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October 30, 2008

Catrice C. Williams
Secretary of the Department
Department of Telecommunications and Cable
Two South Station
Boston, MA 02110

Re: DTC 07-9; Initial Brief of Sprint Nextel Corporation

Dear Secretary Williams:

Enclosed please find an original and ten (10) copies of Sprint Communications Company, L.P., Sprint Spectrum, L.P. and Nextel Communications of the Mid-Atlantic's (collectively "Sprint Nextel") Initial Brief of Sprint Nextel Corporation. Sprint Nextel has filed electronic copies of each with the Department (dtc.efiling@state.ma.us and Lindsay.deroche@state.ma.us) and the service list. Hard copies are also being served on the service list via first class mail.

Please return a file-stamped copy of the enclosed filing in the enclosed self-addressed, postage-prepaid envelope. Thank you for your attention to this matter. If you have any questions concerning this request, please do not hesitate to contact the undersigned at (703) 592-7618.

Sincerely,

Benjamin J. Aron

Enclosures
cc: service list

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition of Verizon New England Inc., MCImetro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. for Investigation into the Intrastate Access Rates of Competitive Local Exchange Carriers	)	**D.T.C. 07-9**

INITIAL BRIEF OF SPRINT NEXTEL CORPORATION

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INITIAL BRIEF OF SPRINT NEXTEL CORPORATION

Sprint Communications Company, L.P., Sprint Spectrum, L.P., and Nextel Communications of the Mid-Atlantic, Inc. (collectively "Sprint Nextel") hereby files its Initial Brief. In response to the Petition for Investigation Under Chapter 159, Section 14 of the Intrastate Access Rates of Competitive Local Exchange Carriers (the "Verizon Petition") filed by Verizon[1], the Department of Telecommunications and Cable ("Department") initiated the above captioned proceeding. In the Verizon Petition, Verizon requested that the Department "adopt a rule or policy ... specifying that [Competitive Local Exchange Carrier ("CLEC")] intrastate access rates may not exceed the access rates charged by the competing incumbent local exchange carrier ("ILEC") in the same service area." Verizon Petition at 2. Sprint supports Verizon's request. By requiring access rate parity between ILECs and CLECs the Department will remedy the

[1] Verizon New England Inc. ("Verizon Massachusetts"), MCImetro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services ("Verizon Access"), MCI Communications Services, Inc., d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. (collectively "Verizon").

anticompetitive influence of access rate disparities, avoid arbitrage opportunities that exist due to unreasonably inflated CLEC intrastate access rates, end the undesirable allocation of funds within the market by regulatory device rather than competitive forces, and ensure that Massachusetts consumers enjoy the benefits of full and robust competition.

I. Introduction.

The telecommunications marketplace in Massachusetts, indeed in all of American, has undergone tremendous changes in the recent past. Advances in technology and changes to regulatory regimes have resulted in remarkable increases in the level of competition within the market. These same forces have also led to a concurrent increase in the array of service options available to consumers. Today consumers can chose amongst a panoply of intermodal service options for telephone service. Consumers can select traditional ILEC telephony, CLEC telephony, cable telephony, VOIP telephony, and wireless telephony. Despite the existence of intermodal competition, regulatory treatment of the above listed services differs greatly in some areas.

One area in which the regulatory treatment of these services differs greatly is in the pricing of access services. In Massachusetts the variation in CLEC access rates is widely divergent, but uniformly inflated above ILEC access rates. The CLECs failed to present any compelling reason, and indeed no reason based on empirical evidence, for the Department to ignore the inequity of allowing CLECs to charge inflated rates for access services when such services are monopolistically controlled and insulated from price regulation by competitive forces. Accordingly, the Department must conclude that

implementing a benchmark setting CLEC access rates at ILEC levels is the most certain and appropriate means of ensuring that competition in the Massachusetts is based on competitive forces, not regulatory mechanisms.

II. Argument.

a. Precedent at the Federal Level.

1. Preventing Imposition of Anticompetitive CLEC Access Rates

The issue the Department is confronted with, the appropriate level of CLEC access charges, has previously been addressed at length and with finality by the Federal Communications Commission ("FCC"). The FCC reviewed the interstate access rates of CLECs and reduced them in a 2001 order to levels that mirrored the access rates of the ILEC in the territory in which the CLEC competed. *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, FCC 01-146, Seventh Report and Order and Further Notice of Proposed Rulemaking 16 FCC Rcd. 9923, 9931 (2001) ("CLEC Access Charge Reform Order"). In the CLEC Access Charge Reform Order, the FCC examined CLECs' tariffed interstate access rates and observed that "CLEC access rates vary quite dramatically, and, on average, are well above the rates that ILECs charge for similar service." *Id.* at 9931. Examining the root of this problem, the FCC stated as follows.

> It appears that certain CLECs have availed themselves of this rule and have refused to enter meaningful negotiations on access rates, choosing instead simply to file a tariff and bind IXCs receiving their access service to the rates therein. CLEC use of this strategy raises questions about the extent to which CLECs truly are subject to competition in their provision of access service. The Commission has previously noted the unique difficulties presented by the case of terminating access, where the called party is the one that chooses the access

> provider, but it neither pays for terminating access service, nor does it pay for, or choose to place, the call. It further complicates the case of terminating access that an IXC may have no prior relationship with a CLEC, but may incur access charges simply for delivering a call to the access provider's customer. In these circumstances, providers of terminating access may be particularly insulated from the effects of competition in the market for access services. The party that actually chooses the terminating access provider does not also pay the provider's access charges and therefore has no incentive to select a provider with low rates. Indeed, end users may have the incentive to choose a CLEC with the highest access rates because greater access revenues likely permit CLECs to offer lower rates to their end users. *Id.* at 9934-35 (internal footnotes omitted).

The situation described by the FCC arose because CLECs have a monopoly over access to their end users. *See* CLEC Access Charge Reform Order at 9938 ("... IXCs are subject to the monopoly power that CLECs wield over access to their end users."). The FCC determined that such an outcome was inconsistent with the pro-competitive deregulatory national policy framework established by the Telecommunications Act of 1996. To remedy this market failure, the FCC detariffed all CLEC interstate access rates that exceeded a rate benchmark. This has commonly been referred to as the "mirror rule." *See Id.* at 9938-39. Thus, as pertains to interstate traffic, CLECs are currently required to set interstate access rates no higher than the access rates of the ILEC within a CLEC's service area. This approach has been successful, and the FCC has not since changed its approach to preventing imposition of anticompetitive CLEC access rates.[2]

2. FCC Experience With Market Self-Regulation and the Complaint Process.

[2] While it is true that new problems continue to arise due to access rates in general (traffic pumping issues, for instance), and that the FCC is currently considering global intercarrier compensation reform, the FCC has not had to revisit the issue of anticompetitive CLEC access rates since it issued its CLEC Access Charge Reform Order.

Another important element of the CLEC Access Charge Reform Order for the Department to review is the discussion therein of the FCC's experience with using its complaint process as a mechanism to curtail anticompetitive CLEC access rates. Prior to issuing the CLEC Access Charge Reform Order the FCC attempted to allow the market to self-regulate CLEC access charges, with complaint procedures available to bolster this self-regulation. The FCC eventually concluded that this approach had failed and as a result issued its CLEC Access Charge Reform Order. Despite the failure of the self-regulation approach at the federal level, the CLECs urge the Department to pursue an identical course to regulate CLEC access charges. *See* Hearing Transcript at 545:11-23. As the discussion below illustrates, the CLECs' suggested course of action is nearly certain to produce the same unsavory results that were an impetus for the FCC's CLEC Access Charge Reform Order.

Prior to issuing the CLEC Access Charge Reform Order, the FCC had studied access rates from an industry-wide perspective. *See In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges, CC Docket 96-262, First Report and Order, 12 FCC Rcd 15982* (May 16, 1997) (Access Reform Order), *aff'd sub. nom. Southwest Bell v. FCC, 153 F.3d 523 (8th Cir. 1998).* In its Access Reform Order, the FCC implemented certain reforms to the access charge regime for interstate telecommunications traffic, but elected not to apply the reforms to CLECs. *Id.* at 16140-42. Nevertheless, the FCC indicated that it would be sensitive to indications that CLECs were imposing unreasonable access charges, would revisit the issue of whether to adopt regulations governing CLEC access charges if such action were necessary to constrain

anti-competitive actions by the CLECs, and would rely on its complaint process to combat unreasonable CLEC access rates. "[W]e conclude that reliance on the complaint process will be sufficient to assure that non-incumbent LEC rates are reasonable. We emphasize that we will not hesitate to use our authority under section 208 to take corrective action where appropriate." *Id.* at 16141.

After release of the Access Reform Order, many carriers were forced to avail themselves of the federal complaint process to combat unreasonable CLEC access rates. This resulted in numerous complaints being filed before the FCC and in U.S. District Courts. *See e.g. Advamtel, LLC v. AT&T Corp.*, 105 F. Supp.2d 507 (E.D. Va. 2000); *Advamtel, LLC v. Sprint Communications*, CIV. A. No. 00-1074-A (E.D. Va. complaint filed Apr. 17, 2000) (case settled); *Total Telecomm. Servs., Inc. v. AT&T Corp.*, 16 FCC Rcd. 5726 (2001); *Time Warner Telecom, Inc. v. Sprint Communications Company, L.P.*, File No. EB-00-MD-004 (complaint filed Mar. 16, 2000); *U.S. TelePacific Corp. v. AT&T Corp.*, File No. EB-00-MD-010 (complaint filed June 16, 2000); *AT&T Corp. v. Business Telecom, Inc.*, File No. EB-01-MD-001 (complaint filed Jan. 16, 2001); *Sprint Communications Company, L.P. v. Business Telecom, Inc.*, File No. EB-01-MD-002 (complaint filed Jan. 16, 2001); *MGC Communications, Inc. v. AT&T Corp., 14 FCC Rcd 11647 (1999); and Sprint Communications Company, L.P. v. MGC Communications, Inc., 15 FCC Rcd 14027 (2000).* The foregoing list is not intended to be exhaustive, but is merely intended to give the Department an idea of the volume of complaint activity that followed the Access Reform Order and in no small part prompted the FCC to review CLEC access rates and ultimately issue the CLEC Access Charge Reform Order.

The Department should note that the volume of complaints filed after release of the Access Reform Order was not the only factor that led the FCC to issue the CLEC Access Charge Reform Order. At least equally compelling to the FCC were methods carriers were employing, outside the complaint process, to combat unreasonable CLEC access rates.

> Reacting to what they perceive as excessive rate levels, the major IXCs have begun to try to force CLECs to reduce their rates. The IXCs' primary means of exerting pressure on CLEC access rates has been to refuse payment for the CLEC access services. Thus, Sprint has unilaterally recalculated and paid CLEC invoices for tariffed access charges based on what it believes constitutes a just and reasonable rate. AT&T, on the other hand, has frequently declined altogether to pay CLEC access invoices that it views as unreasonable ... Additionally, IXCs have threatened to stop delivering traffic to, or accepting it from, certain CLECs that they view as over-priced. Thus, AT&T has notified a number of CLECs that it refused to exchange originating or terminating traffic. In some instances, AT&T has terminated its relationship with CLECs and is blocking traffic, thus raising various consumer and service quality issues. These practices threaten to compromise the ubiquity and seamlessness of the nation's telecommunications network and could result in consumer confusion. CLEC Access Charge Reform Order at 9932 (internal footnotes omitted).

As illustrated by the foregoing passage, carriers employed a variety of means – litigious and practical – to combat excessive CLEC access rates. The tension in the market was reaching untenable levels and indeed threatened the ubiquity of the national telecommunications network. These market conditions arose despite the availability and utilization of the FCC's complaint process as a tool to regulate anticompetitive CLEC access rates.

The FCC not only concluded that its experiment with the use of the complaint process and self-regulation to prevent the imposition of anticompetitive CLEC access

rates had not worked, but it also concluded that the resulting pressures in the market had unintended, undesirable effects:

> [T]he uncertainty of litigation has created substantial financial uncertainty for parties on both sides of the dispute. This uncertainty, in turn, poses a significant threat to the continued development of local-service competition, and it may dampen CLEC innovation and the development of new product offerings. CLEC Access Charge Reform Order at 9932 (internal footnotes omitted).

These collateral effects were at least as troubling to the FCC as was the volume, inefficiency and ineffectiveness of the complaint process as a regulatory tool to combat imposition of unreasonable CLEC access rates. Having observed its experiment with self-regulation and the complaint process fail, the FCC took action and applied a bright-line rule to correct CLEC access rates and to reduce them to reasonable levels. The FCC imposed the above described mirroring rule, essentially the same approach advocated in the Verizon Petition, to ensure the reasonability of CLEC access rates, and to end the uncertainty that threatened innovation and competition. The FCC's action was as decisive as it was effective.

Despite the obvious problems the FCC encountered in attempting to allow the market to self-regulate CLEC access rates, the CLECs advocate that the Department should take this same approach. *See* Hearing Transcript at 545:11-23. The Department should carefully consider the FCC's experience with the use of the complaint process as the primary regulatory tool to combat CLEC access rates. Sprint avers that many or all of the issues the FCC observed, as described above, are likely to occur in Massachusetts should the Department not act to ensure that CLEC access rates are set at reasonable levels. Such undesirable consequences can and should be avoided. The Department

should consider carefully the aftermath of the FCC's decision to follow the course recommended by the CLECs, and it must conclude that implementing the relief advocated in the Verizon Petition is the most prudent course of action.

b. Precedent in Massachusetts.

In 2002, the Department Telecommunications and Energy ("DTE") released a decision in a proceeding which, in part, considered the appropriate levels for Verizon's switched access rates. *See Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts*, D.T.E. 01-31, 2002 Mass. PUC LEXIS *10 (May 8, 2002) ("Verizon Alt. Reg. Order"). Therein, the DTE examined Verizon's switched access rates to determine whether pricing switched access charges above cost was stifling competition. The DTE concluded that it was. The DTE stated "[w]ith respect to AT&T's argument that above-cost switched access charges limit competition ... we agree with AT&T." *Id.* at *108. The DTE further concluded that

> [l]owering all wholesale service rates closer to incremental cost improves efficiency, promotes competition, and creates a consistent economic framework for all wholesale services.
> ...
> [W]e judge that consistent regulatory policy for all wholesale services ... will promote competition and administrative efficiency by pricing all wholesale inputs at more efficient levels. *Id.* at *109-110.

Ultimately, the DTE ordered Verizon to reduce its rates for intrastate access services to a level equal to its interstate rates for such services, concluding that the interstate rates were closer to cost-based. *Id.* at *109.

The DTE's findings in the Verizon Alt. Reg. Order are applicable to the matter at bar. CLEC rates are not cost-based and thus, consistent with the DTE's findings, are both economically inefficient and anticompetitive. Action by the Department to reduce CLEC access charges to the levels charged by Verizon will improve economic efficiency by allowing market forces to dictate profit, will promote competition by preventing CLECs from suppressing consumer costs while collecting unearned revenue from competitors to offset the CLECs' lower consumer costs, and will create a consistent framework for access services whereby all carriers' access services are close to cost-based levels. Thus, just as the DTE ordered Verizon to lower its intrastate access rates to the near cost-based rates applicable to interstate traffic in order to improve economic efficiency, promote competition and implement a consistent regulatory framework, the Department can achieve these same goals by ordering CLEC access rates reduced to the level of Verizon's access rates.

c. Precedent From Other Jurisdictions.

Several states have recently taken action limiting CLEC access rates. In Virginia, the State Corporation Commission ordered that by April 1, 2008 CLEC intrastate access rates are limited to either their own interstate rate or the intrastate access rates of the ILEC in whose territory they are competing. See, Virginia State Corporation Commission Order in Case No. PUC-2007-00033, *Amendment of Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers.* Similarly, the Public Utilities Commission of Ohio recently limited CLEC access rates. *In the Matter of the Establishment of Carrier to Carrier Rules,* Case No. 06-1344-TP-ORD (August 22, 2007). In its order, the Ohio Commission limited CLEC intrastate access rates to the

rates of the ILEC in whose territory the CLEC is competing. The Commission rejected the arguments of a CLEC seeking to remove the cap by stating that "this request should be denied inasmuch as there is not competition for terminating access." *Id.* at p. 57.

Additional support for limiting CLEC access rates to the rates of the relevant ILEC can be found in numerous other jurisdictions including California, Connecticut, Maryland, Missouri, New York, and Pennsylvania (this list is merely intended to be illustrative, not exhaustive).[3] To the extent that the FCC and a number of other states have taken a uniform approach to regulating CLEC intrastate access rates, the Department would be joining a growing number of states that have recognized the important pro-competitive benefits of preventing carriers from collecting profits from monopolistically controlled network elements such as switched access services. The Department should also note that some of the CLECs which would be affected by the outcome of this proceeding already operate in other states that have affected parity between CLEC and ILEC access rates. *See* Hearing Transcript at 558-561. The CLECs' joint witness, however, declined to review the impact on his clients – if any – of the

[3] California: *Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges*, R.03-08-018, *Final Opinion Modifying Intrastate Access Rates* (Dec. 10, 2007), D.07-12-020; Connecticut: *DPUC Investigation of Intrastate Carrier Access Charges*, Docket No. 02-05-17, Decision (2004), 2004 Conn. PUC LEXIS 15, at *45 (requiring all LECs, including CLECs, to implement a common price cap on intrastate access charges unless they can demonstrate higher rates are justified via a cost study); Maryland: Code of Maryland Regulations § 20.45.09.03(b) (requiring all facilities-based LECs to modify their intrastate switched access rates to ensure that they do not exceed the rates of the largest LEC in Maryland); Missouri: *In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Case No. TO-99-596, Report and Order (June 1, 2000), 2000 Mo. PSC LEXIS 996, at *28-31 (CLEC access rates capped at level of the directly competing ILEC."); New York: Case 94-C-0095, *Opinion* 98-10 (1998), 1998 N.Y. PUC LEXIS 325, at *40-41 ("... competitive local exchange carriers are authorized to levy access charges subject to the constraint that their rates not exceed those of the largest carrier in the LATA without a showing that higher rates are cost-based and in the public interest.")(footnote omitted); and Pennsylvania: 66 Pa.C.S. § 3017(c) (2006) ("No telecommunications carrier providing competitive local exchange telecommunications service may charge access rates higher than those charged by the incumbent local exchange telecommunications company in the same service territory unless such carrier can demonstrate that the higher access rates are cost justified.").

CLEC access rate caps imposed in other states. That the CLECs declined to offer any information relative to their experience operating in other states that have adopted mirroring rules is unfortunate as it would have allowed the Department to analyze particularly salient evidence pertaining to CLECs' ability to compete in markets where CLEC access rates cannot exceed ILEC access rates.

d. Testimony Presented to the Department.

1. No Cost Studies Produced by CLECs.

The hearings before the Department were as remarkable for what was not produced as for what was. Noticeably absent was any showing of the cost justification underlying the access rates for any of the CLEC participants. The CLECs' jointly sponsored witness, Dr. Ankum, admitted that he did not review any cost information regarding his clients in preparing his testimony or in preparation for the hearings. *See* Hearing Transcript at 479:1-11, 508:5-13, 583:12-18, and 609:12-16. Dr. Ankum's failure to support his theoretical models with factual analysis is troubling.

The Department initiated the instant proceeding so as to determine whether to grant the relief requested in the Verizon Petition, and to impose a rate cap in order to reduce CLEC access rates to reasonable levels. Thus, the CLECs were on notice that the Department intended to examine CLEC access rates. Clearly, the Department's task is most readily facilitated by a robust factual record. Nevertheless, the CLEC participants did not introduce evidence through their own witness to support their access rates. Accordingly, Dr. Ankum's testimony, as he confirmed during cross-examination, is entirely based on theoretical models. Hearing Transcript at 610:17-24.

Sprint suggests to the Department that the CLEC participants declined to have their witness review their access rates in no small part because those rates are priced far above cost. Certainly the CLECs oppose a rate cap as it allows them to forestall reduction of their inflated access rates to reasonable levels. When asked how he proposed the Department analyze whether the CLECs could recover their costs under the Verizon proposal, Mr. Ankum responded that such an inquiry is empirical, and conceded that his testimony was entirely theoretical. *Id.* The CLECs failure to support the reasonability of their access rates through evidence rather than theory is especially damning in light of the admission by their own witness that the Department would need to review empirical evidence, not theory, to reach a factual conclusion regarding the ability of the CLECs to recover their costs if their access rates were capped at the level of Verizon's access rates.

Contrary to the CLECs' unsupported testimony, witnesses for Verizon, AT&T and Comcast provided the Department with ample evidence in support of their testimony. These witnesses have provided the Commission evidence and testimony establishing that CLEC access rates vary extensively; that CLEC rates are well above compensatory levels in every instance; and that competition is hindered by excessive CLEC access charges. The CLECs should not be rewarded for their failure to present evidence to support their theoretical testimony. Without any supporting evidentiary basis, the CLECs' testimony should be afforded little or no weight. Under Verizon's proposal, the CLECs will not be without recourse to prove that their rates are justified, but in order to have the Department reach such a conclusion, the CLECs will have to support their position with evidence, not mere theory.

2. Dollar-For-Dollar Rate Reductions Not Relevant.

A theme the CLECs appeared to focus on during cross-examination is whether Massachusetts consumers will enjoy a corresponding dollar-for-dollar benefit from any reduction in CLEC access rates. Counsels for the CLECs asked this question of each opposing witness. See Hearing Transcript 37:19-24, 261:13-20, and 381:10-17. As was made clear in responsive testimony, however, the question over-simplifies the benefits that can flow from rate reductions. Cost of service is not the only area in which consumers can enjoy benefits as a result of reductions to input costs. Consumers realize benefits through innovation and improved services as well as through lower service costs.

It is essential for the Department to consider that elevated access rates affect an inefficient redistribution of funds in the telecommunications marketplace. This inefficient redistribution of funds is against public policy. Undeniably the Department has an interest in ensuring that Massachusetts consumers enjoy low prices that result from competitive pressures within the marketplace. The Department also, however, has an interest in encouraging the availability and proliferation of advanced telecommunications services. These interests do not have to conflict, but any policy requiring a dollar-for-dollar reduction in rates for consumers will put these interests at odds.

The presence of elevated access charges artificially diverts part of the cost of service away from the consumer, who would ordinarily pay his proportional share of his selected carrier's cost of service, and instead imposes them on competing carriers and

their consumers. This masks the true cost of service from the consumer and forces other companies and their customers to implicitly subsidize the carrier imposing unreasonably high access rates. This implicit subsidization enables the carrier to reap an unreasonably high profit despite offering low rates.

The problem is exacerbated by the current regulatory regime applicable to CLECs. As access rates are imposed via tariffs filed with the Department, carriers are largely without recourse to challenge them as they have Department's implicit imprimatur. *See* CLEC Access Charge Reform Order at 9935 ("[Carriers are required to] pay the published rate for tariffed CLEC access services ... It appears that certain CLECs have availed themselves of this rule and have refused to enter meaningful negotiations on access rates, choosing instead simply to file a tariff and bind [carriers] receiving their access service to the rates therein."). Additionally, access rates apply to essential network facilities that are insulated from competition, and thus insulated from those market forces that otherwise tend to drive down inflated costs.

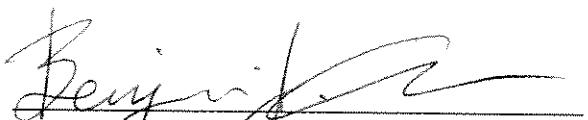
The artificially redirection of revenues to CLECs results in a net reduction of funds available to other carriers for investment in advanced services and innovation. The funds that might otherwise be invested in developing and deploying advanced services are artificially redirected to CLECs by regulatory mechanism rather than being directed by market forces. By reducing CLEC access rates to ILEC levels, the Department can ensure that no carrier enjoys this unearned advantage. While Sprint believes that rates for monopolistically-controlled, essential network elements are most appropriately set at cost, capping all CLEC access rates at the ILEC level is a dramatic and needed reform.

The Department must also acknowledge that unlike access charges, which are insulated from competitive forces and set by tariff, consumer rates are far more directly subject to market forces. Thus, it would be an unnecessary intrusion into the a robust, competitive market for the Department to follow the course the CLECs appear to highlight for the Department and order dollar-for-dollar price reductions in response to a reduction in access charges. *See* Hearing Transcript 261:21 – 264:3, 39:8-21, and 381:18-24. It would also ignore the benefits that will arise, including cost reductions, if competitive forces are allowed to direct funds within the market.

III. Conclusion.

For all the reasons described above, the Department should move expeditiously to reform CLEC access rates in Massachusetts. The Department has a well developed, robust record establishing that inflated CLEC access rates are anti-competitive and immune from market pressures. The CLECs failed to provide any cost evidence to support their position that their inflated rates are cost-justified. These inflated rates allow CLECs to set garner profits via regulatory mechanism – tariff – rather than being required to compete for their profits. This is against the Department's long standing policy of encouraging competition and thereby ensuring that Massachusetts consumers enjoy the benefits of a healthy, competitive market. Therefore, Sprint encourages the Department to implement a cap on CLEC access rates.

Respectfully submitted,



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Date: October 30, 2008

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CERTIFICATE OF SERVICE

I, Benjamin J. Aron, hereby certify that on this day, October 30, 2008, I caused a true and correct copy of the foregoing document to be served by first class mail upon all parties of record listed on the DCT 07-9 Service List.

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Verizon Petition for Investigation under Chapter 159, Section 14 of the Intrastate Access Rates of Competitive Local Exchange Carriers
D.T.C. 07-9

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