Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Use of N11 Codes and Other Abbreviated Dialing Arrangements	)	CC Docket No. 92-105
	)	
	)	
Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide	)	NSD File No. L-99-24
	)	
	)	
Request by the Alliance of Information and Referral Systems, United Way of America, United Way 211 (Atlanta, Georgia), United Way of Connecticut, Florida Alliance of Information and Referral Services, Inc., and Texas I&R Network for Assignment of 211 Dialing Code	)	NSD File No. L-98-80
	)	

SPRINT PCS REPLY COMMENTS

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Summary

First, Sprint PCS does not believe any of the Oppositions filed contain a persuasive argument that the APA does not apply to this proceeding. The actions taken by the Commission including its description of the *Third N11 Order* as containing "final rules" clearly refutes any such argument. Furthermore, regardless of the Commission's original intent in assigning these N11 codes, the resulting Order has the force and effect of rules; as a result, the Commission should have complied with the APA.

Second, the transportation organizations and agencies who have uniformly opposed the Petitions for Reconsideration still have not addressed how the public interest is served by a government monopoly over 511 services. Sprint PCS does not oppose the assignment of 511 for travel and transportation information; it does, however, oppose the Commission's assignment of the code to government entities to the exclusion of wireless carriers. The award or assignment to government entities is at odds with the FCC's new "user rules" principle as well as Congressional directives. Moreover, a government monopoly of 511 service will not meet the most important need – nationwide uniformity and transparency. Carrier-provided 511 service, on the other hand, would meet these needs because it would not be dependent upon a patchwork of government entities whose transportation information would vary widely from location to location and from agency to agency.

Third, Sprint PCS disagrees with ITS America's Opposition in which ITS dismissed the First Amendment concerns addressed in Verizon's Petition for Reconsideration. Sprint PCS believes the Commission would be remiss not to address the First Amendment implications of its *Third N11 Order*.

Fourth, should the Commission affirm its *Third N11 Order*, Sprint PCS seeks the Commission's clarification on several issues that it believes could expedite implementation of 211 and 511 services. First, Sprint PCS asks the Commission to confirm the CMRS carriers are not required to provide base station routing to 211 and 511 code recipients. The time, expense, and opportunity costs (i.e. the diversion of resources) shouldered by telecommunications carriers can be alleviated if N11 providers share the burden of properly routing calls. Second, the Commission should confirm that customers will incur no additional charges for calling 211 or 511. Third, the Commission should confirm that N11 recipients must pay a carrier's recurring and non-recurring costs and that carriers are not required to provide N11 recipients service until a service contract is executed.

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SPRINT PCS REPLY COMMENTS

Sprint Spectrum, L.P., d/b/a Sprint PCS ("Sprint PCS"), submits this reply in support of its petition for reconsideration.

I. THERE IS NO MERIT TO THE CLAIM THAT THE APA DOES NOT APPLY TO THIS PROCEEDING

Sprint PCS and others have pointed out that the Commission contravened the Administrative Procedures Act ("APA") and core requirements of due process in adopting the *Third N11 Order*.[1] None of the oppositions challenges this demonstration. ITS America and

[1] *See, e.g.*, Sprint PCS Petition at 2-6; Verizon Wireless Petition at 21-26; AT&T Wireless Comments at 7-8; Qwest Comments at 2-4.

United Way contend, however, that the Commission need not worry about these procedural flaws because, they assert, the APA does not even apply to this proceeding. Indeed, these two organizations assert that because the APA does not apply, the reconsideration petitions are untimely and that the Commission accordingly need not even entertain the petitions.[2]

The actions the Commission took in the Third N11 Order are clearly rules covered by the APA. Thereafter, the Commission published the *Third N11 Order* in the Federal Register, it described this *Order* as containing "final rules," and it specified that the effective date of the July 2000 *Order* was "February 9, 2001."[3] There is no basis to the argument that the reconsideration petitions are untimely.

For their part, ITS America and United Way contend that APA requirements are not relevant because this proceeding is not a rulemaking, but they advance different arguments in support of their positions. United Way contends that the Commission "did not intend the N11 assignments to be part of a rulemaking proceeding."[4] However, the Commission's "intent" to use, or not use, rulemaking procedures has little or no relevance to the issue of whether the Commission is legally required to use the procedures.[5]

In contrast, ITS America asserts that the *Third N11 Order* is not a rulemaking because the Commission's allocation of N11 numbers "is a result of its plenary authority . . . over national

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[2] *See* ITS America Opposition at 10-11; United Way Opposition at 9-10.

[3] *See* 66 Fed. Reg. 9674 (Feb. 9, 2001).

[4] United Way Opposition at 6.

[5] United Way further says that the procedures used with the allocation of the 211 and 511 codes are the same procedures used with other N11 codes. *See* United Way at 4-5. Sprint PCS has not taken the time to review this history because past history is irrelevant. The fact that no one objected to procedural flaws in the past does not mean that the Commission can simply ignore allegations of procedural irregularities once raised.

numbering matters."[6] Sprint PCS has never disputed the Commission's exclusive jurisdiction over telephone numbers.[7] But the fact that the Commission has jurisdiction to act does not answer the separate question of whether in exercising its authority it must comply with the APA rulemaking requirements.[8]

Section 553 of the APA imposes certain obligations on the Commission in rulemaking proceedings.[9] "Rulemaking" is defined as an "agency process for formulating, amending or repealing a rule."[10] The APA defines "rule" broadly as "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy."[11] Again, the actions the Commission took in the *Third N11 Order* are "rules" within the ambit of the APA. In allocating the 211 and 511 codes for particular purposes and in imposing certain obligations on carriers to respond to routing requests made by agencies that are assigned these numbers, the Commission took action of "general or particular applicability and

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[6] ITS America Opposition at 9.

[7] *See* 47 U.S.C. § 251(e). Indeed, because Congress preempted the entire field of numbering matters, ITS America is mistaken in believing that state legislatures can enact numbering laws. *See* ITS America Opposition at 19 n.66. Under "field" preemption, state law is displaced if federal law "so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the State to supplement it." *Cipollone* v. *Liggett Group*, 505 U.S. 504, 516 (1992). A state law that has been preempted is "void" and "without effect." *Id.* at 515; *Southwestern Bell* v. *Johnson County*, 199 F.3d 1185, 1193 (10th Cir. 1999). A state law is null and void even though the state seeks only to "supplement" the federal law and even though the state law is "similar to the federal requirements." *United States* v. *Locke*, 529 U.S. 89, 113 (2000)(state reporting requirements are preempted and therefore invalid). Thus, state legislatures have no authority over numbering matters, and state commissions have only that authority that the Commission delegates to them.

[8] *See National Motor Freight Traffic Ass'n* v. *United States*, 268 F. Supp. 90, 95 (D.D.C. 1967)(three-judge panel), *aff'd* 393 U.S. 18 (1968)("That agency action falls within the permissible scope of statutory authority does not alone answer the question of the applicability of Section 4" of the APA.).

[9] *See* 5 U.S.C. § 553.

[10] 5 U.S.C. § 551(5).

[11] *Id.* at § 551(4).

future effect designed to implement, interpret, or prescribe law or policy." For example, the Commission specifically stated with respect to the 211 code:

> [W]e *direct* that, when a provider of telecommunications services receives a request from an entity (*e.g.*, United Way) to use 211 for access to community information and referral services, the telecommunications carrier *must* . . . take any steps necessary (such as reprogramming switch software) to complete 211 calls from its subscribers to the requesting entity in its service area.[12]

ITS America's assertion that this "direction" does "not impose a new regulation on CMRS operators" is not credible on its face.[13]

United Way further asserts that the petitioners "sat on their rights,"[14] while ITS America contends that the petitioners seek "a second bite at the apple."[15] Indeed, ITS America goes so far as to assert that the petitioners should "not now be permitted another opportunity to raise their objections to the assignment, *regardless of their merits*."[16]

In point of fact, Sprint PCS submitted comments, but its arguments and evidence were disregarded — despite repeated court admonitions that significant comments may not be ignored.[17] Besides, Sprint PCS and others have a statutory right to raise their arguments in

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[12] *Third N11 Order* at ¶ 21 (emphasis added). The actions the Commission took in the *Third N11 Order* certainly cannot be classified as an "interpretative rule," which are typically (but not always) exempt from APA rulemaking requirements. *See* 5 U.S.C. § 553(b)(3)(A). An "interpretative rule" is one that "clarifies a statutory term." *National Family Planning* v. *Sullivan,* 979 F.2d 227, 236 (D.C. Cir. 1992). Interpretative rules ordinarily have no legal effect. *See, e.g. American Mining Congress* v. *Mine Safety & Health Admin.*, 995 F.2ds 1106, 1112 (D.C. Cir. 1993).

[13] ITS America Opposition at 7.

[14] United Way Opposition at 8.

[15] ITS America Opposition at 7.

[16] *Id.* (emphasis added).

[17] *See* Sprint PCS Petition at 3-4 and cases cited therein.

reconsideration petitions- even if none of them had earlier participated in this proceeding.[18] These ITS America/United Way arguments lack merit.

United Way also contends, without any explanation, that the procedural defects are "severable and do not render the assignment itself invalid."[19] Sprint PCS must respectfully disagree. The Commission did not simply allocate the 211 and 511 codes for a specific purpose. It further ruled that only certain entities may use these codes and that other entities, such as Sprint PCS, may not use them. It is axiomatic that a regulatory agency may not limit the rights of citizens without following basic due process requirements and in the case of new agency rules, the requirements set forth in the APA.

It is unfortunate that the Commission did not comply with APA requirements — although had the Commission considered Sprint PCS' comments, the current set of reconsideration petitions would have been unnecessary. Nevertheless, Congress enacted the APA to achieve certain objectives (*e.g.,* fundamental fairness), the Supreme Court has ruled that "strict compliance with the APA" is required,[20] and the Commission cannot ignore the directives that Congress has imposed.

II. TRANSPORTATION AGENCIES STILL HAVE NOT ADDRESSED THE CENTRAL ISSUE — NAMELY, HOW THE PUBLIC INTEREST IS SERVED BY A GOVERNMENT MONOPOLY OVER 511 SERVICES

Transportation organizations uniformly oppose Sprint PCS' reconsideration petition and ask the Commission to affirm in full its *Third N11 Order*. In support, they uniformly argue that the assignment of the 511 code for traveler services will serve important public purposes. This,

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[18] *See* 47 U.S.C. § 405. *But see* California Alliance Opposition at 5 ("Reconsideration is not appropriate nor fair at this point.").

[19] United Way Opposition at 7.

[20] *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 312 (1979).

however, is an issue not in dispute. Nearly two years ago Sprint PCS advised the Commission that it "supports the assignment of an N11 code such as 511 for use in the delivery of travel-related information to the public."[21]

Rather, the issue Sprint PCS raised in its reconsideration petition is the Commission's additional, and entirely unexplained, decision to award to "government entities" a monopoly in the provision of 511 traveler services. The few transportation organizations addressing this issue contend that a government monopoly is necessary to permit "a level of control on the minimum content and quality of traveler information delivered via 511."[22] In short, these government officials take the position that government best knows what kind of information the public wants to receive.[23]

This paternalistic view is at odds with the "user rules" principle that Chairman Powell has stated should govern the Commission's decisionmaking.[24] And, as Qwest has noted, this paternalistic view is at complete odds with the Congressional directive that federal agencies may "not . . . establish an exclusive, restricted, or other distribution arrangement that interferes with timely . . . availability of public information"; rather, Congress "encourage[s] a diversity of public and private sources for information based on government public information."[25]

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[21] Sprint PCS Comments, Docket No. 92-105, at 1 (July 20, 1999).

[22] American Association of State Highway and Transportation Officials ("AASHTO") Opposition at 5-6. *See also* Department of Transportation ("DOT") Comments at 11-12 (511 content "must be coordinated to ensure that a certain core traffic 'information set' is conveyed whenever ATIS is accessed."); ITS America Opposition at 24 n.82 (government control needed to ensure "basic level of 511 services.").

[23] The Commission needs to ask whether "quality control" is, in fact, the motivating rationale for the government position, or whether transportation agencies are instead motivated by taking advantage of the financial opportunities from their newly created FCC monopoly. *See, e.g.*, ITS America Opposition at 24 and 27 (discussing the "franchising" opportunities from the monopoly the FCC has awarded).

[24] *See* Sprint PCS Petition at 1-2, *quoting* Michael K. Powell, "Law in the Internet Age," Remarks before the D.C. Bar Association Computer and Telecommunications Law Section and the Federal Communications Bar Association (Sept. 29, 1999).

[25] Qwest Comments at 6, *quoting* 44 U.S.C. § 3506(d).

There are numerous additional flaws with the government monopoly position that the Commission has adopted. First, no one has seriously contested the fact that funding will be a major problem for these government programs.[26] As one regional government candidly acknowledged, "[i]f not generously funded on a long term basis, [a government] program would only generate a public backlash as complaints of long waits, lack of information, and poor service accumulated."[27] What this means as a practical matter is that 511 service will not be available at all in certain areas and where it is available, the government may provide an inferior service.

Moreover, a government monopoly service will admittedly not meet what even the transportation organizations recognize is the most important public need: "transparency":

> Uniformity of service for a nationwide system may be desired or expected by consumers even though it is implemented at the local level. Customers calling 511 from different locations in different states may, for example, expect to hear a similar greeting or list of menu options when dialing the service. They may also expect consistent terminology when information such as travel conditions, weather forecasts or transit schedules are provided.[28]

The nationwide transparency that the public will demand will be impossible to achieve under the *Third N11 Order* because 511 services will be provided by a patchwork of dozens (or hundreds) of different local or regional governmental agencies.[29]

Importantly, none of these problems would arise with carrier-provided 511 services because, between competition and the incentive to generate additional revenues, service

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[26] These funding challenges are not overcome by the DOT grant to each state of the paltry sum of $100,000. *See* DOT Comments at 15.

[27] Letter form Him Sims, Director, Information Services, Southern California Association of Governments, to Magalie Roman Salas, FCC Secretary, Docket No. 92-105, NSD File No. L-99-24, at 2 (June 14, 1999).

[28] DOT Comments at 6 and Attachment 1 at 8.

[29] *See, e.g.,* AASHTO Opposition at 8 ("Each State has the authority to operate in a fashion that best fits its needs and those of the political jurisdictions within the State.").

providers have incentive to provide superior services that consumers actually want. Additionally, carrier-provided 511 service would result in nationwide transparency as carriers would not be dependent upon a patchwork of government agencies whose transportation information would likely vary greatly from location to location and from agency to agency. The only criticism transportation agencies make of carrier-provided 511 traveler services is that in *their view* carriers would provide too much information to the public (*e.g.,* directions in addition to road conditions).[30] Notably, these agencies do not assert that the public does not want to receive such additional information with their 511 traveler services.

In summary, Sprint PCS does not oppose the assignment of the 511 code for traveler services. It does, however, vigorously oppose the Commission's additional decision to authorize the government as the sole provider of these 511 services.

III. THE OPPONENTS HAVE NOT ADEQUATELY ADDRESSED THE FIRST AMENDMENT IMPLICATIONS OF THE THIRD N11 ORDER

In the past, CMRS carriers have determined what information services will be made available to their customers. Given the competitive CMRS market, the editorial decisions that carriers make over which information services they will provide is an important component of the competition among carriers. The public benefits through increased choice and innovation.

The *Third N11 Order* represents an abrupt change in course. In this *Order,* the Commission has effectively required carriers to provide a new information service — one where the information is controlled by the government. And in the process, the Commission has precluded carriers from providing their own 511 travel information services.

[30] *See* DOT Comments at 11; AASHTO Opposition at 4.

The Commission's jurisdiction to order carriers to provide certain information services is not apparent. Information services are not telecommunications services, and the Commission's jurisdiction over information services is limited to its ancillary jurisdiction under Title I of the Communications Act.

However, as Verizon Wireless points out in its reconsideration petition, the Commission's decision raises significant issues under the First Amendment even if the Commission possesses the authority to require carriers to offer particular information services. ITS America was the only party choosing to respond to this issue.[31] According to ITS America, the Commission need not concern itself with the First Amendment because it did not determine "who will be the 'speaker' to customers of wireless carriers or that only the government can determine what specific information must be provided."[32]

In fact, the *Third N11 Order* did just that. According to the Commission, only "government entities" can provide 511 traveler services — that is, be the "speaker" to mobile customers. And according to these governmental entities, carriers will be permitted to provide their own 511 traveler services only if they determine that the information carriers would provide instead "is acceptable."[33] Indeed, the Department of Transportation reads the *Third N11 Order* as giving government agencies not only the right to determine whether carriers can provide 511 traveler services, but also to determine the "quality of that service."[34]

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[31] Verizon Petition at 16.

[32] ITS America Opposition at 22.

[33] AASHTO Opposition at 6.

[34] 511 Implementation Guide, DOT Comments, Attachment 1 at 7 ("[I]f an agency allows a carrier to provide the 511 service for their customers, the agency can insist on a certain quality of that service.").

Commission rules have been vacated in the past because the Commission did not fully consider the First Amendment implications of its rules.[35] The Commission would be wise to consider the First Amendment implications of awarding to government a monopoly in the provision of 511 traveler services.

IV. CMRS CARRIERS SHOULD NOT BE REQUIRED TO PERFORM BASE STATION ROUTING FOR 211 AND 511 CALLS

It appears that industry has not interpreted the *Third N11 Order* consistently. Sprint PCS reads the *Order* as requiring only switch-based translations for implementation.[36] However, others in the industry appear to have interpreted the *Order* as permitting N11 code recipients to ask that their calls be routed based on the base station serving the caller.[37] Moreover, some N11 service providers appear to think that they can require CMRS carriers to route calls at the county level although CMRS networks are often designed to serve multistate regions.[38] Sprint PCS asks the Commission to confirm that CMRS carriers are not required to provide base station routing to 211 and 511 code recipients.[39]

N11 code recipients say that the Commission need not get involved in such implementation details because CMRS carriers "can charge for effectuating the necessary routing changes and subsequent updates" and that there is "no expectation that the wireless

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[35] *See, e.g., U.S. WEST* v. *FCC,* 182 F.3d 1224 (10th Cir. 1999), *cert. denied,* 120 S. Ct. 2215 (2000) (CPNI rules vacated because they contravened First Amendment).

[36] *See* Sprint PCS Petition at 13-15. Surely, given the sizable additional costs involved, the Commission would have motioned the need to route 211 and 511 calls using base station routing had it intended to include this within its mandate.

[37] *See, e.g.*, Verizon Wireless Petition at 13-14; CTIA Petition at 5-6.

[38] *See* California Alliance Opposition at 6.

[39] In its Opposition at pp. 2 and 8, the United Way/AIRS announces that it would participate in a formal rulemaking to address wireless implementation issues. Sprint PCS could support such a rulemaking if, in fact, the Commission has a different view or interpretation of what is needed or required to implement 211 and 511.

carriers will not be able to recover these and related costs."[40] The issue, however, is not simply cost recovery, although cost recovery is certainly imperative. The issue also involves the diversion of finite resources from more important work — continued network buildout.

Sprint PCS has been installing base stations at a rate unprecedented in the history of the CMRS industry.[41] Many of these base stations are "capacity" base stations to accommodate additional customers and additional usage by each customer. Each time Sprint PCS installs a new capacity base station, it must adjust the serving area of adjacent base stations. Thus, the installation of a single cell site may require numerous changes to 211/511 translations that require endless hours of additional labor.[42] At this time, Sprint PCS' valuable labor is better expended on installing additional base stations.

Consumers benefit through increased competition, and competition intensifies through additional network buildout. The Commission postponed the effective date of the local number portability ("LNP") activation date so industry could focus its attention on continued network buildout.[43] It should do the same with respect to 211 and 511 call routing especially since as at least some N11 proponents have acknowledged, such routing is not essential for the provision of their services.[44] Furthermore, Sprint PCS believes the N11 service providers should share some

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[40] ITS America Opposition at 25.

[41] During its first five years, it installed more base stations than the entire cellular industry deployed during the first 10 years of the cellular industry. Last year alone, it deployed an average of over 280 base stations *each month*.

[42] United Way is simply wrong when it opines (without any direct knowledge of the situation) that 211 implementation using base station routing "is not a fundamental problem." United Way Opposition at 18.

[43] *See CTIA LNP Forbearance Order,* 14 FCC Rcd 3092 (1999), *recon. denied,* 15 FCC Rcd 4727 (2000).

[44] *See* United Way Opposition at 18 (noting that "serious harm would not be caused" if N11 calls are not routed to the correct N11 recipient).

of the burden of properly routing wireless calls; indeed, the Commission expects N11 service providers to work cooperatively with each other to facilitate the provision of N11 services.[45]

V. AT MINIMUM, THE COMMISSION SHOULD MAKE SEVERAL CLARIFICATIONS TO ACCELERATE IMPLEMENTATION OF 211 AND 511 SERVICES

Sprint PCS believes that the *Third N11 Order* must be vacated for both procedural and substantive reasons. If, however, the Commission decides to affirm the *Order*, it should at minimum make three clarifications in order to eliminate conflicts that will invariably arise during 211 and 511 implementation.

A. The Commission Should Confirm That CMRS Customers Will Incur No Additional Charges for Calling 211 or 511

The Commission has stated that providers of 211 and 511 services may not impose "an additional charge to callers."[46] Nevertheless, several transportation organizations suggest that they may charge mobile customers for their 511 services.[47] There are two problems with such an arrangement. First, government 511 providers may want carriers to bill their user, per-call fees. The Commission, however, has no jurisdiction to order carriers to provide unregulated billing services to unregulated information services providers. Second, even if government 511 providers do their own billing, the fact remains that most customer complaints over 511 fees will

[45] *Third N11 Order* at ¶ 21. Sprint PCS believes additional call routing, once the wireless carrier hands-off the traffic to an N11 provider, could be accomplished through the use of an interactive voice response ("IVR") units.

[46] *Third N11 Order* at ¶ 2. Sprint PCS believes the Commission's insertion of the word "additional" clearly means that the carriers responsible for transmitting N11 calls can bill for the N11 calls placed on their networks. For instance, a wireless carrier should be allowed to bill a customer for any applicable airtime or roaming charges.

[47] *See* 511 Implementation Guide, DOT Comments, Attachment 1 at 6 ("[A]gencies may also choose to have the caller pay a charge per call."). This Implementation Guide is mistaken to the extent it suggests that states can regulate the rates CMRS carriers charge for their N11 services. *Compare id.* at 8 *with* 47 U.S.C. § 332(c)(3)(A).

be made to the serving carrier rather than the 511 providers. Carriers should not have to be put in the situation whereby they must entertain customer complaints over another provider's service and incur the resulting customer care costs.

In contrast to the 511 transportation comments, community referral organizations recognize that N11 calls "should be free to the calling party."[48] The Commission should clarify that N11 service providers must supply the telecommunications carrier a toll free number and trunk as necessary so the calling customer does not incur a toll charge in calling N11 (211 or 511). In summary, the Commission should confirm that *all* additional charges are prohibited.

B. The Commission Should Confirm That N11 Recipients Must Pay a Carrier's Setup and Recurring Costs

CMRS carriers are not philanthropic organizations. They have shareholders and the job of a carrier is to provide a return to its shareholders. The Commission should, therefore, confirm, that telecommunications carriers have no obligation to route 211 and 511 calls until N11 code recipients agree to compensate the carrier for the costs it incurs in setting up the service and in thereafter providing the service.

Some of the N11 interests in this proceeding have recognized their obligation to compensate carriers. For example, ITS-America states:

> The wireless carriers can charge for effectuating the necessary routing changes and subsequent updates. There is no expectation that the wireless carriers will not be able to recover these and related costs.[49]

However, most of the N11 interests make no reference to their obligation to compensate carriers.

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[48] California Alliance Opposition at 9. *See also* United Way Opposition at 16 (Prospective 211 code recipients must demonstrate "the ability to provide 211 free of charge to calling parties.").

[49] ITS America Opposition at 25.

So as to eliminate future controversy, the Commission should clarify now that N11 code receipts have an obligation to compensate carriers for the costs they incur both in setting up service and in providing the service.

C. The Commission Should Confirm That a Service Contract Is a Prerequisite to the Provision of 211 or 511 Service

Wireless carriers are precluded by FCC rules from providing service pursuant to tariffs.[50] As a result, they must offer their services and capabilities pursuant to contracts. It is not reasonable to expect a carrier to provide a new capability or service without a contract. An N11 service contract is necessary to define each party's responsibilities and to specify compensation. The Commission should therefore clarify that a carrier's obligation to begin providing 211 or 511 service is not triggered until the N11 code recipient and carrier execute a services contract.

VI. CONCLUSION

The actions the Commission took in the Third N11 Order are clearly "rules" within the ambit of the APA. Moreover, the Commission published the *Third N11 Order* in the Federal Register, it described this *Order* as containing "final rules," and it specified an effective date. As the Supreme Court reminded all federal agencies recently:

> Regardless of how serious the problem an administrative agency seeks to address, however, it may not exercise its authority "in a manner that is inconsistent with the administrative structure that Congress enacted into law."[51]

Further, as discussed above, although Sprint PCS does not dispute the Commission's authority to allocate N11 codes for a particular purpose, the Commission does not have the authority to award monopolies in the provision of certain information services (so they, in turn, can "franchise" their new FCC-created legal entitlement). Nor may the Commission impose new

[50] *See* 47 C.F.R. § 20.15(c).

binding obligations on carriers (subjecting them to possible enforcement actions) when it has provided no guidance over how they are to implement the new regulatory requirements, nor provided a means for carriers to recover their costs in implementing the new government mandates.

For the foregoing reasons, Sprint PCS respectfully requests that the Commission reconsider and clarify its *Third N11 Order* consistent with the positions discussed above and in its reconsideration petition.

Respectfully submitted,

SPRINT SPECTRUM L.P., d/b/a SPRINT PCS

April 25, 2001

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[51] *FDA* v. *Brown & Williamson,* 120 S. Ct. 1291, 1296 (2000)(internal citations omitted).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, via U.S. mail, first class, with postage prepaid and affixed thereon, on April 25, 2001, to:

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