

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**COMMENTS
OF
SPRINT CORPORATION**

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COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby respectfully submits its comments on the definition of services supported by universal service, in response to the Notice of Proposed Rulemaking (FCC 03-13) released on February 25, 2003 in the above-captioned proceeding. Sprint recommends that the list of supported services remain unchanged, and, in particular, that equal access not be added to the list.

I. INTRODUCTION AND SUMMARY.

In its *Recommended Decision*,¹ the Joint Board recommended that the Commission retain the existing list of services supported by universal service (single-party service; voice grade access to the public switched network; DTMF signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation services for qualifying low-income consumers). The Joint Board was, however, unable to reach agreement on whether equal access satisfies the statutory criteria and should be recommended for inclusion. Therefore, it included two opposite positions (one in favor

¹ *Federal-State Joint Board on Universal Service, Recommended Decision* released July 10, 2002 (FCC 02J-1).

of adding equal access to the list of supported services, one against) for the Commission's consideration.

As discussed below, Sprint agrees that the existing list of services receiving universal service should be retained. As the Joint Board stated (*Recommended Decision*, para. 7), these services should continue to receive universal service support because they are "necessary to ensure that all consumers have access to the fundamental telecommunications services that are necessary to utilize and enjoy the public telecommunications network." Sprint further recommends that neither equal access nor any other service be added to the list; the combined universal service funds already exceed \$6.1 billion a year² -- 9.1% of contributory revenues³ -- and any additions to the list of services supported by universal service funds will only increase the fund beyond a sustainable level. Moreover, adding equal access to the list is violative of Section 332(c)(8) of the Act; even if it were not, it would place an undue burden on one segment of the industry (wireless service providers); and does not foster universal service goals.

² Annualized figure based on Q2 2003 funding requirements. USAC estimates that funding needs for the four federal universal service funds (Schools and Libraries, Rural Health Care, High-Cost, and Low Income) for the second quarter of 2003 will be \$1.534 billion. See "*Proposed Second Quarter 2003 Universal Service Contribution Factor*," released March 7, 2003 (DA 03-689).

³ See *Revised Second Quarter 2003 Universal Service Contribution Factor*, released March 21, 2003 (DA 03-851).

II. THE LIST OF SERVICES CURRENTLY SUPPORTED BY UNIVERSAL SERVICE SHOULD NOT BE CHANGED.

Sprint recommends that the existing list of services currently supported by federal universal service should remain the same, neither expanded nor reduced. In particular, the Commission should refrain from adding equal access to the list of supported services.

A. Currently Supported Services Should Continue to Receive USF Support.

Sprint agrees with the Joint Board that all supported services, in their current form, should continue to receive federal universal service support.⁴ As the Commission found in 1997 and as the Joint Board again concluded in 2002, these core telecommunications services all are, as required under Section 254(b), essential to education, public health, or public safety; subscribed to by a substantial majority of residential customers; deployed in public telecommunications networks by telecommunications carriers; and consistent with the public interest, convenience and necessity. Elimination from the list of any of the currently supported services could jeopardize the goal of ensuring that access to core telecommunications services remains “just, reasonable and affordable.”

There is widespread agreement among regulators, service providers, and service subscribers that the existing supported services are critical telecommunications services, and for this reason, Sprint believes that carriers would be extremely reluctant to curtail access to these services even if any of those services were dropped from the list and even if universal support for those services were no longer forthcoming. On the other hand, given the sluggishness in the overall economy and problematic financial conditions in the

⁴ *Recommended Decision*, para. 1. Thus, Sprint also supports the Joint Board’s recommendation (*id.*, para. 22) that the existing definition of voice grade access be retained.

telecommunications industry, many carriers -- especially high-cost carriers -- are likely to find it difficult to absorb a drop in universal service support. Thus, carriers facing a decline in USF support may have little choice other than to increase their rates, by rebalancing local rates to the extent possible (a necessary and economically rational step in any event, but one which state public utility commissions have traditionally been very reluctant to allow), and by increasing access and other non-basic local service rates, even if such action has the effect of pushing those rates farther from the economic cost of providing the service. To avoid a curtailment in access to core telecommunications services and an increased reliance on implicit subsidies, Sprint recommends that services currently on the list of supported services continue to receive universal service support.

B. Equal Access Should Not Be Added to the List of Supported Services.

Sprint recommends that equal access not be added to the list of supported services for several reasons: its application as to wireless carrier conflicts with Section 332(c)(8) of the 1996 Act; it imposes an undue burden on wireless carriers and therefore is not competitively neutral; it is likely to be extremely costly, with no offsetting benefits to consumers; and it does not foster universal service goals. Each of these is discussed briefly below.

Section 332(c)(8): Section 332(c)(8) specifies that a “person engaged in the provision of commercial mobile services...shall not be required to provide equal access to common carriers for the provision of telephone toll services.” As the Joint Board members opposing inclusion of equal access in the list of supported services explained, “inclusion of equal access in the definition of supported services would be inconsistent with the

legislative intent underlying section 332(c)(8).”⁵ Requiring CMRS providers seeking to obtain or retain ETC (eligible telecommunications carrier) status to offer equal access capability as a condition for receiving federal universal service funds is merely a back-door imposition of an equal access requirement on CMRS providers. As the Commission concluded in 1997 when it initially decided to exclude equal access from the list of supported services, requiring CMRS providers to provide equal access in order to receive universal service support “would be contrary to the mandate of section 332(c)(8),” and “would undercut local competition and reduce consumer choice.”⁶ Nothing has changed since the Commission made its initial finding, and, based on its previous reasoning, the Commission should again exclude equal access from the list of supported services.

Competitive neutrality: Wireline carriers already had converted virtually all (99.4%) of their presubscribed lines to equal access by the end of 1996,⁷ and most ILECs recovered almost all (if not all) of their equal access deployment costs a decade ago. Thus, adding equal access to the list of required USF services would, for all intents and purposes, impose a burden exclusively on wireless service providers. Because such an outcome is clearly contrary to the principle of competitive neutrality, the Commission should refrain from adding equal access to the list of supported services.

⁵ *Recommended Decision*, para. 70; see also, separate statement of FCC Commissioner Kathleen Abernathy, pp. 37-38 of the *Recommended Decision*.

⁶ *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8819-8820 (paras. 78-79) (1997) (“1997 USF Order”).

⁷ *Distribution of Equal Access Lines and Presubscribed Lines*, released November 1997 by Industry Analysis Division, Common Carrier Bureau, Table 1.

Competitive neutrality is one of the bedrock principles “upon which we [the Commission] base policies for the preservation and advancement of universal service.”⁸ The Commission explained that competitive neutrality “means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another” (*id.*, para. 47). Because a particular industry segment -- CMRS providers -- is unduly disfavored by imposition of an equal access requirement, the Commission must reject any recommendation to include equal access on the list of supported services.

Cost: The federal universal service fund, currently over \$6 billion per year and 9.1% of contributory revenues, is already perilously close to the maximum sustainable level. Contributory revenues declined 10.5% between the second quarters of 2002 - 2003,⁹ and further declines are very likely.¹⁰ At the same time, future program funding requirements will surely increase, given plans to carry forward unused E-rate funds into subsequent funding years,¹¹ continued growth in the number of ETCs receiving high-cost support,

⁸ 1997 USF Order at 8801 (para. 46).

⁹ See Proposed Second Quarter 2003 Universal Service Contribution Factor, Public Notice released March 7, 2003 (adjusted revenues = \$17.037 billion), and Proposed Second Quarter 2002 Universal Service Contribution Factor, Public Notice released March 8, 2002 (\$19.027 billion).

¹⁰ This is due to many factors, including the increasingly aggressive actions of carriers claiming that their voice traffic converted into and out of Internet protocol is not telecommunications traffic, and therefore is exempt from USF contributions (and access charges); continuing severe price competition in the long distance market, which has depressed long distance revenues; and increasing use of telecommunications substitutes (*e.g.*, e-mail) that is not subject to USF contributions.

¹¹ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *First Report and Order* released June 13, 2002 (FCC 02-175), para. 5. Thus, all of the \$2.25 billion in annual E-rate funds will be used by program beneficiaries.

and efforts to stimulate demand for low income¹² and rural health care universal service support.¹³ Thus, the burden on the remaining base of contributory services is already increasing, even without any increase in fund size which would result from adding to the list of supported services. Indeed, concern over the increase in the USF contribution factor led the Commission to apply approximately \$750 million in unused funds from the School and Library program to reduce total USF funding requirements for the third and fourth quarters of 2002 and the first quarter of 2003.¹⁴ Increasing the overall USF burden by adding new services to the list could well be the straw that breaks the camel's back.

As an initial matter, Sprint would note that USF support to ILECs (which is portable to CMRS providers who have ETC status) contains little, if any, equal access costs. The RBOCs recovered the bulk of their equal access deployment costs from a separate switched access rate element (the equal access recovery charge), which had an 8-year cost amortization period which expired in 1993,¹⁵ and smaller ILECs were allowed to expense (rather than amortize) their equal access costs in the period in which they were incurred.¹⁶ Thus, CMRS providers with ETC status do not receive USF support which includes a capability (equal access) which they do not provide, and under current rules, would not have a mechanism for recovering the potentially huge costs associated with implementation of equal access. Wireless carriers presumably would seek to have their

¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision* released April 2, 2003 (FCC 03J-2).

¹³ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Notice of Proposed Rulemaking* released April 19, 2002 (FCC 02-122).

¹⁴ *School and Libraries First Report and Order*, para. 3.

¹⁵ *Petitions for Recovery of Equal Access and Network Reconfiguration Costs*, 1 FCC Rcd 434 (1986).

¹⁶ *NECA Petition for Waiver of Sections 36.191(a) and 36.421(a) of the Commission's Rules*, 3 FCC Rcd 6042 (1988).

equal access costs added to the pool of supported costs, which will inevitably increase overall funding requirements. The alternative -- disallowing such costs -- would place CMRS providers at a severe financial disadvantage vis-à-vis wireline carriers who were allowed to recover their equal access deployment costs from ratepayers under the former cost-of-service, rate-of-return regulatory regime.

Given wireless carriers' existing debt burdens, their other pressing capital requirements, and tight financial markets, it is not at all clear that deployment of equal access makes business sense even if USF support for wireless equal access costs were available. If CMRS providers are required to provide equal access as a precondition for obtaining or retaining ETC status, they may well "choose not to provide services competitive with local exchange service in rural and high-cost areas" – an outcome which is obviously contrary to the public interest (*Recommended Decision*, para. 71).

Carriers who are required to contribute to the universal service fund pass those charges through to their customers.¹⁷ Thus, any increase in the USF burden is ultimately borne by consumers. If the federal USF is to be sustainable, the Commission must act decisively to limit the growth in the fund and to prevent the addition of unnecessary costs.

USF goals: Joint Board members advocating the addition of equal access to the list of supported services argue that such action will enhance consumer choice and competition in the interexchange market (*Recommended Decision*, para. 77), and will level the playing field among all ETCs (para. 82). While these goals may be laudable, they are not

¹⁷ CMRS carriers are already facing a significant increase in their USF contributions because of the increase in the interim "safe harbor" for wireless carriers from 15% to 28.5% (cite Dec. 2002 order).

the goals which the universal service program was designed to foster, and therefore they should not be cited as justification for expenditure of universal service fund dollars.

As noted in the *Recommended Decision* (para. 81, citing FCC Industry Analysis Division studies), growth in the number of wireless subscribers has been “phenomenal.” There are six major national wireless service providers, and numerous regional wireless carriers, and competition among these carriers as well as between these wireless carriers and wireline service providers is fierce, as demonstrated by the dizzying array of service offerings, features and functions, pricing plans, and promotional offers. Consumers who are dissatisfied with the long distance service available in conjunction with a particular wireless service are free to select another wireless carrier, or can always place their long distance calls using their preferred IXC from their wireline telephone. The fact that so many millions of consumers have obtained wireless service (and are apparently using their wireless telephones for an increasing percentage of their overall calling needs) may reasonably be interpreted as a sign that the market is satisfied (or at least not dissatisfied) with the long distance portion of their wireless service. Since there is no apparent unmet demand for equal access when using a wireless telephone, and thus no market failure which needs to be addressed through regulatory intervention, it makes little sense to make equal access a required supported service.

In fact, imposing an equal access requirement on CMRS providers would harm, not help, wireless customers. Most wireless customers today subscribe to “one-rate” plans, where the rate is the same whether the customer is calling across the street or across the country. If wireless carriers were required to provide equal access, customers would begin to pay two charges – airtime plus the IXC’s charges – where today they pay

only one charge (airtime). The public interest is hardly served by a regulatory requirement that would result in customers paying more for the same services they receive today.

Furthermore, the mobile exchange under “one rate” plans is the entire United States; there is no separate toll service which requires “a separate charge not included in contracts with subscribers for exchange service.”¹⁸ Thus, if the Commission were to impose an equal access requirement on wireless carriers, it would have to get into the business of defining the size and scope of a wireless exchange, so carriers and customers would know which calls are “local” and which are “toll.” Such efforts involve real costs in terms of dollars expended (regulatory compliance, billing system modifications, jurisdictional tracking, etc.) and greater customer confusion.

The interexchange market is already fully and effectively competitive, and the Commission has recognized as much by its decisions to refrain from regulating IXCs.¹⁹ Conditions today are far different than they were in 1984 when the ILECs were required to deploy equal access capability: now there are almost 1100 toll service providers,²⁰ many of which are facilities-based service providers; no carrier has market power in the interexchange market; there is a multitude of calling plans, some offering rates of only pennies per minute; and indeed, use of dial-around, non-1+ long distance calling (101XXXX) and prepaid cards is widespread and increasingly popular. Requiring

¹⁸ 47 U.S.C. Section 153(48).

¹⁹ For example, IXCs have not filed general 1+ tariffs or rate schedules with the FCC for several years now.

²⁰ See *Telecommunications Provider Locator, Table 1, “Telecommunications Providers Filing FCC Form 499-A by Type of Filer,”* released February 2003 by Industry Analysis and Technology Division, Wireline Competition Bureau.

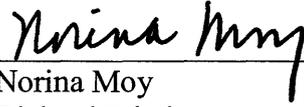
wireless carriers to deploy equal access simply will *not* make the interexchange market more competitive than it already is.

The argument that adding equal access to the list of supported services is necessary to level the playing field among ETCs also is incorrect. All service providers currently do have equal obligations in terms of what is required to gain ETC status – they all must provide all of the 8 services currently on the list of supported services, and none is required to deploy equal access as a precondition for obtaining ETC status. ILECs' mandatory provision of equal access is an obligation that was imposed upon them some 19 years ago for reasons unrelated to promoting universal service and the imposition of that obligation is simply not relevant to the USF debate. As the Commission stated in the *1997 USF Order* (12 FCC Rcd 8820, para. 79), “statutory and policy considerations preclude us from imposing ‘symmetrical’ service obligations on all eligible carriers, including the obligation to provide equal access to interexchange service, as a condition of eligibility under section 214(e).”

Sprint agrees that the principles expressed by Joint Board members here -- enhanced consumer choice, fostering interexchange competition, level playing fields -- are valid goals that should be pursued, and in fact have been pursued (appropriately so) in other proceedings aimed at promoting competition in local and long distance markets. However, none of these goals is central to the universal service program, and none of these goals constitutes sufficient justification for adding equal access to the list of supported services. When combined with the statutory, competitive, and financial concerns discussed above, there is no basis for adding equal access to the list.

Respectfully submitted,

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April 14, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Corporation in CC Docket No. 96-45 was delivered by electronic mail or U.S. First Class Mail, postage prepaid, on this 14th day of April 2003 to the parties listed below.


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