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March 25, 2009

Secretary James J. McNulty  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

Re: Status Report of Sprint communications Company, L.P., *et al.* – Docket No. I-00040105

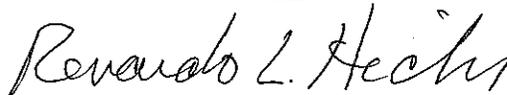
Dear Secretary McNulty:

Enclosed for filing on behalf of Sprint Communications Company, is an original of the Status Report of Sprint Communications Company, in the above-referenced matter. This Status Report has been e-filed at the Pennsylvania Public Utility Commission's website. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Renaldo L. Hicks

JDC:jljg

cc: Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Investigation Regarding Intrastate Access Charges :  
and IntraLATA Toll Rates of Rural Carriers and : Docket No. I-00040105  
The Pennsylvania Universal Service Fund :

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**STATUS REPORT**

**OF**

**SPRINT COMMUNICATIONS COMPANY, L.P., *et al.***

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Pursuant to the seventh ordering paragraph of the Pennsylvania Public Utility Commission's ("Commission") Order entered April 24, 2008 ("Order") in the above captioned proceeding, Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint") submit this Status Report. In its Order the Commission instructed that "the parties to this proceeding shall submit status reports to the Commission pertaining to common or related matters in the instant investigation and the Federal Communications Commission's Unified Intercarrier Compensation proceeding and the need for any coordination of those matters or any new matters that may arise once the instant investigation is reinstated." Parties were instructed to submit their status reports at least thirty (30) days prior to expiration of the twelve-month stay or thirty days after the

Federal Communications Commission (“FCC”) makes a final decision in its *Intercarrier Compensation Docket*,<sup>1</sup> whichever occurs first.

Sprint below provides a status update on the FCC’s *Intercarrier Compensation Docket*, discusses certain filings made in the FCC’s *Intercarrier Compensation Docket* by various parties to the instant docket, addresses recent, related matters before the Commission, and provides other relevant updates. Sprint urges the Commission not to wait any longer to address intrastate switched access charge reform in Pennsylvania. Reform of Rural Local Exchange Carrier (“RLEC”) rates is urgently needed, and will not be realized in Pennsylvania unless the Commission allows the instant docket to proceed and issues a final decision.

1. **FCC’s *Intercarrier Compensation Docket*.**

Since the Commission last received status reports in the instant docket, there has been considerable activity in the FCC’s *Intercarrier Compensation Docket*, but that docket is no closer to achieving a unified intercarrier compensation regime than it was a year ago. Since the Commission’s Order staying this proceeding became effective on April 24, 2008, the FCC has received at least 175 comments in the *Intercarrier Compensation Docket*.<sup>2</sup> The FCC received comments from this Commission, Sprint, AT&T, Verizon, Qwest, T-Mobile, Comcast, many PTA members<sup>3</sup>, and dozens of other carriers, associations and interested parties.

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<sup>1</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, Notice of Proposed Rulemaking (April 27, 2001) (“*Intercarrier Compensation Docket*”).

<sup>2</sup> All submissions in the FCC’s *Intercarrier Compensation Proceeding* can be viewed at [http://fjallfoss.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://fjallfoss.fcc.gov/prod/ecfs/comsrch_v2.cgi). The number of comments filed during the above referenced timeframe can be ascertained by sorting by docket, date range, and document type.

<sup>3</sup> Sprint has not exhaustively searched to determine whether all PTA members submitted comments, but Sprint is aware that at least 15 PTA members jointly submitted comments to the FCC on November 26, 2008.

The key development in the *Intercarrier Compensation Docket* since the release of the Commission's Order was the FCC's issuance of a Further Notice of Proposed Rulemaking in the *Intercarrier Compensation Docket* ("FNPR").<sup>4</sup> The FCC's FNPR was accompanied by two alternative plans for a new intercarrier compensation regime, each contained in the form of a proposed order.<sup>5</sup> Each draft order has a slightly different approach to reforming intercarrier compensation and universal service, but there is at least one important theme that runs through both draft orders, and that theme is that both require each carrier's intrastate access rates to mirror its interstate switched access rates within two years of the effective date of the FCC's final order.<sup>6</sup> Both draft orders require that intrastate access rates be reduced by half (50%) of the difference between intrastate and interstate rates within the first year, and the remainder of the difference in the second year.<sup>7</sup>

Additionally, both draft orders rely heavily on the state commissions to achieve a uniform and fair system of intercarrier compensation. For instance, the Chairman's Draft Order (Appendix A) specifically indicates that state commissions need not wait for the FCC to reform intercarrier compensation rules: "We note that the reforms adopted today do not preclude ... nor do they prevent state commissions from accelerating the glide path toward the final reciprocal compensation rate if they deem it appropriate."<sup>8</sup> From the draft orders, it is clear that the FCC recognizes it will require cooperation from the state commission to accomplish intercarrier compensation reform.

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<sup>4</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, Further Notice of Proposed Rulemaking, 46 Comm. Reg. 431 (rel. November 5, 2008).

<sup>5</sup> FNPR at Appendices A and C. A third draft order is contained in Appendix B of the FNPR, but that draft order addressed Universal Service reform only, not intercarrier compensation.

<sup>6</sup> FNPR at ¶192 of Appendix A, and ¶ 188 of Appendix C.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at ¶192, fn. 500 of Appendix A.

The clear emphasis of the *Intercarrier Compensation Docket* at this time is to promptly reduce intrastate access rates to mirror interstate access rates. The draft orders appended to the FNPR both recognize that inflated access rates “impose significant inefficiencies on users and distort carriers’ investment incentives, which can result in losses of billions of dollars in consumers and producers surplus.”<sup>9</sup> Sprint urges the Commission to heed the FCC’s clear emphasis on near-term access reform and reopen this docket for the institution of proceedings aimed at reducing inflated RLEC intrastate switched access rates.

**2. Comments Submitted in the *Intercarrier Compensation Docket*.**

On November 26, 2008, Embarq submitted comments in response to the FCC’s FNPR. Therein, Embarq expressed support for the FCC’s stated goal of reducing intrastate switched access charges. “Embarq supports proposals to unify intrastate and interstate switched access rates over a reasonable period of time, assuming that provisions are made for reliable revenue recovery mechanisms ... Embarq supports a future NPRM to determine how the industry should proceed to achieve the ultimate unification of switched access and local reciprocal compensation rates. Properly implemented, switched access rate unification will go a long way toward achieving the ultimate goal of rate unification ...”<sup>10</sup> Embarq indicated that a mirroring approach achieves a precompetitive balance between competitors.<sup>11</sup> While Sprint does not agree with all the statements in Embarq’s Comments, it is apparent that Embarq supports the FCC’s goal of access charge reduction – including a first step of mirroring intrastate switched access rates with interstate switched access rates.

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<sup>9</sup> *Id.* at ¶ 189 of Appendix A.

<sup>10</sup> Comments of Embarq, CC Docket -1-92, at 24-25 (November 26, 2008) (“Embarq’s Comments”).

<sup>11</sup> Embarq’s Comments at 24.

Also on November 26, 2008, a group of carriers that included fifteen members of the PTA filed comments with the FCC supporting, with certain recommended changes, the draft order contained in Appendix C of the FNPR.<sup>12</sup> As described above, the draft order at Appendix C expressly provides for reduction of intrastate switched access rates to levels mirroring interstate rates as a first step to reforming the existing intercarrier compensation regime. In light of their comments, it is apparent that many PTA members – those that announced their support for the Appendix C draft order – support the FCC’s goal of reducing intrastate switched access rates.

Both the commenting PTA members and Embarq identify numerous issues that arise from the current disparity between interstate and intrastate access rates. A concern present in their comments, as well as comments submitted by many other carriers, is that the lack of a unified termination rate leaves open the opportunity for regulatory arbitrage. This pervasive problem is acknowledged by both Embarq and the PTA members.<sup>13</sup> Sprint, in its comments, also submitted to the FCC on November 26, 2008, echoed the need to combat regulatory arbitrage in its various forms – including traffic pumping and other forms of regulatory arbitrage.<sup>14</sup> Like Embarq and the PTA members, Sprint, too, encouraged the FCC to proceed with reforming intrastate switched access rates. Sprint, however, suggested a more aggressive schedule for implementation of reform.

The transition to [cost]-based rates should occur over a maximum of five years as follows: intrastate terminating switched access charges reduced to interstate levels within 12 months from adoption of the order in two equal steps at the 6 and 12 month marks; blended rates reduced to reciprocal compensation levels within 24 months from adoption of the order in two equal steps at the 18 and 24 month marks; reciprocal compensation rates reduced

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<sup>12</sup> Letter from Rural Pennsylvania LECs, CC Docket 01-92 (“PTA Member Comments”).

<sup>13</sup> Embarq’s Comments at 21; PTA Member Comments at 1.

<sup>14</sup> Comments of Sprint Nextel Corporation, CC Docket 01-92 at 2-3 (“Sprint Comments”).

to [cost]-based rates within 60 months from adoption of the order, in three equal steps at the 36, 48, and 60 month marks. Five years constitutes a reasonable and achievable transition period, and the final terminating rates will promote numerous public interest benefits.<sup>15</sup>

The basis for Sprint's suggested accelerated schedule is founded upon several factors – all of which are relevant to Pennsylvania. First, the need for reform is acute as regulatory arbitrage is problematic today and continues to grow in scope, complexity and variety. A uniform termination rate would solve many of these problems, and cost-based termination rates would solve many more.<sup>16</sup> Second, the current regulatory regime is based on the circuit-switched network, but the industry as a whole is rapidly moving towards use of IP networks and technology. To be relevant, reform must be implemented promptly.<sup>17</sup> Finally, the *Intercarrier Compensation Docket* was instituted in 2001, some nine years ago, so it can hardly be claimed that carriers are not well aware of pending reform.<sup>18</sup> This situation is analogous to Pennsylvania where the Commission instituted its long pending access reforms in 1999 – some ten (10) years ago – in its *Global Order*.<sup>19</sup>

As stated above, dozens of other carriers filed comments with the FCC in the *Intercarrier Compensation Docket* since the Commission's stay in this docket was imposed. It would hardly be useful to the Commission for Sprint to summarize them at any greater length than it has herein. As the Commission itself filed comments in the *Intercarrier Compensation Docket*, Sprint is comfortable in assuming that the

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<sup>15</sup> Sprint Comments at 3-4.

<sup>16</sup> *Id.* at 4-5.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 6.

<sup>19</sup> *Re Nextlink Pennsylvania, Inc.*, Docket No. P00991648; P-00991649, 93 PaPUC 172 (September 30, 1999)(“*Global Order*”); 196 P.U.R. 4<sup>th</sup> 172, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utilities Commission*, 763 A.2d 440 (Pa. Cmnlth. 2000), *alloc. Granted* 844 A.2d 1239 (Pa. 2004).

Commission is well aware of the positions of the many parties, and certainly of the parties to this docket. Accordingly, Sprint is confident the Commission recognizes that whatever the final form of intercarrier compensation reform the FCC announces, the Commission will play an essential role in lowering intrastate access rates first to mirror interstate, and ultimately to a lower, cost-based rate. Sprint urges the Commission not to delay much needed reform until ultimate and finite details of the FCC's reform plans are finalized. Reform in Pennsylvania is urgently needed, and the Commission can take the precompetitive first step of forcing local exchange carriers in Pennsylvania to lower their intrastate rates to mirror interstate rates.

### **3. AT&T's Formal Complaint.**

On Friday, March 20, 2009, AT&T filed a Formal Complaint in Pennsylvania alleging that RLEC rates are unjust and unreasonable in violation of 66 Pa. C.S.A. § 1301. Sprint fully supports the allegations made by AT&T in its Formal Complaint, and applauds AT&T for implementing this action to achieve much needed relief from the highly inflated intrastate switched access rates of Pennsylvania's RLECs. As pointed out by AT&T, RLECs in Pennsylvania impose terminating access charges that are many times the rates those same carriers are permitted to charge for calls that are subject to interstate (federal) jurisdiction despite the fact such calls use identical network elements. The end result is that Pennsylvania consumers pay too much for toll calls within Pennsylvania, and competitors are forced to subsidize LEC networks. Both market distortions injure competition, innovation and deter service improvements.

In many instances calls across Pennsylvania cost more than calls across the entire continental United States. For instance, a call from the University of Pennsylvania to

Butler, Pennsylvania costs 11 times more than a call from Palo Alto, California to Butler, Pennsylvania. This illogical pricing is based solely on the slower pace of reform in Pennsylvania than at the FCC. The need to reform such illogical, unsupportable pricing disparities is urgent. At such time as the Commission docket AT&T's Formal Complaint, Sprint intends to intervene in order to join AT&T in seeking relief through the Commission's formal complaint process.

#### 4. Access Reform in Other States.

During the Commission's stay of the instant docket other states have been active in pursuing access charge reform. In Kansas and Virginia, Sprint has brought actions against Embarq seeking relief from inflated intrastate switched access rates. In the Virginia docket, an administrative law judge recently released a recommended decision.<sup>20</sup> Therein the hearing examiner found that Embarq's intrastate rates are inflated well above cost and therefore run afoul of statutory pro-competitive, anti-subsidy public policies.<sup>21</sup> The ruling also recommended against waiting on action by the FCC on intercarrier compensation reform.<sup>22</sup>

The ruling determined that Embarq's intrastate access rates would exceed cost even if reduced to mirror Embarq's interstate rates.<sup>23</sup> This should be of particular interest to the Commission as Embarq's composite intrastate switched access rates in Virginia are actually lower than Embarq composite switched access rates in Pennsylvania. Sprint would welcome the chance to establish for the Commission that Embarq's rates in

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<sup>20</sup> *Petition of Sprint Nextel for Reductions in the Intrastate Carrier Access Rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.*, Case No. PUC-2007-00108, Hearing Examiner's Ruling (April 17, 2008).

<sup>21</sup> *See Id.* at 40.

<sup>22</sup> *Id.* at 41.

<sup>23</sup> *Id.*

Pennsylvania could easily be reduced to mirror Embarras's interstate rates while still exceeding cost by a wide margin.

In New Jersey, the Board of Public Utilities ("BPU") opened a docket, on October 6, 2008, to consider the appropriate level of local exchange carrier (ILEC and CLEC) intrastate switched access rates.<sup>24</sup> The BPU opened this access docket despite the pendency of the FCC's *Intercarrier Compensation Docket*. "The Board is convinced that it is appropriate at this time to determine whether these rates should be adjusted, notwithstanding any longstanding open matters before the Federal Communications Commission[] (FCC)." Hearings in this docket are currently scheduled for fall 2009.

In addition to the above described actions by the Virginia and New Jersey commissions, the state Commissions in Massachusetts and West Virginia (this list is not intended to be exhaustive) have also considered intrastate switched access reform. In Massachusetts, the Department of Telecommunications and Cable ("DTC") is considering whether to reform CLEC intrastate switched access rates. A predecessor agency to the DTC reformed ILEC intrastate switched access rates in 2002,<sup>25</sup> and ordered ILEC rates to be reduced to match interstate levels. In 2007, responding to a Petition filed by Verizon New England, Inc., the DTC opened a docket to consider ordering reductions to CLEC intrastate switched access rates.<sup>26</sup> Hearings were held in late-2008, and an order is pending. The West Virginia Public Service Commission ("WV PSC") considered a Petition, also filed by Verizon, to reduce CLEC intrastate switched access

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<sup>24</sup> *In the Matter of the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, BPU Docket TX08090830, Order (October 6, 2008).

<sup>25</sup> See Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts, D.T.E. 01-31, 2002 Mass. PUC LEXIS \*10 (May 8, 2002).

<sup>26</sup> *Petition of Verizon New England, et al., for Investigation in the Intrastate Switched Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9 (final order pending).

rates. In that matter an administrative law judge released a decision recommending that the WV PSC order CLEC intrastate switched access rates reduced to the level of the competing ILEC.<sup>27</sup> Sprint urges the Commission to follow the example set by other state commissions and immediately proceed with urgently need intrastate switched access reform.

#### 4. **Conclusion.**

The Commission should promptly initiate proceedings in this docket to effectuate reform of intrastate switched access rates. There is no reason to delay action in this docket based on the chance that further activity in the FCC's *Intercarrier Compensation Docket* may occur at some undetermined point in the future. Inflated intrastate switched access rates are pervasive in Pennsylvania and they distort the market for telecommunications services. Sprint urges the Commission to resume activity in this docket so that much needed relief from inflated intrastate switched access rates can be realized.

Respectfully submitted,  
Sprint Communications Company, L.P.  
Sprint Spectrum, L.P.  
Nextel Communications of the Mid-Atlantic, Inc.  
NPCR, Inc.



Renardo L. Hicks

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<sup>27</sup> *Petition of Verizon West Virginia, Inc., et al., Requesting That Commission Initiate a General Investigation of the Intrastate Switched Access Charges of Competitive Local Exchange Carriers Operating in WV*, Recommended Decision, Case No. 08-0656-T-GI (March 4, 2009).

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Dated: March 25, 2009

## CERTIFICATION OF SERVICE

I hereby certify that I have this 25th day of March, 2009, served a copy of the foregoing Status Report of Sprint Communications Company, L.P., *et al.* in Docket No. I-00040105 upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55.

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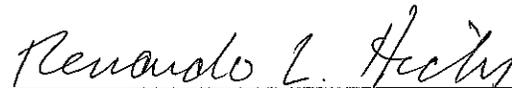
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