Sprint

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November 12, 1998

VIA FEDERAL EXPRESS

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Avenue, State Capitol
Pierre, SD 57501

Re: Proposed Rules

Dear Mr. Bullard:

Enclosed for filing, are the original and ten copies of Sprint's Comments on Proposed Commission. Please return one file-stamped copy in the enclosed envelope.

Thank you for your assistance. Please call me if you have any questions.

Very truly yours,

Donald A. Low

DAL:kmm
Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SPRINT'S COMMENTS ON PROPOSED COMMISSION RULES

Sprint Communications Company L.P., (hereafter "Sprint"), submits the following comments on the proposed rules being considered by the Commission, in accordance with the Notice in this matter.

Chapter 20:10:01 Rules of Practice.

Sprint generally supports the comments made at the November 2nd public hearing concerning the need to clarify some of the procedures and requirements with regard to motions.

Chapter 20:10:24 Interexchange Carrier and Classification & Chapter 20:10:32 Local Exchange Service Competition.

Sprint generally concurs with the comments of DTG and others at the November 2nd public hearing that the rules regarding interexchange carriers and competitive local service providers should be designed to encourage competition and not deter entry by requiring excessive information or procedures.

20:10:24:02 & 20:10:32.03. Certification. Although Sprint will not be affected since it is already certificated for interexchange and local exchange service, the information required in the applications for certification under the proposed rules appears excessive and unnecessary. Sprint concurs with the changes suggested by DTG.

20:10:32:11. Local calling scope. This proposed rule is unclear. The first sentence mandates that CLECs offer "no less than the same local calling area" than the ILEC. But the

second sentence allows the CLEC to offer a "different local calling area upon showing that it would not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns." If this is intended to allow a CLEC to offer a calling scope only equal to or greater than the ILEC local calling scope, Sprint objects. As pointed out by DTG and others, the calling scope offered by CLECs will be determined by competitive customer demands. The Commission should not prevent CLECs from meeting such demands. At the very least, CLECs should be able to offer smaller calling scopes in addition to ones equaling that of the ILEC.

20:10:32:13. Annual reporting. This proposed rule would require more extensive annual information than that currently required for interexchange carriers. There is no need for such greater information. In addition, it should be noted that CLECs may not be able to comply with the proposed rule's requirement to report revenues from major service categories "such as private line and special access, business local exchange, residential local exchange, measured interexchange, and vertical services." For instance, Sprint may have difficulty complying since its Integrated On-demand Network services will not consist of segregated traditional services.

20:10:32:16. Rural service area. The proposed rule requires provision of service throughout the rural service area within 12 months after certification or approval of interconnection agreement. Such a time period is insufficient for a CLEC to become operational, especially if the Commission requires service throughout the entire service area of the rural telephone company – as discussed below under 20:10:32:43. Sprint suggests that 36 months, as adopted by the Minnesota PUC, would be a more reasonable time period.

20:10:32:38. Rural exemption. Sprint suggests that this rule include a provision that a rural telephone company shall respond to inquiries from a telecommunications service provider contemplating interconnection, services or network elements concerning the economic burdens and technical feasibility of providing such interconnection, services or network elements. Since SDCL 49-31-79 purports to place the burden on the requesting company, the rural telephone company should be required to disclose pertinent information before a bona fide request is made.

20:10:32:39. Notice to commission of request. In view of the statutory time limit of 120 days after notice of the request for commission determination, Sprint suggests that it would be desirable to spell out some additional procedural steps to ensure that the issues can be adequately addressed. First, the rural telephone company should be required to file a response to the bona fide request within 20 days, indicating whether it continues to assert an exemption and, if so, setting forth what aspects of the bona fide request are considered unduly economically burdensome and technically infeasible and the basis for such assertions. Second, the maker of the request should be allowed to engage in discovery prior to the formal commission initiation of a proceeding.

Also, to avoid confusion concerning the application of the timelines for negotiation and arbitration of interconnection agreements under the Telecommunications Act, the rule should require the Commission, if it denies or terminates the rural exemption, to include in the decision a schedule for such negotiation and arbitration. Assuming that the requesting company has also requested negotiation of an interconnection agreement, it is unclear how the Act's timelines apply when a rural exemption is claimed and subsequently terminated.

Finally, Sprint agrees with the comments of DTG concerning the absence of standards for determining whether a request is "bona fide." Sprint suggests that if the requesting carrier has also requested negotiations, that should be considered prima facie evidence that the request is made in good faith.

20:10:32:43. Designation of eligible telecommunications carriers. The last sentence of this proposed rule prohibits a public interest finding if the CLEC requesting ETC status is not offering service coextensive with the rural telephone company's service area. That provision is in conflict with 20:10:32:16, which allows the commission to determine, after notice and opportunity for hearing, that the service requirement should be imposed over a different geographic area. Although Sprint would prefer that there be no presumption that service should be throughout the rural company's service area, 20:10:32:32 is more reasonable than 20:10:32:43. The adoption of an absolute prohibition would prevent the Commission from ever determining, regardless of the circumstances, that it was in the public interest to allow a CLEC to provide service that is not coextensive with the ILEC's service area. Since it is impossible to foresee what circumstances may develop in this changing milieu, Sprint suggests that it is unreasonable, and perhaps impermissible under the federal act, to make an absolute public interest finding such as this in advance and in the abstract. Sprint therefore suggests deletion of the last sentence of this proposed rule.

20:10:32:46. Determining applicable service area. Sprint supports the modifications suggested by DTG. The factors listed in DTG's proposed addition for determining service areas are reasonable.

Chapter 20:10:33. Service Standards for Telecommunications Companies.

Sprint notes that this chapter does not address standards for services provided by incumbent local exchange carriers to competitive local exchange carriers. Sprint urges that Commission to establish such standards in the near future. Sprint is participating as part of the Local Exchange Competition Users Group (LECUG) to establish such standards on a national basis and is one of the CLECs negotiating with U S West to determine standards on a regional basis.

20:10:33:33. Failure to pay for services other than local exchange services not grounds to terminate local exchange service. This proposed rule prohibits termination of local exchange service for nonpayment of non-local services.[1] Sprint understands that this proposed rule is intended to combat slamming in that it would remove the leverage of the slamming long distance carrier for payment of the unauthorized services. Sprint does not believe that this change in disconnection policy[2] is necessary to deter slamming and would only increase the costs of long distance services due to higher uncollectibles.

As discussed below, Sprint does not condone slamming and has implemented policies and practices to prevent it. However, the proposed rule is not necessary to deter slamming. As noted at the public hearing, current Commission rules prohibit disconnection of local service for nonpayment of the portion of a bill that is in dispute:

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[1] The following rule, 20:10:33:34, allowing an exemption from the prohibition on termination of local service if toll services cannot be terminated separately, obviously need not be adopted if this rule is not adopted. However, if this rule is adopted, Sprint endorse the following rule as necessary to allow for denial of toll services to the nonpaying customer.

[2] Sprint agrees with DTG that these proposed rules should not be in the service quality chapter but in another chapter - 20:10:10 Disconnection of Telecommunications Service. Adoption of these rules in this chapter would create a conflict with the existing rule, 20:10:10:03, allowing disconnection for nonpayment of past-due bills.

20:10:10:03 Nonpayment of past-due bills as reason for disconnection. The following conditions must all be satisfied before a telecommunications company may disconnect a subscriber for nonpayment of a past-due bill:

. . .

(5) There is no bona fide and just dispute surrounding the bill. A dispute is not considered bona fide and just if a subscriber does not pay the undisputed portion of a bill and does not, within 10 days after notice of the subscriber's right to do so, contact the commission about the unresolved dispute.

Thus, a customer who is slammed has no reason to fear termination of local service for nonpayment of unauthorized long distance services. As long as the customer disputes the bill reflecting the unauthorized services, the customer's local service cannot be disconnected under current rules.[3] The proposed rule thus does not add to current protections for victims of slamming and is unnecessary.

In addition to not deterring slamming, the proposed rule would simply increase uncollectibles for the IXCs and ultimately increase long distance rates for all customers. There are apparently a number of figures concerning the increases in uncollectibles when termination of local service for nonpayment of toll and other services is prohibited. For example, Bell Atlantic reported an increase of 400% in Pennsylvania when that state adopted a restrictive policy.[4] Other IXCs and LECs experienced similar consequences in California, New York, Texas, and Florida.[5] Sprint's own internal analysis has shown an overall 23% higher uncollectible rate in states prohibiting local service disconnection than in other states. Whatever the figure would be for South Dakota, there should be no doubt that uncollectibles would increase due to the greater number of customers who would fail to pay their long distance bill when they can retain local

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[3] It should be noted that LECs routinely refer customers to the IXCs when the customer has questions or disputes about the long distance portion of bills and do not disconnect local service. LECs generally have no special incentive to disconnect for nonpayment of toll charges since, under billing and collection agreements, uncollectibles are borne by the IXCs and not the LECs.

services. Such customers would not be victims of slamming, since they already are unlikely to be subject to local service termination, but customers who have no cause to dispute the long distance portion of their bill and simply fail to pay.[6] Thus, the proposed rule would ultimately and unnecessarily penalize all customers with higher long distance rates to "benefit" only the small minority of customers. Sprint therefore urges that the proposed rule not be adopted.

Chapter 20:10:34. Prohibition Against Unauthorized Switching of Carriers and Charging for Unauthorized Services.

20:10:34:02. Requirements for independent third-party verification. Sprint objects to the proposed requirement for recording of the conversation between the customer and the third party verifier. Such a recording is unnecessary to ensure verifications, would be costly and would make retrieval of the verification more problematic. Currently, Sprint's third party verification involves obtaining unique customer information from the subscriber (such as date of birth or mother's maiden name) for recording in the computer database to prove that the verification took place. In almost all cases, such information is sufficient to confirm verification and recording of the conversation would be redundant. At the same time, recording of the conversation and maintenance of tens of thousands of tapes would obviously be very costly. Perhaps most importantly, designing a system for retrieval of the recording of a specific conversation in the event of a slamming allegation, to comply with 20:10:34:05, is likely to be very expensive since such a requirement would be unique to South Dakota.

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4 See, Bell Atlantic Reply Comments before the FCC, CC Dkt. 95-115, (Nov. 20, 1995), p. 3.

5 See, GTE Reply Comments before the FCC, CC Dkt. 95-115, (Nov. 20, 1995), p. 9

6 It should be noted that Sprint and other IXCs and LECs routinely enter into pay arrangements for low income or other customers who genuinely have trouble paying a bill.

Sprint also does not believe that the verification process should include giving the new service providers name and toll free number to the customer. Sprint provides such information as part of its "fulfillment package" sent to the customer shortly after the request for service is made. There is not reason to have the third party verifier provide such information.

20:10:34:03. Letter of agency form and content. Sprint shares the concerns expressed by others at the public hearing regarding (6) of the proposed rule which requires that the letter of agency (LOA) specify the "precise amount" of the PIC change charge. Sprint suggests that the rule be change to require disclosure of only the "approximate amount" of the charge. Although the charge is normally within the $5 range, the actual charge can vary with the LEC serving the customer and IXCs are not necessarily aware of the precise amount since it is charged to the end-user and not the IXC. For a national provider like Sprint, it would be practically impossible to customize the LOA for each LEC service area or customer since the costs of researching the actual PIC change charge for each LEC and indivdually tailoring the LOA to reflect that charge for tens of thousands of LOAs would be prohibitive.

Sprint also sees no reason to include the requirement of subpart (9) to provide the toll free number for verification of the change in service. Again, Sprint provides such information as part of its fulfillment package welcoming the customer. There is no benefit to the customer in providing that information in the LOA.

20:10:34:06. Telecommunications company liability. & 20:10:34:07. Refund of charges. As noted at the public hearings, Sprint shares the Commission's desire to prevent slamming and supports reasonable efforts to do so. However, as Sprint has suggested in other forums, it should be recognized that slamming is too often a deliberate practice of a small minority of providers

who may not deterred by increased "penalties," since they have no intention of complying with those requirements. At the same time, the increased penalties are unlikely to significantly prevent "slamming" that results from inadvertent and innocent processing mistakes by Sprint and other reputable IXCs. For the Commission information, attached to these comments is the text of a letter from Sprint's Vice-President for External Affairs, John Hoffman to U.S. Senator Collins summarizing Sprint's policies and positions with regard to slamming. Sprint would also note that the FCC is reportedly prepared to consider new anti-slamming rules in early December. Sprint urges the South Dakota Commission to review any such rules before adopting rules of its own since Sprint believes that slamming can be most effectively combated if carriers are subject to as uniform national requirements as possible.

Sprint also wishes to elaborate on the comments made at the public hearing. Sprint currently responds to PIC disputes by authorizing the serving LEC to immediately credit the consumer for any PIC change charges and by re-rating the customer long distance bill at the rates the customer would have been charged by the original carrier. Sprint believes that this is a fair and reasonable practice and suggests that customers should not be relieved of all obligations to pay for services that they actually received and benefited from. The proposed rule's opportunity to acquire six month of free services creates greater incentives for customers to take advantage of the system by delaying complaints of alleged slamming and then disputing the validity of verifications produced by the carrier, e.g. contest the authenticity of a signature on an LOA. Furthermore, although Sprint appreciates the Commission's desire to deter slamming, the proposal is unlikely to stop the "bad actors" who deliberately engage in slamming and unfairly

penalizes other carriers who may only be guilty of inadvertent switching of customers without proper authorization.

IN CONCLUSION, Sprint appreciates the opportunity to provide these comments on the proposed rules and requests that the Commission make the suggested changes before adopting the rules.

Respectfully Submitted,
Sprint Communications Company L.P.

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April 15, 1998

The Honorable Susan M. Collins
United States Senator
Chair, Permanent Subcommittee on Investigations
Government Affairs Committee
432 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairwoman Collins:

Thank you for your letter of April 2, 1998, and the opportunity to provide the Subcommittee with Sprint's views on the problem of unauthorized changes in subscribers' selections of long distance carriers (an abhorrent practice commonly known as "slamming"). Slamming is a plague on the competitive long distance marketplace, and it will undoubtedly spread to local telephone markets if and when competition develops there. How to solve the problem, though, is less clear.

The Federal Communications Commission (FCC), as well as other federal and state regulators have been looking into ways to prevent slamming. Indeed, the FCC has already adopted aggressive rules requiring independent verification of telemarketing orders in order to minimize the opportunities for slamming. The FCC has also sought public comment on how it should implement the mandate of Congress in Section 258 of the Telecommunications Act of 1996.

A copy of Sprint's September 15, 1997 Comments, and September 29, 1997 Reply Comments in that FCC proceeding (Common Carrier Docket No. 94-129) have already been provided to you (with my letter of February 3, 1998) and I respectfully request that they be included in the record of the Subcommittee's April 23, 1998 hearing.

Your April 2, 1998 letter asked me to address certain specific questions for the benefit of the Subcommittee as you prepare for the April 23 hearing. The questions and my responses are as follows:

According to the FCC, 1,136 consumers complained in 1997 that Sprint switched their long distance service without their authorization. Please provide an explanation of how Sprint handled

such complaints and the steps it has taken to ensure that the number of slamming complaints against it are reduced.

I'd like to first point out that switching of a customer's long distance carrier is a function performed by the incumbent local telephone company, not by Sprint. A customer's designation of a preferred or primary long distance carrier is accomplished in the local telephone company's central office, and changing that designation is a process much like programming a computer. Long distance carriers, such as Sprint, submit orders to local telephone companies, when a customer selects their long distance service, and the local telephone company actually switches the customer's line from their former long distance service to their current choice.

I point out this process to highlight the fact that it provides opportunities for error. Indeed, it's Sprint's experience that many errors occur in the data provided by customers to long distance companies, in the data provided by long distance companies to local telephone companies, and in the data entered by local telephone companies when accomplishing the switch. Considering the millions of long distance customers that change their service every year and the amount of data that humans and the computers must process as a result, it is not unreasonable that such errors can and do occur. We believe that these errors are, for the most part, inadvertent and, to a much lesser extent, unavoidable.

An example of which I am personally aware involves a customer who called Sprint (in response to our TV advertising) and placed an order for long distance service. As part of completing the ordering process, Sprint records the customer's Social Security Number. When that record was transmitted to the local telephone company, though, the last four digits of the customer's local telephone number were replaced with the last four digits of the SSN. The local telephone company entered that number and, obviously, the wrong customer was switched to Sprint. When that customer complained, we immediately had the local telephone company switch back to the customer's prior long distance service and, instead, switch the correct customer to Sprint service. The event was recorded by the regulator as a "slamming incident," but it clearly was unintentional, inadvertent and regrettable.

In any event, because the process is so susceptible to error, it's Sprint's practice not to question customers who claim that their long distance service has been switched without their authorization. When we receive such a complaint, we immediately take all of the necessary actions with the local telephone company to see that the customer is switched back without delay, added cost or other penalty. We believe that, unlike some other long distance companies, Sprint goes the extra mile to ensure satisfaction, even if the person is not presently a customer of Sprint. We believe that striving for customer satisfaction in everything we do is one of the ways Sprint will be successful long term.

We, also, have implemented extensive checking and continuing improvement of our internal processes to try to eliminate all possibility of error. We also have some suggestions for improving the entire process, which I'll explain in more detail below.

I should also explain that a significant number of the complaints filed at the FCC were attributable to resellers, not directly to Sprint. When Sprint provides service to resellers, the reseller's customers are connected in the local telephone company's switch to circuits identified by Sprint's Carrier Identification Code (or CIC). If a reseller has slammed a customer, and that customer complains to the local telephone company, the local telephone company often assumes it was Sprint's fault because of the CIC and because the identity or even existence of the reseller is not easily ascertainable from the circuit records.

I would also point out that, while Sprint believes that any slams are wholly unacceptable, we believe the number attributed to Sprint by the FCC is, relative to Sprint's size, among the lowest in the long distance industry. We don't believe those results are an accident; we have no tolerance for slamming and work very hard to provide the best possible service to both our customers and potential customers.

I have to admit, in all honesty, that we have also experienced overzealous or misbehaving sales representatives who submit orders to change customers to Sprint when those customers may not have fully agreed to buy our service. Such actions should be caught and corrected in the verification process, but apparently some slip through. We work constantly, through training of new sales representatives and penalizing careless or reckless sales representatives, to minimize the possibility of inappropriate sales and incorrect orders.

What procedures does Sprint have in place to ensure that its agents or resellers adhere to FCC regulations for verification of carrier changes? Does Sprint report suspected slamming violations by its resellers to the FCC?

We believe that one of Sprint's most valuable assets is its brand, and we go to great lengths to protect its image, integrity and use. Agents are authorized by Sprint to use our brand, and they are required to do all the same things we do to ensure that they communicate a positive image to our customers, including taking all possible steps to prevent slamming.

Resellers, on the other hand, are not authorized to use the Sprint brand and are responsible for their own conduct in the marketplace. We constantly communicate with our resellers and they clearly understand our total intolerance of slamming. In fact, our standard contracts provide that the reseller shall not submit a customer's telephone number for activation without obtaining and maintaining proper authorization. If the reseller breaches this provision, Sprint has the right to stop accepting orders from the reseller (which we have done), to discontinue promotional discounts (if any), or to terminate the contract. We also can recover from the reseller any charges paid to local

telephone companies for switching customers slammed by the reseller back to their original long distance service.

We do not monitor the marketplace activities or try to verify the sales of resellers, but we do try to intervene to quickly correct slamming problems when we're made aware. In that regard, when and if a reseller slams a customer, the FCC (or state regulator) usually knows about it well before Sprint does. Nevertheless, we are always willing to work with the FCC (and other regulators) to do whatever we reasonably can to eradicate slamming.

Please comment on the current legislative and administrative proposals to control slamming.

As I tried to point out in my February 3 letter, I think it's important when trying to fashion a remedy for slamming that the Subcommittee keep a couple things in mind. First, our research reveals that slamming allegations arise from several different causes. Some seem to result from confusion in the customer's household about who had the authority to authorize a change, some from "buyer's remorse" (when a customer may authorize a change, but later regret and recant), and some from customers seeking to avoid having to pay change charges or even some or all of their long distance charges. Given human nature, there probably is no effective legislative or administrative remedy for these causes.

There are also, clearly, bad actors at work. In particular, there seems to be a significant number of outlaw carriers who deliberately and ruthlessly slam innocent customers, hoping they'll pay the bill without complaint. We need to eradicate those bad actors, who ignore the current rules and who will surely not be deterred by simply increasing current penalties. Criminal prosecution for fraud may be the most effective deterrent.

There are also, as described above, inadvertent slams. The fact is that a lot of data is exchanged between long distance carriers and local telephone companies to accomplish conversions of service, and there is created a real opportunity for error by either or both carriers. If a single digit is transposed in the customer's telephone number or the long distance carrier's identification code, the wrong customer could be connected to the wrong carrier, despite a valid order from the right carrier for the right customer. There is some evidence that such errors happen with some frequency, but the process is such that these types of errors are hard to detect and audit.

Which brings me to the second important point. That is the process by which customer long distance selections are changed is by submitting orders to the incumbent local telephone company. The telephone company, in order to be completely non-discriminatory, makes no judgment about the validity or appropriateness of any change order submitted to it, but simply executes it (hopefully, error free). Thus, unscrupulous actors knowingly can submit false orders to telephone companies, get the customers converted and hope they'll pay before discovering or complaining about the unauthorized

service change. Indeed, the process somewhat seems to encourage such fraudulent submissions.

Thus, we suggest that an effective means to curb fraudulent slammers could be to put controls upon the submission of orders to telephone companies. In particular, we believe that a neutral third party could be inserted between the long distance carrier and local telephone company, who has the responsibility for the process of changing a customer's Primary Interexchange Carrier (or PIC). This neutral third party -- which could be the neutral Number Administrator created by the '96 Telecom Act -- could be empowered to develop systems to minimize mistakes and make the reconciliation process as error-free as possible. Long distance (and, when the market is open to competition, local) carriers would still be responsible for verification of orders; but the third-party administrator would have some discretion in processing customer changes from, for instance, carriers who've been proved to have fraudulently slammed unsuspecting customers in the past. Such a neutral third party could also eliminate the possibility of anticompetitive conduct by an incumbent telephone company that is also competing against long distance carriers.

Another possible remedy could be to take advantage of emerging technology and empower customers to implement long distance carrier selections themselves. That is, when a customer decides to change long distance companies, the company could give the customer a telephone number to contact the local telephone company and a personalized code to enter that would automatically effect the change without human intervention. This solution would obviously require a little more work by customers, but it should prevent slamming regardless of whether caused by outlaws or inadvertent errors.

We are, of course, aware of another possible solution being offered by some local telephone companies that "freezes" a customer's account, so that the long distance carrier (or PIC) can not be changed without direct contact between the customer and the local telephone company. This so-called PIC-Freeze option can reduce the incidence of slamming; but it also, unfortunately, has been abused by some local telephone companies. Sprint prosecuted complaints against one local telephone company, for instance, that attempted to employ a PIC-Freeze in several states to not just reduce slamming, but also gain an unfair advantage as local and toll markets were being opened to competition. Because PIC-Freezes can be anti-competitive, Sprint has not enthusiastically embraced them as a solution to slamming.

We sincerely believe that slamming can be eliminated altogether if the solution is directed at the root cause of the problem. We are genuinely concerned that simply increasing penalties for slamming will not deter the bad actors, and will lead to endless litigation by others. In that regard, we believe that existing laws -- not only directed at slamming, but others including wire fraud statutes -- already contain adequate penalties to prosecute the truly guilty.

Sprint is, as you know, most anxious to work with the Subcommittee to find and implement a solution to this problem, and hope that you'll call upon us to contribute. Please call me or James E. Lewin, Jr., Vice-President-Government Affairs in Sprint's Washington Office (202/828-7412) at any time. Thank you very much.

Respectfully submitted,

John R. Hoffman