



PUBLIC NOTICE

Federal Communications Commission
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Sprint PCS And AT&T File Petitions For Declaratory Ruling On CMRS Access Charge Issues

Pleading Cycle Established

WT Docket No. 01-316

Comments Due: November 30, 2001

Reply Comments Due: December 12, 2001

On July 24, 2001, the United States District Court for the Western District of Missouri (“the court”) referred to the Commission, under the doctrine of primary jurisdiction, issues raised in a related civil action involving Sprint Spectrum and AT&T.¹ On October 22, 2001, Sprint Spectrum, d/b/a Sprint PCS (Sprint PCS) and AT&T Corp. (collectively Petitioners) each filed a Petition for Declaratory Ruling with the Commission pursuant to the district court’s referral. We seek comment on the issues identified in these petitions, which are described in more detail below.

Sprint PCS, Plaintiff in the underlying civil case, filed suit against AT&T seeking to collect money Sprint PCS claims AT&T owes it stemming from AT&T’s failure to pay Sprint PCS for use of Sprint PCS’s wireless communications network. Sprint PCS’s Complaint, originally filed in state court and later removed to federal district court, contains three state law claims: breach of contract, quantum meruit, and action on account. In its July 24th order, the court referred to the Commission issues concerning “whether Sprint PCS may charge AT&T access fees for use of the Sprint PCS network and, if so, what rate may be reasonably charged for such services.”² The court stayed all remaining issues in the case pending a Commission ruling until June 24, 2002.

Sprint PCS requests that the Commission issue a declaratory ruling finding that: (1) neither the Communications Act of 1934 as amended nor Commission rules prohibit Sprint PCS from recovering from AT&T its costs of terminating AT&T’s long distance traffic over the Sprint PCS mobile network; and (2) AT&T’s refusal to compensate Sprint PCS for its call termination costs is an unjust and unreasonable practice in contravention of Section 201(b) of the Communications Act and (3) AT&T’s refusal to compensate Sprint PCS for its call termination costs is unreasonably discriminatory in contravention of

¹ *Sprint Spectrum L.P. v. AT&T Corp.*, Civil Action No. 00-00973-W-5 (W.D. Mo. July 24, 2001) (*Primary Jurisdiction Referral Order*).

² *Primary Jurisdiction Referral Order* at 11.

Section 202(a) of the Communications Act.³ AT&T requests that the Commission issue a declaratory finding that: (1) access charge payments by interexchange carriers (IXCs) to commercial mobile radio services (CMRS) carriers are unwarranted and that the longstanding industry bill and keep compensation mechanism should remain intact whereby CMRS carriers recover their network costs from their end users; and (2) if the Commission nonetheless finds some compensation is due from IXCs, it should apply the total element long-run incremental cost (TELRIC) based reciprocal compensation rates on a prospective basis only. Interested parties may file comments in response to the issues identified in Sprint PCS's and AT&T's petitions and issues referred to the Commission by the court.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

We request that parties file comments on an expedited basis in light of the limited stay date of June 24, 2002, entered by the court.⁴ Interested parties may file comments no later than November 30, 2001. Reply comments may be filed no later than December 12, 2001. When filing comments, please reference the internal file number: WT No. 01-316.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the docket number of this proceeding. Parties that choose to file by paper must file an original and four copies of each filing with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, one copy each with the Wireless Telecommunications Bureau, Policy Division and Common Carrier Bureau, Competitive Pricing Division, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and a diskette copy with the Commission's copy contractor Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554. The filing should include the docket number of this proceeding: WT No. 01-316. Filings and comments are also available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information contact Gregory R. Vadas, Policy Division, Wireless Telecommunications Bureau, (202) 418-1310 or Steve Morris, Competitive Pricing Division, Common Carrier Bureau, (202) 418-1520.

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³ See 47 U.S.C. §§ 201(b), 202(a).

⁴ *Primary Jurisdiction Referral Order* at 13.