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

In the Matter of	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
Number Resource Optimization	)	CC Docket No. 99-200
Telephone Number Portability	)	CC Docket No. 95-116
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF SPRINT ON PETITIONS FOR RECONSIDERATION

Sprint Corporation, on behalf of its incumbent LEC, competitive LEC/long distance and wireless divisions, hereby comments on certain of the petitions for reconsideration filed in response to the Commission's December 13, 2002 Order in the above-captioned dockets (FCC 02-329).

I. CUSTOMER CLASS AVGERING BY LOCAL EXCHANGE CARRIERS SHOULD BE PERMITTED

Sprint supports the petitions of USTA (at 12-13) and SBC Communications (at 4-9) asking permission to continue to average the USF obligations of customer classes (e.g., business and residential) for recovery purposes rather than having to resort, for what is only an interim system, to the complex billing changes that will be required to calculate each customer's individual USF obligation. As SBC points out (at 4) there are a variety of charges that can be incurred by some, but not all customers, that are subject to federal universal service contributions – not just the interstate subscriber line charge but other charges such as local number portability surcharge, the PIC change charge and others. The Commission's January 30, 2003, Order and Order on Reconsideration (FCC 03-20), clarified that CMRS carriers may engage in averaging their customers' USF obligations, and there is no reason why similar relief should not be granted to wireline local exchange carriers as well.

Such cost averaging should encompass all USF-subject services that the customers purchase, including DSL-based Internet access service. Although Sprint is unaware of any orders in this docket that have ever lawfully made such services subject to USF contributions, there are dicta in the *Broadband NPRM* that revenues from such services are part of the USF contribution base.[1] Out of an abundance of caution, the Sprint ILECs are including revenues from their DSL-based Internet access service as part of their USF contribution base. However, Sprint submits that it is utterly unjustifiable for the Commission to regard such services as subject to USF contributions while at the same

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[1] *Appropriate Framework For Broadband Access To the Internet Over Wireline Facilities,* 17 FCC Rcd 3019, 3053 (2002). See, also, Sprint's April 22, 2002 Comments in CC Docket Nos. 96-45 et al., n.5 at 10-11, with respect to this issue.

time relieving identical services provided through cable modems from USF contributions. As Commissioner Abernathy pointed out in her separate statement to the December 13 Order, this "creates an obvious competitive distortion." If ILECs have to recover USF costs separately from subscribers that elect DSL-based Internet access services, they will have to add in the neighborhood of $3-4 to the monthly bills of such subscribers, giving the identical services offered by cable providers a decided price or (should the ILEC choose to "eat" such costs) cost advantage for no logical reason whatsoever. The issue of the eligibility of revenues from either form of Internet access service is pending in the *Broadband NPRM*, and is currently slated for Commission decision sometime late in this quarter or in the second quarter of this year.[2] Sprint expects that whatever decision the Commission reaches in that proceeding will apply uniformly to all Internet access services, regardless of the technology used, and, one way or the other, will thereby eliminate this unjustifiable competitive disparity that is a creature of the Commission's own (and we submit unlawful) making. Allowing the averaging of DSL-based Internet access USF expense with other USF costs of each customer class (i.e., business and residential) would impact the Sprint ILECs' monthly recovery charges by roughly only a dime, would avert a substantial and unjust competitive disparity that would otherwise exist, and would avoid the expensive and time-consuming billing system changes otherwise required.

[2] See, COMPETITION/BROADBAND POLICY SCHEDULE appended to the written statement of Chairman Powell in his January 14, 2003 testimony before the Senate Commerce Committee.

II. PRICE-CAP LEC COST RECOVERY

Paragraph 54 of the December 13 Order prohibits carriers from marking up their USF recovery charges to account for administrative costs associated with the federal universal service program. Paragraph 55 states that carriers which are not rate-regulated can recover such costs either through their service rates or through other line items and that rate-of-return ILECs can include administrative costs in their end user revenue requirements, but as for carriers subject to price-cap regulation, the order simply opines that it does not anticipate that such costs will be "extraordinary." USTA (at 5-8) observes that implementing a separate line item for administrative costs would risk customer annoyance and argues that the Commission has therefore put price-cap ILECs in a position of being unable to recover their administrative costs unless they can justify exogenous cost treatment, which, USTA argues, the Commission appears to have negatively prejudged in opining that the costs involved are not "extraordinary." Thus, USTA contends, the Commission has singled out price-cap LECs when it comes to permitting recovery of administrative expenses. As a remedy, USTA urges that the Commission allow all carriers to mark up their USF surcharges to include administrative costs that are capped at a Commission-prescribed level.

Sprint believes that USTA is correct in pointing out that price cap LECs are faced with a heavier burden of recovering administrative costs through their rates than other carriers. However, the most significant incremental administrative costs imposed by the order in question are those needed to base each customer's contribution on that customer's interstate service charges (USTA's Petition at 5). If the Commission grants the customer class averaging relief discussed in the preceding section, these costly changes in billing systems would be avoided with respect to the new interim revenue-based methodology, and the cost recovery issue raised by USTA would largely become moot. In the event that the Commission does not grant such relief, however, either it should allow exogenous treatment of these administrative costs, which are, after all, government imposed costs over which the carrier has no control, or it should set a modest, uniform administrative cost allowance to be included within the carrier's line item charges.

III. ROUNDING OF THE LINE ITEM OR CONTRIBUTION FACTOR

AT&T (at 5-7) correctly points out that since the December13 Order prevents carriers from marking up the contribution factor in their line item charges, carriers whose billing systems cannot accommodate a factor of three digits beyond the decimal point will be forced always to round down the Commission's six decimal point contribution factor and therefore will systematically under-recover their USF obligations from their line item charge. AT&T purposes either that carriers be allowed to round up the contribution factor to three decimals (and using the annual true-up to recover any resulting over-recovery) or that the contribution factor itself should not be carried out beyond the third decimal point.

Of the two alternatives proposed by AT&T, Sprint supports the latter – setting the contribution factor in no more than three decimal places. Allowing carriers to round up a six-digit factor and then using the annual true-up process to recover the slight over-recovery that would result would itself impose a penalty (albeit a minor one) on carriers, since the over-recovery would be recouped based on the highest two contribution factors during the year rather than the average contribution factor over the entire year. It would be much simpler to round the contribution factor to begin with.

IV. GOVERNMENT OBLIGATIONS TO PAY USF RECOVERY CHARGES

Nextel (at 21) points out that some state and local government customers refuse to pay USF recovery charges and suggests an explicit exemption for state and local governments from carriers contribution obligations in order to avoid the problematic process of attempting to renegotiate contracts or the cost recovery shortfalls that carriers would otherwise incur. Sprint has also experienced refusals by certain government agencies – Federal as well as state and local – to pay their share of universal service costs and believes that this problem is sufficiently widespread that explicit Commission action is necessary. As the Commission is aware, many state and local entities are exempt from Federal taxes. Numerous state and local entities have argued that the universal service recovery charge is a "tax" from which they are exempt by law. At the same time, some Federal agencies argue that USF is NOT a "tax" and therefore not payable under Federal Acquisition Regulation (FAR) provisions that render the Government liable for "after imposed taxes." Sprint believes both arguments are wholly without merit. State and local governments are not exempt from payment of USF charges as the assessment is on the carriers rather than the governmental entity. In addition, the Federal Government must pay USF charges as they are the type of charges recognized by the FARs as compensable under a government contract.

This patchwork quilt of inconsistent positions calls for direct intervention by the Commission. Rather than merely pointing out that carriers "may be permitted to renegotiate" contracts, as the Commission did in ¶59 of the order, it should make quite clear that all customers have an obligation to pay the USF line item charges. Failing such action, the next best solution is Nextel's proposal to allow carriers to exclude revenues from governmental entities from their contribution base. That is clearly a less desirable solution, however, since it would increase the USF burden borne by all other consumers.

V. FORECASTING AND REPORTING ISSUES

Sprint supports WorldCom's petition for reconsideration, in which it argues that the Commission should not use first quarter 2003 projected revenues for purposes of the 2003 true-up, since the USF contributions for that quarter are governed by the previous regime and yet carriers could stand to be penalized for misprojecting their revenues. Sprint agrees with WorldCom that the appropriate true-up for 2003 would be to compare the contributors' projected revenues only for the second, third and fourth quarters to the carriers' actual revenues for those quarters.

Sprint also supports the views of Verizon Wireless (at 13-14) on a related universal service reporting requirement. Specifically, in its Order, the Commission requires CMRS providers to utilize the new 28.5% safe harbor or a company-specific proxy to report interstate revenues for the fourth quarter of 2002. Accordingly, on February 3, 2003, CMRS providers were to submit the FCC Form 499-Q (4Q-2002) with an entirely new interstate revenue calculation. As Verizon correctly notes, however, the effective date of the Order was February 1, 2003. Sprint agrees that "there is no legal basis for the Commission to increase the wireless safe harbor retroactively . . . for the determination of any 2002 wireless interstate revenues, and correspondingly, wireless carrier obligations under the USF, LNP or TRS programs." (Verizon Wireless at 14). In any event, the Commission should clarify that wireless carriers will not be required to pay increased regulatory assessments for any portion of 2002 based upon changes in the rules which took effect on February 1, 2003.

NECA, noting the difficulties of accurately forecasting revenues and the fact that the annual true-up process requires additional payments, if any, to be based on the two highest contribution factors for the year while overpayments are refunded based on the lowest two contribution factors, proposes instead that there be a quarterly true-up mechanism in which a contributor's quarterly revenue projections are compared with the corresponding quarter's actual revenue, with any difference assessed for refund or additional contribution based on the contribution factor in affect for that quarter. Sprint does not oppose NECA's requested relief and does share NECA's concern about the inherent difficulty of forecasting. In this regard, it should be emphasized that one forecasting factor that is clearly beyond any carrier's control is that the forecasted revenues must include the revenues from the USF recovery charge, which in turn requires the carriers to estimate a future quarter's USF contribution factor. The USF contribution factor, given the turmoil in the industry and possible changes to the contribution base, could vary by a significant amount from one quarter to the next. It is particularly unfair to penalize carriers whose forecasts prove to be incorrect for their inability to crystal ball the USF contribution factor. The fairest course of action in this regard would be to exclude revenues related to USF recovery from the required forecasts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT ON PETITIONS ROR RECONSIDERATION** was sent by e-mail or by United States first-class mail, postage prepaid, on this the 27th day of February, 2003 to the parties on the attached page.

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