

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
)	
Sprint Corporation)	
Petition For Designation as an)	
Eligible Telecommunications)	
Carrier In the State of New York)	

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA")¹ hereby submits its comments in the above captioned proceeding in support of the Petition for Eligible Telecommunications Carrier ("ETC") designation filed by Sprint Corporation, on behalf of its wireless division ("Sprint").²

INTRODUCTION

On September 2, 2003, Sprint filed a petition ("Sprint Petition") seeking ETC designation for portions of its licensed service area in New York, which includes service areas currently

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² *Wireline Competition Bureau Seeks Comment on Sprint Corporation's Petition for Designation as an Eligible Telecommunications Carrier in New York*, Public Notice, CC Docket No. 96-45, DA 03-2961 (rel. Sept. 26, 2003); *see also* Sprint Corporations' Petition for Designation as an Eligible Telecommunications Carrier in New York, 68 Fed. Reg. 61, 216 (Oct. 27, 2003) (setting Nov. 6, 2003, comment date). According to the Petition, Sprint's Wireless Division includes Sprint Spectrum, L.P., Wireless Co, L.P., Sprint Com, Inc., Sprint PCS License, L.L.C., APC PCS, LLC, PhillieCo, L.P., and other wholly-owned and controlled affiliates.

served by two non-rural local exchange carriers – Verizon New York, Incorporated and Frontier Telephone of Rochester, Incorporated, a subsidiary of Citizens Communications Co. Consistent with CTIA’s position in earlier comments, CTIA supports Sprint’s Petition, which demonstrates that Sprint meets the requirements for designation as an ETC. Section 214(e)(6) provides for ETC designation of carriers not subject to state commission jurisdiction. Specifically, Section 214(e)(6) states, in relevant part:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the 2 requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law.³

Furthermore, as a commercial mobile radio service (“CMRS”) provider that will offer a basic universal service package to subscribers who are eligible for Lifeline support, the FCC has the authority to grant ETC status to Sprint pursuant to 47 U.S.C. Sections 214(e)(3) and (e)(6).

DISCUSSION

A. Sprint’s Wireless Division Is Not Subject To the Jurisdiction of the New York Public Service Commission

Pursuant to Section 214(e)(6), the Commission shall designate as an ETC a common carrier providing telephone exchange service and exchange access service that is not subject to the jurisdiction of a State commission, so long as the carrier otherwise meets the Act’s requirements. The Commission has held that wireless carriers provide exchange access service: “[M]any CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide

³ 47 U.S.C. §214(e)(6). *See also Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947 (1997).

telephone exchange service and exchange access as defined by the 1996 Act.”⁴ The Commission has also stated that a carrier may demonstrate that it “is not subject to the jurisdiction of a state commission” by providing an “affirmative statement” from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation.⁵ The New York Department of Public Service (“NY DPS”) has previously issued an affirmative statement that the New York Public Service Commission lacks jurisdiction over ETC designations for CMRS carriers.⁶ Specifically, the NY DPS has stated that “a CMRS provider . . . would not be subject to the application of the [New York Public Service Law], and consequently the jurisdiction of the New York Public Service Commission, for the purposes of making the Eligible Telecommunications Carrier designation.”⁷

B. Sprint Offers All Of the Services Supported by Universal Service Support Mechanisms

Sprint addressed the nine services and functionalities identified in the Commission’s rules, 47 C.F.R. 54.101(a), that are the core services to be offered by an

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket 96-98, at ¶1012. *See also id.* at ¶1004 (“Congress recognized that some CMRS providers offer telephone exchange and exchange access services”).

⁵ *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12264 (2000).

⁶ *See* NPCR, Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, Attachment 2 (filed April 3, 2003) (attaching copy of letter from Elizabeth H. Liebschutz, Assistant Counsel, New York Department of Public Service, noting NY PSC’s lack of jurisdiction over CMRS carriers).

⁷ *Id.*

ETC and supported by federal universal service support mechanisms.⁸ Sprint's universal service offering will be provided in its requested service area in New York over its existing cellular network infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used to serve existing mobile cellular service subscribers.⁹ Sprint further states that it will advertise its new universal service offering to ensure that consumers within the designated service areas in New York are aware of the service.¹⁰ Accordingly, Sprint has satisfied the requirements of Sections 254 and 214(e)(1)(A) of the Communications Act of 1934 and Section 54.101(a) of the Commission's rules regarding ETC eligibility.

C. Designating Sprint as an ETC Will Advance The Public Interest

Because Sprint has requested ETC designation only in non-rural ILEC service areas, the Commission need not conduct a public interest analysis prior to designating Sprint as an ETC. To the contrary, the Commission has held that, “[f]or those areas served by non-rural telephone companies, . . . 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.”¹¹ Nonetheless, CTIA agrees with Sprint that a grant of Sprint's application will serve the public interest by bringing the benefits of competition to an underserved marketplace and bring new advanced telecommunications services to consumers in

⁸ See Sprint Petition at 4-8.

⁹ See *id.* at 8-9.

¹⁰ See *id.* at 9.

¹¹ *Federal-State Joint Board on Universal Service, Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order*, 16 FCC Rcd 39, 45 (2000).

New York.¹² Furthermore, designating Sprint as an ETC promotes the development of advanced communications and is consistent with the principal goals of the universal service program.

¹² *See id.* at 10-12.

CONCLUSION

For the foregoing reasons, the Commission should exercise its authority to grant ETC status to Sprint for its requested service territories in the State of New York.

Respectfully submitted,

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