



November 6, 2003

Marlene H. Dortch,
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, **Comments on ETC applications**: Sprint Corporation (Virginia) (filed August 29, 2003); Sprint Corporation (New York) (filed September 2, 2003); Sprint Corporation (Alabama) (filed September 5, 2003); Sprint Corporation (Georgia) (filed September 8, 2003)*

Dear Ms. Dortch:

The National Association of State Utility Consumer Advocates (“NASUCA”¹), submits these comments concerning the above-cited applications for eligible telecommunications carrier (“ETC”) status pursuant to 47 U.S.C. 214(e). These applications, all filed by Sprint Corporation (“Sprint”), seek ETC status for portions of Sprint service areas served by non-rural incumbent local exchange carriers.² As previously stated to the Commission, NASUCA’s perspective is as a representative of the consumers who are intended to benefit from the universal service programs of the 1996 Act, but who also pay for those

¹ NASUCA is an association of 44 consumer advocates in 42 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See. e.g., Ohio Rev. Code Chapter 4911.

² In Virginia, Verizon South, Incorporated -- VA (Contel) and Verizon Virginia, Incorporated; in New York, Verizon New York, Incorporated and Frontier Telephone of Rochester, Incorporated; in Alabama, BellSouth Telecommunications, Incorporated, CenturyTel of Alabama, LLC (Northern), and CenturyTel of Alabama, LLC (Southern); and in Georgia, BellSouth Telecommunications, Incorporated.

programs. In reviewing these applications and others,³ the Commission should consider the following:

First, the Federal-State Joint Board on Universal Service (“Joint Board”) is currently examining ETC issues referred by the Federal Communications Commission (“Commission”).⁴ Many of the comments filed -- including those from NASUCA⁵ -- propose substantial changes to the Commission’s rules that govern the ETC designation process. Given the pendency of this review, it should be clear that if one or more of these pending applications is granted, in granting the application the Commission should explicitly state that the continuing eligibility of the applicant is contingent on any future changes to the rules, and that those rules will be binding on these applicants. No applicant -- particularly a relatively new ETC designee -- should be able to claim any estoppel or other variation of entitlement to the universal service support allowed ETCs under any current rule(s) subsequently superceded.

On a more substantive level, the Commission must note that the public interest is a key Congressionally-mandated factor in the designation of any ETC, and that the mere promotion of competition is not sufficient to meet the public interest test required by 47 U.S.C. 214(e).⁶ The public interest test should include a number of factors such as those outlined in previous NASUCA comments:

- As a minimum, a CETC should be required to offer a calling plan that provides unlimited local calling, equal access to IXCs, and a monthly price comparable to that charged by the ILEC.
- As a minimum, CETCs should be required to submit to the consumer protection rules, including disclosure, notice, billing and collection rules, that apply to ILECs.

³ The Commission reviews applications for ETC status where, as here, state commissions lack or have declined jurisdiction to make the required findings under 47 U.S.C. 214(e). See, e.g., Sprint Petition for Virginia (August 29, 2003) at 3-4.

⁴ See Public Notice, FCC 03J-1 (rel. February 7, 2003).

⁵ NASUCA Comments (May 4, 2003).

⁶ Some parties have argued that the mere promotion of competition is sufficient to meet the public interest test. If that were true, there would have been no need for Congress to have included the public interest test, for the designation of additional ETCs in a service territory inevitably increases competition. Yet Congress specifically required a separate public interest finding before the designation of an additional ETC in the territories of both rural and non-rural ILECs: “Upon request and consistent with the public interest, convenience and necessity, the ... commission may, in the case of an area served by a rural telephone company, and shall, for all other areas, designate more than one carrier as the eligible telecommunications carrier ...” 47 U.S.C. 214(e)(2). A finding of public interest based solely on competition reads the public interest test out of the statute. Likewise, a holding that designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest, also reads the test out of the statute. For ETCs in rural telephone companies’ service areas, there is an additional requirement that the commission explicitly find the designation to be in the public interest.

- CETCs should be required to provide data to demonstrate their need for high-cost support.
- CETCs should be required to be able to provide service to all customers within the designated service area within a reasonable time.
- All ETCs should provide equal access.⁷

NASUCA appreciates the Commission's consideration of these positions as it concludes its deliberation on these applications.

Sincerely,

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications
Committee
bergmann@occ.state.oh.us
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Tel: 614/466-8574
Fax: 614/466-9475

NASUCA
8300 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

⁷ Equal access meets the requirements of Section 254(c)(1) and does not contravene Section 332(c)(8) of the Act. Equal access provides a direct, tangible consumer benefit by placing the customer in charge of deciding which long distance plan is more appropriate for that customer. Equal access is even more important to rural customers who have fewer choices of carriers than urban customers.