

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

	)	
In the Matter of	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	

**COMMENTS OF SPRINT CORPORATION**

Sprint Corporation, on behalf of its incumbent local exchange (“ILEC”), competitive LEC (“CLEC”)/long distance, and wireless divisions, respectfully submits its Comments in response to the Public Notice<sup>1</sup> requesting comments on the Joint Board’s October 16, 2002 *Recommended Decision* in the above-referenced proceeding.<sup>2</sup>

**I. INTRODUCTION AND SUMMARY.**

In the *Recommended Decision* the Joint Board addresses three of the four issues from the *Ninth Report and Order*<sup>3</sup> that were remanded by the United States Court of Appeals for the Tenth Circuit:

- (1) The FCC did not define adequately key terms including “reasonably comparable” and “sufficient”;
- (2) It did not sufficiently justify setting the funding benchmark at 135% of the national average; and

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<sup>1</sup> Public Notice, Comment Sought on the Recommended Decision of the Federal-State Joint Board on Universal Service Regarding the Non-Rural High-Cost Support Mechanism, DA 02-2976, released Nov. 5, 2002.

<sup>2</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, FCC 02J-2, released October 16, 2002 (“*Recommended Decision*”).

<sup>3</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Ninth Report and Order and Eighteenth order on Reconsideration*, 14 FCC Rcd 20432 (1999) (“*Ninth Report and Order*”).

- (3) It did not provide any inducements for the state mechanisms that it concedes are necessary to implement universal service.<sup>4</sup>

In the *Recommended Decision*, the Joint Board recommends defining sufficiency as “enough support to enable states to achieve reasonable comparability of rates”<sup>5</sup> because that definition will further the primary statutory purpose of non-rural high-cost support “to provide enough federal support to enable states to achieve reasonable comparability of rural and urban rates.”<sup>6</sup> Sprint believes this definition is reasonable and meets the 10<sup>th</sup> Circuit direction to the FCC to “define these terms more precisely in a way that can be reasonably related to the statutory principles...”<sup>7</sup>

The Joint Board also recommends the continued use of a national average cost benchmark based on 135% of the national average cost “[b]ecause the standard deviation analysis and the cluster analysis both support 135% as a reasonable benchmark...”<sup>8</sup> Sprint agrees with this recommendation and agrees that the statistical analysis relied on by the Joint Board provides the needed justification.

Sprint’s support for the current 135% cost benchmark is pragmatic. The 135% benchmark assumes that states will take an active role in equating rates within their borders. This assumption is reasonable. The current support mechanism is designed such that when states equate rates within their borders, but the resultant rates are not

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<sup>4</sup> *Qwest Corp. v. FCC*, 258 F.3d 1191, 1201 (10<sup>th</sup> Cir. 2001). In the Commission’s *Remand Notice*, the Commission reserved review of the fourth issue on remand: (4) it [FCC] did not explain how this funding mechanism will interact with out universal-service programs. See, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Notice of Proposed Rulemaking and Order*, 17 FCC Rcd 2999, 3010-11, paras. 25-26, (2002) (“*Remand Notice*”).

<sup>5</sup> *Recommended Decision* at para. 15.

<sup>6</sup> *Id.*, citing Section 254(b)(3), 47 USC § 254(b)(3).

<sup>7</sup> *Qwest v. FCC*, at p. 1202.

<sup>8</sup> *Recommended Decision* at para. 38.

comparable *across* states, support is provided with the intention of creating between-state comparability. By necessity, this involves determining some level at which cross-state variability becomes “too” variable. As the 10<sup>th</sup> Circuit acknowledged, this process will not be an exact science: “[w]e recognize that the FCC’s determination of a benchmark will necessarily be somewhat arbitrary.”<sup>9</sup> However, the use of standard deviation analysis limits the arbitrary nature of the process and provides a useful guide in that it provides a recognized approach for identifying extreme values in a data set, based on all the values in that data set. Critics of standard deviation analysis (as support for a 135% benchmark) are quick to point out shortcomings with this approach, yet are unable to provide the Commission with any superior method determining a benchmark.<sup>10</sup>

The *Recommended Decision* also proposes a process that includes (1) funding 76% of state average costs exceeding the national benchmark; (2) establishing a national rate benchmark based on a percentage of the national average urban rate; (3) defining reasonably comparable rates and implementing state review and certification of rate comparability; and (4) providing states the opportunity to demonstrate that further federal action is needed because combined federal support and state action is insufficient to yield reasonably comparable rates. In the remainder of these comments, Sprint will focus on the latter two processes. Sprint is concerned that the Joint Board’s proposed definition of reasonably comparable rates is still too imprecise to pass muster under the 10<sup>th</sup>

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<sup>9</sup> *Qwest v. FCC*, at p. 1202.

<sup>10</sup> Commissioner Rowe points out “[i]ndeed, it is easy to imagine circumstances under which *no state* is more than two standard deviations above the mean, but many have costs that are not by any reasonable measure comparable to urban costs.” Unfortunately, Commissioner Rowe does not provide any definition of or method to determine “reasonable measure comparable to urban costs.” See, *Recommended Decision*, Separate Statement of Commissioner Bob Rowe, Montana Public Service Commission, at p. 6.

Circuit's requirements. Also, Sprint is concerned that the Joint Board's state certification process combined with the opportunity for further federal action could lead to unnecessary increases in the size of the Universal Service Fund.

**II. THE JOINT BOARD'S PROPOSED DEFINITION OF REASONABLY COMPARABLE RATES DOES NOT PROVIDE THE PRECISION REQUIRED BY THE 10<sup>TH</sup> CIRCUIT COURT.**

The Joint Board recommends that the Commission further develop the record to establish a national rate benchmark as a safe harbor. Under the Joint Board's proposal, any state whose rates in high-cost areas are at or below that benchmark rate "may certify that their basic service rates in high-cost areas are reasonably comparable without the necessity of submitting rate information."<sup>11</sup> The Joint Board explains that "[w]hen state basic service rates are at or below the rate benchmark level, there should be a presumption that rates in that state are reasonably comparable to national urban rates."<sup>12</sup>

The problem is that this recommendation sets a rate ceiling for what is reasonably comparable, but it does not establish a price floor. This lack of a price floor could lead to large rate discrepancies. This is precisely the problem the 10<sup>th</sup> Circuit found with the reasonably comparable mechanism under the *Ninth Report and Order*:

This definition does not help answer the questions that arise about reasonable comparability. For example, Vermont and Montana assert that some rural rates will be 70-80% higher than urban rates under the FCC's funding mechanism. We fail to see how the FCC's definition of "reasonably comparable" illuminates this dispute. Does the FCC contend, for example, that a 70-80% discrepancy is within a "fair range" of rates? We doubt that the statutory principle of "reasonable comparability" can be stretched that far.<sup>13</sup>

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<sup>11</sup> *Id.*, at para. 50.

<sup>12</sup> *Id.*, at para. 51.

<sup>13</sup> Qwest v. FCC, at p. 1201.

Additionally, the Joint Board's recommendation does not define reasonably comparable rates, but merely provides a conclusion of same if the state can demonstrate that it meets the mechanism recommended by the Joint Board. Thus, the Joint Board's recommended definition of reasonably comparable rates suffers from the same deficiency that the 10<sup>th</sup> Circuit found with the *Ninth Report and Order's* definition of sufficient:

The FCC also has not defined what it means for federal support for universal service to be "sufficient." It simply asserted without explanation that the mechanism it chose would be sufficient. .... This conclusory statement is inadequate to enable appellate review of the sufficiency of the federal mechanism and, if accepted, would provide only a circular argument in support of the FCC's position.<sup>14</sup>

Sprint recommends that the Commission adopt the Joint Board's recommendation regarding the development of a national rate benchmark. However, the Commission should then develop and adopt a specific range, above and below the national rate benchmark, which becomes the safe harbor. If a state's high-cost rates fall within the range, the state can certify that its rates are reasonably comparable without being required to produce additional rate information or justification. A safe harbor with a limited range between the rate ceiling and rate floor will provide the precision needed to satisfy the definition of reasonably comparable that the 10<sup>th</sup> Circuit previously found missing.

In Sprint's experience, many high-cost areas have substantially lower local rates than more densely populated lower-cost areas. Sprint acknowledges that this fact means that Sprint's recommendation may require some rates in high-cost areas to be increased. This should not be construed that the FCC is attempting to set local rates. To the contrary, each state would remain free to set local rates at whatever level it deems to be appropriate. Sprint's recommendation simply addresses how the FCC implements a

specific statutory directive to provide federal high-cost support in order to achieve reasonably comparable rates throughout each state and the nation.

The fact that many high-cost areas have lower than average rates has not been addressed by the Joint Board. This issue must be addressed. Low average-rate, high-cost areas are antithetical to cost-based pricing and are inconsistent with the fact that competition drives prices toward costs. In short, low-average rate, high-cost areas are economically inefficient and negate the efficiency effects of competition.

Sprint is aware that lower rates in high-cost areas, which are often sparsely populated areas, are often based on uneconomic value-of-service pricing theories -- that end-users in less populated areas have a smaller local calling scope than end-users in more densely populated areas and therefore their local service is of lesser value and should be priced lower. As Sprint points out below, such a pricing theory cannot withstand the test of reasonableness because it leads to the inevitable conclusion that calling scopes throughout the country must be measured by the most densely populated local calling area. There is nothing in the Act to suggest that federal high-cost support should fund such a pricing scheme.

**III. THE FCC SHOULD BE CAUTIOUS IN PROVIDING STATES THE OPPORTUNITY TO DEMONSTRATE THAT FURTHER FEDERAL ACTION IS NEEDED BECAUSE COMBINED FEDERAL SUPPORT AND STATE ACTION IS INSUFFICIENT TO YIELD REASONABLY COMPARABLE RATES.**

The Joint Board suggests two situations where further federal action may be necessary:

- c. Rates are below the benchmark, but are not reasonably comparable.  
A state may show that even though actual rates are within the safe

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<sup>14</sup> *Id.*, at p. 1201.

harbor, the price paid for service received results in rates and services that are not reasonably comparable. ....

- d. Rates are above the benchmark and are not reasonably comparable.

....<sup>15</sup>

Undoubtedly the Joint Board is attempting, through this proposal, to address the 10<sup>th</sup>

Circuit's concern that:

Nevertheless, the FCC may not simply assume that the states will act on their own to preserve and advance universal service. It remains obligated to create some inducement – a “carrot” or a “stick”, for example, or simply a binding cooperative agreement with the states to assist in implementing the goals of universal service.<sup>16</sup>

Unfortunately, rather than producing a “carrot” or a “stick” the Joint Board's proposal more likely leads to a federal “backstop” or guarantee of reasonably comparable rates; which the 10<sup>th</sup> Circuit specifically rejected:

We recognize that the FCC may not be able to implement universal service by itself, since it lacks jurisdiction over intrastate service. ... Thus it is appropriate – even necessary – for the FCC to rely on state action in this area. We therefore reject Qwest's argument that the FCC alone must support the full costs of universal service.<sup>17</sup>

Additionally, Sprint is concerned with the example put forth by the Joint Board of when additional federal support may be necessary – “For example, the state could show that the local calling area size is too small to be considered comparable service...”<sup>18</sup> The problem is that such an argument suggests that everyone in the country should have an identical calling scope – an end user in a small town should have the same local calling scope as an end user in New York City. Clearly, nothing in the Act even remotely suggests that federal Universal Service high-cost funds should support such a scheme.

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<sup>15</sup> *Recommended Decision at para. 55.*

<sup>16</sup> *Qwest v. FCC at p. 1204.*

<sup>17</sup> *Id.*, at p. 1203.

<sup>18</sup> *Recommended Decision*, at para. 55.

Rather, federal USF support addresses the ability to place and receive local calls – calls within the end user’s local community of interest at rates that are reasonably comparable to rates throughout the state and the nation. It does not address the number of people to whom an end user can place a local call, nor should it.

Nevertheless, if the FCC adopts the Joint Board’s recommendation of additional federal support, it should utilize two related imperatives. First, it must ensure that the requesting state carries a heavy burden of demonstrating that it has taken all necessary steps to remedy the lack of reasonably comparable rates, including rate rebalancing. Second, the FCC must consider the size of the federal fund, which is already significant. Indeed, the Joint Board has already acknowledged that increasing the federal fund further may actually run counter to the principles underlying federal Universal Support:

Providing additional support merely to induce states to ensure rate comparability without determining that additional support is necessary may conflict with the principle that support should be only as large as necessary.<sup>19</sup>

#### **IV. CONCLUSION.**

Sprint supports most aspects of the Joint Board’s *Recommended Decision*. However, Sprint believes the Joint Board’s recommended definition of “reasonably comparable rates” must establish both a rate ceiling and floor in order to meet the 10<sup>th</sup> Circuit’s requirement for precise definitions. Additionally, Sprint believes the FCC should be extremely cautious in adopting the Joint Board’s recommendation for additional federal support when a state cannot certify reasonably comparable rates. The FCC must ensure that the requesting state has demonstrated that it taken all steps possible

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<sup>19</sup> *Id.*, at para. 42.

to achieve reasonably comparable rates before granting additional support, in order to  
keep the federal fund from growing beyond necessary levels.

Respectfully submitted,

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December 20, 2002