainly not non-cost-based legacy access charges), on VoIP traffic;
- Technological and competitive neutrality: no right of first refusal mechanism in the distribution of broadband USF, and a broadband USF that is available on a balanced basis and accompanied by reasonable, pro-competitive public interest requirements; and
- Adoption of deregulatory measures only where the regulated entity lacks market power.

Each of these factors is discussed in further detail below in relation to the ABC and RLEC proposals.

II. IP VOICE INTERCONNECTION RULES

TDM traffic volumes are significant, and the unification and reduction of intercarrier compensation rates for TDM calls are critically important and obviously a key part of any comprehensive ICC/USF reform plan. However, the Commission and other interested parties must not lose sight of the fact that TDM is a technology rooted in the past, that the ILECs' circuit switched networks were designed to handle voice rather than broadband traffic, and that the access charge regime that was developed in the first half of the 1980's neither reflects the costs of nor encourages the deployment of the vastly more efficient IP technology increasingly in use today.[4] It is appropriate for the

[4] Indeed, the Commission's Technical Advisory Council (TAC) has recommended that the transition from the legacy TDM-based PSTN to all-IP networks be completed by

Footnote continued on next page

Commission to act on terminating rates for TDM traffic. But it must be extremely careful to avoid TDM reform mechanisms that apply legacy access rate structures and legacy network architectures that are completely unsuitable in an efficient IP world. To allow such legacy elements to spill over in any way to IP traffic will seriously impede and distort broadband investment, deployment and adoption.

This, unfortunately, is the likely outcome of adoption of the ABC Plan in its proposed form. On its face, the ABC Plan applies only to TDM interconnection; the price cap ILECs even state in a footnote that IP-to-IP interconnection "would continue to be governed by commercial agreements."[5] However, the ABC Plan's $.0007 default unified termination rate (which would become effective July 1, 2017)

> ...shall only apply to termination at the end office where the terminating carrier does not own the service tandem switch (in which case, additional charges may or may not apply depending on the arrangement used to deliver traffic), and it shall only apply to transport and termination within the tandem serving area where the terminating carrier does own the serving tandem switch.[6]

In other words, voice traffic delivered to any location other than the ILEC's end office or tandem switch is *not* eligible for the default $.0007 rate. It appears that under the ABC Plan, carriers that do not have an IP interconnection agreement with the LEC would have to deliver all voice traffic – including voice traffic originated and/or transported long-haul in IP format -- at ILEC end offices or tandems, rather than aggregating that IP voice traffic with all other forms of IP traffic at the handful of regional interconnection points

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2018. *See* TAC, Status of Recommendations, June 29, 2011, slide 10, available at http://transition.fcc.gov/oet/tac/TACJune2011mtgfullpresentation.pdf.

[5] ABC Plan, Attachment 1, p 10, n. 10.

[6] ABC Plan, Attachment 1, p. 11.

efficiently and typically used to exchange data, video, and other broadband traffic.[7] For TDM interconnection, the transport and termination rate (*e.g.*, $.0007) should include all transport and termination functions including tandem switching, local transport, and end office switching. The public interest demands that the FCC adopt requirements for carriers to establish IP interconnection which is inherently more efficient.

Even if the ILECs did not intend to require IP voice interconnection at each end office or access tandem, the ABC Plan appears to lay the groundwork for, at a minimum, one POI for IP voice traffic in each LATA. In their cost model description, the ILECs state:

> ...the middle mile captures what one might typically refer to as the interoffice network transport. It captures the routing from the End Office up to the point at which the traffic is passed to "the cloud." For this effort, the connection to the cloud occurs at the tandem location within a LATA.[8]

LATAs are a legacy BOC construct, dating back to the Bell System divestiture, and are completely irrelevant to the engineering of an IP network. Requiring an IP POI in each of the approximately 220 LATAs is woefully inefficient compared to the small number of regional interconnection points used to exchange broadband traffic today. Even the authors of the ABC plan acknowledge that deployment of broadband is encouraged by "accelerating the transition from traditional circuit-switched networks to

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[7] IP voice traffic is a tiny percentage of total IP traffic (Cisco, for example, has estimated that VoIP would account for less than 1.7% of all global mobile data traffic in 2011; *see* "Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010-2015," dated February 1, 2011, available at http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html). It would be grossly inefficient to maintain separate network facilities to terminate such a small percentage of total IP traffic.

[8] ABC Plan, Attachment 3, p. 11.

IP-based networks."[9] Thus, to even suggest that an IP POI should be established in each LATA makes no sense from an engineering, financial, or public policy perspective.

The National Broadband Plan emphasized that IP voice interconnection is critical to broadband deployment, and pointed out that some LECs have "resisted" IP voice interconnections and claimed they have "no basic obligation to negotiate interconnection agreements."[10] Therefore, the NBP strongly recommended that IP-to-IP interconnection obligations be clarified. Sprint agrees, and urges the Commission to incorporate such a clarification into any ICC reform plan it adopts. As Sprint has previously explained at length,[11] in order to promote efficient IP interconnection and deployment of all-IP networks, the Commission can and should adopt the following high-level rules, regardless of how the FCC chooses to reform the ICC/USF systems:

- Incumbent LECs and their affiliates that offer retail broadband voice services should be required to negotiate IP voice interconnection agreements in good faith;
- The FCC must adopt interim default point of interconnection (POI) rules for IP voice interconnection, to be developed by the FCC's TAC;
- The FCC, again in consultation with the TAC, should consider the steps it should take to facilitate efficient indirect interconnection between IP networks; and
- The Commission should confirm that its complaint remedy is available to resolve IP voice interconnection disputes, including refusals to negotiate in good faith.

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[9] ABC Plan, Cover Letter, p. 4.

[10] *See, e.g.*, NBP at p. 49.

[11] *See, e.g.*, Sprint's Comments filed in WC Docket No. 10-90 *et al.* on April 18, 2011, pp. 16-28; Reply Comments in WC Docket No. 10-90 *et al.* filed May 23, 2011, pp. 9-25; *ex parte* letter from Charles McKee, Sprint, to Marlene Dortch, FCC, in WC Docket No. 10-90 *et al.* filed July 29, 2011 ("Sprint IP Interconnection Letter," included here as Sprint Attachment A). These interconnection requirements can and should be adopted independent of any traffic transport and termination rates or compensation methodology the Commission adopts.

Adoption of these rules is critical to the principle of interconnection and to the promotion of competition, and Sprint again urges the Commission to unambiguously incorporate these high-level rules into a comprehensive ICC/USF reform plan.

III. RAPID BUT ACHIEVABLE TRANSITION OF ALL RATE ELEMENTS TO A SYSTEM OF BILL-AND-KEEP

A. The Commission Should Require A Faster Transition with a Bill-and-Keep End Point

One of the positives of the ABC Plan is that it includes a firm date – July 1, 2017 -- by which certain terminating rates are unified at $.0007. However, the proposed transition does not go far or fast enough.[12] The FCC can and should accelerate both the pace and scope of reform, especially for the price cap ILECs. In particular, rather than a rate level, the Commission should require implementation of a system of bill-and-keep at the specified end point. The ABC carriers should be subject to the following, more aggressive, but achievable transition:

- July 1, 2012: intrastate transport, end office local switching, and tandem switching rates, and reciprocal compensation rates, if higher than interstate rates, are reduced immediately to interstate levels (no rate increases for these elements would be allowed);
- July 1, 2013: terminating transport, end office local switching, and tandem switching rates, and reciprocal compensation rates, reduced 50% of differential between interstate level and $.0007;
- July 1, 2014: terminating transport, end office switching, and tandem switching rates, and reciprocal compensation rates, reduced to $.0007;
- July 1, 2015: all terminating rate elements reduced to zero and system of bill-and-keep instituted for all voice traffic.

Sprint understands that small rural ILECs may be afforded a longer transition because their access rates are generally higher than those of price cap ILECs. However,

[12] *See* Public Notice, p. 13 (asking for comment on whether the scope of reform should be extended beyond the ABC Plan's focus on end office switching).

their proposed nine-year plan is also too long.[13] Sprint therefore proposes a 6-year ICC reform plan for rural ILECs and their competitors,[14] with a bill-and-keep system in place as of July 1, 2017:

- Reduce Intrastate Access Rates. On July 1, 2012, rural ILECs (and their competitors) would reduce their intrastate transport, end office local switching, tandem switching and reciprocal compensation rates (if higher than interstate rate levels) to 50 percent of the difference between current intrastate access rate levels and their interstate access rate levels;
- Unify Access Rates: On July 1, 2013, rural ILECs (and their competitors) would reduce to interstate rate levels their intrastate transport, end office local switching, tandem switching and reciprocal compensation rates (if higher than interstate rate levels);
- Reduce Access Rates: On July 1, 2014, rural LECs' (and their competitors') unified access rates for transport, end office local switching, tandem switching and reciprocal compensation rates (if higher than interstate rate levels) would be reduced by 33 percent of the difference between their current interstate rate levels and $0.007.
- Further Reduce Access Rates: On July 1, 2015, rural ILECs (and their competitors) would further reduce their unified access rates for transport, end office local switching, tandem switching and reciprocal compensation rates (if higher than interstate rate levels) by another 33 percent;
- Exclusive Use of the ISP Rate: On July 1, 2016, all terminating transport, end office switching and tandem switching would be reduced to $0.0007; and
- Bill-and-Keep: On July 1, 2017, all terminating rate elements subject to a system of bill-and-keep.

During this transition, no carrier (price cap, rate-of-return, or other carrier) would be allowed to increase its rates for transport and termination, and existing intercarrier compensation arrangements (*e.g.*, bill-and-keep) will remain in effect if those rates are lower than the rates specified in the transition plan.

[13] *See* RLEC Proposal, p. 3 and n.1.

[14] The Commission should not allow any RLEC reform plan to be used as a traffic pumping loophole. Rules designed to curb or eliminate traffic pumping (for example, which require rates lower than those applicable under a RLEC reform plan) are likely to be required until such time as a bill-and-keep regime is operational.

Sprint expects that some parties will claim that even a rate of $.0007 is non-compensatory. However, as Google and others have explained, the proposal to use the ISP rate would actually be "overly compensatory."[15] Indeed, the Wireline Competition Bureau determined several years ago that given the capacity of digital circuit switches that incumbent LECs were using at the time, LECs incurred no additional termination costs and that as a result, their termination rate for reciprocal compensation should be set at zero.[16] The Bureau further determined that the total additional cost that Verizon incurred when calls are instead delivered to its tandem switches was $0.00029 -- 60 percent lower than the ISP rate incumbent LECs propose should apply six years from now.[17]

Importantly, the criticism that the ISP (or any other) rate is either not compensatory or overly compensatory does not apply to bill-and-keep, which is a very different compensation methodology than a calling-party's-network-pays (CPNP) regime. With bill-and-keep, the terminating carrier, instead of recovering some or all of its additional termination costs from its competitors and other networks, recovers any such costs from its own end users (and, where appropriate, explicit universal service funding).

There are sound legal reasons to adopt a bill-and-keep approach:

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[15] *See ex parte* letter of Ad Hoc, Google, Sprint, Skype, and Vonage, filed August 18, 2011 in WC Docket No. 10-90 *et al.*, p. 8 ("August 18 Google Letter").

[16] *See Virginia Arbitration Cost Compliance Filing Order,* 19 FCC Rcd 1259, 1269 ¶ 30 (2004) ("To avoid any confusion on this matter, we reiterate that Verizon may *not* include end-office switching or end-office trunk port costs in its reciprocal compensation rates. We therefore set the Meet-Point A reciprocal compensation rate at zero ($0.00).") (italics in original).

[17] *See Virginia Arbitration Further Compliance Order,* 20 FCC Rcd 5279, Appendix A (2005) ("Traffic Delivered at Verizon Tandem: $0.00029 MOU"). Verizon has since modernized its transport network so its additional transport costs today are almost certainly lower than they were six years ago.

Congress made it clear in its bill-and-keep savings clause that bill-and-keep is an arrangement that is consistent with a LEC's statutory reciprocal compensation obligation.[18] Moreover, because bill-and-keep is a "pricing methodology" rather than a rate level, it is, as the Supreme Court has held, well within the Commission's authority to adopt and design.[19]

Both common sense and dollars and cents also justify use of bill-and-keep rather than a CPNP-based intercarrier compensation regime. A CPNP, per-minute regime assumes -- incorrectly -- that only the caller (not the called party) benefits from a call. A CPNP per-minute regime encourages carriers to shift costs to their competitors, thereby distorting competition. In contrast, bill-and-keep best promotes innovation and efficiency, because it puts "all carriers in the position where they must recover their own costs from their own retail customers":

> Under this regime, success in the marketplace will reflect a carrier's ability to serve customers efficiently, rather than its ability to extract payments from other carriers.[20]

And finally, only bill-and-keep would reduce *every* network operator's cost of service, because all carriers would be able to sharply reduce, if not eliminate, their operational

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[18] *See* 47 U.S.C. § 252(d)(2)(B)(i).

[19] *See AT&T* v. *Iowa Utilities Board,* 252 U.S. 366, 384-85 (1999). *See also*, *WorldCom* v. *FCC*, 288 F.3d 429, 434 (D.C. Cir. 2002) (remanding the FCC's 2001 *ISP Remand Order* because of the "non-trivial likelihood that the Commission has the authority to elect such a [bill-and-keep] system").

[20] Wireline Competition Bureau Report, *A Bill-and-Keep Approach to Intercarrier Compensation Reform,* at 103, Appendix C to *2005 ICC Reform NPRM,* 20 FCC Rcd 485 (2005).

and transactional costs of billing, auditing and paying invoices, and handling the billing disputes that invariably arise.

Wireless carriers have exchanged traffic on a bill-and-keep basis since the inception of the wireless industry, and the resulting growth, innovation and efficiency in this industry are a living testament to the fact that bill-and-keep is a fully viable – and desirable – model for intercarrier compensation. For all these reasons, Sprint urges the Commission to adopt bill-and-keep as the end point of ICC reform, rather than the ISP rate or any other rate level that is based on the flawed CPNP regime.

B. Local Transport Must Be Included in the Termination Rate Transition

Noting that the ABC Plan focuses only on end office termination, the Commission has asked whether "any problematic incentives, such as arbitrage schemes, arise from or be left in place by such an approach, and if so, what could be done to mitigate them?"[21]

The Commission has good cause for concern. While the ABC Plan does propose annual reductions in the end office switching rate element, end office access charges represent only a fraction of the overall access charges that LECs impose on terminating traffic. LEC access charges also include additional rate elements for transport, including entrance facility charges, tandem switching charges, switched common and dedicated interoffice transport charges, multiplexing charges, and port charges (collectively, "transport rate elements"). As shown below, current access rates for these transport rate elements are significant.

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[21] Public Notice, p. 13.

The ABC Plan proposes that large ILECs would reduce their intrastate access transport rate elements to interstate access rate levels in two years (by July 1, 2013), while rural LECs would take six years (until July 1, 2017) before they would unify their access transport rate elements.[22] The ABC Plan proposes that price cap LECs would freeze (but still apply) their current interstate access transport rate elements for a period of four years, when on July 1, 2017 they would move to a reciprocal compensation regime for all terminating traffic and eliminate certain separate transport charges. *But if* the terminating LEC does not own the serving tandem switch, that LEC would continue to apply its common transport access rate element indefinitely – even after it begins using the ISP rate for termination in 2017.[23] While the Plan is not entirely clear, it appears that rural LECs would also continue to apply their current common transport rate elements indefinitely after they begin using the ISP rate for termination in 2020.

The price cap ILECs imply that at the end of their Plan, all wireless traffic (including interMTA traffic) sent to all LECs would be exchanged at the ISP rate:

> **July 1, 2017**: Each carrier unifies all terminating traffic under 251(b)(5) at a rate of $0.0007 for transport and termination consistent with some existing interconnection agreements that have adopted the "ISP remand" rate.[24]

However, this representation is not accurate. Wireless carriers and large ILECs today exchange intraMTA traffic at the ISP rate of $0.0007/minute, and this rate includes both

[22] *See* ABC Plan at 11; RLEC Plan at 3, n.1.
[23] *See* ABC Plan at 11 ("Beginning with this [last 2017] step, the rate for transport and termination shall only apply to termination at the end office where the terminating carrier does not own the serving tandem switch (in which case, additional charges may or may not apply depending on the arrangement used to deliver traffic).").
[24] ABC Plan at 11.

termination and transport.[25] But under the ABC Plan, wireless carriers would not pay $0.0007 for all traffic on July 1, 2017 (or 2020 for rural LECs) because some large LECs and many rural LEC would also continue to impose their current interstate access common transport rate element.

The Commission is correct that the ABC Plan regarding transport is "problematic." Incumbent LECs' current tariffed interstate access rates for the transport rate elements are very high, and constitute a sizable proportion (31% to 72% in the examples below) of the total terminating access charges ILECs impose on carriers today:[26]

[25] The ABC Plan could be read to include an implicit proposal for the FCC to modify the current "mirroring rule," because each of the steps in the Plan refers to transport (*e.g.*, "Transport rates remain unchanged") and the one exemption from the transition plan proposed (*i.e.*, bill-and-keep) does not apply to traffic exchanged at the ISP rate. However, because the Plan does not explicitly ask that the mirroring rule be modified, Sprint assumes that during their proposed transition, ILECs would not increase the rates wireless carriers currently pay for intraMTA transport and termination (*i.e.*, the ISP rate with no extra charges for transport).

[26] The ILECs' intrastate rates for these transport elements are even higher, and the ILECs themselves acknowledge that these intrastate transport rates must be reduced.

LEC	Transport[27]	Termination[28]	Total Access Charge (MOU)
AT&T (Pacific Bell FCC 1)	$0.006816	$0.002620	$0.009436
CenturyLink (Embarq-FL FCC 1)	$0.003243	$0.003568	$0.006811
NECA FCC 5 (Rate Band 2)	$0.011876	$0.026941	$0.038817
Verizon FCC 1	$0.003282	$0.002406	$0.005688

These transport element rates bear no relationship to the miniscule incremental cost of performing the traffic termination functions. As discussed above, the Wireline Competition Bureau determined several years ago (before Verizon began modernizing its transport network) that the total additional cost that Verizon then incurred in transporting and terminating traffic delivered at its tandem switches was less than three one-hundreds of a penny (or $0.00029).[29] Thus, the ISP rate that large ILECs propose to charge for termination for all traffic in 2017 is ***more than double their total additional costs*** (which were based on technology they are rapidly replacing). ***And as a result, the access transport rate elements they also want permission to charge through 2017 (and in some cases, indefinitely) would constitute 100 percent profit.***

The bloated transport access rate elements that the ILECs would assess through 2017 (and beyond) would extend two of the most significant ICC problems that plague

[27] Transport includes local transport termination; local transport facility (assuming 10 miles); tandem switching; common multiplexing; host-remote termination (assuming applicable 40% of the time); host-remote per mile (assuming applicable 40% of the time and assuming 10 miles); common trunk port; and information surcharge.
[28] Termination includes local (or end office) switching.
[29] *See* fn. 17 supra.

the industry today. First, due to the fact that they are set at extremely high levels, LEC transport access rate elements are a major cause of traffic pumping and mileage pumping schemes. As the National Broadband Plan recognized, "Most ICC rates are above incremental cost, which creates opportunities for access stimulation":

> Because the arbitrage opportunity exists, investment is directed to free conference calling and similar schemes for adult entertainment that ultimately cost consumers money, rather than to other, more productive endeavors.[30]

Consequently, even if all LECs immediately began charging only the ISP rate for termination, they would still continue to enjoy monopoly profits on their transport rates elements, which encourages LECs to engage in access stimulation schemes. Yet, the ABC Plan inexplicably proposes to embed and use these bloated transport rates at least through 2017.

Second, maintaining high rates for transport access rate elements will continue to provide the powerful *dis*incentive for ILECs to establish more efficient interconnection arrangements. Sprint has previously demonstrated that if IP voice interconnection is done properly, the incremental costs IP networks would incur in transporting broadband voice traffic would be miniscule, if not zero, thereby enabling all network operators to sizably reduce their current cost of service.[31] Consumers would realize enormous benefits from cost savings of this magnitude (and they would receive yet additional benefits from the introduction of new functionalities that become possible once their voice traffic is handled exclusively over all IP networks). But incumbent LECs will have no financial incentive to eliminate most of their transport costs if they are allowed to

[30] National Broadband Plan at 142.
[31] *See* Sprint April 18, 2011 Comments at 16-18.

continue to reap extraordinary, supra-competitive profits by continuing to charge their current transport access rate elements over equipment that, for the most part (if not entirely) are fully depreciated.

The ABC Plan will also distort future negotiations for IP voice interconnection with ILECs. By defining the $0.0007 rate as the applicable transport and termination rate at 1,000 ILEC tandem locations and 22,000 end office locations, the ILECs will want to establish these locations as the default POIs, which they will demand be the starting point for all IP voice interconnection negotiations. In these negotiations, ILECs undoubtedly will take the position that if competitive carriers do not make additional transport payments or agree to other unfavorable terms and conditions, they will simply make the competitive carrier continue to deliver all of its traffic to all of the ILECs' tandem and end office locations. The Commission should not allow these POI locations to be locked in, and it is precisely for this reason that Sprint has urged the Commission to establish interim default POI rules for IP voice interconnection.[32]

Congress has specified that the FCC "shall encourage" the deployment of broadband voice services over all IP networks and take "immediate action" if this capability is not widely available today.[33] Sprint respectfully submits that the only way the Commission can comply with this directive is by adopting an ICC reform plan that includes annual reductions in all traffic termination access rate elements and that ends with bill-and-keep for the exchange of all traffic that terminates over LEC TDM facilities.

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[32] *See* Sprint IP Interconnection Letter, pp. 7-9 and Section II supra.
[33] *See* 47 U.S.C. §§ 1302(a) and (b).

IV. VoIP SHOULD NOT BE SUBJECT TO ACCESS CHARGES

The very first step of the ABC Plan and the RLEC Plan, effective 6 months before step one of the phase-down of certain terminating rates,[34] is to make VoIP traffic exchanged between LECs and other carriers subject to "interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call."[35] While the LECs' self-interest in maximizing their access revenue streams and their Access Replacement Mechanism (ARM) subsidies is understandable, it is unclear to Sprint how the ILECs' proposed VoIP policy is consistent with the Act, FCC and Court precedent, and the NBP's broadband deployment goals.

The disputes over what intercarrier compensation regime applies to VoIP traffic persist unabated today despite repeated requests for clarification by interested parties and by the Commission itself for comment on the appropriate ICC mechanism.[36] At least two

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[34] The ILECs propose that their VoIP intercarrier compensation mechanism become effective January 1, 2012.

[35] ABC Plan, Attachment 1, p. 10; RLEC Plan, p. 3. If by "call detail" the ILECs mean originating and terminating telephone numbers, their VoIP proposal is even more problematic. Originating and terminating numbers are not dispositive for determining call jurisdiction for mobile traffic, which by its very nature is not tied to predefined geographic endpoints. A mobile subscriber who lives, works or travels in an area other than the one associated with wireline area codes could in fact be placing an intraMTA call which under the ABC/RLEC Plans might be treated as an interexchange call. To eliminate the need for wasteful and unnecessary billing machinations caused by artificial traffic compensation distinctions, the Commission should declare mobile traffic (both interMTA and intraMTA) subject to reciprocal compensation arrangements consistent with Section 20.11 rules. To the extent any compensation distinction between interMTA and intraMTA traffic is applied, until such time as the distinction is eliminated, rather than using call detail records, carriers should use cell tower data to determine intercarrier compensation for wireless calls.

[36] *See, e.g., IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004); *Petition of the Embarq Local Operating Companies for Limited Forbearance under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption* (withdrawn February 11, 2009); *Feature*

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federal courts have ruled that VoIP originated traffic is an information service and thus not subject to access charges;[37] indeed, only days ago, both AT&T and Verizon asserted that VoIP is an information service because it undergoes net protocol conversion, and thus cannot be subject to access charges, which may be assessed only on telecommunications services.[38] Even if AT&T and Verizon were incorrect and VoIP were not an information service, it could not be assessed access charges since VoIP (which was not offered in 1996) would not fall within the Act's Section 251(g) grandfathering provision.

As Sprint has previously explained, ILEC assessment of access charges on VoIP traffic terminating on TDM networks is inconsistent with Section 706 of the Act (which directs the FCC to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability [which the Commission has stated includes

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Group IP Petition for Forbearance From Section 251(g) of the Communications Act and Sections 51.701(b)(1) and 69.5(b) of the Commission's Rules, Memorandum Opinion and Order released January 21, 2009 (FCC 09-3) (petition denied without addressing whether VoIP traffic is subject to access charges); *Connect America Fund, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* released February 9, 2011 (FC 11-13) at ¶604 (requesting comment on the appropriate intercarrier compensation framework for VoIP traffic).

[37] *See, e.g., Southwestern Bell v. Missouri PSC*, 461 F. Supp. 2d 1055 (E.D. Mo 2006); *Paetec Communications v. CommPartners LLC*, No. 08-0397, 2010 U.S. Dist LEXIS 51926.

[38] *In the Matter of TW Telecom Inc. Petition for Declaratory Ruling Regarding Direct IP-to-IP Interconnection Pursuant to Section 251(c) of the Communications Act*, WC Docket No. 11-119, Opposition of AT&T filed August 15, 2011, p. 5 (TW Telecom's VoIP services are information services because, among other factors, "they require a net protocol conversion to allow intercommunication with end users attached to the PSTN"); Comments of Verizon and Verizon Wireless, August 15, 2011, p. 14 (the Commission should "...confirm that VoIP is an information service that is not subject to the archaic rules designed for a different world in a different time that govern telecommunications services...").

interconnected VoIP service] to all Americans."[39] In addition, because access charges are many orders of magnitude higher than the estimated incremental cost of termination (which might, in fact, be zero), assessment of access charges on VoIP will generate excessive, 3- or 4-digit profit margins.[40] Given these circumstances, many carriers -- including Sprint – have withheld payment for access bills rendered by LECs for VoIP traffic terminating on their networks.

The ABC and RLEC Plans' proposal that access charges or reciprocal compensation rates apply to VoIP as of January 1, 2012 thus is extraordinarily problematic in a number of respects. By establishing a new rule that would require access payments in an area the FCC has not previously addressed, the FCC will be imposing a dramatic cost increase to and cash outlay for those VoIP service providers which have legitimately disputed the assessment of access charges in the past based on the current state of the law. Embedding inflated access rate level expenses on VoIP – which could easily be in the neighborhood of $1 billion per year[41] -- would translate into higher end user prices and, at a minimum, would negatively affect the cash flow of service providers which might otherwise put their money to far more productive uses, such as broadband network investment and service quality improvements. Assessing

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[39] *See, e.g., ex parte* letter from Charles McKee, Sprint, to Marlene Dortch, FCC, filed in WC Docket No. 10-90 *et al.* on July 29, 2011 ("Sprint VoIP Letter," included here as Sprint Attachment B).

[40] *Id.*

[41] Sprint has estimated that there will be roughly 123.7 billion VoIP minutes of use in 2011 (based on an average 300 minutes of use per month for each of the approximately 33.8 million interconnected VoIP subscribers, plus an estimated 2.1 billion off-network Skype minutes). If all of these VoIP minutes were assessed an average access rate of $.0080, total estimated VoIP access charges would be $990 million. *See* Sprint Attachment C.

access charges on VoIP is a giant step backwards, in direct conflict with the directives of the National Broadband Plan and its goal of eliminating per-minute charges.[42]

On the other hand, it is clear why the ILECs want VoIP traffic to become subject to access charges. Adoption of their proposed rule would embed the access revenue they would derive from VoIP traffic from 2012 forward as compared to the status quo (one carrier's expense increase is another carrier's revenue increase) and doubtless would be cited to support their contention that the assessment of access charges pre-2012 should be upheld as well, even though any rule would necessarily be prospective in application.

Such a rule would also directly harm consumers by unnecessarily inflating the ILECs' proposed Access Recovery Mechanism subsidies – they would claim "lost" revenues associated with VoIP traffic (as termination rates are reduced to $.0007 over time) for purposes of computing ARM revenue guarantees. While this is certainly an attractive deal for the ILECs, it is a bad deal for VoIP customers and service providers, is economically and legally unjustified, and is simply bad public policy. The Commission should accordingly dismiss this aspect of the ABC/RLEC Plans.

V. ICC/USF REFORMS MUST BE COMPETITIVELY NEUTRAL

The ABC and RLEC Plans include three major elements which are designed to benefit overwhelmingly one class of carriers – the ILECs. While these plans have – confusingly and incorrectly – been characterized as reflecting an "industry" consensus, Sprint, as a non-ILEC member of the industry, believes that the following elements seriously compromise the fundamental principle of competitive neutrality:

[42] *See* NBP, Recommendations 8.7, 8.11 and 8.14. The NBP concluded that per minute charges hinder broadband deployment.

- The ARM, available only to ILECs;
- The right of first refusal in distribution of CAF subsidies, available only to ILECs;
- The "land grab" transfer of the overwhelming majority of USF dollars to ILECs without any associated pro-competitive public interest access obligations.

A. The ILEC Access Recovery Mechanism

The ABC/RLEC Plan ILECs have proposed that they receive ARM subsidies from the USF/CAF to replace a significant share of the revenue reductions caused by transitioning certain of their terminating rates over time to $.0007. Under the proposal, ILECs may recover 90% of any revenue reduction greater than the imputed subscriber line charge (SLC) increases, with revenue reductions recalculated every year to reflect changes in traffic volumes.[43]

The concepts underlying some elements of the ILEC ARM proposal are positive:

- Increasing SLC Caps: Recognizes that carriers should rely on profits they can generate by selling services to their own end user subscribers rather than relying on the receipt of inflated traffic taxes and untargeted universal service distributions that harm their competitors and consumers;
- Capping Total Support: Recognizes the importance of USF cost control in order to minimize the burden on all consumers;
- Eliminating Subsidies on a Date Certain: Recognizes that subsidies cannot be provided indefinitely.

Despite these positive elements, however, there are a number of elements of the ARM proposal that are clearly anticompetitive or otherwise contrary to the public interest:

- The ARM would be available exclusively to ILECs, yet would be funded by contributions from service providers (or, more accurately, their end user subscribers) that derive no benefit from the ARM. The fact that many USF

[43] ABC Plan, Attachment 1, pp. 12-13.

contributors compete against the ILEC or the ILEC's corporate affiliates only exacerbates the anti-competitive impact of a revenue guarantee mechanism that is available only to select carriers.

- The proposed ARM for non-price cap ILECs does not appear to have a sunset date. The ARM cannot be considered to be a "transition" mechanism if there is no firm end date.

- The proposed ARM is extremely generous. It would remain in effect in some form at least until 2020 for price cap LECs (3 years *after* the unified terminating rate is achieved), provides a 90% revenue guarantee after SLC increases are taken into consideration, and involves a very low benchmark rate ($30 for price cap LECs, $25 for RoR LECs). In its proposed form, the ARM would burden consumers with a price tag in the hundreds of millions of dollars.[44]

- The proposed ARM would require no demonstration of the need for support.

- The proposed ARM would fail to consider the revenue available to the ILECs from the array of broadband, video entertainment, and bundled services they provide and the ability of the revenue from these services to cover the cost of their networks instead of burdening competitors and consumers.

Rather than inflating the USF and burdening consumers with the proposed ARM, the Commission can and should rely on increased SLC caps and the ability of incumbent LECs to reduce costs and generate increased revenues through their more efficient and capable broadband networks.

B. Right of First Refusal

Under the ABC Plan, ILECs that provide high-speed Internet service to more than 35% of the service locations in a wire center would have the right of first refusal to accept CAF subsidies within that wire center.[45] The ABC Plan authors estimate that ILECs "would have the opportunity to accept or decline CAF support in 82.0 percent of

[44] ABC Plan, Attachment 1, p. 13.
[45] ABC Plan, Attachment 1, p. 6.

the census blocks that are eligible for CAF support, representing 82.2 percent of the $2.2 billion in support targeted to areas served by price cap LECs."[46]

As the Public Notice recognizes (p. 4), the right of first refusal approach raises serious concerns. It is rather difficult to imagine how a proposal that gives incumbent LECs a right of first refusal to 82.2% of the available broadband subsidy dollars could possibly be considered competitively or technologically neutral. Whether the ILEC chooses to exercise its right of first refusal and accept the CAF support is irrelevant; the mere fact that the ILEC, and only the ILEC, has such a right is what is dispositive.

Assuming that the ABC ILECs do in fact accept all of their right of first refusal subsidies, their CAF receipts would *more than double* their current high-cost support -- $1.808 billion under the ABC Plan, versus the $893.5 million received in 2010[47] -- an increase made possible largely by the proposed transfer of support from CETCs to ILECs and from the on-going net contributions from Sprint and other wireless carriers.

Granting incumbent LECs a right of first refusal gives these carriers a significant advantage over potentially more efficient service providers or technologies. If an ILEC has a legitimate financial or technological advantage that would enable it to provide broadband service in an unserved area more efficiently than another service provider, then it certainly should be allowed to cite to those advantages in seeking CAF subsidies.

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[46] *Id.*, n. 7.

[47] *See* 2010 Universal Service Monitoring Report, CC Docket No. 98-202, released December 2010. Federal high-cost support by ILEC holding company was as follows: AT&T ($188.0 m.), CenturyLink and Qwest ($351.0 m.), FairPoint ($3.2 m.), Frontier ($146.8 m.), Verizon ($125.3 m.), and Windstream ($79.2 m.). These figures do not include the hundreds of millions of high-cost USF paid to the wireless and CLEC affiliates of these six ILECs. Verizon-ILECs' 2010 receipts are unaffected by the phase-out of Verizon-Wireless' high-cost receipts.

However, there is no principled basis for giving the incumbent LEC the advantage of a right of first refusal that is not available to any other service provider.

C. Public Interest Obligations for CAF Recipients

As Sprint and many other parties have previously recommended, grant of broadband USF support, particularly if the Commission decides to grant USF to only one carrier per geographic area, should be accompanied by public interest obligations that require the recipient to make its supported network available to other service providers on reasonable and economic rates, terms and conditions.[48] Requiring the supported carrier to provide backhaul (in the case of wireline carrier recipients) and data roaming (in the case of wireless carrier recipients or wireless affiliates of wireline carrier recipients) at forward-looking economic rates; collocation; and IP packet-based interconnection would encourage competition in markets in which entry by multiple service providers in competition with the subsidized carrier might otherwise be economically infeasible.

The ABC and RLEC Plans are both silent as to public interest obligations on CAF recipients and indeed, the ABC Plan ILECs proponents urge the FCC to take a wholly deregulatory approach to the very broadband facilities the proponents expect a new wholly regulatory mechanism to fund. Unless pro-competitive public interest obligations are incorporated, their ICC/USF proposals cannot be accepted.

VI. DEREGULATION ONLY WHERE A LEC LACKS MARKET POWER

Under the ABC Plan, price cap incumbent LECs and CETCs that no longer receive legacy high-cost or CAF support for a given area would no longer be subject to

[48] *See, e.g.,* Sprint's comments on the proposed Mobility Fund (WT Docket No. 10-208) filed on December 16, 2010, pp. 7-8; comments in WC Docket No. 10-90 *et al.,* April 18, 2011, p. 42; reply comments in WC Docket No. 10-90 *et al.*, filed May 23, 2011, pp. 44-45. *See also,* August 18 Google Letter, p. 6.

legacy ETC regulations and requirements.[49] In addition, the price cap LECs have proposed that elimination of legacy USF or CAF support in a given area would trigger elimination by the Commission of "all remaining federal rate and other service regulations imposed on price cap incumbent LECs."[50]

Sprint agrees that as their legacy high cost USF support is phased out, ETCs should be freed of many of the obligations associated with ETC status, such as line count reports; filing of service improvement plans, network outage reports, and complaint reports; and mandatory provision of Lifeline services. Elimination of Carrier of Last Resort (COLR) retail local voice service obligations might also be considered on a case-by-case basis.

What should *not* be allowed, however, is the blanket elimination of federal rate and other service regulation on ILECs for facilities over which the ILEC retains market power and for which the receipt of USF support is irrelevant. The fact that an ILEC does not receive USF subsidies (legacy or CAF) in a given area does not mean that the ILEC lacks market power in the provision of certain telecommunications facilities or that rate and other service regulations are unnecessary. To the contrary, ILECs retain enormous market power in the provision of certain facilities for which they do not receive direct USF support. To deregulate the LECs' provision of these services would obviously be contrary to the public interest.

Special access is a case in point. ILECs – AT&T and Verizon in particular – control the overwhelming majority of this market, assess rates for such services that far

[49] ABC Plan, Attachment 1, p. 13.
[50] *Id.*

exceed their economic cost and generate supra-competitive returns, and impose onerous terms and conditions that effectively foreclose potential competition.[51] The phase-out of USF subsidies would have no bearing on their market power over the provision of special access services. Where market forces are insufficient to ensure cost-based, just and reasonable rates, terms and conditions, deregulation is assuredly not warranted.

Deregulation of all switched access services is also highly problematic. The ABC and RLEC ICC reform plans address only certain terminating switched access rate elements – they do not touch originating access or certain terminating transport rate elements. Moreover, even those rate elements included in these reform plans (terminating local switching and local transport) are provided by a LEC on a monopoly basis,[52] and so long as there is an ICC mechanism other than bill-and-keep for these rate elements, deregulation is unwarranted.

The reason for continued regulation in the face of market power should be self-evident. A carrier with market power can shift the cost of foregone revenues associated with the provision of one service for which it faces competition or for which, because of regulatory constraints, it is unable to increase its rates, to other services for which there

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[51] *See, e.g.,* Sprint's *ex parte* letter (filed October 24, 2007), comments (filed January 19, 2010), and reply comments (filed February 24, 2010) in WC Docket No. 05-25.

[52] *See, e.g., Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, ¶30 (2001) ("once an end user decides to take service from a particular LEC, that LEC controls an essential component of the system that provides interexchange calls, and it becomes the bottleneck for IXCs wishing to complete calls to, or carry calls from, that end user"). *See also, Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area, Memorandum Opinion and Order* released June 22, 2010, ¶79 ("IXCs, which also must pay switched access charges, face a bottleneck monopoly from the LECs-whether incumbent LEC or competitive LEC- that provide access to their end users").

are minimal or no rate or quality of service constraints.[53] A carrier with market power may choose to exercise that power by gouging captive customers and earning supra-competitive returns.

To eliminate all rate and other service regulations for special access, switched access, and other services over which the ILECs retain market power is unwarranted and contrary to the public interest. It is also an attempt to circumvent Section 10 of the Act and the Commission's forbearance rules. Therefore, any proposal to eliminate necessary competitive safeguards – particularly via an automatic trigger such as a halt in USF or CAF support -- should be rejected out of hand.

The Commission has asked for comment on the likelihood of a pass-through of any cost savings associated with a reduction of terminating rates to $.0007.[54] The benefit of reducing or eliminating traffic termination charges is the unlocking of operational, administrative, and financial resources that are currently tied to a monopoly network function (traffic termination) and freeing those resources to be put to productive use in the marketplace. The Commission long ago decided that the retail markets for wireless and long distance were competitive. In such competitive markets, access/reciprocal compensation cost savings may be reflected in various ways. Service providers may reduce retail rates, plow back any cost savings into network improvements or more attractive service plans (offering higher usage levels without raising rates, or introducing new or improved services or capabilities, for example), or may use cost savings to

[53] For example, if local switching rates are reduced to $.0007 or below, the LEC might attempt to recover some of its lost local switching revenues through higher transport charges or higher special access rates.
[54] Public Notice, p. 17.

improve their bottom line or to offset cost increases incurred elsewhere (*e.g.*, to pay increases in rates applied to VoIP traffic or increases in special access rates). Because carriers will be affected differently by terminating rate reform, the Commission should avoid the temptation to mandate flow-through of any cost savings in a specific manner, instead allowing the competition in those markets to determine the manner in which those cost savings will flow to end users.

Sprint, for example, is currently engaged in a massive network upgrade, known as Project Vision, that will boost network performance, increase efficient use of spectrum, speed conversion to IP based voice, and ultimately reduce the cost of providing service to consumers on a per megabyte basis. This deployment represents Sprint's continued leadership in technology development and implementation, just as Sprint lead the industry in the development and deployment of 4G mobile broadband services. Network Vision, however, poses a significant upfront capital expenditure. Public statements from Sprint have noted an investment cost of $4-5 billion. Sprint is willing to make these investments in technology, however, because of the competitive pressure of the industry. Elimination of the implicit subsidies of ILEC TDM networks will allow more rapid investment in new networks such as Vision.

VII. CONCLUSION

The Commission is presented here with an opportunity to adopt meaningful and comprehensive reforms of the dysfunctional intercarrier compensation and universal service regimes – to address not only legacy disputes and networks, but also to lay the groundwork for efficient IP networks in a pro-consumer, pro-competitive manner. It may choose to use the ABC Plan and the RLEC Plan as its starting point for reform, but these

plans cannot be the end point. Instead, the Commission must adopt a regulatory framework which fosters broadband investment and adoption (by clarifying IP interconnection obligations, forbidding the assessment of legacy access charges on VoIP, and rapidly transitioning to a system of bill-and-keep for all terminating rate elements, including all local transport elements); which protects and promotes competitive neutrality (by adopting USF mechanisms which are carefully targeted, distributes support only where there is a genuine need, are evenly applied, and are accompanied by certain public interest obligations for recipients); and which maintains reasonable regulations where a carrier has market power.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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August 24, 2011

ATTACHMENT A

Sprint

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July 29, 2011

Via Electronic Submission
Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Written Ex Parte Communication
Interconnection of IP Networks for the Exchange of Broadband Voice Traffic, *WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No, 96-45, WC Docket No 03-109*

Dear Ms. Dortch:

Reform of the intercarrier compensation regime must take into account the evolution of voice communication from traditional time division multiplexing (TDM) to Internet protocol (IP). Today's networks largely rely on more efficient IP technology to handle and deliver traffic to consumers. Establishing traffic exchange rules based upon the quickly disappearing TDM world will only cement inefficiencies in the network, resulting in unnecessary cost to consumers.

The incumbent LEC position regarding the interconnection of IP networks for the exchange of broadband (or packetized) voice traffic ("IP Voice Interconnection") threatens to undermine the advantages of this technological innovation and is incompatible with the explicit directives that Congress has imposed on the Commission. Sprint Nextel Corporation has therefore proposed adoption of a handful of rules that would accelerate the availability of IP Voice Interconnection – action that would benefit consumers by offering them a superior voice product at a lower price and thereby make even more compelling the case for consumers to subscribe to broadband Internet access services.

A. IP Voice Interconnection Is Necessary to Spur Broadband Deployment

The National Broadband Plan recognized that IP Voice Interconnection is critical to broadband deployment:

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> Without interconnection, a broadband provider . . . is unable to capture voice revenues that may be necessary to make broadband entry economically viable.[1]

The National Broadband Plan observed that some LECs have adopted an "anticompetitive interpretation of the Act" and imposed a "barrier to broadband deployment" by "resisting" IP Voice Interconnection and claiming they have "no basic obligation to negotiate interconnection agreements."[2] The Plan therefore urged the FCC to "clarify the rights and obligations regarding [IP Voice] interconnection to remove any regulatory uncertainty," recognizing that for "competition to thrive, the principle of interconnection – in which customers of one service provider can communicate with customers of another – needs to be maintained":

> For consumers to have a choice of service providers, competitive networks need to be able to interconnect their networks with incumbent providers. Basic interconnection regulations, which ensure that a consumer is able to make and receive calls to virtually anyone else with a telephone, regardless of service provider, network configuration or location, have been a central tenet of telecommunications regulatory policy for over a century.[3]

In response to the Plan's recommendation, the Commission sought comment on the "steps we can take to promote IP-to-IP interconnection."[4]

The record evidence submitted in response to the *NPRM* demonstrates that the availability of IP Voice Interconnection has "not kept pace with the deployment of IP in internal networks" and that until "widespread IP interconnection is available, consumers and carriers alike will not realize the full benefits of IP technology."[5] Although Sprint is one of the nation's largest voice providers, it has been unable to reach an IP Voice Interconnection agreement with any ILEC, large or small. Other competitive IP network operators have told the FCC they face significant difficulty establishing IP interconnection arrangements – namely, ILECs have "steadfast[ly] refus[ed] to enter into such [IP Voice] agreements despite the willingness of many other providers to do so."[6]

Congress has specified unequivocally that the FCC "*shall encourage* the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."

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1 National Broadband Plan at 49.

2 *Ibid.*

3 National Broadband Plan at 49, Recommendation 4.10.

4 *See Connect America Fund et al. NPRM*, 26 FCC Rcd 4554, 4773 ¶ 678 (Feb. 9, 2011) ("*ICC Reform NPRM*").

5 XO Reply at 5. *See also* EarthLink Reply at 2 ("[C]arrier interconnections in IP have lagged internal network deployments due in large part to [ILEC] refusals to negotiate IP interconnection.").

6 Cablevision Reply at 2. *See also* Charter Reply at 6; Cbeyond Reply at 2 and 4; Paetec Reply at 6; XO Reply at 2 and 6.

further classifying broadband voice as an advanced communications service.[7] In May, the Commission concluded that broadband is "not being deployed in a reasonable and timely fashion to all Americans."[8] This finding is important because in this situation, Congress has directed the FCC to take "*immediate* action to *accelerate* deployment" of broadband voice and other advanced services.[9]

So what "immediate action" do incumbent LECs propose the FCC take to "accelerate deployment" of broadband voice service? *Nothing*. For example, CenturyLink and the Rural ILEC Associations contend that the FCC should not even consider IP Voice Interconnection at this time and instead delay such consideration for "three to five years":[10]

> [T]he Commission should strive first to get TDM ICC right – then move on to dealing with a rational transition from the TDM network to all-IP networks, and finally, to addressing the regulatory implications of an all-IP network.[11]

Obviously, delaying for "three to five years" the time before the FCC even considers the subject of IP Voice Interconnection cannot possibly be deemed consistent with the statutory directive that the FCC take "immediate action to accelerate deployment" of broadband voice services.

The nation's two largest ILECs take a slightly different position, with AT&T and Verizon urging the FCC to address this subject but find that no new rules are necessary. For example, AT&T asserts that "market forces alone" should govern IP Voice Interconnection because, AT&T claims, any new rules would only "resolve hypothetical problems that may never arise":[12]

> As the industry transitions to an all-IP communications infrastructure, there will be no need for the Commission to regulate interconnection or inter-provider compensation for *any* type of packet-switched communications. Instead, relationships among IP networks should continue to be governed, as they are today, by freely negotiated agreements.[13]

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7 47 U.S.C. § 1302(a) (emphasis added); *see also* 47 U.S.C. § 153(1) ("The term 'advanced communications service' means (A) interconnected VoIP service; (B) non-interconnected VoIP service . . . ."). These two terms are defined in 47 U.S.C. §§ 153(23) and (34).

8 *Seventh Broadband Progress Report*, GN Docket No. 10-159, FCC 11-78, at ¶ 1 (May 20, 2011). *See also Sixth Broadband Deployment Report*, 25 FCC Rcd 9556, 9558 ¶ 2 (2010).

9 47 U.S.C. at § 1302(b) (emphasis added).

10 *See* NECA *et al.* Reply at 61.

11 CenturyLink Comments at 56. While CenturyLink demands immediate expansion of public funding mechanisms to subsidize its IP network, it is simultaneously urging the FCC to put off any consideration of efficient interconnection of its IP network with other carriers that it expects the FCC to require to subsidize CenturyLink. The FCC should reject this obvious inconsistency.

12 AT&T Comments at 17 and 25.

13 AT&T Reply at 2 (italics in original). In making these claims, AT&T does not identify any IP network operator with which its ILEC has an IP Voice Interconnection agreement. Moreover, in Texas,

Similarly, Verizon asserts that new rules would "lead to arrangements that are economically and technically suboptimal, or even unviable."[14]

This position is to be expected given that Verizon and AT&T currently control more than 75% of incumbent local exchange lines and 64% of wireless subscribers. Sprint and other competitive IP network operators are not asking the FCC to "resolve hypothetical problems that may never arise." The fact is that market forces will work *only* if incumbent LECs are willing to establish IP Voice Interconnection agreements. But the record evidence demonstrates that IP interconnection agreements are not being widely established with the incumbent LECs. A rule requiring incumbent LECs to negotiate in good faith IP Voice Interconnection agreements cannot possibly, as the RBOCs claim, "cause significant harm," "prejudge the outcome of industry negotiations," or result in arrangements that would be "economically and technically suboptimal, or even unviable."[15]

There is no ambiguity in the statutory directive. Specifically, where the evidence shows that broadband voice services are not being deployed timely to all Americans – and such deployment cannot exist without ILECs agreeing to IP Voice Interconnection agreements – then the FCC is to take "immediate action to accelerate deployment" of broadband voice services. Incumbent LECs, in taking their position, basically want the FCC to delegate to them the authority to determine when all-IP networks will become available to American consumers. Of course, such a delegation would not begin to meet the statutory directive.

Last month, in a report to the Technology Advisory Council ("TAC"), the Critical Legacy Transition Working Group ("CLT-WG") recommended that the FCC "take steps to expedite the transition" to all IP networks.[16] The CLT-WG observed that a "fast transition" can "generate significant economic activity and at the same time lower the total cost."[17] The fact is that a transition to all-IP networks cannot meaningfully begin until ILECs, and the major ILECs in particular, begin to negotiate IP Voice Interconnection agreements. As Cox has correctly observed:

> Allowing market forces to determine the terms of IP-enabled voice interconnection would essentially give the incumbent LECs the unilateral ability to develop the paradigm governing IP interconnection.[18]

In closing, Sprint agrees with XO that the "refusal of ILECs to interconnect with competitive carriers on an all IP basis so far is all the evidence that is required to show that

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AT&T claimed it has no obligation to negotiate such agreements (because it placed most of its IP assets in a separate affiliate that it deems to be unregulated). *See* Sprint Comments at 20.

[14] Verizon Comments at 16.

[15] AT&T Reply at 13; Verizon Comments at 16.

[16] *See* Technology Advisory Council, *Status of Recommendations*, at 11 (June 29, 2011), *available at* http://transition.fcc.gov/oet/tac/TACJune2011mtgfullpresentation.pdf.

[17] *Id.* at 10.

[18] Cox Reply at 3. *See also* Cbeyond Reply at 11.

market forces alone will not usher in reasonable and nondiscriminatory IP-based interconnection":

> [I]t is clear from the current state of the industry that the necessary widespread shift to IP-based networks will not occur without some regulatory intervention.[19]

Accordingly, Sprint urges the Commission to adopt the rule proposals discussed below.

B. Adoption of a Handful of High-Level Rules Should Accelerate the Availability of IP Voice Interconnection and All IP Networks

Sprint submitted in its pleadings explicit proposals in response to the FCC's question regarding the "steps we can take to promote IP-to-IP interconnection."[20] Sprint below identifies the most important steps the Commission can take to begin the transition to all-IP networks.

1. Incumbent LECs and Their Affiliates That Offer Retail Broadband Voice Services Should Be Required to Negotiate IP Voice Interconnection Agreements in Good Faith

Several parties have urged the FCC to establish a firm date by which the transition from the PSTN to all IP networks, for purposes of interconnection, would be completed. For example, Sprint has proposed that the transition be completed no later than the end of 2015,[21] while AT&T has proposed that this date be deferred for another year.[22]

Incumbent LECs have taken the position they should not be required to offer any IP Voice Interconnection before the transition end date that the FCC ultimately adopts – even if they already offer broadband voice services to their own customers and even though such IP interconnection would reduce their own costs of service.[23] In other words, ILECs contend that the entire industry should flash cut to IP interconnection on the same, far in the future, day. The Commission should reject this ILEC position. There is no legitimate reason why an ILEC already offering retail broadband voice services should be excused from negotiating an IP Voice Interconnection agreement with competing IP network operators.

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19 XO Reply at 2 and 11.

20 *ICC Reform NPRM*, 26 FCC Rcd at 4773 ¶ 678. Sprint further demonstrated the FCC possesses ample legal authority to adopt its proposed rules for IP Voice Interconnection. *See* Sprint Reply, Appendix D.

21 *See* Sprint Reply at 19. *See also* Sprint NBP Public Notice #25 Comments, GN Docket No. 09-51, at 16 (Dec. 22, 2009) ("By 2016, carriers should provide all of their traffic to other carriers in IP format.").

22 *See, e.g.*, AT&T Comments at 32 (proposing that all PSTN "interconnection obligations" end on January 1, 2017).

23 *See, e.g., ICC Reform NPRM*, 26 FCC Rcd at 4710 ¶ 506 ("[T]he transition to IP can result in cost savings, including reductions in circuit costs, switch costs, space needs, and utility costs, as well as the elimination of other signaling overhead.").

AT&T asserts that direct IP Voice Interconnection is unnecessary because competitive IP network operators can always interconnect with it indirectly.[24] But as AT&T recognizes, because industry quality of service standards for broadband voice do not exist,[25] IP network operators interconnecting indirectly necessarily would be relegated to offering consumers a broadband voice service without any quality of service guarantees (*e.g.*, their customers' voice calls would be treated no differently than a gaming session).[26] In other words, AT&T claims that the FCC should empower it and other ILECs to determine unilaterally the quality of voice service that their competitors are able to offer to consumers. This position is untenable, and it is not surprising that AT&T makes no attempt to explain how the public interest would be served by precluding American consumers from having the option of specifying the level of quality they want to use with their voice services – especially when, as even AT&T acknowledges, such a capability "already exists" (at least with direct interconnection).[27]

The only objection AT&T makes to direct IP Voice Interconnection is that this would require an ILEC to convert *some* of the incoming traffic to TDM (for calls destined to its PSTN customers). But this is a function that all network operators with a mix of PSTN and broadband voice customers would assume (*e.g.*, Sprint would be responsible for converting AT&T's IP traffic to TDM for the calls destined to Sprint's PSTN customers), so the performance of this conversion function would be applied in a competitively neutral fashion. Also, AT&T and other ILECs offering broadband voice services today already engage in such an IP-TDM conversion for calls between their own PSTN and IP customers, and no ILEC alleges it would incur any additional costs in performing this same function for some of the incoming traffic it receives from other IP networks. Finally, AT&T's "solution" – calls between two broadband voice customers should undergo two, completely unnecessary, IP-TDM conversions – makes no sense whatsoever.[28]

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[24] *See, e.g.*, AT&T Comments at 22. In taking this position, however, AT&T does not identify any IP networks that offer transit functionality to AT&T's IP network, including the quality of service levels these networks offer in conjunction with AT&T's IP network. While AT&T offers transit services (for an extra fee, of course), given its position that "mileage pumping" is an unreasonable practice under § 201(b) of the Act (*see* AT&T § XV Comments at 30-35), Sprint assumes that AT&T agrees that it cannot require competitive IP networks to use its transit services when the competitor prefers to connect directly to AT&T's IP network.

[25] *See* AT&T Reply at 12-13.

[26] *See id.* at 2 and 8. Since as AT&T concedes, the only way that quality of service guarantees can be offered today is *via* direct interconnection, there is no basis to AT&T's assertion that indirect interconnection acts as a "powerful competitive check" to the ability of ILECs to misuse their market power over direct interconnection. *See* AT&T Comments at 23.

[27] *See* AT&T Reply at 13.

[28] Under AT&T's proposal, an IP network operator would convert its broadband voice traffic into TDM before delivery to the ILEC, and the ILEC would then reconvert the call to IP for delivery to its broadband voice customers. In contrast, under Sprint's proposal, such calls would undergo no protocol conversions.

In the end, the real reason incumbent LECs are urging the FCC to ignore the issue of IP Voice interconnection is because, as the FCC has recognized, they have the "perverse incentive to maintain . . . legacy, circuit-switched-based [TDM] networks to collect intercarrier compensation revenue," even though "IP-to-IP interconnection would be more efficient":

> [T]he record suggests that the current [ICC] system may be disrupting a market-driven transition to more efficient forms of interconnection, such as IP-to-IP interconnection.[29]

As the National Broadband Plan correctly observed, while this forced TDM interconnection arrangement "may be in the short-term interest of a carrier seeking to retain ICC revenues, it actually hinders the transformation of American's networks to broadband."[30]

Broadband deployment and use will not become widespread until broadband voice is widely available. In turn, broadband voice will not become widely available and used, much less achieve its full potential, until IP networks begin interconnecting on an IP basis.

Sprint submits that to protect the interests of consumers and to accelerate the availability of robust broadband voice services, the Commission should order those incumbent LECs offering retail voice broadband services to negotiate in good faith IP Voice Interconnection agreements, upon receipt of a bona fide request. A plain reading of the statutory directive – the FCC shall take "immediate action to accelerate" the deployment of broadband voice capabilities – demands no less.

2. The Commission Should Adopt Interim Default POI Rules for IP Voice Interconnection

"[T]he location of the POI and the allocation of transport costs," the FCC has correctly observed, are "some of the most contentious issues in interconnection proceedings."[31] Even opponents of new rules recognize the need for the FCC to establish the default POIs (points of interconnection) that would be used to exchange broadband voice traffic between IP networks in the absence of an agreement between the two interconnecting parties.[32]

Google has urged the FCC to establish network efficiency as one of the overarching goals that should guide its actions in this docket.[33] Sprint agrees, and it is for this reason that it and T-Mobile have proposed that the Commission refer the default POI location issue to the Technological Advisory Council ("TAC") so the FCC can act with the benefit of the TAC's

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29 *ICC Reform NPRM*, 26 FCC Rcd at 4709-10 ¶¶ 506-507.

30 National Broadband Plan at 142.

31 *Unified ICC Regime NPRM*, 20 FCC Rcd 4685, 4727-28 ¶ 91 (2005).

32 *See* AT&T Reply at 25 ("The Commission could easily prevent carriers from dumping off traffic at inappropriate locations by adopting such default POIs."). *See also* Joint AT&T and Verizon Ex Parte Letter, Docket No. 01-92 (Oct. 14, 2008) (the RBOCs propose default POI rules).

33 *See* Google Comments at 1.

views on this important subject.[34] Nevertheless, interim default POI rules are still needed to guide interconnection negotiations that occur while the TAC is considering this matter and developing its recommendations to the Commission.

Parties addressing this subject in their pleadings have widely different views regarding the location of such default IP POIs, but very few of them explain why their proposal is superior to the alternatives. For example, some parties recommend retaining current LATA-based POIs – even though they recognize this arrangement reflects "the networks that existed at the time of the AT&T divestiture rather than the networks that exist today."[35] Other parties propose establishing a default IP POI in each State or in each MSA – proposals that would likely require IP network operators to build (or obtain from third parties) new facilities to reach the new POI locations.[36]

All of these default POI proposals are fundamentally flawed. They would not support VoIP – voice over IP networks; they would rather require IP voice interconnection locations (and connecting facilities) that would be used exclusively for transmission and exchange of voice traffic. In other words, proponents of the use of LATAs, States or MSAs as the location of default POIs effectively want the FCC to replicate for IP the inefficient interconnection architecture that is currently used for PSTN traffic – except that the trunks would transport voice traffic in the IP protocol rather than the TDM format.

The Commission should reject these PSTN-centric default POI proposals for the exchange of broadband voice traffic. As the *NPRM* correctly notes, it makes "little sense for providers to maintain different interconnection arrangements for the exchange of VoIP and other forms of Internet traffic."[37] In fact, as AT&T has stated, "maintaining two separate interconnection regimes for IP-to-IP traffic would be grossly inefficient, and thus would defeat one of the principal benefits of the transition to all-IP networks":

> VoIP accounts for only one percent of the traffic on IP networks, and as Sprint notes, "[r]edesigning IP networks based on one percent (1%) of the traffic transported over these networks so they accommodate legacy PSTN network architecture makes no sense whatsoever." Instead, efficiency requires providers to "transport and commingle IP voice over the same facilities used to transport other IP traffic."[38]

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34 *See* Joint Sprint and T-Mobile Ex Parte Letter, Docket No. 01-92, at 3 (Jan. 21, 2011). *See also* Sprint Comments at 22-25.

35 Level 3 Comments at 12. *See also* Hypercube Reply at 3.

36 *See* Hypercube Reply at 3; Level 3 Comments at 12.

37 *ICC Reform NPRM*, 26 FCC Rcd at 4773 ¶ 679.

38 AT&T Reply at 15 (supporting citations omitted). *See also* AT&T Comments at 24 ("In fact, such a bifurcated regime would make *no sense at all*.") (italics in original). Inexplicably, however, AT&T later describes as "efficient" its past proposal that would establish at least one (and for traffic destined to AT&T customers, several) POIs per each LATA. *See id.* at 25.

If the default POIs for broadband voice are located where networks currently exchange non-voice IP traffic, the incremental cost to transport broadband voice – whether from the calling party or to the called party – would be miniscule, if not zero.[39] With efficient IP POIs, network operators would no longer require hundreds (or in Sprint's case, thousands) of separate low capacity facilities currently used for PSTN interconnection (*e.g.*, DS1s, DS3s). The cost savings the industry would realize by interconnecting at a handful of locations would be significant (and likely exceed $1 billion annually). In addition, having far fewer facilities and interconnection points would make use of redundant facilities more feasible. The consumer benefits from such a sizable reduction in service costs and an increase in network reliability would be enormous.

Sprint submits that the preeminent factor the FCC should use in establishing default POIs for broadband voice is to maximize the extent to which such voice traffic can be exchanged at the same locations where IP networks today exchange non-voice IP traffic. Accordingly, Sprint recommends that while the TAC is considering this subject, the FCC establish interim default IP POIs at the locations where IP networks today interconnect for purposes of exchanging non-voice Internet traffic. Of course, this interim rule would be a default rule only, as two IP network operators could always agree to use different locations for the exchange of their broadband voice traffic.

3. The Commission Should Ask the TAC to Identify the Steps the FCC Should Take to Facilitate Efficient Indirect Interconnection Between IP Networks

While direct interconnection will be the most appropriate means of exchanging IP voice services in many cases, there are over a thousand incumbent LECs and hundreds of competitive networks. It is not realistic to believe that all 1,800 to 2,000 networks will connect directly with each other. Rather, as is the case today with PSTN interconnection, in many circumstances it will be more efficient for two networks to interconnect indirectly with each other, using an IP network operated by a third party.

The practical problem, as AT&T recognizes, is that "additional technical requirements [are needed] for indirect interconnection" to ensure a minimum level of quality for broadband voice services, and such standards do not exist today.[40] While different standards bodies are working on developing such standards,[41] it is not now known when these standards will be developed, whether they will be sufficiently complete and consistent with each other, whether international standards will be suitable for the U.S. market, and whether these standards will provide the minimum level of service quality that the FCC believes should be available to American consumers.

Given the importance of indirect interconnection, especially with respect to the traffic exchanged with small networks, coupled with the statutory directive that the FCC take "immediate action to accelerate the deployment" of broadband voice services, Sprint submits that the TAC is ideally suited to identify the steps the FCC should take to ensure that indirect

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39 *See* Sprint Comments at 17-18 and 23-25.

40 *See* AT&T Reply at 12-13.

41 *See id.* at 13 and n.16.

interconnection is widely available and provides the minimum level of service quality that consumers deserve.

4. The Commission Should Confirm That Its Complaint Remedy Is Available to Resolve IP Voice Interconnection Disputes – Including Refusals to Negotiate in Good Faith

Finally, the Commission should confirm that any IP voice network operator may file a complaint with it if the operator is unable to reach timely an interconnection agreement with an incumbent LEC.[42]

The Commission has long held that under Section 2(a) of the Act, it has "plenary jurisdiction to require . . . interconnection negotiations to be conducted in good faith":

> [T]he conduct of interconnection negotiations cannot be separated into interstate and intrastate components because failure to reach an interconnection agreement for intrastate services also precludes interconnection for interstate services.[43]

If the FCC possesses the authority to order that interconnection negotiations be conducted in good faith, it necessarily follows it has the authority to entertain complaints alleging that one of the parties to the negotiations is not, in fact, negotiating in good faith.

Moreover, the Commission has squarely held that portable broadband services must be subjected to a federal regime because such services "cannot be separated into interstate and intrastate communications," and it has further declared that this ruling applies to other providers of broadband voice services, including fixed location IP voice services:

> [T]his Commission, not the state commission, has the responsibility and obligation to decide whether certain regulations apply to DigitalVoice and other IP-enabled services having the same capabilities.[44]

Of course, if fixed and portable broadband voice services are subject to a federal regime, it necessarily follows that mobile broadband voice services must be subject to the same regime.[45] Indeed, the FCC has recognized that broadband voice is merely an application like other

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[42] The FCC possesses regulatory authority to resolve IP voice interconnection disputes whether broadband voice services are deemed to be a telecommunications service or an information service. *See* Sprint Reply Comments, Appendix D at 6-9.

[43] *See Cellular Interconnection Reconsideration Order*, 4 FCC Rcd 2369, 2371 ¶ 16 (1989). *See also Cellular Interconnection Order*, 2 FCC Rcd 2910, 2912-13 ¶ 21 (1987).

[44] *Vonage Order*, 19 FCC Rcd 22404, 22404-05 ¶ 1, 22424 ¶ 32 (2004), *aff'd*, 483 F.3d 570 (8th Cir. 2007). Given the FCC's finding that certain broadband voice services should be classified as interstate, information services, *see pulver.com Order*, 19 FCC Rcd 3307 (2004), and given the importance of competitive neutrality so markets can operate effectively, it is critically important that all providers of broadband voice services be regulated under the same set of regulatory rules.

[45] This is especially the case with respect to mobile services because Congress has explicitly given the FCC regulatory authority over intrastate mobile services. *See* 47 U.S.C. § 152(b)(opening clause).

applications used with broadband Internet access services, "thus making jurisdictional determinations about particular DigitalVoice communications based on an end-point approach difficult, if not impossible."[46]

Finally, FCC enforcement of federal IP voice interconnection rules are needed given the very nature of IP technology and the business arrangements that are developing as a result. Two IP voice providers will negotiate one interconnection agreement, and even national providers will typically exchange their IP voice traffic at most at three or four locations nationwide. Given this reality and given that Congress has given the FCC exclusive regulatory authority over interstate services,[47] only the FCC can efficiently enforce whatever rules it adopts to promote the interconnection and exchange of IP voice services.

For all these reasons, coupled with the statutory directive that the FCC take "immediate action to accelerate deployment" of broadband voice services, Sprint urges the Commission to confirm that it will entertain, and act expeditiously on, any complaint that an ILEC or its affiliate offering retail broadband voice services is acting in bad faith or otherwise refusing to accept reasonable terms of interconnection for the exchange of IP voice services.

* * *

Verizon asserts that Sprint and other competitive IP network operators want the FCC to adopt "heavy-handed regulation,"[48] while AT&T claims that competitors want the FCC to adopt a "one-size-fits all regulatory framework."[49] These RBOC claims grossly misrepresent the position of the competitive industry. As XO states, it is "not necessary for the Commission to analyze all the nuanced details of IP interconnection in order to take the critical step of confirming that all carriers must provide IP interconnection and traffic exchange (directly or indirectly)."[50] The handful of rules that Sprint discusses above would not, as Verizon claims, possibly result in arrangements that would be "economically and technically suboptimal, or even unviable."[51] Nor could such a regime, as AT&T asserts, possibly cause "more harm than good" or lead to "the same type of market distortions . . . that afflict the PSTN."[52]

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[46] *Vonage Order*, 19 FCC Rcd at 22419 ¶ 24. *See also American Libraries Ass'n v. Pataki*, 969 F. Supp. 160, 170 (S.D.N.Y. 1997) ("Internet protocols were designed to ignore rather than document geographic location.").

[47] *See, e.g., Vonage Order*, 19 FCC Rcd at 22412-14 ¶¶ 17-18.

[48] Verizon Reply at 36.

[49] AT&T Reply at 15.

[50] XO Reply at 10. *See also* Cablevision Reply at 7 ("Cablevision and others do not propose a heavy hand of Commission regulation 'to displace efficient market forces with prescriptive rules.'").

[51] Verizon Comments at 16.

[52] AT&T Comments at 25.

The Commission in its *Open Internet Order* determined that the best approach for ensuring the openness of the Internet was to adopt high-level rules that would be applied in case-by-case adjudication, where the FCC would have the benefit of acting in the context of concrete facts. As the FCC explained, the "novelty of Internet access and traffic management questions, the complex nature of the Internet, and a general policy of restraint in setting policy for Internet access service providers weigh in favor of a case-by-case approach."[53] Sprint submits that the same approach should be utilized with respect to IP interconnection regarding the exchange of broadband voice traffic. Specifically, to accelerate the availability of IP Voice Interconnection, the Commission should expeditiously:

1. Direct incumbent LECs providing retail broadband voice services to negotiate in good faith upon receiving a *bona fide* request for an IP Voice Interconnection agreement;
2. Adopt interim default POI rules for IP Voice Interconnection while the TAC develops recommendations for permanent rules;
3. Ask the TAC to identify the steps the FCC should take to facilitate efficient indirect interconnection between IP networks; and
4. Confirm that the FCC will entertain complaints that an incumbent LEC is not negotiating in good faith.

Respectfully submitted,

/s/ Charles W. McKee
Charles W. McKee
Vice President - Government Affairs
Federal & State Regulatory

cc (*via* email): Zac Katz
Margaret McCarthy
Christine Kurth
Angela Kronenberg
Sharon Gillett
Randy Clarke
Rebekah Goodheart

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[53] *Open Internet Order*, 25 FCC Rcd 17902, 17952 ¶ 83 (2010). This case-by-case approach, the FCC noted, received "almost universal support among commenters." *Id.* at 17986 152.

ATTACHMENT B

Sprint

Charles W. McKee
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Sprint Nextel
Suite 700
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Washington, DC 20001

July 29, 2011

Via Electronic Submission
Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Written Ex Parte Communication
Application of LEC Access Charges to Interconnected VoIP Traffic
WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No, 96-45, WC Docket No 03-109

Dear Ms Dortch:

Sprint Nextel Corporation ("Sprint") submits this letter to respond to those LECs requesting that the Commission permit them to impose access charges on interconnected VoIP traffic. Sprint demonstrates below that the Commission cannot grant this LEC request, both as a matter of an explicit statutory mandate and as a matter of law.

A. Applying Access Charges to Interconnected VoIP Traffic Would Be Incompatible With the Congressional Directive in Section 706

Congress has specified that the FCC "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,"[1] and it has further classified interconnected VoIP service as an advanced communications service.[2] The Commission recently concluded that broadband is "not being deployed in a reasonable and timely fashion to all Americans."[3] This finding is important because in this situation, Congress

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1 47 U.S.C. § 1302(a).

2 47 U.S.C. § 153(1)("The term 'advanced communications service' means (A) interconnected VoIP service . . . ."). Congress has defined interconnected VoIP service by referring to FCC Rule 9.3 "as such section may be amended from time to time." *See id.* at § 153(25).

3 *Seventh Broadband Progress Report*, GN Docket No. 10-159, FCC 11-78, at ¶ 1 (May 20, 2011). *See also Sixth Broadband Deployment Report*, 25 FCC Rcd 9556, 9558 ¶ 2 (2010).

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has specifically directed the FCC to take "immediate action to accelerate deployment of such capability."[4]

In response to the call for "immediate action" to "accelerate deployment" of interconnected VoIP service, the LECs propose to impose new costs – in the form of legacy access charges – on providers of interconnected VoIP services, even though such access charges are well above economic cost.

The lowest access charges in the country are 0.55 cents/minute – and some access charges are as high as 35.9 cents/minute.[5] The Wireline Bureau, however, has determined that "the incremental cost of termination [on circuit switches] is zero."[6] Given this conclusion, *even the "lowest" access rate constitutes 100 percent profit to the LEC.*

The following four ILECs all favor applying their legacy access rates to interconnected VoIP traffic, and it becomes immediately apparent why they take this position. Based on the $0.0007/minute ISP rate (rather than the more accurate but lower "de minimis" or "zero" incremental cost) these ILECs generate truly remarkable profit margins:

	Interstate		Intrastate	
	Average Rate	Profit Margin	Average Rate	Profit Margin
AT&T	0.55¢	686%	0.80¢	1,043%
CenturyLink	0.65¢	829%	3.20¢	4,471%
Windstream	1.20¢	1,614%	5.50¢	7,757%
Frontier	0.70¢	900%	1.70¢	2,329%

[4] 47 U.S.C. § 1302(b).

[5] The "lowest" rate is the average traffic sensitive rate the RBOCs charge for interstate access. *See* 47 C.F.R. § 61.3(qq). *See also* National Broadband Plan at 142 (Access "[r]ates vary from zero to 35.9 cents per minute.").

[6] *See Chairman Martin's ICC Reform Proposal*, 24 FCC Rcd 6475, 6611 ¶ 255 (2008). *See also Virginia Arbitration Cost Order*, 18 FCC Rcd 17722 (2003)(Bureau finds Verizon incurs no incremental costs of termination with its circuit switches). Similarly, three prominent economists have advised the FCC that the incremental costs of termination on circuit switches are "de minimis," if not zero, and that transport involves "very little incremental costs." *See* 24 FCC Rcd at 6610-11 ¶¶ 255-56. AT&T has submitted evidence that the incremental cost of termination for one softswitch is zero, while this cost with another softswitch, using "conservative" estimates, ranges from 0.01 to 0.024 cents/minute. *See id.* at 6611-12 ¶ 257.

LECs also propose imposing their bloated access charges even though these per-minute charges are fundamentally incompatible with the flat-rated price structure that VoIP providers typically use with their retail services. For example,

- AT&T, with its U-verse services, offers "unlimited calling within the U.S. and to Canada, Puerto Rico, the U.S. Virgin Islands, Guam, and the Northern Marianas for just $35 per month."[7]
- Comcast for existing customers offers for $19.99/monthly an XFINITY voice service that includes "unlimited local and long-distance calls in the United States, Canada and Puerto Rico. Enjoy the latest technology like Universal Caller ID on your TV and PC and voicemail you can check online. Plus, 12 popular calling features including Call Waiting, 3-Way Calling and more."[8]
- Vonage offers for $25.99/monthly (following a three month promotional rate of $14.99) its Vonage World service, which includes "unlimited local and long distance home phone service across the U.S., Canada and Puerto Rico," "unlimited calling to landlines" in 60 countries, and "unlimited calling to mobile phones" in 10 countries, "even India."[9]
- CenturyLink-Qwest offers for $19.99/monthly an unlimited VoIP calling plan for domestic calls – while the same plan using its circuit-switched network is more than twice the price: $45/monthly.[10]

As Verizon has documented, even if VoIP customers have only moderate "toll" usage, their VoIP provider could see annual cost increases of up to $180 – or more.[11] Cost increases of this magnitude necessarily will be passed through to customers in the form of higher retail prices.

Of course, imposing significant new costs on interconnected VoIP services cannot possibly accelerate deployment of such services. It is therefore unsurprising that no LEC has attempted to reconcile its "impose legacy access charges" position with the specific mandate that Congress imposed on the FCC in § 706 of the 1996 Act. In fact, under no circumstances can anyone credibly claim that imposing bloated access charges on providers of interconnected VoIP services will "accelerate" broadband deployment and use of broadband voice services.

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7 *See* http://www.att.com/u-verse/explore/voice-plans.jsp (visited June 1, 2011).

8 *See* http://www.comcast.com/Corporate/Learn/DigitalVoice/digitalvoice.html (visited July 28, 2011).

9 *See* http://www.vonage.com/world-calling-plans/vonage-world/ (visited July 28, 2011).

10 *Compare* http://www.qwest.com/residential/products/voip/ *and* http://www.qwest.com/residential/phonelanding/ (visited July 28, 2011).

11 *See* Verizon § XV Reply Comments filed April 18, 2011 at 8.

B. The FCC Cannot Classify Interconnected VoIP Service as a Telecommunications Service And Subject It to the Access Regime Without Overruling 30 Years of Uniform Precedent

Many LECs contend that the "simplest way" for the FCC to apply access charges to interconnected VoIP service would be to classify this advanced service as a "telecommunications service" under the Act.[12] However, the FCC cannot make such a classification and impose access charges on such service without overruling 30 years of uniform precedent.

Access charges have never been applied to information services. The FCC decided not to apply such charges to what it then called enhanced services in its 1983 orders establishing access charges.[13] As the FCC later explained, the imposition of access charges is "not appropriate and could cause disruption in this industry segment that the provision of enhanced services to the public might be impaired."[14]

Shortly following enactment of the 1996 Act, which added the "information services" classification, the FCC held that "all of the services the Commission has previously considered to be 'enhanced services' are 'information services.'"[15] The FCC further reaffirmed that LECs may not impose access charges on information service providers:

> We find that our existing policy promotes the development of the information services industry, advances the goals of the 1996 Act, and creates significant benefits for the economy and the American people.[16]

The presence or absence of a "net" protocol conversion has been one of the defining factors the FCC has considered in determining whether a particular service should be classified as an information service or a telecommunications service.[17] For example, in its *IP-in-the-Middle Order*, the FCC held that an IXC's use of IP within its long haul network constituted a telecommunications service because the toll calls underwent "no net protocol conversion" (as both the calling and called parties were still served by TDM networks).[18] Citing Rule 69.5(b),

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12 *See* Cbeyond Reply Comments at 10. *See also* Comptel § XV Comments at 2-7; Rural LEC Section XV Group Comments at 7-8.

13 *See MTS/WATS Market Structure Order*, 97 F.C.C.2d 682, 715 ¶ 83 (1993). To achieve this result, the FCC adopted Rule 69.5(b), which provided in relevant part: "Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign *telecommunications services*." *Id.* at Appendix A (italics added).

14 *Enhanced Service Providers Order*, 3 FCC Rcd 2631, 2633 ¶ 17 (1988).

15 *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, 21955-56 ¶¶ 102-03 (1996).

16 *First Access Charge Reform Order*, 12 FCC Rcd 15982, 16003 ¶ 50 (1997).

17 *See, e.g., Non-Accounting Safeguards Order*, 11 FCC Rcd at 21956-58 ¶¶ 104-06. The Act's definition of information service is nearly verbatim with the same term as defined in the 1982 AT&T Consent Decree. The antitrust court had also consistently construed protocol conversations as being within the scope of the Decree's definition of information services. *See, e.g., United States* v. *Western Electric*, 673 F. Supp. 525 (D.D.C. 1987).

18 *See AT&T IP-in-the-Middle Order*, 19 FCC Rcd 7457 ¶ 1, 7465 ¶ 12 (2004).

which limits access charges to telecommunications services, the FCC concluded that access charges may be assessed on this IXC's traffic.[19]

While the FCC has not yet addressed the regulatory classification of interconnected VoIP services, several federal courts have been asked to decide whether access charges may be applied to such traffic. These courts, applying the Act and FCC precedent, have held that interconnected VoIP services are information services and that as a result, access charges may not be imposed.[20] For example, in *Southwestern Bell* v. *Missouri PSC*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006), AT&T appealed an arbitration order that precluded it from imposing access charges on interconnected VoIP traffic. The court rejected AT&T's arguments and held that interconnected VoIP services are an information service under the Act:

> Net-protocol conversion is a determinative indicator of whether a service is an enhanced or information service. . . . The communication originates at the caller's location in the IP protocol, undergoes a net change in form and content when it is transformed at the CLEC's switch into the TDM format recognized by conventional PSTN telephones, and ends at the recipient's location in TDM. Without this protocol conversion from IP to TDM, the called party's traditional telephone could not receive the VoIP call (*id.* at 1081-82).

Noting that information services are "outside the access charge regime," the court then held that "the MPSC correctly ruled that CLECs should not pay access charges when they originate or terminate IP-PSTN traffic" (*id.* at 1081).[21]

Administrative agencies are, of course, free to change their policies so long as they "supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored."[22] But given that the FCC has determined that information

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[19] *Id.* at 7457 ¶ 1 and 7466 ¶ 44. *See also Prepaid Calling Card Order*, 21 FCC Rcd 7290,7297 ¶ 20 (2006) (FCC applies the same analysis in connection with IXC prepaid cards where the IXC uses IP within its network).

[20] *See Paetec* v. *CommPartners*, 2010 U.S. Dist. LEXIS 51926, at *6 and *8 (D.D.C., Feb. 18, 2010) (The "net conversion of the [interconnected VoIP] calls is properly labeled an information service" and "[i]nformation services are not subject to the access charge regime."). *See also Vonage* v. *Minnesota PUC*, 290 F. Supp. 2d 993, 999 (D. Minn. 2003) (The interconnected "VoIP service provided by Vonage constitutes an information service" because for "calls originating with one of Vonage's customers, calls in the VoIP format must be transformed into the format of the PSTN before a POTS user can receive the call."), *aff'd*, 394 F.3d 568 (8th Cir. 2004).

Given that federal courts have uniformly held that interconnected VoIP services constitute an information service and that access charges may not be applied as a result, it is difficult to understand the LEC claim that the decision by VoIP providers not to pay LEC access charges constitutes a "reckless decision" that is "unsupported by Commission precedent." ITTA Section XV Reply Comments at 6.

[21] Although AT&T appealed other parts of this district court order, it chose not to appeal the ruling prohibiting access charges on interconnected VoIP traffic. *See Southwestern Bell* v. *Missouri PSC*, 530 F.3d 676 (8th Cir. 2008).

[22] *Greater Boston* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970).

services should not be subject to LEC access charges to "promote the development of the information services industry" and to "create significant benefits for the economy and the American people,"[23] given the explicit Congressional mandate for the FCC to take "immediate action to accelerate the deployment" of interconnected VoIP services,[24] and given the NBP's findings that per-minute charges should be eliminated because they are hindering broadband deployment,[25] it is not apparent why the Commission would want to change course and impose the access regime on information services.

LECs, unable to challenge the analysis above, instead urge the FCC to focus on its "ESP Exemption," which the LECs argue was "never intended to exempt" providers of interconnected VoIP services from paying access charges.[26] But of course, the FCC did not specifically "intend" to address interconnected VoIP when it first established the ESP Exemption, since VoIP technology did not even exist at that time. But what is important is that since then, the FCC has repeatedly reaffirmed that access charges may not be applied to enhanced services (or later, to information services).

More fundamentally, the ESP Exemption is no longer relevant. The FCC has recognized that the information services definition which Congress added to the 1996 Act, while it encompasses all services that had previously been treated as enhanced, is also broader than the former enhanced services definition.[27] Consequently, the Commission should decide the access charge question under the Act's regulatory classifications, rather than attempt to define (or modify) the ESP Exemption that applied before Congress changed the Act.

C. Section 251(g) Precludes Imposition of Access Charges Even If Interconnected VoIP Service Is Deemed to Be a Telecommunications Service

Some LECs contend that if the FCC classifies interconnected VoIP service as a telecommunications service, then "access charges would automatically apply" to interconnected VoIP service.[28] These LECs are mistaken because interconnected VoIP traffic does not fall within the scope of the § 251(g) access charge exception even if the service is deemed to be a new, post-1996 subset of the telecommunication services regulatory category.

The FCC has held repeatedly that the reciprocal compensation statute, § 251(b)(5), "on its face" requires LECs to establish reciprocal compensation arrangements for the transport and termination of "*all* 'telecommunications' they exchange with another telecommunications carrier, without exception":

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23 *See First Access Charge Reform Order*, 12 FCC Rcd at 16003 ¶ 50.

24 *See* 47 U.S.C. § 1302(b).

25 *See* National Broadband Plan, Recommendations 8.7, 8.11 and 8.14.

26 Consolidated Section XV Reply Comments at 6. *See also* AT&T Section XV Comments at 27.

27 *See Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, 21955-56 ¶ 103 (1996).

28 *See, e.g.*, Cbeyond § XV Reply Comments at 10.

> Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic, -- *i.e.*, whenever a [LEC] exchanges telecommunications traffic with another carrier.[29]

There is one exception to this LEC duty. Specifically, "Section 251(g) singles out access traffic for special treatment and *temporarily* grandfathers the pre-1996 rules applicable to such traffic, including rules governing 'receipt of compensation.'"[30]

The temporary access charge exception in § 251(g) is limited in scope to certain activities that predated the enactment of the 1996 Act. The plain language of this statue makes clear that it applies only to the "continued enforcement" of those "interconnection restrictions and obligations (including receipt of compensation) that apply to such [LECs] on the date immediately preceding February 8, 1996 under any . . . regulation, order, or policy of the Commission." Thus, the D.C. Circuit held that the FCC erred in attempting to bring ISP-bound traffic within the scope of § 251(g) because there had been "*no* pre-Act obligation relating to intercarrier compensation of ISP-bound traffic."[31] The Court further held that the FCC does not possess the discretion to enlarge the types of services that fall within the scope of the § 251(g) grandfather provision (and thereby narrow the scope of the § 251(b)(5) reciprocal compensation statute).[32]

Two federal courts have been asked to determine whether interconnected VoIP traffic falls within the scope of § 251(g). Both courts held that under the Act, LECs may not impose access charges on interconnected VoIP calls because such traffic does not fall within the § 251(g) access charge exemption:

> Because IP-PSTN is a new service developed after the Act, there is no pre-Act compensation regime which could have governed it, and therefore § 251(g) is inapplicable. As a result, IP-PSTN traffic falls within the statutory mandate that reciprocal compensation be used to compensate carriers for transporting traffic between calling and called parties that subscribe to different carriers.[33]

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[29] *2001 ISP Remand Order*, 16 FCC Rcd 9151, 9165-66 ¶¶ 31-31 (2001) (italics in original; underscoring added), *remanded on other grounds*, *WorldCom* v. *FCC*, 288 F.3d 429 (D.C. Cir. 2002). *See also Connect America Fund et al. NPRM*, 26 FCC Rcd 4554, 4712 ¶ 513 (Feb. 9, 2011)("*ICC Reform NPRM*"); *2008 ISP Remand Order*, 24 FCC Rcd 6475, 6479-80 ¶ 8 (2008), *aff'd*, *Core* v. *FCC*, 592 F.3d 139 (D.C. Cir. 2010), *cert. denied*, 131 S. Ct. 626 (Nov. 15, 2010).

[30] *See ICC Reform NPRM*, 26 FCC Rcd at 4712 ¶ 514 (emphasis added). *See also 2001 ISP Remand Order*, 16 FCC Rcd at 9166-67 ¶ 34; *2008 ISP Remand Order*, 24 FCC Rcd at 6483 ¶ 16.

[31] *WorldCom* v. *FCC*, 288 F.3d 429, 433 (D.C. Cir. 2002) (italics in original).

[32] *See id.* ("But nothing in § 251(g) seems to invite the Commission's reading, under which (it seems) it could override virtually any provision of the 1996 Act so long as the rule it adopted were in some way, however remote, linked to LECs' pre-Act obligations.").

[33] *Southwestern Bell* v. *Missouri PSC*, 461 F. Supp. 2d 1055, 1080 (E.D. Mo. 2006) (supporting citations omitted). *See also Pactec* v. *CommPartners*, 2010 US. Dist. LEXIS 51926, at *9 (D.D.C., Feb.

No one can credibly claim that there existed on February 8, 1996 an obligation on providers of interconnected VoIP services to pay LEC access charges. After all, the current dispute – whether access charges should be applied – obviously would have never arisen had there been such an obligation in 1996. Consequently, whether interconnected VoIP service is ultimately deemed to be an information service or a telecommunications service is irrelevant. Either way, the service does not fall within the § 251(g) grandfather provision, and the Act therefore precludes LECs from imposing access charges on interconnected VoIP traffic. At most, interconnected VoIP traffic can be subjected to reciprocal compensation rates.[34]

D. Conclusion

Based on the foregoing, Sprint respectfully submits that the Commission may not lawfully permit LECs to impose access charges on interconnected VoIP services. Moreover, to the extent that policy is relevant, imposing legacy access charges, set at rate levels well above economic cost, cannot possibly be deemed to be action that would "accelerate" the deployment of interconnected VoIP services.

Respectfully submitted,

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18, 2010) ("There cannot be a pre-Act obligation relating to inter-carrier compensation for VoIP, because VoIP was not developed until the 1996 Act was passed.").

[34] *See ICC Reform NPRM*, 26 FCC Rcd at 4748 ¶ 615 (Interconnected VoIP traffic is "telecommunications" traffic within the scope of § 251(b)(5) "regardless of whether interconnected VoIP service were to be classified as a telecommunications service or information service.").

ATTACHMENT C

Estimated Impact of Assessing Access Charges on VoIP

	6/30/2011	12/31/2010	6/30/2010	12/31/2009	6/30/2009	12/31/2008	Notes:
Interconnected VoIP Subscribers	33,801,800	31,258,000	28,895,000	25,981,000	23,463,000	21,255,000	Actuals from Table 8 of FCC Local Competition Report. 6-30-11 trended from actuals through 6-30-10
Approx. Average Access Usage per Sub per Month	300	300	300	300	300	300	Estimate from Statistics of Common Carriers Hsitoric Data
Estimated VoIP Access Usage	121,686,480,000	112,528,800,000	104,022,000,000	93,531,600,000	84,466,800,000	76,518,000,000	Subs times Minutes times 12
Skype Out Traffic	2,064,516,129						Skype-off network was 12.8B in calendar 2010. USA has 20M of Skype total of 124M subs
Total	123,750,996,129						Skype plus interconencted VoIP
Interstate:							
Estimated Interstate VoIP Usage	82,500,664,086	75,019,200,000	69,348,000,000	62,354,400,000	56,311,200,000	51,012,000,000	approximately 2/3 of calling is interstate
Average Interstate Access Rate	$ 0.0080	$ 0.0080	$ 0.0080	$ 0.0080	$ 0.0080	$ 0.0080	Approximate average interstate rate paid
Estimated Interstate Access on VoIP	$ 660,005,312.69	$ 600,153,600.00	$ 554,784,000.00	$ 498,835,200.00	$ 450,489,600.00	$ 408,096,000.00	Minutes times average rate
Intrastate:							
Estimated Intrstate VoIP Usage	41,250,332,043	37,509,600,000	34,674,000,000	31,177,200,000	28,155,600,000	25,506,000,000	approximately 1/3 of calling is intrastate
Average Interstate Access Rate	$ 0.0080	$ 0.0080	$ 0.0080	$ 0.0080	$ 0.0080	$ 0.0080	Approximate average interstate rate paid
Estimated Intrastate Access on VoIP	$ 330,002,656	$ 300,076,800	$ 277,392,000	$ 249,417,600	$ 225,244,800	$ 204,048,000	Minutes times average rate
Total Estimated VoIP Access Charges	**$ 990,007,969.03**	$ 900,230,400.00	$ 832,176,000.00	$ 748,252,800.00	$ 675,734,400.00	$ 612,144,000.00	Interstate and Intrastate charges in total

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Nextel Corporation was filed electronically or via US Mail on this 24th day of August, 2011 to the parties listed below.

/s/ Norina T. Moy

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