

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Petition of Sprint for Declaratory)	
Ruling on VoIP-Originated)	WC Docket No. 12-105
Traffic)	

**COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES;
EASTERN RURAL TELECOM ASSOCIATION; and the
WESTERN TELECOMMUNICATIONS ALLIANCE**

By Public Notice dated April 30, 2012, the Commission has requested comment on a petition for declaratory ruling filed by the Sprint Communications Company (Sprint).¹ Sprint seeks a declaratory ruling on several issues pertaining to the applicability of tariffed access rates to voice over Internet protocol (VoIP)-originated calls prior to December 29, 2011.² The Associations listed above³ respectfully urge the Commission to deny Sprint's requests. As

¹ *Wireline Competition Bureau Seeks Comment on Sprint Petition for Declaratory Ruling on VoIP Originated Traffic*, WC Docket No. 12-105, Public Notice, DA 12-681 (rel. April 30, 2012) (Public Notice).

² Petition of Sprint for Declaratory Ruling Regarding Application of CenturyLink's Access Tariffs to VoIP Originated Traffic Pursuant to Primary Jurisdiction Referral, WC Docket No. 12-105 (filed April 5, 2012) (Sprint Petition).

³ The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; MTS and WATS Market Structure, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241(1983). The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural RoR regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 420 small ILECs serving rural areas of the United States. The Eastern Rural Telecom Association (ERTA) is a trade

shown herein, there is no basis for exempting VoIP-originated traffic from tariffed access charges under rules and tariffs in effect during the period at issue in Sprint's petition.

I. BACKGROUND

In 2009, the CenturyLink companies-- incumbent local exchange carriers (ILECs) formerly doing business as CenturyTel-- filed a complaint against Sprint in the federal district court in the Western district of Louisiana to enforce their state and federal tariffs for calls sent by Sprint and terminated on CenturyLink's network.⁴ Sprint had refused to pay CenturyLink tariffed access charges, alleging the calls were exempt from access charges based on claims these calls were "information services" and therefore outside the relevant access charge regime. Sprint began paying CenturyLink \$0.0007 per minute for these calls instead of rates specified in CenturyLink's access tariffs.

The Louisiana District Court issued a Report and Recommendation⁵ in December 2010 and a subsequent Referral Order⁶ in January 2011 dismissing one of the four counts in CenturyLink's complaint and referring issues related to federal access tariffs to the Commission under the doctrine of primary jurisdiction.⁷ Sprint then filed the instant petition⁸ asking the

association representing approximately 68 rural telephone companies operating in states east of the Mississippi River. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

⁴ See *CenturyTel of Chatham, LLC et al. v. Sprint Commc'n Co. LP*, No. 09-CV-1951, Complaint (W.D. La. Nov. 23, 2009) (CenturyLink Complaint).

⁵ *CenturyTel of Chatham, LLC, et al. v. Sprint Commc'n Co., LP, et al.*, No. 09-CV-1951, 2010 WL 5648871 (W.D. La. Dec. 15, 2010) (Report and Recommendation).

⁶ *CenturyTel of Chatham, LLC, et al. v. Sprint Commc'n Co., LP, et al.*, No. 09-CV-1951, 2011 WL 284447 (W.D. La. Jan 25, 2011) (Referral Order).

⁷ *Id.* at 2. Count I of CenturyLink's complaint alleges that Sprint violated federal access tariffs by failing to pay tariffed rates for VoIP-originated interstate long distance traffic. Count III

Commission to decide all three remaining counts, while acknowledging Commission staff read the court's referral order⁹ to require resolution only of count I of CenturyLink's complaint.¹⁰

Sprint acknowledges the Commission established an intercarrier compensation (ICC) framework for VoIP traffic in its USF/ICC Transformation Order, under which all VoIP-public switched telephone network (PSTN) traffic will prospectively be subject to a bill-and-keep framework.¹¹ Sprint asserts the transition from the existing system provides a path to the new regime but does not resolve disputes regarding compensation for prior periods. Sprint specifically asks the Commission to declare access tariffs filed with the Commission for periods prior to December 29, 2011, including CenturyLink's tariffs, did not impose compensation obligations on VoIP-originated calls delivered over the PSTN.¹²

claims that Sprint's decision to compensate for VoIP originated long distance long distance traffic at \$0.0007, instead of the rates in the switched access tariffs, is an unreasonable and unjust practice in violation of 47 U.S.C. § 201(B). Count IV asserts claims under state access tariffs. *See generally*, CenturyLink Complaint at 16-19.

⁸ Sprint Petition at 2.

⁹ Referral Order.

¹⁰ Sprint Petition at 2.

¹¹ *See 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 an 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, *Universal Service – Mobility Fund*, WT Docket No. 10-208, 26 FCC Rcd. 17663 (2011) ¶ 933 (USF/ICC Transformation Order) (effective Dec. 29, 2011).

¹² Sprint Petition at 3, 6-13.

II. THE COMMISSION SHOULD DENY SPRINT'S PETITION AND CONFIRM TARIFFED ACCESS CHARGES APPLY TO VoIP-ORIGINATED TRAFFIC TERMINATED ON THE PSTN PRIOR TO DECEMBER 29, 2011.

A. Interconnected VoIP Calls Are Not “Enhanced” Services.

Sprint's claim for exemption from access charges rests almost entirely on the theory its wholesale customers' VoIP-originated calls undergo a “protocol change” or a “net change in form” over the path of the call and are therefore exempt from access charges under the enhanced service provider (ESP) exemption. But, as the Associations have repeatedly shown,¹³ the fact interconnected VoIP calls may originate using one transmission technology (IP) and terminate in another (time division multiplexing) does not provide any basis for claiming such services qualify as “enhanced” or “information” services. All modern telecommunications services require various forms of conversions to transport voice calls across and between networks (e.g., wireless to wireline, analog to digital), yet such services are still deemed “telecommunications services.” The introduction of yet another new technology into the telecommunications system, by and of itself, does not transform a “telecommunications service” into an “information service.”¹⁴

¹³ *E.g.*, Rural Associations' Comments, WC Docket No. 10-90, *et al.*, at 11 (filed April 1, 2011) (Rural Associations' April 1, 2011 Comments); Associations' Comments, WC Docket No. 08-08, at 4 (filed Feb. 19, 2008); Associations' Reply Comments, WC Docket No. 05-276, at 2 n.3 (filed Dec. 12, 2005) (citing *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, *Memorandum Opinion and Order*, 19 FCC Rcd. 7457, 7470 (2004)).

¹⁴ In 1987, for example, the Commission made clear it did not intend to classify as “enhanced” certain actions on subscribers' transmitted information that represent functions necessary to route a message through the network. *See Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Phase II Carrier Service and Facilities Authorizations Thereof Communications Protocols under Sections 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Report and Order, 2 FCC Rcd. 3072 (1987) ¶ 70. As mainstream carriers increasingly convert their core networks to IP technology, protocol conversions similar to those claimed by Sprint to “enhance” its services are essential to the smooth and transparent provision of new telecommunication services and should be classified accordingly.

The Associations have also explained that the ESP exemption¹⁵ was never intended in any event to apply to interexchange voice calls placed to called parties on the PSTN.¹⁶ The Commission created the ESP exemption in the early 1980's to allow providers of computer-based information services to obtain local business dial-up access connections without paying per-minute access charges.¹⁷ As such, the exemption was intended to apply only to calls placed from the PSTN to the ESP for access to information services, not the reverse.¹⁸

The Commission has also made clear that services that look and feel like “plain old telephone services,” that are marketed to the public in direct competition with services by traditional carriers, and that arrive on the PSTN in the same manner and use the same facilities as traditional voice services, should be treated the same for regulatory purposes.¹⁹ The

¹⁵ *Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Transport Rate Structure and Pricing*, CC Docket No. 91-213, *End User Common Line Charges*, CC Docket No. 95-72, First Report and Order, 12 FCC Rcd. 15982 (1997) ¶ 343 (First Report and Order).

¹⁶ Rural Associations' April 1, 2011 Comments at 13.

¹⁷ *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Memorandum Opinion and Reconsideration Order, 97 FCC 2d 682 (1983) ¶ 83, *NARUC v. FCC*, 737 F.2d 1095, 1136-1137 (D.C. Cir. 1984).

¹⁸ Claims that the ESP exemption applies to VoIP traffic “misread[] applicable law. . . . the only relevant exemption from the access charge regime under Federal law is for ISP-bound traffic rather than ISP-originated traffic.” See, e.g., *Cox California Telecom, LLC v. GNAPS*, Case 06-04-026, Opinion Granting Complainant's Motion for Summary Judgment, at 5 (Cal. PUC Jan. 11, 2007), aff'd, sub. nom *Global NAPS, Inc. v. PUC of the State of California*, 624 F.3d 1225 (9th Cir. 2010). See also, *Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Transport Rate Structure and Pricing*, CC Docket No. 91-213, *End User Common Line Charges*, CC Docket No. 95-72, First Report and Order, 12 FCC Rcd. 15982 (1997) ¶ 343.

¹⁹ See, e.g., *Universal Service Contribution Methodology*, WC Docket Nos. 04-36, 06-122, Report and Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd. 7518, 7543-43 (2006); *Communications Assistance for Law Enforcement Act and Broadband Access Services*, ET Docket No. 04-296, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 14989, 15009-10 (2005); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *IP-Enabled Services*, WC Docket No.

Commission has further stated “any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network.”²⁰ Sprint claims the calls at issue originate on the cable networks of its cable customers.

Sprint selectively cites a few cases to support its contention that access charges should not be imposed on VoIP-originated calls.²¹ While it is true some courts have absolved VoIP providers from paying tariffed charges for interexchange traffic terminated on the PSTN, others have reached the opposite conclusion, finding that VoIP-originated traffic that terminates on the PSTN and uses the network in the same way as traffic generated using other technologies must pay the same ICC rates.²²

04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 6927, 6956 (2007); *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244, *IP-Enabled Services*, WC Docket No. 04-36, *Telephone Number Portability*, CC Docket No. 95-116, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd. 19531, 19540-41 (2007).

²⁰ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd. 4863, 4904 (2004).

²¹ Sprint Petition at 9-10 (citing *Southwestern Bell Telephone v. Missouri PSC*, 461 F. Supp. 2d 1055 (E.D. Mo.); *PAETEC v. CommPartners*, No. 08-0397, WL 1767293 (D.D.C. Feb. 18, 2010); *Manhattan Telecoms Corp v. Global Naps*, No. 08 CIV. 3829, 2010 WL 1326095 (S.D.N.Y. Mar. 31, 2010)).

²² E.g., *Central Telephone Co. of Virginia v. Sprint*, No. 3:09cv720, Memorandum Opinion (E.D. Va. Mar. 2, 2011) (finding Sprint in violation of its interconnection agreement with Century Link after determining “voice calls that are transmitted in whole or in part, via the public Internet or a private IP network shall be compensated in the same manner as voice traffic.”); *Sprint v. Iowa Telecommunications Services*, No. FCU-2010-0001, Order Denying Motion to Stop Payment Deadline (Iowa Util. Bd Mar. 4, 2011) (Iowa Utilities Board ruled Sprint must pay all access charges due by March 6, 2011; had previously found Sprint’s disputed *telephone* traffic is subject to access charges); *Palmerton Telephone Co. v. Global NAPs*, Docket C-2009-2093336, Opinion and Order (PA PUC Mar. 16, 2010) (PUC Chairman overturned initial ruling that interconnected VoIP was an information service to require GNAPs to pay access charges since it “is a telecommunications carrier providing telecommunications services”); *Global NAPS, Inc. v. PUC of the State of California*, 624 F.3d 1225 (9th Cir. 2010) (affirming order for GNAPS to

This is obviously the correct conclusion. There is no logical basis to exempt VoIP-originated calls from ICC mechanisms simply because a different technology is employed for call origination. VoIP-originated calls can be terminated to all other points on the PSTN and employ the same PSTN resources for termination. The Commission has explicitly found interconnected VoIP services to be “virtually indistinguishable” from traditional telephone services from the consumer’s perspective.²³ Insofar as interconnected VoIP service providers offer services that directly compete with traditional circuit-switched telephony services and are “like” such services from the end-user’s perspective, there is no rational basis for the Commission to treat them differently for regulatory purposes.²⁴

pay over one million dollars in traffic termination charges to Cox; GNAPS had breached the carriers’ interconnection agreement).

²³ *E.g.*, *IP Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd. 6039 (2009) ¶ 12 (“interconnected VoIP service is functionally indistinguishable from traditional telephone service.”); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *IP-Enabled Services*, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 6927 (2007) ¶ 56 (“the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider, . . . from the perspective of a customer making an ordinary telephone call, are virtually indistinguishable.”). *See also*, *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 15712 (2007) ¶ 18 (“interconnected VoIP providers offer a service that is almost indistinguishable, from the consumers’ point of view, from the service offered by interstate telecommunications service providers.”).

²⁴ The Commission has held that the question of whether one service is “like” another service for regulatory purposes significantly depends on customer perception. *See, e.g.*, *American Tel. & Tel. Co. (DDS)*, Final Decision & Order, 62 FCC 2d 774 (1977) ¶ 75a, *aff’d*, *American Broadcasting Cos. v. FCC*, 663 F.2d 133, 139, n.9 (D.C. Cir. 1980). A finding that two services are “like” one another based on customer perception would appear to preclude arguments that one is entitled to differential regulatory treatment. *See, e.g.*, *The Offshore Tel. Co. v. South Central Bell*, Memorandum Opinion and Order, 2 FCC Rcd 4546 (1987) ¶ 32, citing *American Trucking Associations, Inc. v. FCC*, 377 F.2d 121, 130 (D.C. Cir. 1966), cert. denied 386 U.S. 943 (1967) (“The statutory prohibition against unjust discrimination extends to different treatment for like services under like circumstances . . .”).

B. Sprint's Other Arguments in Favor of Exemption Are Unavailing.

Sprint presents a variety of other arguments in favor of exempting its VoIP traffic from access charges. All should be rejected.

Sprint initially suggests that CenturyLink's tariffs did not specifically require application of access charges to its VoIP traffic. No basis is provided for this claim, other than a vague argument to the effect that Sprint's "customers" are VoIP-based cable companies, not the end users who originate the call. But as the entity responsible for forwarding the interexchange traffic at issue to CenturyLink (and other carriers) for termination, Sprint is responsible for paying the relevant access charges.²⁵

Sprint next claims its status as a wholesale telecommunications carrier does not automatically make it responsible for access charges for VoIP-PSTN traffic.²⁶ The Time Warner Order²⁷ affirmed the rights of carriers such as Sprint to obtain interconnection from local exchange carriers for purposes of terminating other providers' VoIP traffic. But Sprint ignores the fact that the Time Warner Order also specified such carriers have the obligation to compensate carriers for traffic sent for termination.²⁸ While the Commission did not address in

²⁵ Sprint had apparently been paying access charges for its VoIP-originated traffic until August 2009, when it lodged a series of disputes and refused to pay the rates contained in CenturyLink's Tariff F.C.C. No. 7 on VoIP-originated traffic terminated over CenturyLink's local telephone network facilities. CenturyLink Complaint at 7.

²⁶ Sprint Petition at 11-12.

²⁷ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd. 3513 (2007) (Time Warner Order).

²⁸ *Id.* at 3523.

the Time Warner Order the question of what compensation was appropriate,²⁹ it is not precluded from confirming now that, under rules and regulations in effect during the time covered by CenturyLink's complaint, carriers such as Sprint are liable for access charges for all interexchange traffic they cause to terminate on the PSTN regardless of technology used to originate the call and regardless of whether they are providing wholesale or retail transmission services.³⁰

C. The Commission Need Not Address Issues Related to Counts III or IV of CenturyLink's Complaint.

Sprint also asks the Commission to address a number of additional issues raised in CenturyLink's complaint. These include questions related to whether access charges apply to its VoIP-originated traffic under various state tariffs, and whether Sprint violated section 201(b) of the Communications Act by compensating CenturyLink for VoIP-originated traffic at \$0.0007 per minute instead of rates specified in applicable access tariffs. The district court's referral order, however, seeks Commission guidance only on issues relating to interpretation of CenturyLink's federal access tariffs, not state access tariffs or federal statutory provisions. Consequently, the Commission should decline to address Sprint's petition insofar as it raises such issues.

III. CONCLUSION

The Rural Associations urge the Commission to deny Sprint's request. Instead, it should confirm that during the period prior to December 29, 2011, tariffed access charges apply to all

²⁹ *Id.*

³⁰ As recent continuing disputes involving Halo Telecommunications make clear, *see, e.g.*, Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed May 24, 2012), the Commission should confirm the application of access charges to Sprint's traffic in no uncertain terms, so as to give the district court clear guidance and avoid further unfounded disputes involving similarly-situated providers.

interexchange calls terminated on the PSTN, regardless of technology used to originate the call and regardless of whether carriers such as Sprint were providing service on a retail or wholesale basis.

Respectfully submitted,

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June 14, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 14th day of June, 2012, by electronic filing and e-mail to the persons listed below.

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