Edward Phillips
Attorney

NCWKFR0313
14111 Capital Blvd
Wake Forest, NC 27587-5900
Voice 919 554 7870
Fax 919 554 7913
edward phillips@mail sprint com

July 8, 2004

Chairman Pat Miller
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Brief of SprintCom, Inc. d/b/a Sprint PCS
Docket No. 03-00633

Dear Chairman Miller:

Please find enclosed for filing in the above-referenced proceeding the original and thirteen (13) copies of SprintCom, Inc. d/b/a Sprint PCS Brief.

If I can be of assistance, please call me at your convenience.

Sincerely yours,

Edward Phillips

Edward Phillips

HEP:sm

Enclosures

cc: R. Dale Grimes w/enclosures
Timothy C. Phillips w/enclosures
Melvin J. Malone w/enclosures

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief of Sprint upon all parties of record to this Docket by depositing a copy addressed to each in the United States Mail, first-class postage prepaid.

This 8th day of July, 2004.

R. Dale Grimes
Bass, Berry & Sims PLC
AmSouth Center
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-3001

Timothy C. Phillips
Assistant Attorney General
Office of the Attorney General
P. O. Box 20207
Nashville, Tennessee 37202

Melvin J. Malone
Verizon Wireless
1200 One Nashville Place
150 4th Avenue North
Nashville, Tennessee 37219-2433

Edward Phillips

Edward Phillips
SprintCom, Inc. d/b/a Sprint PCS

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re:	)	
	)	
Tennessee Coalition of Rural Incumbent Telephone	)	
Companies and Cooperatives Request for Suspension	)	Docket No. 03-00633
Of Wireline to Wireless Number Portability	)	
Obligations Pursuant to Section 251(f)(2) of the	)	
Communications Act of 1934, as Amended	)	

SPRINT'S BRIEF

Edward Phillips
SprintCom, Inc. d/b/a Sprint PCS
Mailstop: NCWKFR0313
1411 Capital Boulevard,
Wake Forest, North Carolina 27587-5900
Telephone: 919-554-7870
Fax: 919-554-7913
Email: Edward.phillips@mail.sprint.com
TN B.P.R. No. 16850

Scott Freiermuth,
Sprint Corporation
6450 Sprint Parkway
Overland Park, KS 66251
913-315-8521
Email: sfreie02@sprintspectrum.com

Table of Contents

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re·	)	
	)	
Tennessee Coalition of Rural Incumbent Telephone	)	
Companies and Cooperatives Request for Suspension	)	Docket No. 03-00633
Of Wireline to Wireless Number Portability	)	
Obligations Pursuant to Section 251(f)(2) of the	)	
Communications Act of 1934, as Amended	)	

SPRINT'S BRIEF

SprintCom, Inc., d/b/a Sprint PCS ("Sprint" or "Sprint PCS") submits this brief in response to the amended petition filed by several Tennessee rural local exchange carriers ("RLECs") seeking relief from their statutory duty to provide number portability ("LNP")

The core issue in this proceeding is consumer choice and specifically, whether residents of rural areas will enjoy the same options available to residents of metropolitan areas. Congress has declared that residents of "rural, insular, and high cost areas should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas."[1] In most proceedings, RLECs contend that their customers should enjoy the same services and features that are available to residents in urban areas (*albeit* they generally expect that other carriers should make contributions to universal service funds so as to subsidize their networks). Here, in stark contrast, the RLEC petitioners do not want to give their customers the same set of options that are available to other Tennessee residents. And, they want to prevent their customers from enjoying the same set of options even though they either are already LNP-capable or will be before the end of the year.

---

[1] 47 U.S.C § 254(b)(3)

Granting the RLEC suspension petition certainly would not serve the public interest or promote the welfare of residents in rural Tennessee. The RLECs rather filed their petition in the hope that the Tennessee Regulatory Authority ("TRA") would through regulation limit the choices available to rural residents and protect the RLECs from meaningful competition.

The RLEC petitioners have the burden of demonstrating that they meet the criteria for a suspension under Section 251(f)(2) of the Communications Act. The RLEC petitioners here have utterly failed to meet their burden of proof. Insulating incumbent carriers from competition and limiting the choices made available to consumers is not in the public interest.

I. SPRINT'S POSITION

Sprint has submitted LNP bona fide requests to eight of the RLEC petitioners. Four of these RLECs – Ben Lomand, CenturyTel, TDS and Twin Lakes – are already LNP capable.[2] It is Sprint's position that these four RLECs have not met their burden of proof for an additional suspension and that as a result, they should be directed to begin providing LNP immediately.

The other four RLECs – Ardmore, North Central, Millington and Peoples – will not become LNP capable until November (and December for Peoples).[3] Sprint does not oppose an additional suspension through November (or December for Peoples); Sprint understands that these carriers are dependent on the delivery schedules established by their vendors. However, Sprint does oppose a suspension beyond the end of this year. Like the other RLECs, these four carriers have utterly failed to meet their burden that an additional suspension can be justified under the statutory standard.

---

2 *See* Amended RLEC Suspension Petition, Attachment A

3 *See id* Ardmore (Nov. 24, 2004), North Central (Nov 24, 2004), Millington (Nov. 15, 2004), and Peoples (Dec 31, 2004)

II. BACKGROUND

Congress has determined that all local exchange carriers, including the RLEC petitioners, have the "duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [Federal Communications] Commission."[4] Congress viewed number portability as one of the minimum requirements "necessary for opening the local exchange market to competition."[5] The House Commerce Committee found that the ability to change service providers is "only meaningful if the customer can retain his or her local telephone number."[6]

Eight years ago, in accordance with its congressional directive, the FCC promulgated rules and deployment schedules for the implementation of number portability.[7] In that order, the FCC required the RLEC petitioners to provide LNP within six months after a specific request by another telecommunications carrier:

> Beginning January 1, 1999, all LECs must make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas in which that telecommunications carrier is operating or plans to operate.[8]

---

4 47 U S C § 251(b)(2)

5 *See, e g*, S REP NO 23, 104th Cong., 1st Sess , at 19-20 (1995).

6 H R Rep No 204, 104th Cong , 1st Sess., at 72 (1995), *accord Cellular Telecommunications & Internet Ass'n* v *FCC,* 330 F.3d 502, 513 (D.C Cir. 2003)(observing in the context of wireless-to-wireless portability that the "simple truth is that having to change phone numbers presents a barrier to switching carriers, even if not a total barrier, since consumers cannot compare and choose between various service plans and options as efficiently ")

7 *See Telephone Number Portability,* 11 FCC Rcd 8352 (1996)("*First LNP Order*"), *recon* , 12 FCC Rcd 7236 (1997), *further recon* , 13 FCC Rcd 21204 (1998)

8 47 C F.R. § 52 23(c)

The FCC made clear that this LEC portability obligation extends to wireless carriers.[9] No LEC challenged these orders and rules on appeal.

Over a year ago, on May 23, 2003, Sprint PCS asked eight of the RLEC petitioners to provide number portability. Admore; Ben Lomand; CenturyTel; North Central; TDS; Twin Lakes; Millington; and Peoples.[10] The FCC has confirmed that Sprint's bona fide requests are valid.[11] Thus, under FCC rules adopted eight years ago, these eight RLECs were required to provide number portability beginning on November 23, 2003.

On November 10, 2003, the FCC entered a six-month waiver of its rules for RLECs providing service outside the 100 most populous Metropolitan Statistical Areas ("MSAs").[12] As a result, the LNP duty for these RLECs was extended to May 24, 2004. On January 16, 2004, the FCC granted similar relief to some, but not all, RLECs providing services within the top 100 MSAs.[13]

FCC Chairman Powell told to NARUC as the RLEC May 24 deadline was approaching that LNP is an area "where states and federal officials worked together to ensure that last November's deadline was a reality – and consumers have benefited because of our efforts":

---

9 *See First LNP Order,* 11 FCC Rcd at 8355 ¶ 3 ("[N]umber portability must be provided . by all LECs to all telecommunications carriers, including commercial mobile radio services (CMRS) providers "), *see also id* at 8431 ¶ 152.

10 *See* Knox Direct Testimony at 3-4.

11 *See Intermodal Porting Order,* 18 FCC Rcd 23697, 23711 n.90 (2003)("Sprint's profile information exchange process is an example of the type of contact and technical information that would trigger an obligation to port "), *Wireless Porting Order,* 18 FCC Rcd 20971, 20979 n.40 (2003)(same)

12 *See Intermodal Porting Order,* 18 FCC Rcd at 23709 ¶ 29

13 *See Two-Percent Carrier Waiver Order,* 19 FCC Rcd 875 (2004) For example, this relief did not apply to RLECs receiving bona fide requests before May 24, 2003, like the requests Sprint submitted *See id* at n 23

> As the deadline for implementation outside the top 100 MSAs nears, we must continue these efforts to bring competition to all areas of the country.[14]

Chairman Powell similarly told consumers on the eve of the RLEC LNP deadline that "[y]our phone number belongs to you, and you can take it with you – *no matter where you live*":

> Now all Americans can enjoy the benefits of competition. These changes will bring lower prices, more innovation and better service to everyone. Wireless carriers will now, more than ever, deliver for rural America.[15]

Several RLECs sought relief beyond May 24, 2004. For example, in March 2004, Yorkville Telephone sought an additional three-month extension (to August 24, 2004) for its wireless (but not its wireline) operations.[16] The FCC denied this request, finding that Yorkville had "failed to provide substantial, credible evidence of special circumstances that warrant an extension of time to comply with the LNP requirements."[17] The FCC further concluded that Yorkville "failed to show" that grant of its request "would serve the public interest":

> The Commission's number portability requirements are an important tool for promoting competition and bringing more choice to consumers. These benefits are particularly important in smaller markets across the country where competition may be less robust than in more urban areas. Accordingly, it is in the public interest that carriers implement porting as quickly as possible. Granting petitioners' waiver requests would slow the LNP implementation process and limit the choices available to consumers in the markets petitioners serve.[18]

---

[14] Remarks of FCC Chairman Power at the National Association of Regulatory Utility Commissioners General Assembly (March 10, 2004), *available at* 2004 FCC LEXIS 1191.

[15] FCC News Release, *FCC Chairman Powell Another 70 Million Americans to Have Freedom to Switch Wireless Carriers and Keep Their Phone Number on Monday* (May 24, 2004)(emphasis added), *available at* 2004 FCC LEXIS 2670

[16] *See* Yorkville Telephone Petition for Limited Waiver and Extension of Time, CC Docket No 95-116 (March 18, 2004) *See also* Public Notice, *Comment Sought on Requests for Waiver of Wireless Local Number Portability Requirements,* 19 FCC Rcd 5387 (March 26, 2004)

[17] *Yorkville Waiver Denial Order*, CC Docket No 95-116, DA 04-1455, at ¶ 6 (May 24, 2004)

[18] *Id* at ¶ 10

The FCC nevertheless announced that it would not enforce its rules for sixty days – and Yorkville was effectively given a "grace period."[19] On June 8, 2004 – or 10 weeks before the period of time it claimed it needed – Yorkville advised the FCC that its "upgrades are complete and [it] is technically able to perform its obligations."[20]

One of the RLEC petitioners' principal arguments in their petition is that they do not know how to route calls to wireless customers with ported numbers. Indeed, CenturyTel made this very argument to the FCC in attempting to justify why it was dropping calls made by its Washington customers to wireless customers with ported numbers. The FCC rejected this argument, reaffirmed that its rules are "clear regarding the obligation to route calls," and tentatively concluded that CenturyTel should be fined $100,000 for "willfully and repeatedly failing to route calls from CenturyTel's customers in Washington to wireless customers with ported numbers."[21]

Many of the RLEC petitioners are already capable of providing LNP, and the rest will be LNP-capable before the end of the year. Thus, the issue no longer is implementation of LNP; but activation of a feature already installed (or about to be installed) in the RLEC networks. The central question for the TRA is whether RLECs will be required to provide number portability as soon as they will be LNP capable, or whether the TRA will delay the consumer benefits of LNP to some unspecified future date.

III. IN ACCORDANCE WITH CRITERIA IN SECTION 251(F)(2) OF THE COMMUNICATIONS ACT, THE TRA DOES NOT POSSESS THE AUTHORITY TO GRANT THE RELIEF THE RLEC PETITIONERS SEEK

Congress, in Section 251(f)(2) of the Communications Act, has authorized state commissions to entertain suspension petitions of the RLEC duty to provide number portability. Operat-

---

19 *See id* at ¶ 12.

20 *See* Yorkville Notice of Compliance, CC Docket No. 95-116, at 1 (June 6, 2004).

21 *CenturyTel Notice of Apparent Liability for Forfeiture,* 19 FCC Rcd 8543, at ¶ 1 (May 13, 2004)

ing pursuant to delegated authority, a state commission obviously possesses only that authority which Congress has specifically delegated to the state commission. In Section 251(f)(2), Congress identified with specificity the circumstances under which a suspension may be granted. Congress further made clear that a suspension is appropriate only "for such duration" as an RLEC can demonstrate "is necessary" under the specified criteria.[22]

All eight RLECs seek an additional suspension "until the later of" (1) "six months after the date by which the *Intermodal Orders* are no longer subject to appeal," or (2) "six months after the date by which the TRA has provided direction to the Petitions on the rating and routing issues."[23] The simple response is that these criteria are not among the criteria that Congress included in Section 251(f)(2). Sprint therefore submits that the TRA is without delegated authority to grant the relief the petitioners seek.

In seeking a suspension until "six months after the date by which the *Intermodal Orders* are no longer subject to appeal," the RLECs effectively ask the TRA to stay the FCC's November 10, 2003 *Intermodal Porting Order.* However, the petitioners neglect to advise the TRA that:

1. On November 20, 2003, the FCC rejected a stay of its *Intermodal Porting Order* that had been filed by CenturyTel and the United States Telecom Association ("USTA"),[24]
2 On November 21, 2003, the D.C. Circuit Court of Appeals denied a stay motion filed by four RLECs of the FCC's October 7, 2003 *Wireless Porting Or-*

---

22 *See* 47 U S C § 251(f)(2).

23 *See* Amended RLEC Suspension Petition at 23

24 *See LNP Stay Denial Order,* 18 FCC Rcd 24664 (2003)

der, ruling that the RLECs had "not demonstrated the irreparable injury requisite for the issuance of a stay pending review;"[25] and

3. No one sought a judicial stay of the FCC's *Intermodal Porting Order.* However, the National Telecommunications Cooperative Association ("NTCA") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") filed with the D.C. Circuit an "Emergency Motion for Expedited Review," wherein they asked the court to adopt a schedule that would allow "a decision to be issued prior to the May 24, 2004 Action implementation deadline "[26] The appellate court denied this request on January 23, 2004, ruling that the RLEC trade associations "failed to articulate the 'strongly compelling' reasons that would justify expedition of this case."[27]

Having achieved no success in the federal forums regarding the federal LNP requirement, the RLECs now seek yet "another bite at the apple" in asking the TRA effectively to stay the obligations the FCC imposed in its *Intermodal Porting Order* and its earlier *First Porting Order.* The simple response is that the TRA does not possess the authority to stay application of FCC orders and requirements. The TRA can, of course, grant a suspension under the criteria Congress established in Section 251(f)(2) of the Communications Act. But as Sprint demonstrates below, the RLEC petitioners have not made a credible case for suspension under the statutory criteria.

The RLEC petitioners alternatively seek a suspension until "six months after the date by which the TRA has provided direction to the Petitions on the rating and routing issues." These

---

[25] *Central Texas Telephone Cooperative, et al* v *FCC,* No 03-1405, Order at 21 (D C. Cir , Nov 21, 2003).

[26] NTCA and OPASTCO Emergency Motion for Expedited Review, Nos 03-1414, 03-1443, at 3 (Jan 14, 2004).

issues, however, are governed by FCC rules that were affirmed on appeal long ago. The TRA is required to follow these federal rules under the Supremacy Clause of the U.S. Constitution. No purpose would be served by postponing the benefits of LNP until the TRA enters an order affirming the validity of FCC rules governing interconnection and the exchange of traffic between RLECs and wireless carriers.[28]

It bears emphasis that eleven years ago, Congress amended Section 2(b) of the Communications Act, which historically gave states exclusive jurisdiction over intrastate telecommunications, so the FCC could "establish a Federal regulatory framework to govern the offering of all commercial mobile services."[29] Congress noted that this federal framework was necessary to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[30] Congress further determined that this new federal authority should apply to wireless carrier interconnection with other carriers because "the right to interconnect [is] an important one which the [FCC] shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network."[31] It is thus beyond reproach that the FCC possess the authority to adopt its RLEC-wireless interconnection rules and, as discussed below, those rules have been affirmed on appeal and since applied consistently by federal courts in appeals of state arbitration decisions.

---

27 *United States Telecom Association and CenturyTel* v *FCC,* Nos. 03-1414, 03-1443, Order at 1 (D.C Cir , Jan. 23, 2004).

28 Because these issues involve the application of federal law, appeals of TRA decisions will appropriately be made in the federal courts *See, e g , Verizon* v *Maryland Public Service Comm'n,* 535 U S 635 (2002).

29 H R CONF. REP NO. 103-213, 103d Cong , 1st Sess , at 490 (1993).

30 H R REP NO 103-111, 103d Cong , 1st Sess , at 260 (1993).

31 *Id* at 261.

IV. THE RLEC PETITIONERS HAVE FAILED TO DEMONSTRATE THE EXISTENCE OF ANY OF THE FOUR STATUTORY SUSPENSION CRITERIA

The RLEC petitioners have the burden on demonstrating that they meet the criteria for a suspension under Section 251(f)(2) of the Communications Act, as the TRA has already recognized [32] The RLEC petitioners here have utterly failed to meet their burden of proof.

A. INTERMODAL PORTING IS TECHNICALLY FEASIBLE

The TRA may grant a suspension if the RLECs can demonstrate that a suspension "is necessary" to "avoid imposing a requirement that is technically infeasible."[33] Although the RLECs claim in their amended petition that intermodal porting is not technically feasible, many of them are already LNP-capable and the rest of them will be LNP-capable before the end of the year. The technical feasibility of LNP is confirmed by the evidence submitted by one of the RLEC petitioners:

> TDS TELECOM has implemented all of the back office processes required for LNP, installed the required switch software and made LNP available in all its Tennessee properties.[34]

The technical feasibility of intermodal portability is further confirmed by decision of United Telephone to withdraw from the amended suspension petition.

---

[32] *See Petition of the Tennessee Small Local Exchange Company Coalition for Temporary Suspension of 47 U S C. § 251(b),* Docket No. 99-00613 (Oct. 4, 2001). RLEC witness Watkins notes, correctly, that the Eighth Circuit has vacated FCC Rule 51 405(d). *See* Watkins Rebuttal at 5-9 But Mr. Watkins fails to note that the TRA held in its Docket 99-00613 Order that this court decision did "not alter the burden of proof for suspensions and modifications, which is implied in the language of § 251(f)(2)." In fact, the relevant FCC rule is Rule 51 405(b), which has never been vacated. *See* 47 C F R § 51 405(b)("A LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide must prove to the state commission, pursuant to section 251(f)(2) of the Act, that it is entitled to a suspension or modification of the application of a requirement or requirements of section 251(b) or 251(c) of the Act.").

[33] 47 U S.C § 251(f)(2)(A)(iii) The plain meaning of the statutory phrase, "technically infeasible," is that something cannot be done for technical reasons. As the Arkansas Commission declared recently in declining to enter a suspension beyond May 24, 2004, "Technically difficult is not the same as infeasible " *Arkansas Telephone, et al*, Docket No 03-198-U, Order No 2, 2003 Ark PUC LEXIS 563 (Dec 22, 2003).

The FCC, after reviewing dozens of RLEC filings and conducting numerous *ex parte* meetings with RLECs, concluded that there is "no persuasive evidence in the record indicating that there are significant technical difficulties that would prevent a wireline carrier from porting a number to a wireless carrier" – including when the wireless carrier does "not have a point of interconnection or numbering resources in the same rate center as the ported number."[35] Similarly, Sprint provides both wireline and wireless services throughout the United States, including in very rural areas.[36] As both a rural LEC and a provider of commercial mobile radio services ("CMRS"), Sprint can confirm that intermodal portability is technically feasible. Indeed, Sprint's incumbent LEC is providing intermodal portability today.

B. Intermodal Porting Would Not Impose a Requirement that Is Unduly Economically Burdensome

The TRA may grant a suspension if the RLECs can demonstrate that a suspension "is necessary" to "avoid imposing a requirement that is "unduly economically burdensome."[37] The petitioners have not met this heavy burden The FCC has already developed a cost recovery plan that enables RLECs to recover the LNP implementation costs FCC Rule 52.33(a) provides:

> Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the [FCC] a monthly number portability charge, as specified in paragraph (a)(1), a number portability query-service charge, as specified in paragraph (a)(2), and a monthly number portability query/administration charge, as specified in paragraph (a)(3).[38]

---

34 Hicks Direct Testimony at 11

35 *Intermodal Porting Order*, 18 FCC Rcd at 23706 ¶ 23.

36 Sprint's incumbent LEC division provides basic exchange services in same kinds of rural areas served by the RLECs, including such towns as Altura, MN (297 access lines); Benedict, KS (155 lines); Blairston, MO (191) lines, Lyle, NE (291 lines); and Mt Charleston, NV (535 lines).

37 47 U S C § 251(f)(2)(A)(ii)

38 47 C.F R § 52 33(a) *See also Third LNP Order*, 13 FCC Rcd 11701, 11773-80 ¶¶ 135-49 (1998), *aff'd, Third LNP Reconsideration Order*, 17 FCC Rcd 2578 (2002).

Given the availability of this existing cost recovery program, LNP implementation should have little or no financial impact on the RLECs. Moreover, LNP can be "unduly economically burdensome" *only* if there will be LNP implementation costs that the RLEC petitioners do not recover in their federal LNP surcharges. Thus, to rule in favor of the RLECs under this statutory criterion, the TRA must necessarily find that (1) there will be a residual set of LNP costs that the TRA will not recover in their LNP surcharges, and (2) those costs are "undue" (or excessive). The RLEC petitioners have not submitted a scrap of evidence that they will not recover any of their implementation costs – much less that these unrecovered costs would be "*unduly* economically burdensome."

In fact, the RLECs here concede by their actions that LNP imposes no cost burden on them at all. Many of the RLECs have already made the investments needed to become LNP capable (and the remaining RLECs are making investments today to become LNP capable before the end of the year). Yet, the RLECs want to be relieved of providing LNP even though they are already capable of providing LNP. In other words, the RLECs would rather not provide LNP (and not recover their LNP costs) than provide LNP and recover their costs per the FCC cost recovery program.[39]

The RLECs also complain about the costs they will incur in transporting their customers' calls to wireless customers with ported numbers. This complaint is, at best, an issue associated with efficient competitive entry, and thus not relevant to their pending LNP suspension petition (because, as discussed below, the RLECs possess this same transport cost obligation even if they are not LNP capable). As the FCC as stated:

---

[39] Under the FCC plan, incumbent LECs cannot begin assessing an LNP surcharge until they begin providing LNP *See Third LNP Order,* 13 FCC Rcd 11701, 11776 ¶ 142 (1998).

> [C]alls to the ported number will continue to be rated in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.[40]

C. INTERMODAL PORTABILITY WOULD NOT IMPOSE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON CUSTOMERS

The TRA may grant a suspension if the RLECs can demonstrate that a suspension "is necessary to avoid imposing a significant impact on users of telecommunications services generally."[41] Under this criterion, the question for the TRA is not the adverse impact on the RLECs' customers alone, but on "users of telecommunications services generally."[42] As the Montana Commission has recognized:

> [W]e interpret "users of telecommunications services generally" as all users of telecommunications services, from whatever source, who reside in the service area of the petition. . . Also, we ascribe to "significant" the usual meaning of "important" or considerable." Demonstrating only "some" impact would not, in our view, meet this standard.[43]

The RLECs complain that LNP implementation would require them to impose the same kind of LNP surcharge that LNP-capable carriers like Sprint already assess. Such a surcharge, however, does not constitute a significant adverse economic impact on customers, as confirmed by the fact that customers continue to order service from wireless and other LNP-capable carriers notwithstanding their LNP surcharge. Indeed, grant of the RLEC requested suspension would give the RLECs a competitive advantage in the market because, unlike most other carriers, they alone would not assess an LNP surcharge.

---

40 *Intermodal Porting Order,* 18 FCC Rcd at 23708-09 ¶ 28.

41 47 U.S C. § 251(f)(2)(A)(i)

42 *See id*

43 *Ronan Telephone Section 251(f)(2) Petition Denial Order,* Docket No. D99 4.11, Order No 6174c, 1999 Mont. PUC LEXIS 83 (Nov. 2, 1999).

The RLEC petitioners present little evidence (none of it documented) concerning the costs their customers would encounter from a LNP surcharge.[44] Nevertheless, Peoples states that its LNP surcharge would be $0.40 monthly.[45] Millington states that its LNP costs per customer would be $24.88 – which, when divided by 60 months per the FCC plan, would result in a monthly surcharge of less than $0.42.[46] CenturyTel states that its LNP cost is $10.53 "for year one" – which would be $0.86 monthly.[47]

Sprint's incumbent LEC division charged its customers $0.48 monthly, and Sprint PCS charged its customers $1.10 monthly.[48] In other words, based on the skimpy evidence that the RLECs do submit, the RLEC surcharges would be lower than the surcharges that Sprint already charges its wireline and wireless customers. In no circumstance can the TRA reasonably conclude that activation of LNP would impose "a *significant* adverse economic impact on users of telecommunications services generally" in the rural areas at question.

D. Intermodal Portability Would Affirmatively Promote the Public Interest

Even if the RLECs had demonstrated that suspension of their statutory LNP duty "is necessary" under one of the three statutory criteria discussed above (and they have not), they also have not demonstrated that the suspension of their statutory duty would also be "consistent with

---

44 *See, e g*, Roland Direct Testimony at 4 ("We have not been able to quantify these costs on an end user basis.").

45 *See* Roark Direct Testimony at 9

46 *See* Howard Direct Testimony at 5.

47 *See* Dickey Direct Testimony at 3

48 Sprint's incumbent LEC division discontinued its $0 48 charge in February 2004, but it will soon reintroduce a charge to recover its costs of implementing intermodal LNP. In June, Sprint's wireless division reduced its wireless local number pooling and portability charge from $1.10 to $0.40

the public interest, convenience, and necessity."[49] In fact, grant of petition would affirmatively harm the public interest

While the RLECs may believe that intermodal portability may not be consistent with their economic self interests, they cannot credibly claim that intermodal portability is incompatible with the interests of their customers As the Chief of the FCC's Consumer Affairs Bureau stated to NARUC recently, state commissions should "strictly apply" the statutory standard so that "the rights of consumers are protected":

> When considering requests to waive these important, consumer-friendly obligations, state should remain mindful of the tremendous customer benefits that porting generates. . . . *These benefits are particularly important in rural areas where competition may be less robust than in more urban markets. . . . If relief were to be granted in the absence of extraordinary circumstances, or for indefinite periods, it would be a setback for rural consumers.*[50]

Grant of the RLECs' amended petition would affirmatively facilitate the public interest in a second way – namely, LNP would enable the RLECs to engage in number pooling, thereby increasing the efficiency in which they utilize scarce telephone numbers. Nationwide, RLECs are not efficient users of telephone numbers. According to the FCC's most recent data, RLECs utilize, on average, only 16.5 percent of the telephone numbers assigned to them (as opposed to 50.6 percent for wireless carriers).[51]

The RLECs have been assigned hundreds of thousands of telephone numbers in Tennessee, but utilize only a small fraction of these numbers. If the RLECs were pooling capable, wireless carriers could utilize thousands blocks that the RLECs are not using. If, however, the RLECs are relieved of engaging in thousands-block pooling (because their LNP capability has

---

[49] 47 U S C § 251(f)(2)(B).

[50] Letter from K Dane Snowden, Chief, Consumer & Governmental Affairs Bureau, to the Hon Stan Wise, NARUC President (May 6, 2004)(emphasis added).

not been activated), wireless carriers would then be compelled to acquire the assignment of yet additional scarce telephone numbers (even though the RLECs are not utilizing their current telephone numbers efficiently) when they begin to require numbers in the RLECs' rate centers. Sprint submits that such an inefficient arrangement makes no sense and is contrary to the public interest.

* * *

In summary, the RLEC petitioners have utterly failed to meet their burden of proof under the four criteria that Congress established in Section 251(f)(2) of the Communications Act.

V. THE RLECS MISINTERPRET OR IGNORE THE FCC'S INTERCONNECTION RULES

The RLECs' principal argument is their claim that they do not know how to route their customers' calls to wireless customers with ported numbers. This contention is evidenced by testimony submitted by CenturyTel, this nation's seventh largest incumbent LEC,[52] where CenturyTel claims it does not know how to route land-to-mobile calls (even though it is providing intermodal portability in other states its LNP suspension petitions were denied):

> Q. Does your company understand how it would transport calls made to a number that has been ported to a wireless provider?
>
> A: No, and that is the major point. As Mr. Watkins notes (and I agree with him), the FCC's directives regarding our responsibility in a wireless number porting environment simply are difficult to reconcile with our existing operations. . . . Moreover, we do not believe that either our company or end users should be exposed to the costs associated with transporting traffic beyond our network under the questions noted by Mr. Watkins are answered.[53]

---

[51] *See* FCC *Numbering Resource Utilization in the United States as of December 31, 2003,* Tables 1 and 3 (May 14, 2004).

[52] *See* FCC Industry Analysis and Technology Division, *Trends in Telephone Service,* at 7-5, Table 7.3 (May 2004)

[53] Dickey Direct Testimony at 6

The RLECs heavily rely on Steve Watkins, who describes himself as a "Special Telecommunications Management Consultant to the Washington, D.C. law firm of Kraskin, Moorman & Cosson."[54] According to Mr. Watkins, the FCC's interconnection rules are "confusing," "incomplete," "inconsistent," and "unresolved":

> There are unresolved issues associated with the ultimate routing (*i.e.*, transport) of calls to telephone numbers ported to wireless carriers.[55]

The TRA should be aware that Mr. Watkins' views are not shared by the FCC. The FCC told the D.C. Circuit Court of Appeals only two weeks ago that its interconnection rules are not just clear, but also "long-standing."[56] Indeed, the RLECs' own evidence confirms that RLECs fully understand existing FCC rules and further understand how to route calls to wireless customers with ported numbers. Specifically, a TDS witness has testified:

> Q: Does your company understand how it is to transport calls made to a number that has been ported to a wireless provider?
>
> A: From a technical perspective, yes. Our company will route a call based upon the Local Exchange Routing Guide (LERG) documentation for the terminating end office.[57]

Similarly, the RLECs own trade association has acknowledged that under current FCC rules, RLECs are responsible for the costs they incur in delivering their land-to-mobile calls to wireless networks [58]

The problem is not with the clarity of the FCC's rules. The problem rather is that RLECs do not like the FCC's rules, and they have unilaterally decided not to follow these rules (even

---

54 Watkins Direct Testimony at 2.

55 *Id* at 7-8

56 *See* Brief of FCC, *Central Texas Telephone Cooperative, et Al v* FCC, No 03-1305, at 17, 21 (D C Cir , filed June 24, 2004)("FCC D C. Circuit Brief").

57 Hicks Direct Testimony at 14.

though these rules have been affirmed on appeal). As the FCC stated recently, it was compelled to enter its declaratory orders – both the *Wireless Porting Order* and the *Intermodal Porting Order* – because rural carriers announced that they would refuse to port their customers' numbers to wireless carriers under these existing interconnection rules:

> It was this unilateral action by rural wireless carriers – and the resulting controversy it ignited among industry participants – that made clarification of the pre-existing rule necessary and appropriate.[59]

A. A REVIEW OF CURRENT LAW GOVERNING TRANSPORT BETWEEN RLEC AND WIRELESS NETWORKS

The RLECs' fundamental position it that they have no obligation to transport calls to the wireless network serving the wireless customer unless the wireless carrier establishes a point of interconnection ("POI") in the RLEC's local calling area *and* agrees to pay for the cost of transporting the call to the originating RLEC local calling area to the wireless carrier's centralized POI in the LATA. For example, the RLEC "consultant" witness, Steve Watkins, asserts:

> [T]here can be no expectation that Petitioners must transport local exchange service traffic to some distant point when the Petitioners have no statutory or regulatory interconnection obligation to do so, and this presents issues that have not been resolved.[60]

These RLEC assertions are flatly inconsistent with FCC rules that have been affirmed on appeal – as well as the Communications Act itself – as Sprint demonstrates below.

Section 251(b)(5) of the Communications Act imposes on local exchange carriers like the RLECs the "duty to establish *reciprocal* compensation arrangements for the *transport* and termi-

---

58 *See* National Telecommunications Cooperative Association ("NTCA") Ex Parte, CC Docket No. 01-92 (March 10, 2004), *attaching* NTCA, *Bill and Keep Is It Right for Rural America,* at 40 (March 2004)("[T]he carrier that originates the call will pay the transiting function ").

59 FCC D C. Circuit Brief at 34 Likewise, Sprint was forced to file its declaratory ruling petition regarding the rating and routing of indirect traffic (*see Intermodal Porting Order,* 18 FCC Rcd at 23709 n 75) because of the refusal by some RLECs to honor wireless carriers rating and routing designations

60 Watkins Rebuttal Testimony at 21

nation of telecommunications."[61] Section 252(d)(2) specifies that for "purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), . . . *each carrier* [shall recover the] costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the network carrier."[62]

The FCC has adopted rules implementing these statutes, and these rules were affirmed on appeal seven years ago.[63] Under these rules, the carrier serving the calling party (the "originating carrier") is responsible for delivering its customers' calls "to the terminating carrier's switch that directly serves the called party, or equivalent facilitate provided by a carrier other than an incumbent LEC."[64] For traffic exchanged between a LEC and a wireless carrier, this obligation applies to a call that "originates and terminates within the same Major Trading Area" (intraMTA traffic).[65]

As a practical matter, carriers (including RLECs and wireless carriers) interconnect with each other using smaller LATAs rather than larger MTAs.[66] In this regard, the FCC has declared that "telecommunications carriers, including CMRS providers, [have] the option to connect at a

---

61 47 U S C § 251(b)(5)(emphasis added).

62 47 U S C. § 252(d)(2)(a)(i)(emphasis added)

63 *See Iowa Utilities Board* v *FCC,* 120 F.3d 753, 800 n 21 (8th Cir 1997) No LEC challenged this holding in the subsequent appeal to the Supreme Court. *See AT&T* v. *Iowa Utilities Board,* 525 U.S. 366 (1999) *See also Qwest* v. *FCC,* 252 F 3d 462 (D.C. Cir. 2001)(Court declines to entertain a collateral attack on the LEC-wireless carrier interconnection rules)

64 47 C.F.R. § 51.703(b)

65 *Id* at § 51.701(b)(2) Different rules (access charges) apply to calls between MTAs (interMTA traffic)

66 This is because the Bell Operating Companies were limited (pre-Section 271 relief) to providing service within a LATA, and all networks have accordingly been designed around LATA boundaries. Since the inception of the cellular industry 20 years ago, wireless carriers have interconnected using Type 2A interconnection, whereby they connect directly to the LATA tandem switch and, in the process, connect indirectly with all switches that subtend the LATA tandem switch, including RLEC networks.

single point of interconnection ("POI") in each LATA."[67] The important point is that FCC interconnection rules are not limited in their application to the exchange of traffic "within" an RLEC's service area, but apply to a larger geographic area.

Carriers can interconnect with each other either directly or indirectly *via* a third party carrier (such as an RBOC LATA tandem switch). As the FCC told a federal appellate court only two weeks ago:

> Under section 251(a) of the Act, a telecommunications carrier, including a CMRS provider, may interconnect with an incumbent LEC either directly or indirectly. 47 U.S.C. § 251(a)(1). In the *Local Competition First Report and Order,* the Commission made clear that such carriers "should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices.[68]

RLECs and wireless carriers generally interconnect indirectly because the traffic volumes the two carriers exchange with each other does not just justify the cost of a dedicated trunk group between an RLEC network and a wireless network. The FCC also confirmed long ago that carriers can continue to interconnect indirectly in a porting environment:

> [T]o provide number portability, carriers can interconnect either directly or indirectly as required under Section 251(a)(1).[69]

Indeed, one of the RLECs own trade associations acknowledge that RLECs generally benefit by indirect interconnection:

> Since all carriers in a service area or market must at some point connect to the area tandem, there is efficiency in utilizing the tandems to route calls to other carriers instead of building a direct connection to each carrier.[70]

---

[67] FCC D.C Circuit Brief at 9 The Type 2A interconnection that wireless carriers have utilized for over 20 years is consistent with this single POI per LATA rule

[68] FCC D C. Circuit Brief at 8.

[69] *See First LNP Reconsideration Order,* 12 FCC Rcd 7236, 7305 ¶ 121 (1997)

[70] National Telecommunications Cooperative Association *Ex Parte,* CC Docket No 01-92, (March 10, 2004), *attaching* NTCA Report, "Bill and Keep. Is It Right For Rural America," at 41 (March 2004).

The type of interconnection (direct vs. indirect) does not change the responsibilities of an originating carrier to deliver its customers' calls "to the terminating carrier's switch that directly serves the called party" and paying for the costs of transporting the call to the terminating carrier switch.[71] If the originating carrier uses its own network (or alternatively, the network of a third party), it cannot charge the terminating carrier for the cost of delivering its own traffic to the network of the terminating carrier.[72] Similarly, as an RLEC trade association has recognized, if the originating carrier uses the transit services of the LATA tandem switch owner, "the carrier that originates the call will pay for the transiting function."[73]

In other words, under current interconnection rules, for a mobile-to-land (RLEC) call, the wireless carrier is responsible for transporting its customers' calls (and paying the costs of this transport) to the RLEC switch serving the RLEC customer being called.[74] Conversely, for an RLEC-to-mobile call, the RLEC is responsible for transporting its customers' calls (and paying the costs of this transport) to the wireless switch serving the wireless customer being called. These transport rules are fully reciprocal in compliance with Sections 251(b) and 252(d) of the Communications Act, and federal appellate courts have affirmed the application of these rules.[75]

---

71 47 U S C § 51 701(c)

72 *See* 47 C.F R § 51 703(b), *TSR Wireless* v *U S WEST,* 15 FCC Rcd 11166 (2000), *aff'd,* 252 F 3d 462 (D.C. Cir 2001), *Unified Intercarrier Compensation Regime,* 16 FCC Rcd 9610, 9634 ¶ 70 (2001)

73 National Telecommunications Cooperative Association *Ex Parte,* CC Docket No. 01-92, (March 10, 2004), *attaching* NTCA Report, "Bill and Keep· Is It Right For Rural America," at 40 (March 2004).

74 As noted, wireless carriers generally connect to the LATA tandem switch *via* Type 2A interconnection For a mobile-to-RLEC call, wireless carriers use the transit services offered by the LATA tandem switch owner to deliver their calls to the RLEC serving the called party.

75 *See, e g , Southwestern Bell* v. *Texas Public Utilities Comm'n,* 348 F.3d 482, 486-87 (5th Cir. 2003) (The originating carrier, not the terminating carrier, is responsible for the cost of transport from the originating local calling area to the terminating carrier's network), *MCImetro* v. *BellSouth,* 352 F 3d 872, 878-79 (4th Cir 2003)(same)

RLECs want wireless carriers to establish a point of interconnection ("POI") inside their network (or local calling area) in the hope that the wireless carrier would then assume the cost of transport from the POI to the wireless switch on land-to-mobile traffic.[76] There are several problems with this RLEC position:

- The RLEC argument assumes they can unilaterally dictate that wireless carriers (a) connect directly to them (vs. indirectly); and (b) establish a POI in the RLEC's network (vs. the tandem switch or somewhere else). However, the FCC has repeatedly ruled that it is the competitive wireless carrier, not the incumbent carrier, that gets to choose whether it connects directly or indirectly and where to establish its POI.[77]
- Even if a wireless carrier agreed voluntarily to a direct interconnection and to establish a POI in the RLEC's network, under existing interconnection rules for land-to-mobile calls, the RLEC would still be responsible for the costs of transport "from the interconnection point between the two carriers to the terminating carrier's end office switch that directly services the called party."[78]

---

[76] A POI is "a point designed for the exchange of traffic between two telephone carriers. It is also the point where a carrier's financial responsibility for providing facilities ends and reciprocal compensation for completing the other carrier's traffic begins" *Southwestern Bell* v. *Texas Public Utilities Comm'n*, 348 F.3d at 483 n 1. *See also* 47 C.F R. § 51 5 (definition of meet point). While the POI defines which carrier is responsible for obtaining and maintaining the facilities (or trunks) on either side of the POI, the POI does not determine the financial obligation for traffic carried over the facilities. *See* 47 C.F R § 51 5 (definition of interconnection)("Interconnection is the linking of two networks for the mutual exchange of traffic This term does not include the transport and termination of traffic ").

[77] *See, e g*, 47 U S.C § 251(a)(1)(carriers may "interconnect directly or indirectly"); 47 C.F.R. § 20.11(a)("A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier "), *First Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996); *Bowles* v. *United Telephone*, 12 FCC Rcd 9840 (1997), *Deployment of Wireline Services Offerings Reconsideration Order*, 17 FCC Rcd 16960, 16867 ¶ 20 (2002)("[A]n incumbent LEC cannot unilaterally dictate the point of interconnection")

[78] 47 C F R § 51 701(c) 47 C.F R. § 51.709(b) further provides that if the dedicated facility connecting two networks is used for two-way traffic (both land-to-mobile and mobile-to-land), then the costs

The position the RLECs advocate before the TRA is thus inconsistent with "long-standing interconnection rules."[79] Indeed, the TRA could not even adopt the RLEC position given the plain commands of the Communications Act. Under the RLEC proposal, wireless carriers would assume all transport costs (for both mobile-to-land and land-to-mobile traffic), while RLECs would incur no transport costs at all. Such an arrangement would be flatly inconsistent with the directive in Sections 251(b) and 252(d) of the Act that compensation arrangements for the transport of traffic be "reciprocal."

B. MR. WATKINS' ASSERTIONS ARE INCOMPATIBLE WITH THE ACT AND FCC RULES AFFIRMED ON APPEAL

Mr. Watkins makes numerous assertions in his nearly 70 pages of testimony. Virtually every statement this consultant makes is wrong. Sprint below highlights only some of Mr. Watkins' more egregious misstatements of fact and law

1. RLEC obligation to transport a local land-to-mobile call to a wireless carrier point of interconnection ("POI") in a LATA. Mr. Watkins asserts, without reciting any FCC authority, that:

> The Petitioners do not have any obligation to provision local exchange carrier services that involve transport responsibility or network functions beyond their own networks or beyond their incumbent LEC service area.[80]

This assertion is erroneous. As demonstrated above, the FCC has repeatedly ruled that wireless carriers can have a single POI in a LATA and may interconnect indirectly with other carriers, including RLECs. If a wireless carrier can interconnect indirectly with an RLEC, it necessarily

---

shall be shared in "proportion of that trunk capacity used by an interconnecting carrier that will terminate on the providing carrier's network ") In other words, the wireless carrier is responsible for the capacity used in handling mobile-to-land traffic while the RLEC is responsible for the capacity used in handling land-to-mobile traffic.

79 *See* FCC D C Circuit Brief at 17, 21

80 Watkins Direct Testimony at 11

follows that an RLEC must transport a local land-to-mobile call to the wireless carrier at some point outside of the RLEC's service area

Moreover, FCC rules (affirmed on appeal) make clear that the originating carrier is responsible for delivering its customers' calls "to the terminating carrier's switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC."[81] Thus, for a local RLEC-to-mobile call, the RLEC is responsible for delivering (and paying the costs of transport) to the wireless carrier's POI in the LATA, just as a wireless carrier is responsible for delivering its mobile-to-RLECs calls to the RLEC switch serving the called party. Indeed, the RLEC's own trade association (and Mr Watkins' former employer) has acknowledged that "the carrier that originates the call will pay for the transiting function."[82]

Equally baseless is Mr. Watkins' claim that these FCC rules are ambiguous. As discussed above, the FCC has already rejected CenturyTel's "FCC rules are ambiguous" contention and stated: "The Commission's rules are clear regarding the obligation to route calls and to query the number portability database."[83]

2 The only authority Mr. Watkins recites is irrelevant to this proceeding. The only authority that Mr. Watkins cites for all of his views of current interconnection law is 47 U.S.C. § 251(c)(2):

> "Incumbent LECs are required to provide interconnection to CMRS providers who request it for the transmission and routing of telephone exchange service or exchange access, under the plain language of section 251(c)(2)." . . . Therefore, it is a wireless carrier's obligation to provision its own network or arrange for the use of some other carrier's facilities outside of the incumbent LEC's network as a

---

81 47 C F R § 51.703(b)

82 National Telecommunications Cooperative Association *Ex Parte,* CC Docket No. 01-92, (March 10, 2004), *attaching* NTCA Report, "Bill and Keep Is It Right For Rural America," at 40 (March 2004)

83 *CenturyTel Notice of Apparent Liability for Forfeiture,* 19 FCC Rcd 8543 at ¶ 13 (May 13, 2004)

> means to establish that "interconnection point" on the network of the incumbent LEC.[84]

However, Mr. Watkins neglects to advise the TRA that the FCC held long ago that Section 251(c)(2) has no relevance to number portability:

> [T]o provide number portability, carriers can interconnect either directly or indirectly as required under Section 251(a)(1). Section 251(c), in contrast, imposes an additional requirement on incumbent LECs to provide "equal" interconnection at "any technically feasible point within the carrier's network," which a carrier does not need to provide number portability. Thus, Sections 251(a) and (b), *not Section 251(c)*, require that carriers interconnect and install and use necessary network elements to provide number portability.[85]

Moreover, Section 251(c)(2) has no relevance to RLEC-wireless carrier interconnection generally. The provisions of Section 251(c) apply to certain incumbent LECs. However, the vast majority of RLECs are exempt from the requirements imposed in Section 251(c). Section 251(f)(1) of the Act provides:

> Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).[86]

In addition, even if this automatic exemption was lifted for a particular RLEC, Section 251(c)(2)(B) would then require that RLEC to provide, upon request of a competitive carrier, interconnection at any technically feasible point "within the carrier's network," but it would not preclude a wireless carrier maintaining the *status quo* – namely, interconnecting indirectly and therefore "outside" of the RLEC's network.

---

84 Watkins Rebuttal Testimony at 19-20 (underscoring in original; internal citations omitted)

85 *First LNP Reconsideration Order,* 12 FCC Rcd 7236, 7305 ¶ 121 (1997)(emphasis added)

86 47 U.S.C § 251(f)(1)(A)

3. Facilities already exist that enable RLECs to route local land-to-mobile calls to wireless carriers. Mr. Watkins claims that the RLECs do not have facilities in place to properly route local land-to-mobile calls:

> [E]ven if the carriers knew that the number had been ported to a wireless or wireline carrier providing service in another location, there would not be any trunking arrangement in place (other than handing off the calls to interexchange carriers) to complete the call. I am not aware of any LEC, including the petitioners, that has network arrangements for the delivery of local exchange service calls to, and the exchange of telecommunications with, carriers the operate at distant locations beyond the LEC's actual service area in which local exchange service calls originate.[87]

This Watkins testimony is inconsistent with the evidence submitted by his own clients. The RLEC petitioners addressing the subject acknowledge their networks are connected to the LATA tandem switches.[88] Indeed, one RLEC petitioner advises the TRA that it uses these RLEC-to-tandem facilities when the terminating carrier is not directly connected with the RLEC:

> If the NPA-NXX rate center of the terminating wireless carrier is inside the TDS exchange's local calling area (including the EAS calling scope), the call is routed over direct interconnection facilities, where they exist, or over a common trunk group to the tandem.[89]

These RLEC-to-tandem facilities are the same facilities that wireless carriers use in delivering their mobile-to-RLEC traffic. Thus, as Mr. Watkins certainly knows (or should know), facilities already exist for RLECs to route local land-to-mobile calls to wireless carriers.

4. RLECs know how to route local land-to-mobile calls. Mr. Watkins would give the TRA the impression that RLECs have no idea how to route local land-to-mobile calls:

> If those [RLEC] numbers were ported to wireless carriers for mobile users, the rural LECs would be presented with the dilemma of how to route calls to those

---

87 Watkins Direct Testimony at 9-10

88 *See, e g*, Rowland Direct Testimony at 6, Roark Direct Testimony at 10-11; Dudney Direct Testimony at 5; Schlimmer Direct Testimony at 7

89 Hicks Rebuttal Testimony at 2

numbers where completion of the call must now involve routing to a wireless carrier beyond the LEC's own network.[90]

In fact, RLECs would route their local land-to-mobile calls in the same way that wireless carriers have routed their mobile-to-land calls for the past 20 years. Specifically, RLECs can retrieve necessary routing information for their land-to-mobile calls in the same way that wireless carriers obtain routing information for mobile-to-RLEC calls – namely, through the Local Exchange Routing Guide ("LERG"). The LERG is a monthly publication that "contains the rating and routing information for assigned CO codes."[91]

Indeed, one of Mr. Watkins' own clients acknowledges that it uses the LERG to successfully complete RLEC-to-mobile calls:

> Q: Does your company understand how it is to transport calls made to a number that has been ported to a wireless provider?
>
> A: From a technical perspective, yet. Our company will route a call based upon the Local Exchange Routing Guide (LERG) documentation for the terminating end office.[92]

In the end, Mr. Watkins' position – wireless carriers should assume all transport costs (for both mobile-to-land and land-to-mobile traffic), while RLECs should incur no transport costs at all – is not simply inconsistent with FCC rules affirmed on appeal, but is also incompatible with the reciprocity directives contained in Sections 251(b) and 252(d) of the Communica-

---

90 Watkins Rebuttal Testimony at 14.

91 Public Notice, *Wireline Competition Bureau Seeks Comment on the North American Numbering Plan Administrator Technical Requirements,* 17 FCC Rcd 11139 (2002). *See also Number Portability NPRM,* 10 FCC Rcd 12350, 12354 n 13 (1995)("The LERG contains the information necessary for routing messages, . and data for rating calls "), *Wireless Porting Order,* 18 FCC Rcd at 20980 ¶ 28, www.telcordia com/products_services/trainfo/catalog_details.html

92 Hicks Direct Testimony at 14

tions Act. The RLECs should find disturbing that their consultant knows so little about interconnection law or how RLEC networks operate.[93]

VI. THE TRA SHOULD REMIND THE RLECS THAT ROUTING LOCAL CALLS TO IXCS WOULD BE PATENTLY UNLAWFUL

Mr. Watkins states repeatedly that calls to wireless customers with locally rated telephone numbers (whether ported or not) should be delivered to a long distance carrier, whereby the calling RLEC customer would dial extra digits and incur toll charges in order to call a wireless customer with a locally rated number.[94] Mr. Watkins justifies this arrangement because of his erroneous assumption that RLECs have no trunk facilities to LATA tandem switches.

It is important that the TRA understand Mr. Watkins' position. Most IXCs (like most wireless carriers) do not connect directly with RLEC networks (again, because the volume of traffic exchanged is not large enough to cost justify a direct interconnection trunk group). Accordingly, for a toll call made by an RLEC customer, the call is routed from the RLEC end office to the LATA tandem switch, where it is rerouted to a trunk group to the designated IXC network In other words, for local RLEC-to-mobile calls, Mr. Watkins proposes that the RLECs would instruct the LATA tandem owner to switch the call to an IXC rather than switch the call directly to the wireless carrier.[95]

As the FCC has noted, "[u]nder standard industry practice, calls are determined to be local or toll (long distance) by comparing the NPA-NXX codes of the calling and called parties":

---

[93] The alternative is that Mr. Watkins does know interconnection law but decide not to provide a complete and accurate summary of this law in the hope of deceiving the TRA

[94] *See* Watkins Direct Testimony at 10-11; Watkins Rebuttal Testimony at 14

[95] Most local RLEC-to-mobile calls have two "legs": the RLEC end office switch to the LATA tandem switch, and the LATA tandem switch to the wireless carrier (over the Type 2A interconnection facility) Mr Watkins claims that local RLEC-to-mobile calls should have four "legs" (1) the RLEC end office switch to the LATA tandem switch, (2) the tandem switch to the IXC network/switch, (3) the IXC would immediately return the call to the tandem switch, and (4) then tandem owner when then route the call from the tandem switch over the Type 2A interconnection facility to the wireless carrier network.

> Thus, carriers generally compare the NPA/NXX prefixes of the calling and called parties' telephone number to determine both the retail rating of a call (that is, the charge imposed on the calling party) as well as the appropriate intercarrier compensation that is due. Every 10-digit telephone number is assigned to a particular rate center. . . . All telephone numbers assigned to a particular rate center are presumed for rate-making purposes to be located at that geographic point.[96]

The FCC has ruled that a telephone number that is ported from a wireline carrier to a wireless carrier must retain the original rate center designation after the port.[97] Thus, if a call to a certain telephone number is local today, a call to the same number after the number is ported will necessarily remain a local call. As the FCC has unequivocally stated: "calls to the ported number will continue to be rated in the same fashion as they were prior to the port."[98]

This rating convention is confirmed by the RLEC petitioners' own evidence:

> Q: Please explain how your company current rates and routes a call made by one of your end users to a wireless number.
>
> A: If the NPA-NXX rate center of the terminating wireless carrier is inside the TDS exchange's local calling area (including the EAS calling scope), the call is routed over direct interconnection facilities, where they exist, or over a common trunk group to the tandem. Since the rate center is in the TDS local calling area, there are no charges to the end user. . . . If the NPA-NXX of the terminating wireless carrier is outside the TDS exchange's local calling area, the call is routed via the end user's presubscribed interexchange carrier and the end user is billed applicable Message Telephone Service (MTS) tariff rates [99]

An RLEC would engage in an unreasonable and discriminatory practice, in contravention of Sections 201 and 202 of the Communications Act, if it rated as local calls to its own customers with locally rated numbers, but treated as toll calls to customers of other carriers with locally rated numbers.

---

96 FCC D C. Circuit Brief at 11 (supporting citations omitted)

97 *See Intermodal Porting Order*, 18 FCC Rcd at 23708 ¶ 28.

98 *Id* at ¶ 28

99 Hicks Rebuttal Testimony at 2.

Moreover, the arrangement that Mr. Watkins describes would result in RLECs violating their statutory duty to provide dialing parity.[100] The FCC's local dialing parity rule provides unequivocally:

> A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.[101]

Under Mr. Watkins' proposal, RLEC customers would dial only seven digits to make a local call to another RLEC customer, while they would have to dial eight or 11 digits (1+seven or 1+NPA+seven) to make a local call to a customer served by a competing local service provider. Mr. Watkins proposal would thus involve a clear violation of the RLEC's local dialing parity obligations.

So as to avoid yet more needless controversy, Sprint encourages the TRA to remind the RLECs that they may not discriminate in how they treat local calls and must provide dialing parity to wireless carriers.

VII. CONCLUSION

For all the foregoing reasons, Sprint respectfully requests that the Tennessee Regulatory deny the RLEC's amended suspension petition beyond the "LNP Technical Capacity" dates contained in Attachment A of their amended petition.

---

100 *See* 47 U S C § 251(b)(3)(Each LEC has the "duty to provide dialing parity to competing providers of telephone exchange and telephone toll services.").

101 47 C F R § 51 207

Respectfully submitted this 8th day of July, 2004.

Edward Phillips
SprintCom, Inc. d/b/a Sprint PCS
Mailstop: NCWKFR0313
1411 Capital Boulevard,
Wake Forest, North Carolina 27587-5900
Telephone: 919-554-7870
Fax: 919-554-7913
Email: Edward.phillips@mail.sprint.com
TN B.P.R. No. 16850

Scott Freiermuth,
Sprint Corporation
6450 Sprint Parkway
Overland Park, KS 66251
913-315-8521
Email: sfreie02@sprintspectrum.com