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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission Investigation )  
Into the Treatment of Reciprocal Compensation )  
for Internet Service Provider Traffic )

Case No. 99-941-TP-ARB

INITIAL BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.  
AND UNITED TELEPHONE COMPANY OF OHIO d/b/a SPRINT  
ON ISSUES AND IMPACT OF D. C. CIRCUIT OPINION

I. INTRODUCTION

Pursuant to the Entry dated April 6, 2000 herein, Sprint Communications Company L.P. and United Telephone Company of Ohio d/b/a Sprint (hereafter collectively "Sprint") respectfully submit their Initial Brief regarding the issues to be considered by the Commission in this matter as well as the impact of the decision in *Bell Atlantic Telephone Companies, et al. v. Federal Communications Commission*. Case No. 99-1094, 2000 U.S. App. LEXIS 4685 (D.C. Cir. March 24, 2000) ("D. C. Circuit Opinion").

II. THE D. C. CIRCUIT OPINION IS NOT DISPOSITIVE OF ANY ISSUES SET FORTH IN THE COMMISSION'S MARCH 15, 2000 ENTRY.

The D. C. Circuit Opinion held that the FCC had failed to supply a sufficiently reasoned decision when the FCC determined that ISP traffic is primarily interstate in nature and that such traffic was therefore non-local for purposes of reciprocal compensation under the Telecommunications Act of 1996 ("Act"). Notably, the D. C. Circuit Opinion did not decide that calls to ISPs either are or are not eligible for reciprocal compensation under the Act; rather, the Court only held that the FCC had failed to justify its ruling. Accordingly, upon remand, the

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FCC may well decide that calls to ISPs are not subject to reciprocal compensation; conversely, the FCC may decide otherwise.

Nonetheless, a fair reading of the D.C. Circuit Opinion suggests that the Court is, at a minimum, skeptical about the likelihood of the FCC's ability to provide a reasoned decision that classifies calls to ISPs as anything other than "local calls" subject to reciprocal compensation. Accordingly, Sprint submits that there is nothing in the D. C. Circuit Opinion that should dissuade this Commission from proceeding with the instant case and, ultimately, determining that calls to ISPs are eligible for reciprocal compensation.

The D. C. Circuit Opinion noted that the FCC had concluded that, even when an interconnection agreement did not require reciprocal compensation for ISP calls, a state commission could find that such reciprocal compensation is appropriate.<sup>1</sup> The Court neither approved nor criticized that aspect of the FCC's rulemaking; accordingly, the D. C. Circuit Opinion constitutes no basis for this Commission to reverse its previous conclusion that it has the jurisdiction to investigate the issue of reciprocal compensation for calls to ISPs and fix rates for such calls.<sup>2</sup>

### III. THE ISSUES THAT THE COMMISSION SHOULD CONSIDER HEREIN ARE THOSE SET FORTH IN THE ENTRY OF MARCH 15, 2000.

In the Attorney Examiner's March 15, 2000 Entry ("Entry"), the Attorney Examiner set forth a relatively comprehensive list of issues that the parties are expected to address herein. The issues range from the jurisdiction of the Commission to establish compensation for calls to ISPs to the policy implications and competitive incentives that result from various proposed

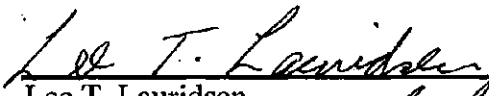
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<sup>1</sup> D. C. Circuit Opinion at 4 citing 14 FCC Rcd at 3703-05.

<sup>2</sup> P.U.C.O. Case No. 99-941-TP-ARB, Entry (January 13, 2000) at 3.

compensation arrangements for dial-up ISP traffic.<sup>3</sup> Sprint believes that a thorough analysis of the issues set forth in the Entry will provide the Commission with a sound basis for determining appropriate compensation arrangements for ISP traffic. Sprint believes that the Commission has the jurisdiction to do so, and further, that, after the Commission has considered the evidence, it will conclude (and should conclude) that ISP traffic should be subject to reciprocal compensation.

Respectfully submitted,

  
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Senior Attorney

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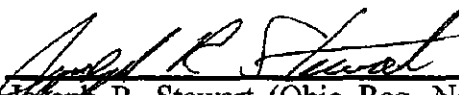
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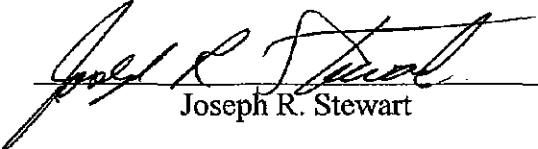
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<sup>3</sup> Entry pp. 1-3.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Initial Brief Of Sprint Communications Company L.P. And United Telephone Company Of Ohio d/b/a Sprint On Issues And Impact Of D. C. Circuit Opinion was served by Internet e-mail and/or U. S. mail upon counsel listed below, this 14th day of April, 2000.

  
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