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February 22, 2005

VIA HAND DELIVERY

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Office of the Secretary
Federal Communications Commission
FCC Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

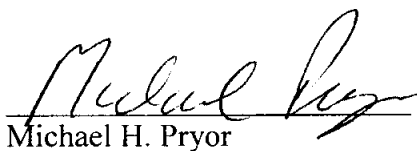
**RE: In the Matter of Sprint Local Telephone Companies Tariff F.C.C. No. 3,
Transmittal No. 252**

Dear Ms. Dortch:

Enclosed please accept for filing in the above-referenced matter a Petition to Suspend or Reject Tariff from NuVox, Inc. (FRN 0004319414) and XO Communications, Inc. (FRN 0006275945). We have an enclosed an original and four copies.

Please date stamp the enclosed return copy and return it in the envelope provided. If you have any questions relating to this filing, please contact the undersigned.

Best regards,


Michael H. Pryor

Enclosure

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Sprint Local Telephone Companies)	Transmittal No. 252
Tariff F.C.C. No. 3)	
)	

**NUVOX, INC. AND XO COMMUNICATIONS, INC. PETITION TO SUSPEND
OR REJECT TARIFF**

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February 22, 2005

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Pursuant to Section 1.773 of the Rules of the Federal Communications Commission ("FCC" or "Commission"),^{1/} NuVox, Inc. ("NuVox") and XO Communications, Inc. ("XO") hereby submit this petition requesting that the Commission reject, or suspend and investigate, the above-captioned tariff filing of Sprint Local Telephone Companies ("Sprint"). Sprint's tariff filing is a blatant attempt to end-run an ongoing dispute with a number of competitive carriers in which Sprint is seeking to replace inexpensive cross connect charges with substantially higher channel termination charges for short cable runs within Sprint's central offices. Sprint has sought to impose these higher charges on carriers that connect Sprint special access services to equipment located in collocation arrangements. Sprint's proposed tariff revisions are unjust, unreasonable and discriminatory, and they are profoundly anti-competitive and undermine the Commission's goal of fostering facilities-based competition.

^{1/} 47 C.F.R. § 1.773.

I. BACKGROUND

A. The Current Dispute With Competitive Carriers

Both XO and NuVox are facilities-based competitive local exchange carriers (“CLECs”). To provide competitive service in Sprint territories, both carriers have physically collocated in Sprint central offices. XO has collocated equipment in ten Sprint central offices in Nevada and two in Florida, and NuVox has collocated in three Sprint central offices in Florida.^{2/} Both XO and NuVox utilize Sprint interstate, high capacity special access services to reach their end user customers. NuVox and XO serve primarily small to medium-size business customers to whom they provide a suite of integrated voice and data services utilizing Sprint special access high capacity services. These special access services connect to NuVox’s and XO’s collocation sites located in Sprint central offices serving those end users. XO has deployed its own transport facilities that it uses to exchange traffic from the collocation sites to and from its own switches. Unlike XO, NuVox does not own transmission links. Rather, it uses collocated equipment to aggregate and groom traffic onto Sprint or third party carrier facilities for transport to NuVox’s voice and data switches.

The special access circuits ordered from Sprint by NuVox or XO typically terminate on Sprint’s main distribution frame or similar equipment in the Sprint central office and then are cross-connected via a short cable run to NuVox’s or XO’s collocated equipment. Initially, Sprint assessed a small cross connect charge for this connection, consistent with Sprint’s Expanded Interconnection Services (“EIS”) tariff.^{3/} The charges

^{2/} NuVox’s collocations were established by NuVox’s predecessors, NewSouth Communications and Universal Communications.

^{3/} See Sprint Local Tel. Cos., F.C.C. Tariff No. 3, § 17 (“*Sprint Current Tariff*”).

in Florida for this connection, for example, are \$2.93 for a DS1 cross connect and \$25.85 for a DS3 cross-connect.^{4/} While the DS1 and DS3 cross connect charges in Nevada are \$2.99 and \$26.47 respectively.⁵

In June 2003, Sprint informed the competitive industry that it intended to replace cross connect charges with channel termination charges on both a forward-looking basis and retroactively for a period of up to two years.^{6/} Channel termination charges are exponentially higher than cross connect fees. In contrast to the \$2.93 cross connect charge, Sprint's interstate DS1 channel termination charges in Florida, for example, range from \$170 to \$270, depending on density zone.^{7/}

Sprint's purported basis for this change is its misguided belief that carriers who had ordered physical collocation pursuant to section 251(c)(6) of the Telecommunications Act of 1996^{8/} could not avail themselves of the cross connect charge contained in Sprint's EIS tariff when carriers connected to Sprint special access circuits from those collocations.^{9/} In this circumstance, according to Sprint, the only applicable access tariff rate element is a channel termination.^{10/} Sprint thus claims that its current

^{4/} Sprint, F.C.C. Tariff No. 3, Transmittal No. 252, Revised Tariff Pages Trans. #252, Rev. Tariff Pages, §§ 17.7(A)(10), (11), at 3rd Revised Page 17-41, 3rd Revised Page 17-42 (filed Feb. 14, 2005) ("*Sprint Trans. #252, Rev. Tariff Pages*").

^{5/} *Id.*

^{6/} *Request for Accelerated Docket Treatment – Complaint against Sprint Local Telephone Companies for Violations of the Communications Act*, Sierra Pacific Comm, XO Communications, et al. v. Sprint, EB-04-TMD-005, at 2 (filed March 29, 2004) ("*XO et al. Letter*").

^{7/} Sprint Current Tariff F.C.C. No. 3, § 7.5.8 (A).

^{8/} Section 251(c)(6) imposes a duty on incumbent LECs to "provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6).

^{9/} *See Sprint Local Tel. Co.s Response to Request for Accelerated Docket Treatment – Complaint against Sprint Local Telephone Companies for Violations of the Communications Act*, Sierra Pacific Comm, XO Communications, et al. v. Sprint, EB-04-TMD-005, at 3-6 (filed April 30, 2004).

^{10/} *Id.*

tariff requires carriers to pay a channel termination charge for the short connection between its distribution frame and the collocated equipment, in addition to a channel termination charge between that wire center and the end user customer. In other words, carriers must pay two channel terminations instead of one to reach end user customers.

Sprint also informed competing carriers that it would impose a channel termination charge, rather than a co-carrier cross connect charge, for intra-office facilities connecting carriers collocated in the same central office. As noted above, NuVox utilizes third party transport providers for backhaul to its switch or to reach other destinations. NuVox obtains from Sprint intra-office cabling between its collocation cage and the other carrier's collocation arrangement. In order to encourage and foster the use of such non-ILEC transport, the Commission directed ILECs to provide co-carrier cross connects on reasonable terms and conditions.^{11/}

XO, NuVox, and other competitive carriers have disputed Sprint's efforts to reclassify cross connects as channel terminations. Some carriers, including XO, have requested that the matter be resolved pursuant to the Commission's "rocket docket" procedure.^{12/} Carriers have also sought and obtained mediation with Commission's enforcement bureau.^{13/} The issue, however, remains unresolved.

Sprint now files these tariff revisions seeking to incorporate into its interstate tariff its blatantly anti-competitive, discriminatory, and unreasonable policy of charging

^{11/} *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd 15435,15468-76 ¶¶ 62-78 (2001) ("Collocation Remand Order").

^{12/} *XO et al. Letter* at 1, 9.

^{13/} *Request of DukeNet Communications, LLC and US LEC Corp. for Mediation and, If Necessary, Initiation of Formal Rate Complaint Against Sprint Local Telephone Companies for Violations of the Communications Act of 1934 (47 U.S.C. § 1, et. seq.) as amended (the "Communications Act")* (filed June 18, 2004) ("DukeNet Mediation Request").

channel termination fees for simple cross-connects. For the reasons set forth below, the Commission should either reject Sprint's proposal outright or suspend and investigate.

B. Sprint's Tariff Revisions

Although Sprint has claimed that its current tariff requires carriers to pay channel termination charges for the cross connection between its special access circuits and equipment contained in "section 251" collocations, it now files "clarifying language" intended to produce this result. Section 7.1.2(A) of Sprint's interstate access tariff describes channel terminations. Sprint's proposed revision is highlighted.

The Channel Termination rate category provides for the communications path between a customer designated premises and the serving wire center or WATS Serving Office of that premises. Included as part of the Channel Termination is a standard channel interface arrangement which defines the technical characteristics associated with the type of facilities to which the access service is to be connected at the point of termination (POT) and the type of signaling capability if any. The signaling capability itself is provided as part of this rate category. One Channel Termination charge applies per customer designated premises at which the channel is terminated. **This charge will apply even if the customer designated premises and the serving wire center are collocated in the same Telephone Company building.** Channel Termination charges for DS3, STS1, and OptiPoint-3, 12, 48 and 192 High Capacity Services may vary based on distance, as set forth in 7.5.8(A) following. Special Access Service used in connection with Switched Access service is provided as set forth in Section 6.1.1.^{14/}

Sprint proposes similar new language with respect to its description of entrance facilities,^{15/} and ATM services.^{16/} Although not without ambiguity,^{17/} Sprint will no

^{14/} *Sprint Trans. #252, Rev. Tariff Pages*, § 7.1.2(A), at 2nd Revised Page 7-5. See also, *Id.*, § 7.2.13(A)(1), at Fourth Revised Page 7-91; Sprint Local Tel. Co.s, F.C.C. Tariff No. 3, Transmittal No. 252, Transmittal Letter at 1, (filed Feb. 14, 2005).

^{15/} "An Entrance Facility is provided even if the customer's premises and the serving wire center are collocated in the same Telephone Company building." *Sprint Trans. 252, Rev. Tariff Pages*, § 6.1.2(B)(1), at Second Revised Page 6-15, 3rd Revised Page 6-97.

^{16/} "The ATM access termination rate . . . charge will apply even if the customer designated premises and the serving wire center are collocated in the same Telephone Company building." *Sprint Trans. #252, Rev. Tariff Pages*, § 8.6.2(A), at 2nd Revised Page 8-72.

^{17/} For example, it is not at all clear that a collocation is a customer designated premises.

doubt point to this language to press its claim for millions of dollars in retroactive and prospective charges resulting from its reclassification of cross connects as channel terminations.

Along with the proposed “clarification” described above, Sprint proposes to reduce the “within CO” channel termination charge for DS3 and higher services while increasing channel termination charges for other mileage bands. For example, Sprint’s “within CO” channel termination charge for 44.736 megabit high capacity service in Florida, Zone 1, would be reduced from \$750.00 to \$155.00 while the 0-3 mile and 3 plus mile charges would increase from \$1,150 to \$1,250 and \$1,600.00 to \$1,700 respectively.^{18/} Sprint asserts that the “within CO” channel termination charge is the appropriate charge for cross connects when carriers connect DS3 and higher capacity Sprint special access services to collocations Sprint determines were ordered under section 251.^{19/}

At the same time, Sprint apparently does not propose any reduction in DS1 channel terminations, which it asserts it must charge in lieu of the DS1 cross connect fee. The anomalous result is that Sprint will charge more for a DS1 channel termination than for a DS3 channel termination -- \$170 for a DS1 versus \$155 for a DS3 in Florida Zone 1 for example. There can be no reasonable justification for such a discrepancy, as discussed further below.

^{18/} Sprint Local Tel. Co.s, F.C.C. Tariff No. 3, Transmittal No. 252, Description and Justification, Exhibit 1 at 1.

^{19/} See *Sprint Local Tel. Co.s Response to Request of DukeNet Communications, LLC and US LEC Corp. for Mediation and, If Necessary, Initiation of Formal Rate Complaint Against Sprint Local Telephone Companies for Violations of the Communications Act of 1934 (47 U.S.C. § 1, et. seq.) as amended (the “Communications Act”)* at 6 (filed July 27, 2004) (“Sprint Response Letter”).

Sprint also proposes revisions to the Expanded Interconnection Services provisions of its interstate tariff.^{20/} Among these changes is a sentence added to the beginning of its EIS tariff that states that “[t]he services and rate elements contained within this section are only available to Interconnectors who have ordered expanded interconnection collocation service as defined within this tariff.”^{21/} This revision is apparently designed to bolster Sprint’s contention that carriers either order EIS collocation from the tariff or order “section 251 collocation” pursuant to an interconnection agreement, and those ordering the latter form of collocation must pay substantially higher channel termination charges for the same functionality provided by the much lower EIS cross connect charge. Additionally, Sprint intends to preclude carriers from obtaining EIS collocation -- and hence the EIS cross connect charges -- unless the carrier builds its own transmission facilities.^{22/}

Sprint also revises its EIS tariff to include a co-carrier cross connect rate element to “recover the cost incurred to connect one Interconnector’s collocation space to another Interconnector’s collocation space...within the same central office.”^{23/} The proposed language provides that carriers may connect “using tariffed special access services provided under the rates terms and conditions in other sections of this tariff.”^{24/}

^{20/} *Sprint Trans. #252, Rev. Tariff Pages*, § 17, at 1st Revised Page 17-1, *et seq.*

^{21/} *Id.*, § 17, at 1st Revised Page 17-1.

^{22/} The proposed new language provides that “[t]he following terms must be met in order to obtain expanded interconnection collocation services: (1) Interconnectors must terminate their own transmission facilities, which are dedicated to their use in the central office; (2) Interconnectors must install central office equipment needed to terminate basic transmission facilities; and (3) Interconnectors must interconnect their transmission facilities to the Telephone Company’s equipment and facilities used to provide interstate switched and special access services.” *Sprint Trans. #252, Rev. Tariff Pages*, § 17.2(A), at 5th Revised Page 17-8.

^{23/} *Id.*, § 17.1(C)(10)(b), at Original Page 17-4.1.

^{24/} *Id.*, § 17.1(C)(10)(b)(i), at Original Page 17-4.1.

Alternatively, carriers can order direct cabling between the collocations at electrical or optical levels.^{25/} Sprint proposes per cable recurring charges (varying by state) ranging from \$8.09 to \$11.35 for a DS1 co-carrier cross connect;^{26/} from \$17.76 to \$27.11 for a DS3 cross connect;^{27/} and from \$8.57 to \$10.23 for a 4-fiber cable.^{28/} Sprint's proposal also contains substantial nonrecurring charges, ranging from nearly \$600 to more than \$700 for a DS1 cross connect to approximately \$2,000 for a DS3 cross connect.^{29/} The nonrecurring charge for fiber optic co-carrier cross connect would be significantly less, ranging from approximately \$216 to \$258 per 4-wire fiber cable.^{30/}

As explained below, Sprint cannot possibly justify its proposed tariff changes.

II. ARGUMENT

A. Sprint's Proposed Tariff Revisions Result in Unjust and Unreasonable Charges for Cross Connect Functionality

As described above, the effect of Sprint's proposed revisions is to require carriers that connect Sprint special access services to collocations ordered pursuant to section 251 of the Communications Act to pay a full channel termination charge rather than a cross connect fee. In the Expanded Interconnection proceeding, the Commission found that carriers could not effectively compete if required to pay a channel termination charge for the "short cable run" between the ILEC's distribution frame and the carrier's collocated

^{25/} *Id.*, § 17.1(C)(10)(b)(ii), at Original Page 17-4.1.

^{26/} *Id.*, § 17.7(A)(14), at Original Page 17-42.3.

^{27/} *Id.*, § 17.7(A)(15), at Original Page 17-42.4.

^{28/} *Id.*, § 17.7(A)(16), at Original Page 17-42.5.

^{29/} *Id.*, § 17.7(A)(14)-(15), at Original Page 17-42.3 to Original Page 17-42.4.

^{30/} *Id.*, § 17.7(A)(16), at Original Page 17-42.4.

equipment.^{31/} The Commission expected the cost of this cross connect function to be minimal (the Commission anticipated several dollars for a DS1 cross connect), and it directed ILECs to submit tariffs containing a properly cost justified cross connect rate element.^{32/} In fact, the Commission found that the charge for the cross connect functionality is properly so small as to not be worth the administrative effort to unbundle from the standard channel termination charge.^{33/} Sprint's tariff, as the Commission anticipated, set this properly cost-justified charge at approximately \$3.00 for a DS1 cross connect and in the range of \$20 to \$30 for a DS3 cross connect.

These minimal charges reflect the limited functionality provided by cross connects. In filings to the Commission in the context of the dispute described above, carriers have explained that cross connects are simply a passive connection. The standard definition of a cross connect is:

[T]he attachment of one wire to another usually by anchoring each wire to a connecting block and then placing a third wire between them so that an electrical connection is made. . . . In a wire cross connect, jumper wires [a wire used to connect equipment and cable on a distributing frame] or patch cords [a short length of wire or fiber cable with connectors on each end ... used to join communications circuits at a cross connect] are used to make circuit connections. In an optical cross connect, fiber patch cords are used.^{34/}

^{31/} *Expanded Interconnection with Local Telephone Company Facilities, Amendment of the Part 69 Allocation of General Support Facility Costs*, CC Docket No. 91-141, CC Docket No. 92-222, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, ¶¶ 5, 157 (1992) (“*Expanded Interconnection Report and Order*”).

^{32/} *Id.*, ¶¶ 121, 157, n.268; *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, 9 FCC Rcd 5154, ¶¶ 115, 121.

^{33/} *Expanded Interconnection Report and Order*, n.268.

^{34/} *XO et al. Letter* at 3 (quoting Newton's Telecom Dictionary, 19th ed. 210, 446, 597). *See also DukeNet Mediation Request, June 2004* at 5 (“A cross-connect is generally described as ‘a connection scheme between cabling runs, subsystems, and equipment using patch cords or jumper wires that attach to connection hardware at either end.’”) (quoting Newton's Telecom Dictionary, 206 (5th ed. 1999)). A cross connect is thus simply a “dumb connection.” *DukeNet Mediation Request* at 5.

In contrast, channel terminations, as described in Sprint's tariff, are active connections providing far greater functionality, including channel interfaces and signaling, often over several miles.^{35/} The connections that Sprint seeks to reclassify as channel terminations do not perform the functions of a channel termination as defined in Sprint's tariff -- they perform a classic cross connect function.

Sprint cannot possibly cost-justify charging carriers exponentially higher channel termination fees to perform the cross connect functionality that Sprint has tariffed at a fraction of the cost of channel terminations. Presumably when it filed its EIS tariff, Sprint believed that the minimal cross connect charges covered Sprint's costs of providing the cross connect function. There can thus be no cost-justification for imposing exponentially higher charges simply because Sprint decides that collocation was ordered under section 251.

Equally absurd is the fact that, as a result of Sprint's proposal, carriers connecting DS1 special access circuits to their "section 251 collocations" would pay more than carriers connecting DS3 special access circuits to such collocations. Under Sprint's plan, carriers connecting DS1 special access services to "section 251 collocations" would pay a full channel termination charge, *e.g.*, \$170 in Florida, for the cross connect function.^{36/} However, carriers connecting DS3 circuits to such collocations presumably would be required to pay the new tariffed "within CO" rate of \$155.00 for the cross connect function. In either case, of course, Sprint should instead charge the appropriate cross connect fee, but there can be no justification for imposing higher charges to connect a DS1 circuit than to connect a DS3 circuit.

^{35/} *Sprint Trans. #252, Rev. Tariff Pages*, § 7.1.2(A), at 2nd Revised Page 7-5.

^{36/} *Sprint Current Tariff*, 5th Revised Page 7-231.

B. Sprints Proposed Tariff Revisions Are Discriminatory

Sprint's proposal to replace cross-connects with channel terminations is unreasonably discriminatory as it treats similarly situated carriers differently. Carriers that Sprint determines ordered collocation pursuant to its EIS tariff can cross connect to Sprint special access services or unbundled network elements^{37/} at Sprint's tariffed cross connect rates (or TELRIC rates), whereas Sprint proposes to charge fees that are orders of magnitude higher for exactly the same facilities if a carrier orders "section 251 collocation." Amazingly, Sprint apparently believes carriers are not similarly situated if they order "section 251 collocation" as opposed to EIS collocation,³⁸ and that the two are mutually exclusive. There is no basis for imposing vastly different charges for identical functions. Exactly the same facilities are used for exactly the same purposes, and even Sprint concedes that both "251 collocations" and EIS collocations can and are being used to connect to both tariffed services and UNEs.^{39/} Given the Commission's endorsement of commingling of tariffed special access services and unbundled network elements,^{40/} there can be no basis for assessing vastly disparate charges for the connection of special access services as opposed to UNEs to section 251 collocations.

^{37/} Sprint's EIS tariff permits collocation for access to Sprint's tariffed services or unbundled network elements. *Id.*, §§ 17.5(C)(10), (19).

^{38/} In the *Local Competition Order*, the FCC explicitly concluded that it had the authority to order physical and virtual collocation so that CLECs would not have to convert their Expanded Interconnection virtual collocation to physical collocation in order to have access to UNEs under Section 251 of the Act. In addition, the FCC held that "permitting requesting carriers to seek interconnection pursuant to our *Expanded Interconnection* rules as well as section 251 is consistent with the goals of the 1996 Act to permit competitive entry through a variety of entry strategies." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Report and Order, 11 FCC Rcd 15499, ¶¶ 551, 611 (1999) ("*Local Competition Order*").

^{39/} *Sprint Response Letter* at 3.

^{40/} Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand, 18 FCC Rcd 16978, ¶ 579 (2003) (*Triennial Review Order*).

Moreover, Sprint's assertion that section 251 collocations and EIS collocations are mutually exclusive is flatly inconsistent with and wholly undermined by the terms of Sprint's interconnection agreements and its standard collocation license agreement that governed the establishment of many of the collocations at issue. Many of the collocations that are the subject of the current dispute, as described above, were ordered under Sprint's section 251/252 interconnection agreements and Sprint collocation licensing agreements that completely conflated section 251 and EIS standards.⁴¹ Sprint's standard section 251 interconnection agreement operative at the time many collocations were "ordered" simply referred carriers to Sprint's EIS tariff. For example the interconnection agreement in effect at the time NuVox's predecessor, NewSouth Communications, ordered collocation in one of Sprint's Florida central offices, provided that "'Expanded Interconnection Service (EIS)' is the collocation arrangement which Sprint provides in its designated wire centers." Thus when NewSouth ordered "section 251 collocation" it received an EIS collocation meaning that there is no legitimate distinction, except the artificial one Sprint is trying to create. Moreover, any contention by Sprint that carriers ordering section 251 collocation versus ordering EIS collocation are thereby not similarly situated is fabricated from whole cloth and thoroughly undermined by Sprint's own agreements operative at the time many collocations were ordered.

^{41/} Indeed, in Nevada, approximately half of XO's collocation arrangements were established prior to the execution of an interconnection agreement with Sprint. The others were established during a time when the interconnection agreement referred to the tariff. For example, XO's October 2000 interconnection agreement with Sprint in Nevada states: "In the event Sprint files tariffs for pricing of collocation and other services covered by this Attachment, such tariffs will control over Exhibit C as of the date the tariff becomes effective." Master Interconnection and Resale Agreement, Sprint-Nevada and XO Communications, L.L.C., Oct. 1, 2000, at § 3.2, p. 127.

C. Sprint's Co-Carrier Cross Connect Charge Must Be Available on a Non-Discriminatory Basis

Sprint proposes to include a co-carrier cross connect charge in its EIS tariff.^{42/}

Petitioners' objection is that Sprint apparently would restrict availability of this charge to carriers that it deems have ordered EIS collocation. Carriers that Sprint determines have ordered section 251 collocation and connect to Sprint special access services would apparently be required to purchase a channel termination in order to cross connect to other carriers in the same central office. Again, the result is the imposition of exponentially higher charges for identical functionality. Evidence of this intent appears in Sprint's proposed new introductory language to section 17 of its tariff: "The services and rate elements contained within this section are only available to Interconnectors *who have ordered* expanded interconnection collocations service as defined within this tariff."^{43/}

Just as Sprint cannot possibly justify a channel termination charge for the cross connect between its distribution frame and a collocation, Sprint cannot justify imposing on some carriers a channel termination to perform the same function as a co-carrier cross connect. Indeed, Sprint's submission states that the \$8 to \$27 co-carrier cross connect charge "recovers the cost incurred to connect one Interconnector's collocation space to another Interconnector's collocation space."^{44/} There is no legitimate basis, explanation or justification for imposing on "section 251 collocators" the exponentially higher -- \$500

^{42/} *Sprint Trans. #252, Rev. Tariff Pages*, § 17.1(C)(10)(b), at Original Page 17-4.1.

^{43/} *Sprint Trans. #252, Rev. Tariff Pages*, § 17, at 1st Revised Page 17-1 (emphasis added).

^{44/} *Id.*, § 17.1(C)(10)(b), at Original Page 17.4.1

to \$1500 or more -- channel termination charge for the same co-carrier cross connect function.^{45/}

Additionally, Sprint's effort to impose channel termination charges, as opposed to co-carrier cross connect charges, on carriers that connect access services to "section 251 collocations" constitutes a violation of section 201.^{46/} The Commission held in the *Collocation Remand Order* that "pursuant to section 201, it would be unjust and unreasonable for an incumbent LEC to refuse to provision cross-connects between two collocated competitive LECs."^{47/} The Commission found that this co-carrier cross connect offering was required to prevent discrimination.^{48/} As the Commission noted:

We find that the provisioning of cross-connects between collocated competitive LECs merely puts each collocater in a position to achieve the same interconnection with other collocators that the incumbent itself is able to achieve. Because most facilities-based competitive LECs must collocate at incumbent LECs' premises, incumbents have the opportunity to efficiently interconnect with competitive LECs. If an incumbent LEC refuses to provision cross-connects between competitive LECs collocated at the incumbent's premises, the incumbent would be the only LEC that could interconnect with all or even any of the competitive LECs collocated at a common, centralized point--the central office.^{49/}

The Commission also found that the refusal to provide co-carrier cross connects would result in "wasteful economic costs on competitive LECs," which would "severely impede the deployment of the innovative, competitive services that the 1996 Act seeks to

^{45/} Sprint's proposed recurring charges for the co-carrier cross connect, as noted above, range from approximately \$8.00 to \$11 for DS1 and fiber optic cross connects, *Id.*, §§ 17.7(A)(14), (16), at Original Page 17-42.3, Original Page 17-42.5, to roughly \$18 to \$27 for DS3 co-carrier cross connect, *Id.*, § 17.7A(15), at Original Page 17-42.4. Channel termination charges for DS1 and DS2 connection have also been noted above. For fiber optic services, Sprint's channel "within CO" termination charges range from several hundred dollars to more than \$1500. *See, e.g., Id.* at §§ 7.5.8(A)(3)-(A)(8).

^{46/} 47 U.S.C. § 201.

^{47/} *Collocation Remand Order* at 15467, 15474, ¶¶ 59, 72.

^{48/} *Id.* at 15469, ¶ 63.

^{49/} *Id.*

facilitate.”^{50/} Additionally, the Commission recognized that requiring carriers to use the ILECs’ transport services, as opposed to a cross connect would entrench the incumbent and undermine the goal of establishing competitive wholesale transport providers.^{51/} Sprint’s proposal to charge a channel termination fee, instead of a co-carrier cross connect fee, violates the *Collocation Remand Order*.

D. Sprint’s Proposed Tariff Revisions Are Anti-Competitive and Undermine Facilities-Based Competition

Sprint’s proposed tariff revisions would have a profoundly anti-competitive effect on the competitive industry. Facilities-based carriers like XO and NuVox have invested millions of dollars to establish collocations in ILEC wire centers around the country. Although these collocations often were established in order connect to the incumbent LEC’s unbundled network elements, for a variety of reasons carriers have also used them to connect to the ILECs special access services.^{52/} The Commission’s recent unbundling order will require carriers to convert UNE loops and transport to special access services in a number of locations.^{53/} As a result, collocations established under section 251 to access UNEs will have to be used to connect to special access services instead.^{54/} The policy advocated by Sprint would impose significant additional costs as part of this

^{50/} *Id.* at 15470, ¶ 64.

^{51/} *Id.* at 15470-71, ¶¶ 65-66.

^{52/} For example, due to their unlawful refusal to perform routine network modifications, ILECs often claimed that facilities were not available as UNEs but would be available as special access services. In some instances, for example Sprint in Florida, UNE and special access pricing is virtually identical. With less ILEC resistance, CLECs therefore would order special access services.

^{53/} *See, e.g.,* Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290 at ¶ 5 (rel. Feb. 4, 2005) (“*TRO Remand Order*”).

^{54/} Indeed, the ILECs advocate the complete replacement of high capacity UNE loops and transport with special access services and the Chairman and other commissioners have urged the industry to reach commercial agreements to replace UNEs. Sprint’s policy would impose additional extraordinary costs on carriers if UNEs are replaced with special access or market agreements.

transition. Carriers would either be required to replace TELRIC based cross connects with channel terminations (in effect requiring the purchase of two non-cost based channel terminations to replace one TELRIC unbundled local loop) or, as Sprint has argued in the dispute described above, pay to convert all or part of their “section 251 collocations” to “EIS collocations,” even though no physical change to the collocation arrangement itself would be required whatsoever.^{55/} These wholly unjustified increases in costs would severely undermine facilities-based competition, which this Commission has determined is the central goal of the Act.^{56/} A finding that Sprint’s proposed tariff revisions are lawful would reverberate throughout the industry, potentially spreading Sprint’s patently anti-competitive proposals to other ILECs that so far have not followed Sprint’s effort to replace cross connects with channel terminations.

^{55/} *Sprint Response Letter* at 3-4.

^{56/} *See, e.g., TRO Remand Order* at ¶ 3.

III. CONCLUSION

For the reasons set forth above, NuVox and XO respectfully request that the Commission reject Sprint's proposed tariff revision set forth in Transmittal No. 252, or at the very least, suspend the tariff and set it for investigation.

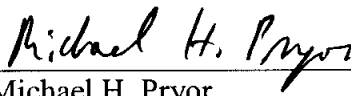
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CERTIFICATE OF SERVICE

I, Ernest C. Cooper, hereby certify that on this 22nd day of February 2005, the foregoing Petition to Suspend or Reject Tariff of NuVox Inc. and XO Communications in the matter of Sprint Local Telephone Companies, Tariff F.C.C. No. 3, Transmittal No. 252, was filed via hard copy and electronically through the FCC's Electronic Tariff Filing System (ETFS) and copies were served on the following as indicated:

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