BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's	)	
Investigation into Intrastate Carrier	)	Case No. 10-2387-TP-COI
Access Reform Pursuant to Sub. S.B. 162.	)	

INITIAL COMMENTS OF SPRINT NEXTEL

Sprint Communications Company L.P.("Sprint"); Sprint Spectrum, L.P. and SprintCom, Inc. d/b/a Sprint PCS ("Sprint PCS"); Nextel West Corp., Inc. ("Nextel"); and NPCR, Inc., d/b/a Nextel Partners ("Nextel Partners") (collectively, "Sprint Nextel") hereby submits comments in Case No. 10-2387-TP-COI in accordance with the Public Utilities Commission of Ohio's ("Commission") order dated November 3, 2010 (the "November 3 Order").

I. Introduction

Sprint commends the Commission for including a provision requiring immediate reduction of all remaining ILECs' intrastate switched access rates to interstate levels as part of a comprehensive access reform plan. High intrastate switched access rates charged by these ILECs to other carriers are anti-competitive and harmful to consumers. Ultimately, all intercarrier compensation charges should be set at the incremental cost of providing one more minute of service on an existing network. Short of that, switched access rate mirroring is a long overdue step in the right direction toward leveling the competitive playing field and eliminating implicit subsidies that unduly enrich ILECs and hinder competition. The sooner excessive intrastate switched access rates are reduced, the sooner consumers will benefit. Accordingly, Sprint supports the Commission's proposal to require the reductions immediately with no phase-in of rate reductions.

Sprint does not support creation of the proposed Access Replacement Fund (ARF) because it is anti-competitive, and carriers should recover their costs from services provided to their own end users, not from other carriers' customers. Creation of a fund from which ILECs continue to be subsidized at the expense of their competitors and Ohio consumers is not competitively neutral. Unsubsidized competitive carriers now compete head-to-head with subsidized ILECs for the communications needs of customers. Reducing intrastate switched access charges will mitigate some competitive harms, but simply shifting the burden of inflated access charges to an ILEC-exclusive company welfare fund (i.e., the ARF) paid for by Ohio consumers in the form of a surcharge does not eliminate the overcharges from the system. It only perpetuates the unjust enrichment of ILECs at the expense of Ohio consumers. The same consumers that pay too much for retail service today as a result of inflated access charges will pay unnecessary surcharges to fund the ARF. Separate identification of the overcharge on customer bills does not eliminate the unfair competitive advantage the ILECs enjoy from overcharging, whether the overcharge is implicit or explicit.

In today's market a subsidized ILEC can use the subsidy to 1) create artificially low rates for its own retail services in order to undercut its competitors; 2) invest in non-regulated services like broadband and video in order to gain a competitive advantage over carriers that must invest in these capabilities with their own funds without the benefit of subsidies; and 3) enrich the shareholders and executives of the ILEC at the expense of their competitors and Ohio consumers. In contrast, competitors have fewer resources to invest in competitive innovations and experience low or negative margins if they attempt to match the ILECs' subsidized prices. This leaves consumers with fewer competitive choices.

Nonetheless, if the Commission decides to move forward with an ARF despite the competitive harms that result from ILEC subsidization, there are two important components that must be included in the ARF in order to mitigate the competitive harms: (1) the size of the fund must be limited to the smallest amount necessary, and (2) the duration of the fund must be limited. Specifically, at a minimum the following changes are necessary to the ARF proposal:

(i) ILECs must be expected to recover their costs first from the provision of services to their own end users. This includes rationalization of retail rates and consideration of other revenues from provision of service over the common network, such as bundles, broadband, and video.

(ii) Before becoming eligible for ARF distributions, ILECs must demonstrate that they are unable to recover their costs by providing services to their own end users, and ARF distributions must be limited to the amount proven necessary, taking into account reasonable affordability benchmarks.

(iii) The initial size of the ARF must be based on current data, not 2009 data, and the size of the ARF must be recalculated annually rather than every two years.

(iv) The duration of the fund must be limited to no more than four years. An ILEC may seek an extension of ARF distributions past the four year period upon a showing to the Commission that it has exhausted all measures to adapt its business to a non-ARF environment, it will likely go out of business unless ARF distributions are extended, and consumers will have no ability to make and receive calls if the ILEC ceases to exist as a going concern.

Unless all of the foregoing modifications are made to the ARF proposal, the Commission must limit the assessment so that only those carriers eligible to receive disbursements are assessed. To do otherwise would be patently discriminatory and anti-competitive for the reasons discussed above.

Sprint discusses below these changes to improve the ARF as proposed and mitigate the competitive harms resulting from creation of a fund, and also responds to some of the questions posed by the Commission.

II. ILECS Must Recover Their Costs From Provision Of Service To Their Own End Users.

Rational end user charges and the continued expansion of retail revenues from other services provisioned over the common local network provide ample opportunity for the ILECs to manage their business without subsidies from bloated switched access rates or a fund paid for by Ohio consumers. The price of local exchange service has historically been kept artificially low based on the premise that this would encourage universal connectivity. Sprint supports the public policy goal of universal service. But the ILECs' networks are not the only components of the public switched telephone network. For example, cable telephony networks, wireless networks and CLEC networks now comprise part of the public switched telephone network. A wealth transfer exclusively for ILECs to subsidize their networks makes no sense in today's telecommunications market. Today, ILECs are not the only service providers in most parts of Ohio. A national study found that only 14.9% of households rely solely on landline service for their voice communications needs, [1] and up to 24.5% of households rely on wireless service exclusively.[2] Wireless providers are also offering plans designed for customers with limited means and basic service needs.[3] Sprint believes the proliferation of competition provides something better for consumers than a ubiquitous

[1] Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, July–December 2009. National Center for Health Statistics. May 2010, at Table 1. Available from: http://www.cdc.gov/nchs/nhis.htm.

[2] *Id.*

[3] See, e.g., Virgin Mobile's application for ETC certification featuring its Assurance Wireless product designed especially for Lifeline customers. Docket No. 10-126-TP-RCC.

monopoly. The vast majority of Ohio citizens enjoy the benefit of choice. And as ILEC voice service prices are permitted to increase so that ILECs generate revenue from their own retail service offerings and reduce the burden placed on other carriers and their customers, the benefits of competition will expand.

Many ILECs have significant pricing flexibility for local exchange service, and many ILECs also have the ability to collect (and are collecting) revenues from numerous other services provisioned over the same network they use to provide local exchange service and exchange access. ILECs within their service territories now offer wireline long distance, numerous new calling features, internet connections and video services. These services are often bundled together to meet consumers' needs for a complete package of communications services. Consequently, the average retail revenue per customer an ILEC collects over its common network continues to expand. ILECs should therefore be expected to recover their costs through the provision of services to their own customers.

In addition, ILECs can offset the reduced burden they place on other carriers by rationalizing the rates charged for retail service. ILECs should have the option to assess their end users an additional charge; for example, as legacy Embarq currently does in Ohio. The Commission's proposal includes a required periodic reduction in ARF disbursements in the amount of $0.50 per access line for price cap ILECs, and allows that amount to be recovered in the form of an end user fee.[4] While $0.50 per line does not go far enough, it is commendable that the Commission recognizes that ILECs should be expected to turn to their own customers instead of their competitors to offset the impact of reduced access rates.

[4] ARF Proposal, para. 16(a)(ii).

III. Before Becoming Eligible for ARF Distributions, An ILEC Must Prove The Subsidy Is Necessary.

Furthermore, before turning to the ARF for a handout paid for by Ohio consumers, an ILEC should be required to demonstrate that it cannot recover its costs through the provision of service to its own customers. Recovery from the ARF should be strictly limited to the amount by which the cost of providing service exceeds the amount demonstrated to be recoverable from the provision of service to the carrier's own customers, including revenues from deregulated services such as bundles and custom calling features and non-regulated services such as broadband and video, and including all cost controls, efficiency measures, new business plans, and strategies employed.

To the extent an ILEC wishes to argue that it cannot recover from its own customers without making rates unaffordable, the ILEC must be required to demonstrate that its rates would exceed reasonable affordability benchmarks. A quick review of the local service rates of the ILECs in Ohio suggests the ILECs can readily increase end user charges to its customers while keeping the price of service affordable to Ohio customers.[5]

IV. The Initial Size Of The Fund Must Be Based On Current Data, And The Fund Must Be Recalculated Annually.

The ARF proposal would establish the initial size of the fund based on 2009 data.[6] It does not make sense to use data that would be well over a year old by the time the ARF would be implemented. At the time of this writing, it is mid-December 2010, and even under the swiftest procedural scenario, the ARF would not be implemented until approximately mid-2011. There is absolutely no reason not to use 2010 data to establish

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[5] It is worth noting that in a recent access proceeding, the Pennsylvania Office of Consumer Advocate produced a study that showed basic local service remains affordable within the non-BOC ILEC service areas for residential customers at $32 including fees and taxes.

[6] ARF Proposal at para. 7.

the initial size of the fund, as 2010 data will no doubt be available by the time the ARF would be implemented. To use 2009 data would simply give the ILECs a windfall; as the Commission itself has recognized, switched access minutes overall are in a "precipitous decline."[7] ILECs have already collected excessive intrastate switched access charges throughout 2010, and to ignore the decline in demand quantities for access minutes attributable to 2010 would essentially compensate the ILECs twice for that portion of the demand. It is discriminatory and anti-competitive to insulate the ILECs from the loss of access lines to competitors, particularly unsubsidized competitors such as wireless carriers, in this manner.

In addition, the ARF should be recalculated every year, not every two years. If the duration of the fund is limited to no more than four years as discussed below, there is no reason why the fund should not be recalculated every year. Administrative costs will be limited because the fund will be discontinued after four years. Recalculating the fund only every two years would unfairly benefit the ILECs by failing to accurately account for declining switched access demand quantities and allowing the ILECs to receive an artificially higher subsidy. It is discriminatory and anti-competitive to insulate the ILECs from the loss of access lines to competitors by assuming inaccurately high demand quantities for switched access.

V. The Duration Of The Fund Must Be Limited To No More Than Four Years.

As discussed above, competition will continue to be impaired in Ohio until subsidies are eliminated from the system and all carriers recover their costs from the provision of service to their own customers. In order to minimize the ongoing damage to

[7] November 3 Order at 1.

competition from continuing to subsidize ILECs, the duration of the ARF must be limited to no more than four years. Four years is an ample amount of time for ILECs to adapt their business plans to wean themselves from reliance on subsidies paid for by other carriers and Ohio consumers. An ILEC may seek an extension of ARF distributions past the four year period upon a showing to the Commission that it has exhausted all measures to adapt its business to a non-ARF environment, it will likely go out of business unless ARF distributions are extended, and consumers will have no ability to make and receive calls if the ILEC ceases to exist as a going concern.

VI. Sprint's Responses to Appendix B Questions.

1) The Staff's proposed plan for the restructuring of ILEC access rates addresses the impact of access rate reduction only and does not address the impact of access line loss on the rural ILECs' provider-of-last-resort obligation. Should the impact of access line loss on revenue be addressed as part of the access restructuring plan? What are the advantages and disadvantages of such an addition to the restructuring plan?

Sprint response: Sprint opposes any attempt to compensate ILECs for attrition of access lines resulting from competition. As explained above, unsubsidized competitors compete head-to-head with ILECs using only their own resources and without the benefit of subsidies. No provider should be insulated from the effects of competition. The industry has been in transition from a pure monopoly environment to a fully competitive environment for years and the elimination of the remaining outdated vestiges of incumbent protectionism is long overdue. Creating new or expanding old incumbent protections is counterproductive. Consumers benefit from competitive choice and are harmed if providers are insulated from the effects of customer choice.

2) *Although the Staff's proposed plan does not require interconnected voice over internet protocol (VoIP) service providers to contribute to the restructuring fund, it requires a provider of telecommunications services to a provider of interconnected VoIP-enabled services to pay the mandatory monthly contribution related to those VoIP services. As VoIP traffic volumes terminating on the eligible ILECs' networks increase, is this a reasonable approach to obtain support from all beneficiaries of the eligible ILECs' networks?*

Sprint response: It would be discriminatory and anti-competitive to assess wholesale providers of interconnected VoIP-enabled services. Wholesale carriers that provide services to providers of interconnected VoIP-enabled services have no ability to recover the cost of the assessment from end users. This would put wholesale carriers at a competitive disadvantage because they do not have the same ability that the retail providers have to recover the out-of-pocket costs of an assessment. In addition, to the extent the Commission is considering assessing wholesale providers based on what it believes to be questionable authority to assess retail VoIP-enabled service providers, there is no such legal impediment as the FCC has recently clarified. In its recent Declaratory Ruling released November 5, 2010, the FCC stated as follows:

> In this Declaratory Ruling, we advance the goals of universal service by ruling on a prospective basis that states may extend their universal service contribution requirements to future intrastate revenues of nomadic interconnected Voice over Internet Protocol (VoIP) service providers, so long as a state's particular requirements do not conflict with federal law or policies. Specifically, we conclude that state universal service fund contribution rules for nomadic interconnected VoIP are not preempted if they are consistent with the [FCC's] contribution rules for interconnected VoIP providers and the state does not enforce intrastate universal service assessments with respect to revenues associated with nomadic interconnected VoIP services provided in another state.[8]

Accordingly, Sprint opposes any attempt to assess wholesale carriers providing services to interconnected VoIP-enabled service providers.

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[8] *In the Matter of Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues,* WC Docket No. 06-122, FCC Docket No. 10-185, 2010 FCC Lexis 6622, rel. Nov. 5, 2010, at para. 1.

3) The Staff's proposed plan includes a provision for recalculating the size of the restructuring mechanism for each eligible ILEC every two years after the initial restructuring mechanism becomes operational. Is this a reasonable time frame? If not, how often should the recalculation of the fund occur? Should the fund recalculations for price-cap eligible ILECs and nonprice-cap eligible ILECs be performed at different intervals?

Sprint response: As discussed above, the fund should be recalculated every year in order to avoid giving the ILECs an additional windfall based on inaccurately high access demand quantities. Such a windfall would be patently discriminatory and anti-competitive.

4) The Staff's proposed plan includes different methodologies for recalculating the size of the access restructuring mechanism for price-cap eligible ILECs than the methodology proposed for nonprice-cap eligible ILECs. Is this a reasonable approach?

Sprint response: Sprint believes there is no reason to treat price-cap and nonprice-cap ILECs differently. As discussed above, all ILECs should be expected to recover their costs from providing services to their own end users before looking to the fund, whether price-cap eligible or not.

7) The Staff proposal includes a provision to allow the Commission to revisit the access restructuring mechanism if the Federal Communications Commission takes specific actions. Is this a reasonable approach?

Sprint response: Sprint would support revisiting the ARF mechanism if the FCC takes action toward intercarrier compensation reform or any other action impacting interstate switched access rates.

VII. Sprint's Response to Appendix D.

As discussed above, Sprint opposes creation of an ARF. If the Commission nevertheless decides to establish an ARF with the modifications discussed above, Sprint believes it is unnecessary and administratively burdensome to require contributing carriers to provide the number of "total Ohio access lines."[9] If the assessment is based on intrastate retail revenues, the number of access lines is irrelevant, and the only information necessary for the Commission to calculate an assessment is data relating to each contributing carrier's intrastate retail revenues. In addition, some providers such as wireless carriers do not maintain "access line" counts. For these reasons, contributing carriers should not be required to provide "access line" counts.

VIII. Conclusion.

Reducing intrastate switched access rates will enhance the development of competition and benefit the consumers of Ohio. While reducing intrastate switched access rates to interstate levels will not completely level the competitive playing field, it is an important step in the right direction. Sprint opposes creation of an ARF because it does not eliminate subsidies from the system and is not competitively neutral. If the Commission decides to move forward with creating an ARF despite the competitive harms resulting from ILEC subsidization, the fund must be (i) limited in size to the smallest amount necessary; and (ii) limited in duration. ILECs must be expected to recover their costs from providing services to their own end users through rationalizing retail charges to their own customers. The plethora of other retail services provisioned on the ILECs' common networks provide ample opportunity for the ILECs to manage their business without relying on subsidies paid for by Ohio consumers. Finally, the fund must be limited in duration to no more than four years in order to minimize the damage to competition and facilitate the transition to a more fully competitive market. Unless all of the modifications discussed above are made to the ARF proposal, the Commission must decline to create the ARF or limit the assessment so that only those carriers eligible to

[9] ARF Proposal at Appendix D.

receive disbursements are assessed. The monopoly-era subsidy scheme established more than 25 years ago is anti-competitive in today's market, and must be reformed for the benefit of Ohio consumers.

Respectfully submitted this 20th day of December, 2010.

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