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October 31, 2002

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington  
Boise, ID 83702

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IDAHO PUBLIC UTILITIES COMMISSION

RE: **Case No. GNR-T-02-16**

Dear Ms. Walters:

Enclosed for filing with the Idaho Public Utilities Commission you will find an original and seven copies of the "Comments of Sprint Communications Company L.P." in the above-referenced proceeding.

Thank you for your assistance in this matter. Feel free to contact me with any questions or concerns you may have regarding these Comments.

Sincerely,

Eric S. Heath

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IDAHO PUBLIC  
UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSISON**

<b>IN THE MATTER OF THE</b>	)	
<b>PETITION OF POTLATCH</b>	)	<b>CASE NO. GNR-T-02-16</b>
<b>TELEPHONE COMPANY;</b>	)	
<b>CENTURYTEL OF IDAHO;</b>	)	<b>COMMENTS OF SPRINT</b>
<b>CENTURYTEL OF THE GEM</b>	)	<b>COMMUNICATIONS</b>
<b>STATE; AND THE IDAHO</b>	)	<b>COMPANY L.P.</b>
<b>TELEPHONE ASSOCIATION FOR</b>	)	
<b>A DECLARATORY ORDER</b>	)	
<b>PROHIBITING THE USE OF</b>	)	
<b>“VIRTUAL” NXX CALLING.</b>	)	

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Pursuant to the Idaho Public Utilities Commission’s (“Commission”) Order No. 29125, issued October 4, 2002, Sprint Communications Company L.P. submits the following Comments for consideration in the above-captioned matter.

Potlatch Telephone Company, CenturyTel of Idaho and of the Gem State, and the Idaho Telephone Association (collectively “the Petitioners”) have requested the Commission prohibit the use virtual NXXs. As the Commission is aware, in a virtual NXX scenario, the CLEC assigns a block of numbers to a particular rate center so that, for rating purposes, it looks as if the call terminates at that end office, while the traffic is physically routed and switched by the CLEC in a distant location. The Petitioners claim that proliferation of this arrangement has caused them to lose access and toll revenues.

Some ILECs also claim that the use of virtual NXXs drives up reciprocal compensation payments, and that reciprocal compensation should not apply since the call does not even physically originate and physically terminate within the local calling area. As explained more fully below, the Commission should reject these claims and support virtual NXX arrangements as they provide end-users an affordable means of accessing Internet Service Providers (ISPs).<sup>1</sup>

If the Commission grants the Petitioners' request and CLECs are no longer permitted to utilize virtual NXXs, CLECs will be forced to establish a physical presence in each exchange that would cause an increase in collocation costs and lead to space exhaust in ILEC central offices. If CLECs cannot establish a physical presence in each exchange, for financial or other reasons and the use of virtual NXXs are prohibited, ISP end-users will incur toll charges to access ISP services. In either case, there will be an increase in the rates for dial-up services. Neither scenario is acceptable. Given that the telecommunications industry and the technology that drives the industry are continually evolving, carriers should embrace innovative and cost effective ways to provide service to end-users. In this regard, it would be unreasonable to expect CLECs to duplicate the ILEC network and place switching equipment, even remotes, in every ILEC local calling area. Virtual NXXs represent an innovative approach to this situation that promotes the public interest.

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<sup>1</sup> Historically, commissions have endorsed service arrangements such as FX (foreign exchange) or the establishment of EAS routes as a means to maintain affordable service to end users. Today, virtual NXXs play a similarly significant role in keeping end user dial-IP rates affordable. Unlike virtual NXXs, however, EAS and FX arrangements remain largely undisputed because the purchaser of the service pays for the costs of establishing the service arrangement and the switching point generally coincides with the NPA/NXX rating point.

Notwithstanding its support for the continued use of virtual NXXs, Sprint notes that the question of who should pay for the incremental cost of increased use of the ILEC's network that calls to dial-up Internet Service Providers ("ISPs") generate remains unanswered. While the ILEC's end users that subscribe to ISPs served by CLECs benefit from virtual NXX arrangements (as do the CLECs who carry the ISP's traffic), ILECs generally cannot increase local rates to recover these costs. This is due in part to the fact that the actual customer service arrangement for ISP service exists between the ISP and the end user. ILECs should not be required to absorb all the incremental costs of increased network usage. Therefore, Sprint proposes that a limitation be placed on the distance the ILEC must transport the traffic outside its local calling area. Sprint also proposes that the CLEC compensate the LEC at TELRIC rates for the incremental transport costs beyond this point. This compromise provides a reasonable limitation on the ILEC's provision of transport over long distances, while allowing CLECs an efficient market entry alternative without incurring burdensome, uneconomic costs.

As demonstrated above, the impact to the customer of eliminating virtual NXXs outweighs the concerns enumerated by the Petitioners; particularly if the Commission limits the distance the ILEC must transport the traffic outside its local calling area. Petitioners argue that the proliferation of virtual NXX arrangements has caused them to lose access and toll revenues. However, if the Idaho PUC prohibited the use of virtual NXXs, CLECs serving ISPs would be forced to either establish an actual presence in the exchange where the virtual NXX had existed or allow the dial-up calls to become toll calls. If dial-up calls placed from that exchange to the ISP become toll calls, the higher

toll costs incurred by the end users would sharply reduce demand for those dial-up services. Therefore, because overall demand will be reduced, Sprint believes the extent of the Petitioners' "lost revenues" argument is overstated.

A corollary argument to the lost toll and access revenue claim states that the use of virtual NXXs drives up reciprocal compensation payments, and that reciprocal compensation should not apply since the call does not physically originate and physically terminate within the local calling area. As stated above, if CLECs serving the ISPs are forced to establish a physical presence within the exchange where their virtual NXX was located, to avoid their calls becoming toll calls, the ILEC would still be required to pay those CLECs terminating reciprocal compensation for the traffic that the ILEC originates. Therefore, any concern with paying reciprocal compensation in a virtual NXX environment is minimized. Furthermore, it is important to note that the FCC's ISP Remand Order<sup>2</sup> has already had a significant effect on reducing ILECs' reciprocal compensation payments to CLECs for ISP-bound traffic.

The Petitioners' reference to the FCC's "end-to-end" analysis to support their argument that virtual NXXs should be declared unlawful since such calls allegedly avoid toll charges, directly relates to the reciprocal compensation point above. While Sprint appreciates this concern, it is important to note that because customer locations have historically coincided with the NPA/NXXs assigned to them (FX service is an exception), rating the calls based on the numbers dialed has never presented a problem. However, as

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<sup>2</sup> Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98; CC Docket No. 99-68 (Rel. April 27, 2001).

mentioned above, the telecommunications industry has evolved dramatically in recent times and carriers have starting assigning numbers to customers who are not located where the call is actually rated. Indeed, evaluating a call based on the numbers dialed as opposed to the physical endpoints has now become a very contentious issue within the industry. The FCC Wireline Competition Bureau addressed this issue in their July 17, 2002 Virginia Arbitration Order. In this Order, the FCC ruled that there is no current, viable alternative to the current system of utilizing the NPA-NXX codes exists, concluding that, “rating calls by their geographical endpoints raises billing and technical issues that have no concrete, workable solutions at this time.”<sup>3</sup>

A final reason the Petitioners put forth as support for discontinuing the use of virtual NXXs is that they have a negative impact on numbering resources and number portability. With respect to numbering resources, CLECs’ use of virtual NXXs should not impact a state’s numbering resources any more than another NXX used within the rate center. However, some concern exists that CLECs operating and serving only ISPs use NXX resources inefficiently. Sprint notes that one potential solution to this concern would involve the CLEC requesting numbers from the ILEC and porting them to itself, since a CLEC serving ISPs needs only one NXX for its Location Routing Number (LRN) within the LATA. If an ILEC is not LNP capable, the CLEC would request interim LNP using remote call forwarding, DID, or remote indexing to serve the ISPs. Each request

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<sup>3</sup> Memorandum Opinion and Order, *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, DA 02-1731 (Rel. July 17, 2002) at ¶ 301.

for LNP and INP to the respective ILEC as described above should be at no cost because this plan supports number conservation that benefits all service providers.

With respect to the Petitioners' number portability concerns, Sprint notes that local number portability is currently limited to the incumbent LEC's existing rate center boundaries. Virtual NXXs are required to operate within the boundaries of number portability and should therefore not impact number portability. Specifically, Section 52.26(a) of the FCC's rules require that local number portability administration "comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (*Working Group Report*) and its appendices..."<sup>4</sup> Further, Section 7.3 of this North American Numbering Council's LNP Architecture & Administrative Plan dated April 25, 1997 states that "location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns." These rules ensure that both carriers are able to both port numbers and receive ported numbers in a competitively neutral manner. Therefore, assigning NXX codes outside of the ILEC rate center boundaries is clearly not within the current FCC rules for number portability.

While Sprint appreciates some of the ILEC's concerns regarding CLECs' use of virtual NXXs, Sprint also believes that this Commission must evaluate the impact to the end user of eliminating their existence entirely. If the Idaho Commission enters an order, it should favor the use of virtual NXXs, so long as a limitation is placed on the distance

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<sup>4</sup> 47 C.F.R. § 52.26(a)

the ILEC must transport the traffic outside its local calling area and the CLEC compensates the ILEC at TELRIC-based rates for the incremental transport costs beyond this point. This position ensures that the ILEC and the CLEC interests are adequately balanced while the end user continues to enjoy local dial-IP service.<sup>5</sup>

Respectfully submitted, this 31<sup>st</sup> day of October 2002.

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By: 

Eric S. Heath, Attorney

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<sup>5</sup> Sprint believes it is critical to comment that any order issued in this matter should not apply to CMRS providers. It is important that the Commission be aware of the differences between a CLEC's use of virtual NXX codes and a CMRS carrier's use of NXX codes. Although CMRS carriers rate and route their traffic differently, CMRS carriers do not use "virtual NXXs" as defined by the FCC. Specifically, the FCC has defined virtual codes as those that correspond with a particular geographic area that are assigned to a customer located in a different geographic area. *See, Developing a Unified Intercarrier Compensation Regime*, Docket No. 01-92, FCC 01-132, 16 FCC Rcd 9619, 962 par. 115 (2001). In other words, a CLEC will not always have facilities and customers in the proximity of the ILEC rate center where the virtual NXX resides, whereas a CMRS provider does. The CMRS and CLEC practices also differ in that CMRS providers do not use virtual NXX codes to aggregate traffic to avoid toll for their customers. Moreover, the MTA serves as the definition of local service for calls to or from a CMRS network for purposes of intercarrier compensation, under § 251(b)(5) of the Telecommunications Act of 1996. Because CMRS calls within an MTA are local, the issue of which intercarrier compensation regime applies becomes a non-issue - access charges would not apply anyway. Therefore, the difference between CLEC and CMRS applications of NXX codes would allow the PUC, should it decide to enter an order, to address the CLEC use of virtual NXXs without prohibiting the way in which CMRS providers assign numbers.

**CERTIFICATE OF SERVICE**

I certify that an original and seven copies of the "Comments of Sprint Communications Company L.P." in Case No. GNR-T-02-16 by were sent by overnight courier on October 31, 2002 to:

Jean Jewell, Secretary  
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And a true and correct copy was sent by U.S. Mail, postage prepaid on October 31, 2002 to all parties shown on the attached list.

*Katherine M. McMahon*

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Katherine M. McMahon, Legal Analyst II

**Idaho**

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