Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Sprint Local Telephone Companies	)	Transmittal No. 257
Tariff F.C.C. No. 3	)	
	)	

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

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"). As with Sprint's previous tariff filing, Transmittal No. 252,[2/] Sprint once again seeks to address its ongoing dispute concerning the application of channel termination charges instead of cross-connect fees. The tariff changes proposed in Transmittal No. 252 were withdrawn by Sprint[3/] subsequent to the filing by NuVox and XO of a Petition to Suspend or Reject Tariff.[4/] Although the new filing does not directly raise the full panoply of issues brought to the fore by Transmittal No. 252, it

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[1/] 47 C.F.R. § 1.773.

[2/] Sprint, F.C.C. Tariff No. 3, Transmittal No. 252 (filed Feb. 14, 2005) ("*Sprint Trans. #252*").

[3/] Sprint, F.C.C. Tariff No. 3, Transmittal No. 254, Transmittal Letter, at 1 (filed Feb. 25, 2005) ("*Sprint #252 Withdrawal*").

[4/] *Sprint Local Telephone Companies, Tariff F.C.C. No. 3, Transmittal No. 252*, NuVox, Inc. and Xo Communications, Inc. Petition to Suspend or Reject Tariff (filed Feb. 22, 2005) ("*NuVox/Xo #252 Petition*"). NuVox and XO hereby incorporate by reference their previous petition. A number of other carriers also filed objections to Transmittal No. 252.

is a troubling indication that Sprint has not abandoned its attempt to replace inexpensive cross-connect charges with substantially higher channel termination charges for short cable runs within Sprint's central offices. Moreover, the new filing once again raises fundamental issues of fairness and reasonableness.

I. BACKGROUND

A. The Dispute Over Collocation Charges and Transmittal No. 252

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. The special access circuits that NuVox and XO order from Sprint 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.

Sprint has historically assessed a small cross-connect charge for this connection, consistent with the company's Expanded Interconnection Services ("EIS") tariff.[5/] In June 2003, however, 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/] According to Sprint, the basis for the change was Sprint's claim that NuVox and XO had ordered section 251 collocation, not EIS collocation. Channel termination charges are significantly higher than cross-connect

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5/ *See* Sprint Local Tel. Cos., F.C.C. Tariff No. 3, § 17 ("*Sprint Current Tariff*").

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*").

fees. For example, in Florida Sprint's DS1 cross-connect charge is $2.93,[7/] while interstate DS1 channel termination charges range from $170 to $270, depending on the density zone.[8/]

XO, NuVox, and other competitive carriers have disputed Sprint's efforts to reclassify cross-connects as channel terminations on any basis, including based on the "type" of collocation that the companies have. The issue, however, remains unresolved.

On February 14, 2005, Sprint filed its Transmittal No. 252, seeking to require as part of its filed tariff that carriers connecting Sprint special access services to collocations ordered pursuant to section 251 of the Communications Act must pay a full channel termination charge rather than a cross-connect fee.[9/] As part of this filing, Sprint proposed to reduce the "within CO" channel termination charge for DS3 and higher services.[10/] This reduction was but one aspect of Sprint's overall attempt to resolve its dispute through unilateral action.

Before the new tariff proposed in Transmittal No. 252 could take effect, Sprint withdrew it.[11/]

B. Sprint's New Tariff Transmittal No. 257

On April 15, 2005, Sprint filed Transmittal No. 257. Although this filing does not contain the objectionable language changes previously proposed for its special access and

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7/ *Sprint Current Tariff*, §§ 17.7(A)(10), (11), at 4th Revised Page 17-41, 4th Revised Page 17-42.

8/ *Sprint Current Tariff*, § 7.5.8(A)(1), at 5th Revised Page 7-231 to 5th Revised Page 7-233.

9/ *See Sprint Trans. #252*, Transmittal Letter, at 1; *Id*., § 7.1.2(A), at 2nd Revised Page 7.5.

10/ *Sprint Trans. #252*, §§ 7.5.10 to 7.5.14, at 11th Revised Page 7-456 to 2nd Revised Page 7-550.5.

11/ *Sprint #252 Withdrawal*.

expanded interconnection tariffs, the Transmittal does essentially duplicate the proposal contained in withdrawn Transmittal No. 252 to reduce the "within CO" channel termination charge for DS3 and higher services.[12/] As explained below, this proposal raises the specter that Sprint intends to proceed with its declared plan to shift cross-connect fee charges to significantly higher full channel termination charges for carriers that terminate Sprint special access services to section 251(c)(6) collocations. The proposed tariff change is also discriminatory and unfair in its own right, and cannot be justified.

II. SPRINT'S PROPOSED TARIFF REVISIONS ARE UNREASONABLE

Just as with its previous filing, Sprint's Transmission No. 257 contains serious flaws. Sprint's Transmission No. 257 indicates that the company still plans to proceed with substituting collocation cross-connect charges for channel termination charges for certain competitive carriers, resulting in increased charges to these carriers of 500% or more.[13/] As NuVox and XO argued in their opposition to Transmission No. 252, such tariff revisions "are unjust, unreasonable and discriminatory, . . . are profoundly anti-competitive and undermine the Commission's goal of fostering facilities-based competition."[14/]

12/ Sprint, F.C.C. Tariff No. 3, Transmittal No. 257, §§ 7.5.8(A)(2), 7.5.8(A)(13), 7.5.10 to 7.5.14, at 12th Revised Page 7-235 to 4th Revised Page 7-237.1, 9th Revised Page 7-289.2 to 4th Revised Page 7-289.4.1, 12th Revised Page 7-456 to 4th Revised Page 7-550.5 (filed April 15, 2005) ("*Sprint Trans. #257*").

13/ Compare, *e.g.*, the Florida DS3 Electrical Cross-Connect charge of $25.85, *Sprint Current Tariff*, § 17.7(A)(11), at 4th Revised Page 17.42, with the proposed Florida Zone 1 "Within CO" Channel Termination rate of $155.00, *Sprint Trans. #257*, § 7.5.8(A)(2), at 12th Revised Page 7-235.

14/ *NuVox/Xo #252 Petition*, at 1.

As with its previous filing, Sprint proposes to reduce the "within CO" channel termination charge for DS3 and higher services while at the same time Sprint apparently does not propose any reduction in DS1 channel termination fees. The anomalous result is that Sprint will often 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.[15/] There can be no reasonable justification for such a discrepancy. Historically, Sprint has charged more than four times as much for a "within CO" DS3 channel termination than it has charged for a DS1 termination.[16/] If Sprint's tariff change is permitted, Sprint should be required to change the DS1 rate simultaneously. The Commission should not allow Sprint to have a DS3 rate that is a fraction of its DS1 rate. Rather, Sprint should be required to reduce the DS1 rate simultaneously.

Secondly, the Transmittal does nothing to change the fact that carriers that utilize section 251 collocations will be forced by Sprint to pay much higher channel termination charges for the same functionality performed by cross-connects. In the Expanded Interconnection proceeding, the Commission found that carriers could not effectively compete if they were required to pay a channel termination charge for the "short cable run" between the ILEC's distribution frame and the carrier's collocated equipment.[17/] The Commission expected the cost of this cross-connect function to be minimal (the

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15/ *See Sprint Current Tariff*, § 7.5.8(A)(1), at 5th Revised Page 7-231 (DS1 channel termination rate), *Sprint Trans. #257*, § 7.5.8(A)(2), at 12th Revised Page 7-235 (proposed DS3 channel termination rate).

16/ *See, e.g.*, *Sprint Current Tariff*, § 7.5.8(A)(1), at 5th Revised Page 7-231 (Florida DS1 channel termination rate of $170), *Sprint Current Tariff*, § 7.5.8(A)(2), at 11th Revised Page 7-235 (Florida DS3 channel termination rate of $750).

17/ *Expanded Interconnection with Local Telephone Company Facilities, Amendment of the Part 69 Allocation of General Support Facility Costs*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7373-74, 7442, ¶¶ 5, 157 (1992) ("*Expanded Interconnection Report and Order*").

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.[18/] 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.[19/] Sprint's tariff, as the Commission anticipated, set this properly cost-justified charge at approximately $3.00 for a DS1 cross-connect[20/] and in the range of $18 to $34 for a DS3 cross-connect.[21/]

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. Similarly, Sprint cannot possibly cost-justify charging a significantly higher rate for DS1 intraoffice channel termination than it does for DS3 intraoffice channel termination.

18/ *Id*., at 7425-26, 7442, ¶¶ 121, 157; *Expanded Interconnection with Local Telephone Company Facilities*, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5186-7, ¶¶ 115, 121 (1994).

19/ *Expanded Interconnection Report and Order,* at 7425, n.268.

20/ *Sprint Current Tariff*, § 17.7(A)(10), at 4th Revised Page 17-41.

21/ *Sprint Current Tariff*, § 17.7(A)(11), at 4th Revised Page 17-42.

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. 257, or at the very least, suspend the tariff and set it for investigation.

Respectfully submitted,

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April 22, 2005

CERTIFICATE OF SERVICE

I, Ernest C. Cooper, hereby certify that on this 22nd day of April 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. 257, was filed electronically through the FCC's Electronic Tariff Filing System (ETFS) and copies were served on the following through electronic mail:

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