

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its)	Rule and Regulation No. 178
Own motion, seeking to amend Title 291,)	
Chapter 5, Telecommunications Rules and)	COMMENTS OF SPRINT
Regulations, to adopt rules regarding)	NEXTEL
Intrastate switched access regulation.)	

Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners, collectively, "Sprint Nextel," hereby submits its comments pursuant to the Commission's Order Opening Docket and Seeking Comment dated April 26, 2011 in the above-captioned matter.

While Sprint Nextel agrees that the Commission can and should take a more active role in regulating intrastate switched access rates in Nebraska, including but not limited to implementing new rules, the proposed rules in this docket offer little or no meaningful progress toward the reform that is badly needed. As Sprint Nextel has repeatedly stated, what Nebraska needs is comprehensive access reform, including taking steps to require all LECs in Nebraska to move toward interstate and intrastate rate parity. Unless and until comprehensive access reform is accomplished in Nebraska, consumers will continue to be harmed by retail pricing distortions resulting from LECs charging their competitors access rates that far exceed their cost of providing service.

Because the rules as proposed do not offer any significant improvement over the status quo with respect to access rates in Nebraska, Sprint Nextel will not undertake an extensive analysis of the proposed rules or attempt to address the proposed rules point by point. Instead, Sprint Nextel will focus solely on its most significant concerns. The

absence of any comment on any particular provision of the rules should not be construed as tacit approval or agreement by Sprint Nextel.

The proposed rules continue to reflect the erroneous view that the Commission lacks authority under Nebraska law to consider challenges to a LEC's existing access rates, as the Commission determined in Docket No. C-4145. As such, the proposed rules set forth procedures under which carriers may only challenge a LEC's application to establish new access rates or to change existing access rates, but there is no provision for a carrier to challenge a LEC's existing access rate. Sprint Nextel respectfully submits that the Commission's view that it lacks authority to hear challenges to existing access rates is incorrect, as neither the plain language of the Nebraska Telecommunications Act, including Neb. Rev. Stat. §§86-140, 86-141, and 86-144, nor its legislative history provides any support for the Commission's finding in Docket No. C-4145. Sprint will not belabor those arguments here, as AT&T has provided an extensive legal analysis in its appeals of both the C-4145 docket and the Orbitcom¹ case. Sprint agrees with AT&T's analysis and believes the Commission has authority under Nebraska law to hear challenges to existing access rates. Accordingly, the proposed rules should include procedures under which a carrier may challenge a LEC's existing access rates.

The lack of any opportunity for a carrier to challenge a LEC's existing rate means the net effect of the proposed rules is to make it possible for access rates to be increased, but impossible or extremely unlikely, at best, for access rates to be decreased. This is moving in exactly the opposite direction of the FCC's stated goal to encourage

¹ *In the Matter of the Formal Complaint of Orbitcom, Inc., Sioux Falls, South Dakota, seeking a determination that AT&T Communications of the Midwest, Inc., Denver, Colorado, failed to pay intrastate access charges billed by Orbitcom in accordance with Orbitcom's switched access tariff*, Docket No. FC-1332, Order dated November 10, 2009.

comprehensive intercarrier compensation reform, including the gradual reduction of per-minute charges.² In fact, the FCC is specifically considering different ways it might “encourage states to reduce intrastate intercarrier compensation rates. . . .”³ Implementing a set of rules under which switched access rates may, as a practical matter, only increase and never decrease, is not only bad public policy but is directly contrary to the clear intention of the FCC.

Also troubling is the adequacy of the procedures under which a carrier may seek to file a new rate or change (i.e. increase) an existing rate. Specifically, the showing a LEC must make in support of its new or changed rate is deficient because, among other things, it fails to require the LEC to account for the multiple services that are provided over the common network, besides just voice service. Calling features, long distance service, broadband service and video entertainment services are all offered using common network components that are also used to provide basic local voice service. Given the enhanced revenue opportunities of modern networks, carriers can and should recover network costs from their own customers through the provision of broadband and other services instead of burdening other carriers and their customers through inflated switched access rates (and NUSF surcharges, for that matter). If LECs are permitted to recover the entirety of their loop costs from the provision of narrowband voice service (including revenue from retail voice, inflated switched access, NUSF, FUSF), even though these loops provide, or could provide, additional end user services such as broadband internet access, this premise creates numerous irrational incentives that undermine the deployment and adoption of

² Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, In the Matter of Connect America Fund et al., WC Docket No. 10-90, et al., FCC 11-13 (Released February 9, 2011) (“FCC NPRM” or “NPRM”).

³ NPRM at para. 549.

broadband service. For example, under this system, carriers have lower incentives to aggressively deploy and price broadband service because they risk having a customer to whom they provide broadband use a third party voice provider, thus eliminating voice-service related subsidy flows such as inflated access revenues.

Sprint Nextel suggests the Commission recognize that carriers today can and do use their networks to generate revenue from multiple retail services that were not prevalent when inflated switched access rates were established. The Commission can mitigate the resulting disincentives to broadband deployment and adoption by recognizing that LECs receive or can receive substantial revenues from these services that utilize the same network facilities as the voice services currently being supported. At a minimum, the showing a LEC must make in order to support a new or changed access rate must take into account the other revenue opportunities available to the LEC from the vast array of services provisioned over its network.


Conclusion.

Sprint Nextel appreciates the Commission's intention to take a more active role in the regulation and oversight of intrastate switched access rates. However, as explained above, the proposed rules do not offer any meaningful progress toward comprehensive access reform that is desperately needed in Nebraska. By refusing to recognize its own authority to regulate existing access rates and consider challenges by other carriers, the Commission is tying its own hands and staying on the sidelines instead of acting consistently with the FCC's stated goal of encouraging states to reduce intrastate access charges. The proposed rules make it possible for access rates to be increased, but impossible or extremely unlikely, at best, for rates to be decreased. This is not only bad

public policy, but is directly contrary to the FCC's stated policy goals. The procedures under which a LEC may apply for a new rate or change (i.e. increase) an existing rate are inadequate for a variety of reasons, but in large part because the rules do not require the LEC to account for the plethora of additional revenue opportunities available to the LEC as a result of the additional services provisioned over the common network. Unless these major deficiencies are addressed, the proposed rules are ineffective and simply perpetuate an intercarrier compensation system that is seriously broken.

Respectfully submitted this 27th day of May, 2011.

**SPRINT COMMUNICATIONS COMPANY L.P., d/b/a
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of May, 2011, an original, five copies and an electronic copy of the Comments of Sprint Nextel in Rule and Regulation No. 178 were delivered to:

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