

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Federal-State Joint Board on)
Universal Service)
_____)

CC Docket No. 96-45

COMMENTS OF SPRINT PCS

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Summary

1. State/Interstate Revenue Allocation. The inherent nature of mobile services and technologies precludes CMRS providers from separating with any precision their intrastate revenues from their interstate revenues. Accordingly, a reasonable method for allocating this separation must be established. Sprint PCS demonstrates below that only one of the three allocation approaches identified in the *Further NPRM* — a presumptive percentage of interstate usage (“PIU”) that individual carriers would have the opportunity to rebut — meets the twin goals of administrative efficiency and competitive neutrality. These two important federal goals will be achieved, however, only if the states utilize the same allocator. Sprint PCS therefore recommends that the Commission exercise its jurisdiction over CMRS telecommunications and hold that states may not adopt a different state/interstate revenue allocation formula for CMRS providers.

2. Local Usage Requirement. A minimum local usage universal service eligibility requirement is necessary when consumers have no meaningful choice in their service provider. If consumers have choices in their provider, however, there is no reason for the government to establish such a requirement for eligibility to receive universal service funding. In fact, government intervention into the type of service plans competitive carriers must offer will have the adverse effect of limiting consumer choices, distorting competition, and undermining Congress’s directive in Section 254. The Commission’s objective in this proceeding should be to promote competitive entry into high-cost rural areas so that consumers in these areas have more choices — that is,

choices reasonably comparable to residents of urban areas. Sprint PCS submits that consumer interests would not be served by attempting to regulate competitive entry when such regulations could actually retard entry and limit customer choice.

3. Recommendations for Further Action. Sprint PCS makes three suggestions in response to the Commission's invitation for parties to identify ways to improve the universal service program. First, the Commission must take steps to ensure that there is certainty in funding; carriers will not enter high-cost areas unless they have a reasonable idea of funding levels so they can perform a cost-benefit analysis and determine whether to enter and serve a particular high cost area. Second, new entrant carriers must be eligible to receive *full* universal service funding, including both state and federal funds. PCS licensees cannot be expected to enter many high-cost rural areas if they are eligible to receive only a small fraction of the support (*e.g.*, 25%) that is available to the incumbent. Finally, the Commission should ensure that CMRS providers are able to designate their own service areas for the purpose of providing universal service and obtaining both federal and state support. The Joint Board's recent recommendation to return to the *status quo ante* whereby universal service costs would continue to be determined based on an incumbent LEC's study area is not competitively neutral. Nor are state requirements that new entrants conform their service area to that of the incumbent provider in order to be designated an eligible telecommunications carrier. In fact, such an approach is particularly burdensome to the development of new competition in rural areas.

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Sprint Spectrum L.P., d/b/a Sprint PCS (“Sprint PCS”), submits these comments in response to the *Further Notice of Proposed Rulemaking* (“*Further NPRM*”) that the Commission released to address certain universal service issues unique to providers of commercial mobile radio service (“CMRS”).¹

Sprint PCS applauds the Commission for adopting additional interim guidance with regard to the reporting of interstate CMRS revenues for purposes of universal service contributions. The Commission’s interim “safe harbor percentage” approach — an interstate factor for cellular, broadband PCS, and digital SMR providers (collectively, “broadband CMRS”) — will do much to alleviate the concern that disparate reporting among carriers concerning their percentage of interstate usage (“PIU”) could distort competition in the mobile telephony market.

¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 98-278 (Oct. 26, 1998).

I. Resolving the CMRS State/Interstate Revenue Allocation Dilemma

It is now widely recognized that the inherent nature of mobile services and technologies makes it extremely difficult for CMRS providers to separate with any precision their intrastate revenues from their interstate revenues.² Regardless of the resources and effort a CMRS provider may devote to the matter, it is simply impossible to achieve a perfect separation of state and interstate traffic.³ Thus, the question before the Commission is how to establish a mechanism that ensures that CMRS providers, individually and as an industry, contribute an appropriate amount towards the federal universal service program — *without* imposing costly and unnecessary administrative burdens on carriers (costs that will invariably will be passed through to consumers) and *without* distorting market forces in the competitive CMRS market.

Sprint PCS demonstrates below that only one of three methods identified in the *Further NPRM* — the presumptive PIU approach — meets the twin goals of administrative efficiency and competitive neutrality. Moreover, these important federal goals will be met only if states follow the same methodology. Sprint PCS therefore recommends that the Commission exercise its jurisdiction over CMRS telecommunications to ensure that states do not take steps that would undermine the federal regime.

² See, e.g., *NECA II Order*, 12 FCC Rcd 12444, 12453 ¶ 21 (1997). For example, a customer may originate a mobile call in one state and complete it in a second (or even third) state. Similarly, the mobile customer may remain in the same state during his or her call but be served by a cell site in an adjacent state.

³ For example, although AirTouch claims to have developed a jurisdiction tracking system that can distinguish state from interstate calls with a reasonable degree of accuracy, even AirTouch acknowledges that its system may still yield “inaccurate information.” *Further NPRM* at ¶¶ 38-39.

A. Only the Presumptive PIU Factor Approach Satisfies the Twin Goals of Administrative Simplicity and Competitive Neutrality

The *Further NPRM* identifies three ways in which CMRS providers could report their interstate telecommunications services revenues. One approach would be to follow the TRS model by enabling CMRS providers to use their good faith estimates in deriving their percentage of interstate revenues. While this approach has the advantage of promoting administrative simplicity, it does not, as the Commission has already noted, give carriers “sufficient certainty as to the appropriate amount of their payment obligations and may result in inequities in payment obligations.”⁴ Indeed, the limited experience with universal service reporting — where CMRS carrier interstate revenue estimates apparently have ranged from a low of 7% to a high of 28%⁵ — confirms that a TRS, good faith reporting model will likely result in competitive inequities and could result in the distortion of competitive markets.

The second approach — *requiring* carriers to perform a traffic study — fails both the administrative simplicity and competitive neutrality considerations. At the outset, Sprint PCS cannot share the Commission’s conjecture that it would be “reasonably simple for most wireless carriers to conduct traffic studies and extrapolate from the data the percentage of their revenues that should be attributed to the interstate jurisdiction.”⁶ In Sprint PCS’ experience, the use of traffic studies to determine

⁴ *Further NPRM* at ¶ 17.

⁵ *See id.* at ¶ 10.

⁶ *Id.* at ¶ 23. Compare *MTS/WATS Market Structure*, 4 FCC Rcd 1352, 1356 ¶ 25 (Joint Board 1989)(“Conducting such traffic studies would involve substantial difficulties since the present record establishes that the LECs cannot readily measure state and interstate special access traffic . . .”).

inter/intrastate calling is complex and imprecise, and unless the Commission is willing to regulate all aspects of such studies (*e.g.*, size and location of sample, assumptions used, frequency of studies), there is no guarantee that such studies will produce results that are any more reliable than those obtained through use of the TRS/good faith model discussed above. The only difference is carriers would face a new financial/administrative burden in conducting these traffic studies.

It makes little sense to impose additional costs to an already costly universal service program – especially where, as here, there is little likelihood that the reliability of results will improve in any material respect. Sprint PCS notes that when the Commission faced a similar situation with regard to certain landline services, it adopted a procedure that allowed carriers to use their existing records, and it specifically declined to require carriers to conduct new, costly traffic studies.⁷

The third approach is the permanent adoption of the interim “safe harbor percentage” approach — or what Sprint PCS terms, the PIU factor. Under this approach, a carrier would have the choice of using either (a) a nationwide PIU factor that the Commission establishes or (b) a carrier-specific PIU factor if the carrier can document to the Commission that a different factor is justified.⁸ This approach meets the administrative simplicity objective, because a carrier will face new administrative costs only if it determines that the benefits of doing a special study exceed the costs. This

⁷ See, *e.g.* *Determination of Interstate and Intrastate Usage of Feature Groups A and B Access Service*, 4 FCC Rcd 1966 (1989), *adopted*, 4 FCC Rcd 8448 (1989). Compare *MTS/WATS Market Structure*, 4 FCC Rcd 5660 (1989)(FCC rejects a usage-based allocation method largely because it would involve the performance of additional, costly traffic studies).

⁸ See *Further NPRM* at ¶ 5.

approach also promotes competitive neutrality because most carriers can be expected to use the presumptive PIU factor, with the result that all competitors will face the same, relative universal service contribution costs.⁹

B. A Nationwide Allocator for CMRS Providers Is Important to Promote Competitive Neutrality and the Commission Should Adopt Only a Presumptive PIU Factor That Carriers Can Rebut

The Commission seeks comment on how it should establish the state/interstate revenue allocator, asking whether it should base this CMRS allocator on the level of interstate traffic handled by landline carriers.¹⁰ The relevance of a landline-based allocator is not readily apparent given that the landline and CMRS industries have very different pricing structures and since consumers still utilize landline and mobile telephones differently. Sprint PCS therefore recommends that the Commission instead establish a national PIU allocator based on the mean, or average, of the Form 457 data that has been submitted to date. The Commission always has the flexibility to adjust this allocator later if subsequent experience demonstrates that an adjustment is appropriate.

It is important to re-emphasize that perfection is not achievable and that the Commission's objective should be to establish a *reasonable* allocator that promotes the goals of administrative simplicity and competitive neutrality. Further, the importance of the particular allocator that the Commission establishes lessens considerably if CMRS providers have the option to document to the Commission that a different allocator should

⁹ Moreover, even if one competitor were to successfully document that it is entitled to use a different PIU factor, other competitors still have the option to match that competitor — *if* they determine that the additional costs of preparing separate studies are outweighed by the benefits of obtaining a PIU factor closer to that of its competitor.

be applied.¹¹ Given that any allocator the Commission adopts necessarily will be a “best estimate” only, it is imperative that carriers have the opportunity to rebut this estimate based on the facts pertaining to its unique operations. The advantage of this “presumptive PIU factor” approach is that it leaves the decision to each carrier and to competitive market forces — namely, each carrier will decide whether the benefits of doing a special study exceed the costs.

In summary, Sprint PCS urges the Commission to adopt a national PIU factor that reflects the average or mean of interstate allocations reported to date by CMRS providers on FCC Form 457. The Commission should also provide the flexibility to rebut the presumptive PIU factor with a number more appropriate for a particular carrier’s operations.

C. The Benefits of a National PIU Factor Would Be Undermined If States Are Free to Require CMRS Providers to Use a Different Allocator

As emphasized above, the Commission should adopt a national PIU factor to avoid imposing unnecessary costs on CMRS carriers (and, in effect, their customers) to promote administrative simplicity, and to ensure that competition in the CMRS market is not distorted. Yet, these strong federal objectives would be undermined if states are free to establish their own PIU factors. These objectives could be frustrated completely if states were free to require each CMRS provider to perform specialized traffic studies and to employ a PIU factor different than that used by its competitors.

¹⁰ *Id.* at ¶ 20.

¹¹ *See id.* at ¶ 25.

The Commission should act decisively to protect CMRS providers from double assessments and the possibility of an onerous administrative burden. In enacting Section 332 of the Communications Act, Congress specifically limited state authority over CMRS in part because “mobile services . . . by their nature operate without regard to state lines.”¹² Accordingly, Sprint PCS believes that the Commission has the statutory authority to preempt states -- if necessary -- from adopting a PIU factor that is inconsistent with the Commission’s PIU factor. Even if the Commission decides not to preempt the states in this matter, it should, at a minimum, articulate clear guidance to ensure that the important federal objectives of administrative simplicity and competitive neutrality are not undermined by state actions.

II. A Local Usage Requirement Is Unnecessary in Competitive Markets and Would Frustrate Consumer Interests

The Commission seeks comment on “whether some amount of minimum local usage should be included in the basic service packages, and if so, how to determine that local usage requirement.”¹³ Sprint PCS agrees that a minimum local usage eligibility requirement is necessary when consumers have no meaningful choice in their service provider.¹⁴ However, if consumers have choices in their provider, there is no reason for the government to establish a minimum usage requirement for eligibility to receive universal service funding. In fact, government intervention into the type of service plans

¹² See H.R. Rep. No. 103-111, 103rd Cong., 1st Sess., at 260; 47 U.S.C. § 332(c)(3)(A).

¹³ *Id.* at ¶ 50.

¹⁴ Sprint PCS further agrees that a local usage requirement is necessary to develop cost models. However, as the FCC has correctly recognized, “no necessary connection exists between these two measures of usage [cost model input and carrier eligibility] because they serve different purposes within the support mechanisms.” *Universal Service Further NPRM*, 12 FCC Rcd 18514, 18581 ¶ 180 (July 18, 1997).

competitive carriers must offer will have the adverse effect of limiting consumer choices, distorting competition, and undermining Congress's directive in Section 254 and the Telecommunications Act generally.

A. The Commission's Primary Objective in this Proceeding Should Be to Facilitate the Introduction of Competitive Choice in Rural Markets, Not Regulate Service Packages Once Competition Arrives

There are two models of universal service for rural and high cost areas that regulators can pursue: (1) maintain the *status quo* whereby rural residents have few, if any, choices in their service provider — an arrangement that necessarily requires intensive regulation in both the definition of “core” universal features and the rates charged for these features; *or* (2) promote the introduction of competition in rural markets so residents begin to enjoy the same type of choices available to their counterparts in urban areas. Once competition develops, the regulation of service package content and rates becomes unnecessary because rural residents will have the freedom to choose the particular package that best suits their needs. If the carrier later attempts to increase its prices for the package, consumers will simply switch to another carrier.

Congress made clear that it favors the latter, competitive model over the former, monopoly model. This intention is evident from the Telecommunications Act of 1996 generally, which Congress adopted to provide for “a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services *to all Americans* by opening *all telecommunications markets* to competition.”¹⁵ This interest in

¹⁵ S.652 Conference Report, No. 104-458, at 1 (Jan. 31, 1996)(emphasis added).

promoting consumer choice is also evident from Section 254, where Congress specifically set forth the principles to govern the development of universal service programs for rural and high cost areas:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . [1] that are reasonably comparable to services provided in urban areas, and [2] that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹⁶

If rural residents have “access to . . . services . . . that are reasonably comparable to services provided in urban areas” — that is, they enjoy meaningful choice in providers, they will soon enjoy “rates that are reasonably comparable to rates charged for similar services in urban areas.”

It is undisputed that rural residents today do not have choices in service providers that are comparable to urban residents. Few consumers, rural or urban, have a choice in landline carriers today. However, there is a dramatic difference in the number of choices available to rural and urban residents with regard to mobile telephony providers. The Commission has noted that new entrant CMRS providers like Sprint PCS have already achieved “a significant presence in most major markets” and that “prices have been falling as competition has increased.”¹⁷ Eighty-seven percent (87%) of the nation’s population is served by three or more CMRS providers; 68% of the population is already served by four or more providers.¹⁸ In stark contrast, the Commission noted only

¹⁶ 47 U.S.C. § 254(b)(3).

¹⁷ *Third Annual CMRS Competition Report to Congress*, FCC 98-91, at 2 (June 11, 1998).

¹⁸ *Id.* at 18.

last month that “many of the nation’s residents living in rural and other high-cost areas do not yet have meaningful competitive alternatives,”¹⁹ with Commissioner Tristani correctly observing that “the rash of new entrants tapers dramatically as we look beyond our urban centers to our rural communities.”²⁰ Thus, the Commission was required to report to Congress last June:

While there are welcome developments, there is ample room for improvement. Much of the deployment of new mobile telephone networks as been concentrated on more densely populated urban and suburban markets. Consequently, many less populated areas are still awaiting the arrival of mobile telephone competition.²¹

If the Commission is to implement the Congressional directive in Section 254, it must take steps to encourage new entrant licensees to expand their networks into rural areas. (Sprint PCS identifies some of these steps in Part III below.)

The *Further NPRM*, however, does not focus on ways to facilitate network deployment and competitive entry in underserved rural areas. Instead, the *NPRM* inquires into whether the Commission should impose a new government regulation — a minimum local usage requirement — as a condition to receiving universal service funding. Sprint PCS submits that the imposition of such a requirement would be a mistake. Regulation of the service plans that new entrants offer is not necessary because new entrants will succeed only if they offer better service and lower prices than incumbent carriers. Even if a new entrant was willing to accept this regulation, service package regulation will merely have the effect of limiting consumer choice because new

¹⁹ *Spectrum Cap NPRM*, WT Docket No. 98-205, FCC 98-308, at ¶ 45 (Dec. 10, 1998).

²⁰ *Id.*, Separate Statement of Commissioner Gloria Tristani.

entrants, in order to become eligible to receive universal service funding, must begin offering a service package that is comparable to incumbent carriers.

This makes no sense, nor is it consistent with statutory directive. Section 254(b) specifies that rural residents should enjoy access (or choices) and rates that are reasonably comparable *to those in urban areas* — not that new entrants in rural areas provide services and rates that are comparable *to those provided by the incumbent*. Moreover, consumer interests are served when they enjoy increased choices — both in serving carriers and in service packages — so they can select a plan that best meets their individual needs.

In summary, Sprint PCS recommends that the Commission focus its effort on promoting new competitive entry in rural markets rather than attempt to regulate that new entry. CMRS providers, the Commission has noted, offer “diverse” service plans.²² Consumers in rural markets should enjoy the benefits of this diversity as much as their counterparts in metropolitan areas.

B. If the Commission Determines that it Must Regulate New Entrants the Regulation Should Focus on Total Consumer Value, and Not Prices Alone

Universal service has two interrelated components: consumer choice and affordability. As Sprint PCS has previously explained, “the relationship between affordable service and a local usage component is tenuous.”²³ Indeed, as the Joint Board

²¹ *Third CMRS Competition Report* at 63.

²² *Third CMRS Competition Report* at 3.

²³ Sprint PCS Comments, Docket Nos. 96-45 and 97-160, at 5 (Oct. 17, 1997).

has recognized, price alone is not the sole measure of affordability, nor is it the sole factor consumers consider in determining which service to purchase.²⁴ Other factors consumers consider in making a purchasing decision are the size of the local calling area and its relationship to the pertinent community of interest, the level of toll charges, additional features, and service connection fees.²⁵ In selecting a particular service, consumers consider the total *value* of a service package, not simply price.

For instance, the Joint Board has noted the importance rural residents attach to the size of their local calling area, specifically determining that the local calling area size “should be considered as another factor to be weighed when determining the affordability of rates,” including whether the calling area “reflects the pertinent ‘community of interest,’ allowing subscribers to call hospitals, schools, and other essential services without incurring a toll charge.”²⁶ Thus, for example, the opportunity to receive “free” unlimited local calling may be of limited value when the calling area includes only 200 local residents, the community of interest is 25 miles away, and calls to the community of interest involve an intraLATA toll call (at \$.25 or more per minute).

For example, below is a comparison of the service/price plans available to the residents of Walnut, Iowa (population, 857), located in western Iowa along Interstate 80 between Des Moines and Omaha:

²⁴ See *Joint Board Recommended Decision*, 12 FCC Rcd 87, 151-52 ¶¶ 126-28 (1996).

²⁵ *Id.*

²⁶ *Id.* at 151 ¶ 128.

	Walnut	Sprint PCS	Sprint PCS	Sprint PCS	Sprint PCS
	<u>Telephone Company</u>	<u>Standard-B</u>	<u>Promotion</u>	<u>National-A</u>	
Local Calling Area	Walnut, Iowa	States of Iowa & Neb.	Nationwide	Nationwide	
Population of Local Calling Area	800	4.3 million	270 million	270 million	
Included Minutes	Unlimited	120	500	600	
Extra Minutes ²⁷	INAP	\$0.30	\$0.25	\$0.25	
Intrastate Long Distance ²⁸	\$0.18	Included	Included	Included	
Interstate Long Distance	\$0.16	\$0.15	Included	Included	
Touch-tone Service	\$1.00	Included	Included	Included	
Voice Mail	\$5.45	Included	Included	Included	
Numeric Paging	\$19.00	Included	Included	Included	
First Incoming Minute Free	INAP	Included	Included	Included	
Caller ID	\$3.00	Included	Included	Included	
Call Waiting	\$3.00	Included	Included	Included	
Detailed Billing	No	Yes	Yes	Yes	
Directory Assistance	Yes	Yes	Yes	Yes	
Operator Services	Yes	Yes	Yes	Yes	
Basic 911	Yes	Yes	Yes	Yes	
Universal Service Subsidies (Per Loop) ²⁹	\$9.53	None	None	None	
Monthly Charge for Basic Package	\$10.50 (incl. SLC)	\$29.99	\$50.00	\$69.99	

²⁷ Sprint PCS subscribers to its standard and national plans also have the flexibility to purchase 500 additional off-peak minutes for \$4.99 monthly.

²⁸ The long distance rates in this table are the rates Walnut charges for its own long distance service during the day.

²⁹ See Federal Universal Service Programs Fund Size Projections for 1Q98, Appendix 4, at page 15 of 28.

The local calling area for Walnut Telephone Company customers is limited to residents of Walnut. Thus, if a Walnut customer wants to call someone in the larger communities of Atlantic (population 7,432; distance 15 miles) or Harlan (population 5,148; distance 17 miles), the customer must make a toll call and pay \$0.18 per minute during the day (or \$0.14 during the evening).

Which of these plans provides the most value? Sprint PCS submits that the answer depends on the unique needs of each individual -- whether the person commutes to Omaha, is a farmer who spends the day in the field, a carpenter who spends the day at a construction site, a veterinarian or real estate agent who spend the day on the road, a mechanic who spends the day in the shop, or a telecommuter tied to his or her computer. Sprint PCS further submits that these examples make apparent that regulators are not in a good position to determine what "core" set of services must be provided as part of universal service, because each consumer has its own perception of what is a "core" feature.

Consumers make decisions on value, not price alone. Consumer interests are served by having more rather than fewer choices. Accordingly, the Commission's overriding objective in this universal service proceeding should be to facilitate competitive entry into high-cost rural areas so all Americans can enjoy the benefits of the competitive choice.

C. Any Local Usage Requirements the Commission Adopts Will Likely Contravene Technological and Competitive Neutrality Principles

The Commission has acknowledged that, given the vastly different cost structures of landline and wireless technologies, any local usage requirement it may adopt has “the potential to affect different types of carriers differently.”³⁰ Sprint PCS submits any attempt to establish a minimum local usage level will be doomed to distort market forces and that, in the end, the best regulatory approach is to take a “hands off” approach so market forces can operate freely.

The Commission apparently believes that it is possible for regulators to pick a local usage number in an attempt to equalize two very different technologies with very different cost structures. Even if this were possible (and Sprint PCS does not believe that it is), such an exercise would still assume that the price for local calls is the sole factor consumers consider in selecting their local telecommunications provider.³¹ As noted above, consumers make decisions based on the total value of the service, and the Walnut, Iowa example suggests that what one person finds valuable may not be deemed as valuable by another. The Commission should therefore allow unfettered competition to occur, so the choices available to the beneficiaries of the universal service program -- consumers -- are maximized.

If, however, the Commission remains inclined to establish a minimum local usage requirement, it is imperative that it adopt a separate usage requirement for

³⁰ *Further NPRM* at ¶ 49.

³¹ Moreover, even if the FCC could divine the core set of universal services that all consumers believe is necessary, the fact is that the FCC definition would become outdated as soon as its rules are promulgated.

landline and wireless carriers. As Sprint PCS has previously explained, “[a]ny attempt to conform usage patterns for these two very distinct technologies will only serve to skew the standard in favor of entrenched wireline providers” and would, as a result, contravene the principles of competitive and technological neutrality.³²

III. Suggestions for Improving the Universal Service Program

The Commission has requested parties to provide “specific suggestions” on how the universal service program can be improved “to facilitate the provision of services eligible for universal support by all eligible providers.”³³ Sprint PCS below makes three suggestions that it believes would do much to meet the statutory directive — ensure that persons in rural areas have choices and prices that are reasonably comparable to those available to and paid by persons in urban areas — in a way that promotes the principles of competitive and technological neutrality.

A. Certainty in Funding Is Imperative

New carriers like Sprint PCS will not enter high cost rural markets unless they have reasonable assurance that they will receive universal service funding *and* have a reasonable idea of the level of funding that will be available. Certainty of funding is imperative so carriers can perform a cost-benefit analysis regarding whether to enter and serve a particular high cost area.

The CMRS industry, whether in technology (new data networks, third generation technologies) or in additional price reductions, is simply moving too fast to correspond to any new regulation.

³² See Sprint PCS Comments, Docket No. 96-45, at 2 and 8-9 (Oct. 17, 1997).

³³ Further NPRM at ¶ 45.

The fixed costs of deploying a network, especially in a rural area, whether landline or wireless are large. As the Commission recognized only last month, PCS licensees as well face “significant challenges” in serving profitably “low-density, rural, or high-cost areas.”³⁴

For example, the cost to purchase a free-standing antenna tower is the same, whether the tower is located in an urban or rural area. In an urban area, this fixed cost can be spread over tens of thousands of customers; in a rural area; this same fixed cost may be spread only over several hundred customers (or less). Moreover, the DS-1 facilities needed to connect rural cell sites with mobile switching centers are often much longer (and therefore, much more expensive) than the facilities used in connecting urban cell sites. Again, this increased cost must be spread over a much smaller customer base. In addition, to provide the local coverage that rural residents will understandably demand, a new entrant licensee will often be required to install numerous antennas so coverage is available throughout the community of interest.³⁵

Simply stated, profit-maximizing firms cannot be expected to enter high-cost markets if they are simultaneously expected to charge rates that are “reasonably comparable” to those charged in dense, lower cost urban areas. Universal service funding has the promise to bridge this revenue-cost gap. With such funding, it may be possible for CMRS providers to enter high-cost areas, thereby giving rural residents a diverse set of new services and choices at rates that are comparable to those available in urban areas.

³⁴ *Spectrum Cap NPRM* at ¶ 57.

Incumbent carriers accustomed to receiving universal service subsidies are comfortable in making incremental investments because they know based on experience that for every dollar they spend they will receive X in subsidy dollars. In this environment, no new carrier can responsibly enter a high-cost rural market unless it has a reasonable degree of assurance that it will not lose money as a result. Consequently, it is critically important that the Commission develop a universal service program that provides sufficient certainty *upfront* concerning the level of potential universal service funding that will be available, so that the carrier can confirm, before it expends its finite capital, that it will not lose money by the investment.

The Commission seeks comment on several proposals where the amount of universal service funding would be determined *after* it builds its network and commences operations.³⁶ These proposals are neither workable nor realistic. No carrier can responsibly commit capital to a high cost area where the opportunity to avoid a loss is based solely on the promise that the carrier *may* receive some unspecified level of universal service funding at some time in the future.

The Commission has also asked how it can be assured that universal service funds will actually be used to lower rates.³⁷ Sprint PCS cannot address the situation of incumbent cellular carriers already operating in rural areas, although experience has proven that cellular carriers will reduce their rates substantially once PCS

³⁵ It bears remembering that because the propagation characteristics of the 2 GHz band compared to the 800 MHz band, PCS licenses must generally install more cell sites than cellular carriers to serve the same geographic area.

³⁶ See *Further NPRM* at ¶ 50.

³⁷ See *id.* at ¶ 49.

licensees enter the market.³⁸ Nevertheless, the Commission need not be concerned about the prices charged by new entrant carriers because they will succeed in the market only if they provide better value (better service, more options, lower prices) than the incumbent.

B. New Entrant Carriers Must be Eligible to Receive Full Universal Service Funding

Under current rules, the federal universal service program will support only 25% of the total universal service funding, although the Joint Board recently recommended that the federal contribution be increased somewhat.³⁹ Sprint PCS has previously documented that some states have adopted state universal service programs that exclude CMRS providers from participating.⁴⁰ Sprint PCS believes that these exclusionary state programs are unlawful.⁴¹ CMRS providers cannot be expected to enter and serve many high cost rural areas if they are eligible to receive only a small fraction of the support (25%-35%) that is available to the incumbent and possibly other landline carriers.

³⁸ A recent Yankee Group study determined that wireless rates have dropped an average of 40% since 1995 alone. See "All-Inclusive Wireless Prices Dislodge Landlines," www.techweb.com/wire/story/TWB19990104S0007 (Jan. 4, 1999).

³⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Second Recommended Decision*, FCC 98J-7 (Nov. 25, 1998).

⁴⁰ See Sprint PCS Comments, Docket No. 96-45 (Jan. 26, 1998).

⁴¹ Among other things, exclusionary state programs violate the principles of competitive and technology neutrality that the Commission adopted pursuant to Section 254(b). See also 47 U.S.C. §§ 253(b) ("Nothing in this section shall affect the ability of a State to impose, *on a competitively neutral basis* and consistent with Section 254, requirements necessary to preserve and advance universal service."); 254(f) ("A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.").

C. The Commission Should Ensure that CMRS Providers Can Designate Their Own Service Areas for Universal Service Support

Finally, Sprint PCS urges the Commission to ensure that CMRS providers are allowed to designate their own service areas for purposes of providing universal service and obtaining support from both federal and state programs.⁴² As the Commission aptly noted in its *Universal Service Order*, “[i]f a state adopts a service area that is simply structured to fit the contours of an incumbent’s facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent’s area, giving the incumbent an advantage.”⁴³ Simply put, it is not competitively neutral to require a CMRS provider – utilizing a wholly different transmission technology – to modify its coverage area to conform with the incumbent LEC’s service area.

IV. Conclusion

For the forgoing reasons, Sprint PCS recommends that the Commission (1) establish a presumptive percentage of interstate (“PIU”) allocation factor that CMRS providers can use absent proof by a carrier that a different allocator should apply to it; (2) refocus its efforts on finding ways to facilitate competitive entry into high-cost rural areas

⁴² Although the Joint Board recently reaffirmed its commitment to the principle of competitive neutrality, it reversed course and recommended that the Commission return to the *status quo ante* – whereby universal service costs would continue to be determined based on an incumbent LEC’s study area – an area “considerably larger than the “wire center” that the Joint Board had previously recommended for use and that the Commission had adopted. See *Second Recommended Decision, supra*, at ¶ 56. Sprint PCS will not repeat here the recent comments filed by Sprint Corporation demonstrating that a return to study areas “will not only fail to stimulate efficient competitive entry, but will actually stifle competition,” and, as a result, would constitute a “giant step backward.” Sprint Corp. Comments, Docket No. 96045, at 10 (Dec. 23, 1998).

⁴³ *Universal Service Order* ¶ 185

rather than attempting to regulate competitive entry (e.g., imposition of minimum local usage requirement); and (3) adopt the three specific recommendations outlined above as a means to improve substantially the universal service program and the objectives Congress established in Section 254 of the Communications Act.

Respectfully submitted,

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