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August 15, 2005

By Electronic Mail and Federal Express

Honorable Jaclyn A. Brillling
Secretary
State of New York Department of Public Service
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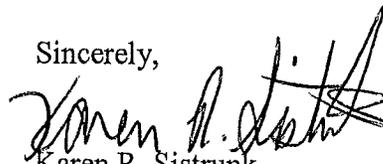
**Re: Case 05-C-0616-Proceeding on Motion of the Commission to Examine Issues
Related to the Transition to Intermodal Competition in the Provision of
Telecommunication Services**

Dear Secretary Brillling:

Please find enclosed for filing an original and fifteen (15) copies of the Initial Comments of Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint) in the above-referenced proceeding.

Please contact me at the letterhead address or phone number if you have any questions.

Sincerely,


Karen R. Sistrunk

Enclosure

cc: Certificate of Service

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Examine)
Issues Related to the Transition to Intermodal) CASE 05-C-0616
Competition in the Provision of Telecommunication)
Services)

**INITIAL COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.
AND SPRINT SPECTRUM L.P./ D/B/A SPRINT PCS**

Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS (collectively "Sprint") respectfully submit the following comments regarding appropriate changes that should be made to the regulatory framework, if any, in light of growing intermodal competition in the provision of telecommunications service in the State of New York, pursuant to the Public Service Commission's ("Commission's") Order Initiating Proceeding and Inviting Comments, issued June 29, 2005, in the above-referenced proceeding. Sprint offers general comments regarding its views on appropriate regulation for wireless and Voice over Internet Protocol ("VoIP") service providers, and further comments on a number of the specific questions contained in the Commission Order, as set forth below.

Generally, Sprint believes that the principles set out by the Commission in 1996 in its earlier proceeding examining telecommunications competition remain pertinent in principle, however, the policies and current activities of the Federal Communications Commission ("FCC") should be carefully considered in determining any future changes in the Commission's regulations regarding wireless and VoIP services.

REGULATION OF WIRELESS SERVICES

To date, the Commission has chosen not to regulate wireless carriers operating within the State of New York, which is consistent with the FCC's preemption of state regulation of the entry of and rates charged by wireless service providers.¹ Sprint supports continuation of the Commission's current decision to exclude wireless service providers from state regulation.

As the Commission is aware, in 1993, Congress charged the FCC with establishing "a Federal regulatory framework to govern the offering of all commercial mobile services."² Congress deemed a national framework necessary to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."³ In order to permit the FCC to establish this federal framework for commercial mobile radio service ("CMRS"), Congress expanded FCC authority to include jurisdiction over intrastate wireless services by amending Section 2(b) of the Act – the statutory source for state authority over telecommunications carriers.⁴ As the Commission later explained:

[I]n the 1993 Budget Act, Congress also added an exception to section 2(b) of the Communications Act. Section 2(b) generally reserves to the states jurisdiction over intrastate communication service by wire or radio of any carrier. The 1993 Budget Act amended section 2(b) to exempt section 332 from its provisions.⁵

¹ Public Service Law § 5(6)(a); 47 U.S.C § 332 (c)(3)

² H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. at 490 (1993).

³ H.R. REP. NO. 103-111, 103d Cong., 1st Sess. at 260 (1993).

⁴ As amended, Section 2(b) now provides, "Except as provided in . . . section 332 of this title . . . , nothing in this chapter shall be construed to apply or to give the [FCC] jurisdiction with respect to . . . intrastate communication service by wire or radio." 47 U.S.C. § 152(b).

⁵ *Unified Intercarrier Compensation NPRM*, 16 FCC Rcd 9610, 9640 ¶ 84 (1991). See also H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. at 497 (1993)(Congress amended

Essentially, Congress gave the FCC plenary authority over “all commercial mobile services,” including intrastate wireless services, by eliminating the statutory barrier to FCC control of intrastate services.

The deregulation of the wireless industry has been an unparalleled success, resulting in widespread and fiercely competitive wireless service. As former FCC Chairman Michael K. Powell has stated:

...the FCC has focused on a deregulatory paradigm for the commercial mobile industry, which we believe has been successful in allowing for marketplace forces to improve consumer benefits for the more than 140 million consumers who subscribe to wireless services. The rapid proliferation of wireless services, in large part due to this deregulatory approach, has had an enormous impact on our country, consumers, and public safety.

Competition and deregulation have resulted in lower prices and an increased diversity of service offerings, which in turn have stimulated rapid growth in the demand for wireless services and substantial consumer benefits.⁶

The success behind the FCC’s deregulatory market-driven approach to the CMRS industry is that carrier offerings are driven by consumer preferences rather than regulation. As noted by the FCC, “consumers contribute to pressure on carriers to compete on price and other terms and conditions of service by actively searching for information on competitive alternatives and freely switching providers in response to differences in the cost and quality of service.” *Id.* These competitive market effects have been accelerated by the advent of local number portability (“LNP”), which allows

Section 2(b) to “clarify that the Commission has the authority to regulate commercial mobile services.”).

⁶ Letter of Michael K. Powell, Chairman, FCC, to William B. Shear, Acting Director, Physical Infrastructure Issues, United States General Accounting Office (April 11, 2003).

consumers to switch wireless service providers, without giving up their mobile phone numbers. The competitive market conditions coupled with the availability of LNP are sufficient to ensure that CMRS carriers provide services upon reasonable terms and conditions to consumers throughout New York.

Intense price competition has resulted in affordable rates as well as innovative pricing plans such as free night and weekend minutes and free mobile-to-mobile calling.⁷ The price of service has fallen consistently, from 44 cents per minute in 1993 to 10 cents per minute in 2003 – a 77% decrease.⁸ And in the period from 1997 through 2003, wireless prices fell 33%, compared to an increase of nearly 15% in general consumer prices.⁹

Consumer choice has expanded as CMRS customers can choose among multiple providers as well as a wide array of service and equipment options.¹⁰ As of September 2004, approximately 97% of the total U.S. population lived in counties with access to three or more different carriers offering mobile telephone service, and 88% lived in counties with five or more competing mobile telephone service providers.¹¹ Competition is vibrant not only nationally but also, more importantly, in New York. The FCC has

⁷ As the FCC has recognized, mobile voice calls are far less expensive on a per minute basis in the U.S. than in Western Europe, and at least some indicators show that rates are still decreasing. According to the U.S. Department of Labor's Bureau of Labor Statistics, for example, the price of mobile telephone service declined by 1.0% during 2003 while the overall consumer price index increased by 2.3%. Ninth Report, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 04-216, ¶¶ 5, 170 (FCC rel. Sept. 28, 2004) ("Ninth CMRS Competition Report").

⁸ *Id.* at A-11, Table 9.

⁹ *Id.* at A-10, Table 8.

¹⁰ *See id.*, ¶ 4.

¹¹ *Id.*, ¶¶ 2, 21.

reported that 12 wireless carriers operated in the state of New York as of December 2003.¹²

The CMRS marketplace is increasingly national. To succeed in the marketplace, CMRS carriers typically operate without regard to state borders and generally have come to structure their offerings on a national or regional basis. This structure reflects the FCC's decision to distribute licenses based on large geographic areas, which typically span more than a single state.¹³ While flat-rate nationwide calling plans were unknown before 1998, today all of the nationwide CMRS operators have responded to competitive pressures by offering some form of national pricing plan that allows wireless customers to purchase a bucket of minutes to use wherever they are, without incurring roaming or long distance charges, as well as, frequently providing various free nights and weekend options.¹⁴

The evolution of wireless service into a national service confirms the sound public policy goal established by Congress. "As the legislative history of [the 1993 Budget Act] makes plain, Congress intended those building blocks to establish a *national* regulatory policy for CMRS, not a policy that is balkanized state-by-state."¹⁵ Through the *Second Truth-in-Billing Order*, the FCC has taken the appropriate steps to protect this public policy focused on a federal regulatory regime.

¹² See *id.* at A-3 (Table 2: FCC's Semi-Annual Local Telephone Competition Survey). Note that carriers with fewer than 10,000 subscribers in a state were not required to report for that state. As a result, if anything, the FCC has under-reported the number of wireless carriers serving New York.

¹³ See 47 C.F.R. § 24.202(a), and 51.701(b)(2).

¹⁴ Ninth CMRS Competition Report, ¶ 113.

¹⁵ *Connecticut Rate Regulation Denial Order*, 10 FCC Rcd 7025, 7034 ¶ 14 (1995) (emphasis in original). See also, FCC Amicus Curiae Brief, *Verizon Wireless v. Hatch*, No. 04-3198, at 4 (8th Cir., filed Nov. 12, 2004)(the 1993 Budget Act amendments established "a uniform national regulatory policy for CMRS, not a policy that is balkanized state-by-state.").

Congress not only directed the FCC to establish a “Federal regulatory regime” for CMRS, it also directed the FCC to establish an appropriate level of regulation for the CMRS industry. To that end, Congress gave the Commission forbearance authority to exempt wireless carriers from traditional utility regulation.¹⁶ In implementing the 1993 amendments, the FCC observed that Congress wanted to “ensure that an appropriate level of regulation be established and administered for CMRS providers”:

Congress acknowledged that neither traditional state regulation, nor conventional regulation under Title II of the Communications Act, may be necessary in all cases to promote competition or protect consumers in the mobile communications marketplace. * * * [W]e establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees who are classified as CMRS providers.¹⁷

As the Commission is also aware, the FCC, in developing the appropriate level of regulation of the wireless industry, has established rules applicable to billing. CMRS providers are required to comply with “truth in billing” requirements adopted by the FCC.¹⁸ Specifically, CMRS providers must comply with the following truth-in-billing regulations:

- The name of the service provider associated with each charge must be clearly identified on the telephone bill. 47 C.F.R. § 64.200(a)(1).
- Billing descriptions must be brief, clear, non-misleading and in plain language. 47 C.F.R. § 64.2401(b).¹⁹

¹⁶ See 47 U.S.C. § 332(c)(1)(A).

¹⁷ *Second CMRS Order*, 9 FCC Rcd 1411, 1418 ¶¶ 14-15 (1994).

¹⁸ *In re Truth-in-Billing & Billing Format, National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, Second Report & Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 05-55 (FCC Mar. 18, 2005) (the “2nd TIB Order & NPRM”); *Truth-in-Billing & Billing Format*, First Report & Order & Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492 (1999) (the “TIB Order”).

¹⁹ CMRS providers were previously exempt from this regulation. However, the FCC made this provision applicable to CMRS in the 2nd TIB Order & NPRM. 2nd TIB Order & NPRM, ¶ 1.

- Common carriers must prominently display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. Each carrier must make its business address available upon request to consumers through its toll-free number. 47 C.F.R. § 64.200(d).

The FCC has further proposed to preempt state regulation of CMRS providers' billing practices.²⁰

Wireless carriers are committed to clear and understandable billing for their customers, and are continually looking for opportunities consistent with federal law and FCC truth-in-billing principles to improve customers' experience with their products and services. In addition, the CTIA Code requires carriers to make disclosures about billing.²¹

REGULATION OF VoIP-BASED SERVICES (IP-enabled services)

While Congressional and FCC policies and directives regarding wireless regulation is relatively straightforward, this is not the case for the regulation of IP-enabled services. Sprint believes that the Commission's 1996 principles should aid the Commission in the determination of which, if any, regulations are applicable to IP-

²⁰ 2nd TIB Order & NPRM, ¶¶ 50-52.

²¹ See Principles #1, #3, and #6 of the CTIA Code which respectfully provide that carriers will:

- “disclose rates and terms of service to consumers”
- “provide contract terms to customers and confirm changes in service”; and
- “separately identify carrier charges from taxes on billing statements”.

The AVC also has a similar provision.

enabled services and cable or IP-enabled telephony in light of the FCC's recent Vonage Order, wherein the FCC preempted the states from regulation of certain aspects of IP-enabled services, but confirmed that states maintain the responsibility and authority to regulate IP-enabled services as it relates to consumer protection (i.e., protect consumers from fraud, enforcing fair business practices, for example, in advertising and billing, and generally responding to consumer complaints) Given this FCC decision, the Commission has limited authority to establish regulations relative to IP-enabled services. Accordingly, minimal, if any, regulations are required given that traditional regulatory mechanisms designed to protect consumers against abuses associated with dominant market power are unnecessary in the current competitive telecommunications market. Moreover, as the Commission has consistently recognized, reduced regulation of competitive services has stimulated competitive entry in the New York telecommunications market.

In order to strengthen the development of intermodal competition, Sprint recommends that the Commission update the definitions of telecommunications terms, and add new terms if necessary, to better reflect the various new forms of telecommunications being offered in New York. Sprint particularly recommends that the Commission reconfirm their position relative to interconnection for IP-enabled voice services and ensure, without question, that IP-enabled service providers continue to be allowed interconnection to the Public Switch Telephone Network (PSTN) by all carriers. This clarification of the treatment of IP-enabled voice services is necessary to avoid potential future conflicts among various types of service providers regarding interconnection terms and conditions, which may arise if the Incumbent carriers modify

their current position based on decisions made by the FCC in addressing “IP-enabled” services (e.g. information service vs. telecommunications service). Any change in the current Incumbent carrier’s position to allow the competitive carriers to connect to the PSTN will ultimately result in anticompetitive delay or barrier to market entry and fewer or no competitive options for New York consumers. The Commission should proactively ensure that the Incumbent carriers are not allowed to impede competition based on the technology used to transmit the service, specifically IP-enabled voice services.

In addition, Sprint supports the applicability of the Commission’s Target Accessibility Fund (TAF) requirements to IP-enabled services. The consequences of excluding IP-enabled service providers from TAF requirements are potentially material. If indeed IP-enabled service is as successful as some have suggested, it could displace much of the traditional circuit switched voice services. The objectives of the TAF to fund programs such as Lifeline, emergency services (e.g., “911”), and Telecommunications Relay Service would be thwarted as the number of consumers using IP-enabled service increases if IP-enabled service providers were exempt from the Commission’s TAF obligations. Sprint supports the applicability of these objectives as well as CALEA capabilities for IP-enabled service providers.

Regarding Intercarrier Compensation, Sprint maintains that intercarrier compensation is applicable to IP-enabled service and, accordingly, IP-enabled service providers must compensate other carriers for the use of the Public Switched Telephone Network (PSTN). Until this issue is fully addressed by the FCC, IP-enabled service providers must be required to pay the appropriate compensation (i.e. TELRIC, access) that is based upon the jurisdiction of the call for the termination of traffic.

COMMENTS ON SPECIFIC COMMISSION QUESTIONS

In addition to the above general comments primarily pertaining to wireless and IP-enabled service regulation, Sprint briefly addresses a number of the Commission's specific questions as follows.

Consumer Protection

1. In view of the proliferation of competitive alternatives is it appropriate for the Commission to relax some of its traditional consumer protection applicable to wireline companies?

Sprint's response:

The Commission's 'traditional' regulations applicable to consumer protection that currently apply to the ILEC and CLEC retail service providers (slamming, cramming, 911, telecommunications relay service and 900 blocking) should lessen any ILC regulations in order to standardize rules for all wireline providers, including VoIP providers where allowed under the FCC's preemption of state regulation of VoIP service providers.

2. Are there core consumer protections (e.g. slamming, cramming, termination notices, contract disclosure) that should be enforced by the Commission, notwithstanding the existence of competitive choices? Should a set of core consumer protections apply to wireless and VoIP/cable telephony, as well as traditional wireline?

Sprint's response:

Regulation of the competitive wireless market is unnecessary and the Commission should not change its practice of not regulating wireless providers. The Commission should evaluate the need for minimal regulations of other types of competitive service providers, to include VoIP providers.

3. Does the Commission have a unique role to play in addressing consumer complaints? Should a common forum for the timely handling of consumer complaints be available under the auspices of the Commission? In other words, should the Commission's complaint handling function and the authority to enforce core consumer protections be extended to wireless and VoIP / cable telephony? If so, what should the nature and scope of the functions be?

Sprint's response:

Regulation of the competitive wireless market is unnecessary and the Commission should not change its practice of not regulating wireless providers. VoIP / cable telephony providers relative to complaint handling should be treated no differently than CLECs are today.

Service Quality

1. How should we adapt our service quality regulations to the marketplace realities?

Sprint's response:

In a competitive marketplace, where consumers have a true choice of service provider, the traditional service quality regulations imposed on the ultimate service provider are not required. The consumer will choose a service provider who meets the service quality they require. However, when the services provided to the consumer are provide via the network of the ILEC (i.e. UNE-L, interconnection to the PSTN), the underlying carrier must be required to meet a standard level of service quality to ensure that the dominant ILEC is not allowed to undermine the quality of a competitor's provision of service.

3. Should proactive service quality performance oversight and enforcement be limited to less competitive markets or geographic areas? How can this be done in

a manner that ensures the overall reliability of the underlying inputs, the interconnected networks themselves?

Sprint's response:

The proactive service quality performance oversight and enforcement of the ILEC is essential to ensure a competitive marketplace is maintained when the competitive service provider relies on the ILEC's network for any portion of the service provided (i.e. UNE-L, interconnection to the PSTN). Therefore, the performance measurements for the ILEC are applicable to less competitive markets as well as highly competitive markets or geographic areas to ensure competition either enters such markets or continues in existing markets.

7. Should we modify, relax, or eliminate performance-based standards in competitive markets?

Sprint's response:

Performance-based standards should not be modified, relaxed, or eliminated for the underlying carrier in either competitive or emerging competitive markets to ensure competition continues. The evolution of technology that eliminates the competitive service provider's dependency on the wholesale ILECs loop still requires that the ILEC continue to be required to perform at a standard acceptable level for wholesale services including interconnection and porting.

8. Are performance standards essential to ensure that consumers have access to a reliable, seamless network of networks and, if so, should they be changed?

Sprint's response:

In a truly competitive market, performance standards are not essential to ensure that consumers have access to reliable service from its direct service

provider. However, to continue to ensure a seamless network of networks (i.e. interconnection and porting), the existing wholesale performance standards that exist for the ILEC are necessary and should not be modified.

17. Parts 602 (Consumer Relations and Operations Management) and 603 (Service Standards) were streamlined in 2000 to better reflect the competitive environment: should these regulations be re-examined in light of the changing market? Is additional streamlining needed?

Sprint's response:

As Sprint noted in its general comments above, some definitions may need to be modified and/or additional definitions included in Part 602 of the Commission's regulations to reflect the various modes in which telecommunications services are being provided. For example, the definition of "service provider" should be changed to reflect the provision of IP-enabled telecommunications services and cable telephony by VoIP providers and cable providers, to clarify that such service providers are entitled to interconnection to the PSTN.

Level Playing Field

1. Recognizing that federal law plays a significant role in numbering administration, should the numbering principles referred to above be equally applicable to new, IP-based numbering solutions?

Sprint's response:

The North American Numbering Council's ("NANC's") VoIP Service Providers' Access Requirements for NANP Resource Assignments Report provided to the FCC on August 1, 2005, should be supported by the

Commission. The requirements in this NANC Report should help to provide a level playing field.

3. Do we need to implement additional number optimization measures in light of the potential demand for numbers by new competitors?

Sprint's response:

Sprint believes that the existing reporting requirements, along with the requirements in the NANC Report as identified in item 1, should meet the number optimization needs without any additional measures.

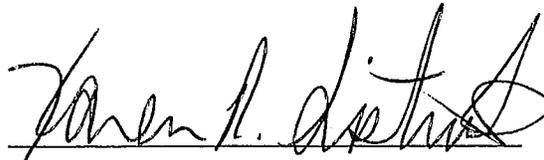
4. Are IP-enabled providers able to access the information they require from telephone, cable, and wireless sources to support efficient management of their operations? Do gaps in the availability of number portability represent an impediment to choice?

Sprint's response:

On-going analysis may be needed to determine if IP-enabled providers are having problems with telephone, cable, and wireless sources to support efficient management of their operations. Gaps in the availability of number portability create an impediment to consumer choice.

Respectfully submitted,
SPRINT COMMUNICATIONS COMPANY L.P.

SPRINT SPECTRUM L.P. d/b/a SPRINT PCS



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Dated: August 15, 2005

CERTIFICATE OF SERVICE

New York

CASE NO 05-C-0616

I, Mable L. Semple, certify that I have served a true copy of Sprint Communications Company, L.P.,'s foregoing document in Docket No05-C-0616 upon the parties of record in this proceeding by Electronic Mail, First Class U.S. Mail, postage prepaid, and/or Federal Express Overnight Delivery.

Dated at Washington, DC, August 15, 2005

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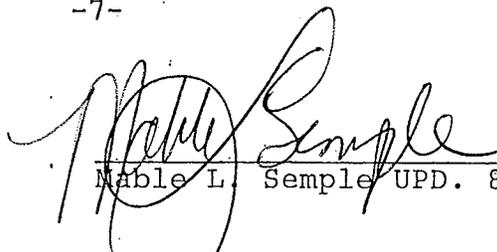
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