

EXHIBIT B

**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
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Alabama)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Georgia)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
New York)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Pennsylvania)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Tennessee)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Virginia)	
)	

SPRINT REPLY COMMENTS

Luisa L. Lancetti
Vice President, Wireless Regulatory
Affairs
Roger C. Sherman
Senior Attorney
SPRINT CORPORATION
401 9th St., N.W., Suite 400
Washington, D.C. 20004
(202) 585-1924

David L. Sieradzki
HOGAN & HARTSON, LLP
555 – 13th St., N.W.
Washington, D.C. 20004
(202) 637-6462

Counsel for Sprint Corporation

November 20, 2003

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY	2
I. THE COMMISSION MUST ADDRESS SPRINT'S APPLICATIONS PURSUANT TO THE RULES CURRENTLY IN EFFECT	3
II. SPRINT'S APPLICATIONS FOR DESIGNATION IN NON-RURAL ILEC AREAS ARE CONSISTENT <i>PER SE</i> WITH THE PUBLIC INTEREST	6
III. THE CALLS ACCESS CHARGE REFORM PLAN IS CONSISTENT WITH THE DESIGNATION OF COMPETITIVE ETCs	11
IV. THE COMMISSION HAS JURISDICTION OVER SPRINT'S APPLICATIONS.....	16
CONCLUSION.....	18

**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
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Alabama)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Georgia)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
New York)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Pennsylvania)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Tennessee)	
)	
Application of Sprint Corporation for Designation as an)	
Eligible Telecommunications Carrier in the State of)	
Virginia)	
)	

SPRINT REPLY COMMENTS

Sprint Corporation (“Sprint”) submits these reply comments in support of its above-captioned applications for designation as an eligible telecommunications carrier (“ETC”). Sprint responds to the comments filed by the Cellular Telecommunications & Internet Association (“CTIA”), Georgia Telephone Association (“Georgia ILECs”), National Association of State Utility Consumer Advocates (“NASUCA”), New York State Telecommunications Association, Inc.

("New York ILECs"), Pennsylvania Public Utilities Commission ("Pennsylvania PUC"), and Verizon. ^{1/}

INTRODUCTION AND SUMMARY

The Commission is obligated to adjudicate Sprint's applications based on the existing rules in effect, and therefore should reject the suggestions of incumbent local exchange carriers ("ILECs") and other parties that Sprint's applications be held in abeyance pending the conclusion of the Joint Board *Portability* proceeding, ^{2/} or that they be denied due to proposed rule changes that parties have offered in that proceeding. Moreover, the public interest arguments raised by some parties are groundless and out of place in the context of these

^{1/} The FCC issued separate Public Notices seeking comment on each of the applications listed in the caption above. Comments on Sprint's Alabama, Georgia, New York, and Tennessee applications were due on Nov. 6, 2003, with replies due on Nov. 20. Comments on the Pennsylvania and Tennessee applications were due on Nov. 10, 2003, with replies due on Nov. 24. See Public Notice (Alabama), DA 03-2958, 18 FCC Rcd 18493 (WCB), 68 Fed. Reg. 61215 (Oct. 27, 2003); Public Notice (Georgia), DA 03-2962, 18 FCC Rcd 19505 (WCB), 68 Fed. Reg. 61216 (Oct. 27, 2003); Public Notice (New York), DA 03-2961, 18 FCC Rcd 19502 (WCB), 68 Fed. Reg. 61216 (Oct. 27, 2003); Public Notice (Virginia), DA 03-2963, 18 FCC Rcd 19508 (WCB), 68 Fed. Reg. 61214 (Oct. 27, 2003); Public Notice (Pennsylvania), DA 03-2960, 18 FCC Rcd 19499 (WCB), 68 Fed. Reg. 61809 (Oct. 30, 2003); Public Notice (Tennessee), DA 03-2959, 18 FCC Rcd 19496 (WCB), 68 Fed. Reg. 61809 (Oct. 27, 2003). NASUCA and Verizon filed comments on all six applications; CTIA filed comments on the Alabama, Georgia, New York, and Tennessee applications; and the Georgia and New York ILECs and the Pennsylvania PUC, respectively, filed comments addressing the Georgia, New York, and Pennsylvania applications. The parties raise similar, if not identical, arguments with respect to all six of these Sprint applications. Accordingly, in the interest of efficiency, Sprint submits this single reply comment filing with respect to all six applications.

^{2/} The *Portability* proceeding was initiated by the Commission's *Referral Order, Federal-State Joint Board on Universal Service*, Order, 17 FCC Rcd 22642 (2002), and by the Joint Board's Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, 18 FCC Rcd 1941 (Jt. Bd. 2003).

applications for designation only in areas served by *non-rural* ILECs. And contrary to Verizon's arguments, the Commission's access charge reform plan anticipated and is fully consistent with the designation of competitive ETCs. Finally, the Commission has jurisdiction, pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended ("Act"), to designate Sprint as an ETC. Accordingly, the Commission should grant these applications expeditiously.

**I. THE COMMISSION MUST ADDRESS SPRINT'S APPLICATIONS
PURSUANT TO THE RULES CURRENTLY IN EFFECT**

The Commission should reject suggestions that Sprint's applications be held in abeyance pending the resolution of the ETC eligibility and funding issues currently pending in the Joint Board's *Portability* proceeding. ^{3/} The Commission should also reject arguments that Sprint's applications be denied because certain parties dislike various aspects of the current universal service rules and have argued for changing those rules. ^{4/}

^{3/} Georgia ILECs Comments at 3 n.4; New York ILECs Comments at 2; NASUCA Comments (AL/GA/NY/VA) at 2; NASUCA Comments (PA/TN) at 2; Verizon Comments (AL) at 2; Verizon Comments (GA/NY/PA/VA) at 2.

^{4/} Georgia ILECs Comments at 2-4; NASUCA Comments (AL/GA/NY/VA) at 2-3; NASUCA Comments (PA/TN) at 2-3; Pennsylvania PUC Comments at 3-6; Verizon Comments (Attached Opposition to ALLTEL ETC Petition) at 8-10. For example, the Georgia ILECs and Verizon oppose the rule that all eligible carriers – ILECs and competitive ETCs alike – receive identical amounts of portable support. Georgia ILECs Comments at 2-3; Verizon Comments (Attached Opposition to ALLTEL ETC Petition) at 9-10. The New York ILECs express discomfort with Section 54.314 of the rules, which requires carriers not subject to the jurisdiction of state commissions to self-certify their compliance with the statutory requirement regarding the appropriate use of universal service support funds. New York ILECs Comments at 3-4. NASUCA argues for the imposition of criteria, found nowhere in the current rules, such as specific consumer protection requirements, filings to demonstrate need for high-cost support, specific time frames for provision of service within the designated service area, and equal

The Commission should adhere to its precedents and conclude, as it has in the past, that these broad objections to the existing rules have no place in adjudicatory proceedings concerning the merits of an individual carrier's ETC applications. ^{5/} In particular, the Commission must not permit parties to inject into these proceedings arguments for ETC criteria – such as NASUCA's proposal to require all ETCs to offer unlimited local calling – that the Commission has already fully considered and rejected. ^{6/} Nor should these proceedings be turned into a

access, none of which is included in the current rules. NASUCA Comments (AL/GA/NY/VA) at 2-3; NASUCA Comments (PA/TN) at 2-3. The Pennsylvania PUC also argues that wireless carriers be required to make cost showings as a pre-condition for ETC designation, although such a requirement exists nowhere in the rules. Pennsylvania PUC Comments at 6. *See also infra* Section III.

^{5/} *Federal-State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24393, 24406, ¶ 32 (Wireline Comp. Bur. 2002) (“*Cellular South ETC Order*”); *Federal-State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532, 23545, ¶ 32 (Wireline Comp. Bur. 2002) (“*RCC ETC Order*”).

^{6/} *Compare* NASUCA Comments (AL/GA/NY/VA) at 2; NASUCA Comments (PA/TN) at 2 *with* *Federal-State Joint Board on Universal Service, Order and Order on Reconsideration*, 18 FCC Rcd 15090, 15096-97, ¶¶ 14-15 (2003) (“*Definition of Universal Service Order*”) (agreeing with Joint Board recommendation to reject NASUCA's argument to impose unlimited local calling requirement as a mandatory ETC criterion). The Commission in 1997 correctly rejected the argument that the Pennsylvania PUC now attempts to resuscitate regarding the purported unfairness of competitive ETCs' offering of service packages that include vertical services. *Compare* Pennsylvania PUC Comments at 5 *with* *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8824, 8856-57, ¶¶ 86, 143 (1997) (“*Universal Service First Report and Order*”), *subsequent history omitted*. Moreover, the Pennsylvania PUC's argument that ETCs should deny effectively free vertical features to low-income consumers is puzzling, to say the least. One would think the PUC would recognize the benefits to consumers of bundled vertical features at no additional cost. Rather than arguing that wireless carriers should eliminate such features from their offerings, one would think the PUC would seek to encourage wireline carriers to migrate toward offering similar value propositions.

forum to consider proposed new criteria, such as rate regulation of wireless carriers' intrastate offerings, that would patently violate the Act. 7/

The only rules under which the Commission may lawfully operate today are those on the books today. The opposing parties leap to the unwarranted assumption that their anti-competitive arguments will prevail in the *Portability* proceeding, and on that basis ask the Commission to defer or reject Sprint's ETC applications. But potential rule changes will be addressed in the pending rulemaking proceeding and cannot lawfully be considered in individual ETC designation proceedings. On this basis, the Wireline Competition Bureau has correctly granted other ETC applications notwithstanding virtually identical objections: "We recognize that these parties raise important issues regarding high-cost support. We find, however, that these concerns are beyond the scope of this Order, which designates a particular carrier as an ETC." 8/

Moreover, as the Commission has recognized, "excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas," and therefore the Commission made a public commitment to resolve ETC applications within six months or less

7/ Section 332(c)(3) of the Act, 47 U.S.C. § 332(c)(3), specifically precludes NASUCA's proposal to institute retail rate regulation of the intrastate basic service offerings of a wireless carrier. NASUCA Comments (AL/GA/NY/VA) at 2 (proposing to require Sprint "to offer a calling plan that provides . . . a monthly price comparable to that charged by the ILEC"); NASUCA Comments (PA/TN) at 2 (same).

8/ *Cellular South ETC Order*, 17 FCC Rcd at 24406, ¶ 32; *RCC ETC Order*, 17 FCC Rcd at 23545, ¶ 32.

after they are filed. ^{9/} The Commission should abide by that commitment, and should expeditiously grant Sprint's applications.

II. SPRINT'S APPLICATIONS FOR DESIGNATION IN NON-RURAL ILEC AREAS ARE CONSISTENT *PER SE* WITH THE PUBLIC INTEREST

The Commission should reject efforts to inject a public interest analysis into these applications for ETC designation in *non-rural* ILEC areas. CTIA, citing FCC precedent, effectively refutes NASUCA's argument that the Commission should conduct a full-fledged "public interest" analysis even for applications such as these, which seek designation only in non-rural ILEC areas:

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." ^{10/}

^{9/} *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, 15 FCC Rcd 12208, 12255-56, ¶ 94 (2000). *See also id.* ("We therefore commit to resolve within six months of their filing at this Commission designation requests for services provided on non-tribal lands that are properly before us pursuant to section 214(e)(6).").

^{10/} *See, e.g.*, CTIA Comments (AL) at 4, citing *Federal-State Joint Board on Universal Service, Cellco Partnership d/b/a/ Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39, 45, ¶ 14 (Com. Car. Bur. 2000)). *Contra*, NASUCA Comments (AL/GA/NY/VA) at 2 n.6; NASUCA Comments (PA/TN) at 2 n.6.

Significantly, no party contends that Sprint fails to satisfy any of the ETC criteria included in the Act and the existing rules. 11/

NASUCA's proposal would render meaningless the special, additional public interest test that the statute applies to *rural* ILEC areas, for which regulators "*may*" designate an additional ETC if they "find that the designation is in the public interest." 12/ By contrast, with respect to applications such as these to serve *non-rural* ILEC areas, the statute requires that regulators "*shall*" designate carriers that meet the statutory criteria. 13/ Thus, even if NASUCA's proposed generic changes to the rules concerning the rural public interest test could be considered in the context of an individual carrier's ETC application – which they cannot – those proposals are completely irrelevant to these non-rural applications.

Several parties' arguments that the public interest disfavors Sprint's ETC applications are not only irrelevant, they are also plainly wrong. 14/ The Georgia ILECs contend that because Sprint is already providing service in the proposed service area, designating it as an ETC would not promote additional

11/ See, e.g., New York ILECs Comments at 3; CTIA Comments (AL) at 3-4; CTIA Comments (GA) at 3-4; CTIA Comments (NY) at 3-4; CTIA Comments (VA) at 3-4.

12/ 47 U.S.C. § 214(e)(2), (e)(6).

13/ *Id.* NASUCA refers to the introductory language in the same sentence referring to "consistent with the public interest, convenience, and necessity" – but that phrase does not require a special public interest analysis; rather, it is a mere term of art that applies to all requests for authority under Section 214 (and comparable state statutes). See, e.g., 47 U.S.C. § 214(a).

14/ Thus, even if a public interest test were to apply to these non-rural applications, Sprint has satisfied it, contrary to these parties' assertions.

deployment of wireless facilities and services or promote consumer access to additional competitive service offerings. ^{15/} The Georgia ILECs ignore the statutory requirement that Sprint use all support funds for the deployment, maintenance, and upgrading of facilities used to provide universal service. As Sprint receives funds and uses them to upgrade and expand its network, consumers will gain broader access to Sprint's universal service offerings. Similarly, there is no basis for the Pennsylvania PUC's contention that Sprint ought to be required to make "a showing that the company intends and is able to provide wireless telephone service to everyone throughout the proposed service territory identified in the map it attached to its Application," since Sprint has already made precisely such a showing. ^{16/} Accordingly, the Commission must disregard the Pennsylvania PUC's unfounded speculation that Sprint might, in violation of existing requirements, "offer service to only those customers in the higher densities that pay higher rates, and avoid serving customers in the more rural areas," or "selectively market to the most lucrative customers in Verizon's territory." ^{17/}

^{15/} Georgia ILECs Comments at 2.

^{16/} Pennsylvania PUC Comments at 3. Sprint has acknowledged its obligation, once it receives ETC designation, to "offer its service throughout the service territory it seeks" and has made a "showing of an ability to do so." *Id.* at 4; *see* Sprint Pennsylvania Application, Exhibit A (Lancetti Declaration), ¶¶ 4, 15-16.

^{17/} Pennsylvania PUC Comments at 3.

The Commission has already found that competition between wireless and wireline carriers is increasing, and beneficial to consumers. ^{18/} Thus, the New York ILECs' assertion that wireless services do not compete with ILECs' wireline services for ILEC offerings, is incorrect. ^{19/} Also plainly erroneous are the Pennsylvania PUC's assertions that Sprint and other wireless carriers do not contribute to Telecommunications Relay Service or E911 and that they "might not be required to be a universal provider in order to receive universal service support." ^{20/} Moreover, the Pennsylvania PUC's stated "concern[s] about the loss of revenue to businesses operating in Pennsylvania" ^{21/} and about the differential application of state gross receipts taxes to wireline and wireless carriers are irrelevant to these ETC applications. ^{22/}

^{18/} See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services*, Seventh Report, 17 FCC Rcd 12985, 13016-20 (slip op. at 32-36) (2002) (noting data on wireless substitution for, and increasing competition with, wireline offerings); Eighth Report, 18 FCC Rcd 14783, 14831-14834, ¶¶ 101-106 (2003) (same). See also *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, 17017, 17119-20, ¶¶ 53, 230 (2003) ("*Triennial Review Order*") (same); *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, FCC 03-284, ¶ 9 (released Nov. 10, 2003) ("[I]mplementation of wireless LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between wireless carriers as well as promote competition between wireless and wireline carriers.").

^{19/} New York ILECs Comments at 3.

^{20/} Pennsylvania PUC Comments at 5.

^{21/} *Id.* at 4. Presumably the PUC is referring to *regulated* businesses operating in Pennsylvania, since Sprint and other wireless carriers obviously are businesses operating in Pennsylvania.

^{22/} The Pennsylvania PUC complains that wireless carriers do not pay access charges. *Id.* The PUC is wrong; Sprint's wireless division pays millions of dollars per year in access charges

Finally, the Pennsylvania PUC expresses concern about the competitive shift of customers and revenues from ILECs to unregulated wireless carriers. ^{23/} This “concern” is totally out of place and improper in the context of ETC designation proceedings. As the courts have confirmed, any construction of the universal service rules that “would amount to protection from competition . . . would run contrary to one of the primary purposes of the Act.” ^{24/} The Act prohibits federal and state regulators from allowing speculative concerns about the implications of competitive entry to interfere with their duties under the Act, including those relating to ETC designation. ^{25/}

In sum, while there is no basis for conducting a public interest analysis in the context of these non-rural ETC applications, the applications are in the public interest *per se* under the Act, as FCC precedent confirms, and should be granted expeditiously.

for the termination of inter-MTA calls to wireline carriers' subscribers. Moreover, in many cases ILECs seek to impose access charges even in situations where the FCC's applicable rules provide that such charges do not apply. See *Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs*, filed by T-Mobile USA, Inc., Western Wireless Corp., Nextel Communications, and Nextel Partners, CC Docket Nos. 01-92, 95-185, and 96-98 (Sept. 6, 2002). But when Sprint (and other wireless carriers) act as *providers* of terminating access service, they are effectively precluded from receiving access charges – another unfair advantage possessed by the incumbents. See *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, 17 FCC Rcd 13192 (2002), *appeal pending*.

^{23/} Pennsylvania PUC Comments at 4.

^{24/} *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 623 (5th Cir. 2000) (“*Alenco*”).

^{25/} 47 U.S.C. § 253; *Alenco*, 201 F.3d at 622; *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 n.31 (5th Cir. 1999).

III. THE CALLS ACCESS CHARGE REFORM PLAN IS CONSISTENT WITH THE DESIGNATION OF COMPETITIVE ETCs

Verizon is wrong in contending that granting ETC designation to competitive wireless entrants such as Sprint would undermine the access charge reform plan established by the *CALLS Order*. ^{26/} Rather, the portability of universal service funds from incumbent local exchange carriers ("ILECs") to competitive ETCs is an integral part of that plan. Moreover, as noted above, the objections to the currently established rules raised by parties such as Verizon are completely irrelevant to an adjudicatory proceeding concerning an individual carrier's ETC application.

In the *CALLS Order*, the Commission fully anticipated the portability of Interstate Access Support funds from ILECs to competitive ETCs. Indeed, the Order specifically cited the consistency of funding portability with the emergence of competition as a key benefit of the plan. ^{27/} Moreover, Verizon itself endorsed the portability of this fund during the Commission's deliberations (to be precise, Verizon's predecessors, Bell Atlantic and GTE, which along with Sprint were included in the coalition that proposed the CALLS plan):

The CALLS plan further promotes competition through the establishment of a portable \$650 million rural and high cost universal service fund. For the first time, *entrants will be able*

^{26/} Verizon Comments (Attached Opposition to ALLTEL ETC Petition) at 2-8; *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12969 (2000) ("*CALLS Order*"), *aff'd in part and rev'd in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *on remand*, FCC 03-164 (released June 10, 2003) ("*CALLS Remand Order*").

^{27/} See, e.g., *CALLS Order*, 15 FCC Rcd at ¶¶ 42, 196, 210.

to compete for and receive support that previously went only to the incumbent LEC through implicit support. All eligible telecommunications carriers will receive universal service support when they win and serve a customer in a more costly rural area. The 1996 Act envisioned that consumers in all parts of the country would be able to have a choice of telecommunications provider. The CALLS plan brings that vision a significant step closer to reality. 28/

Verizon now contradicts this earlier advocacy in favor of the portable fund established by the CALLS plan, and argues that the Commission should not have made the CALLS universal service fund portable from ILECs to competitive ETCs. 29/ Verizon's arguments are misplaced. Wireless carriers and other competitive ETCs face higher costs in providing service in sparsely populated areas, just as ILECs do. Thus, providing non-portable, implicit subsidies to ILECs but not to their competitors would establish a barrier to entry, in violation of the 1996 Act:

[P]ortability is not only consistent with [the statutory requirement of] predictability, but also is *dictated* by the principles of competitive neutrality and the statutory command [of] . . . 47 U.S.C. § 254(e). 30/

This is the main reason that Verizon and the other members of the CALLS coalition proposed, and the Commission ordered, that the inefficient, implicit subsidies that

28/ Comments of the Coalition for Affordable Local and Long Distance Service (CALLS), CC Docket Nos. 94-1, 96-45, 96-262, and 99-249, at 10 (filed Nov. 12, 1999) (emphasis added).

29/ See, e.g., Verizon Comments (Attached Opposition to ALLTEL ETC Petition) at 6.

30/ *Alenco*, 201 F.3d at 622 (emphasis added). Portability is also compelled by the Act's requirement that all markets be opened to competitive entry, and the long-standing Commission recognition that a regulatory system that grants ILECs significantly more per-line support than competitive ETCs would constitute an unlawful barrier to entry. See *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, 15 FCC Rcd 16227, 16231, ¶ 10 (2000). See also *Universal Service First Report and Order*, 12 FCC Rcd at 8933, ¶ 289.

formerly were embedded in ILECs' access charges be eliminated and replaced with an explicit and portable support fund. ^{31/} The CALLS plan also recognizes, as it must, that funding portability is necessary, because a policy of different levels of support to different firms in the market would have the effect of punishing a competitor for being more efficient and rewarding an ILEC for being inefficient. Moreover, Verizon, as successor to two of the proponents – and the greatest beneficiaries – of the CALLS plan, cannot now be heard to object to the portability feature of the universal service fund established as part of that plan. The Commission must reject Verizon's protests against the plan that Verizon's own predecessors originated.

Far from defending the integrity of the CALLS plan, Verizon's anti-competitive arguments would unravel not only the *CALLS Order's* reforms, but price cap regulation itself. Verizon expresses fear that, as competitive ETCs enter and qualify for support, price cap ILECs like Verizon will not be able to recover fully their "fixed" loop costs. ^{32/} But unlike rate-of-return regulation, the system of price cap regulation does *not* entitle ILECs to rates that would guarantee recovery of

^{31/} Indeed, Verizon concedes that the Interstate Access Support fund "was designed to be portable." Verizon Comments (Attached Opposition to ALLTEL ETC Petition) at 5.

^{32/} *Id.* at 7 ("Of course, a reduction in universal service interstate access support does nothing to reduce the local exchange carriers' loop costs. These costs are fixed, and do not vary when lines or customers are lost. However, because CALLS-based interstate access support is capped, moving this support from the ILEC to the ETC will result in a reduction in CALLS-based support for interstate loop costs. . . . Therefore, allowing new ETC designations to dilute CALLS-based interstate access support will make this support insufficient to compensate for interstate loop costs.")

“fixed” costs plus a specified rate of return – and does not assume that such costs are static. Rather, price cap regulation is designed to give ILECs incentives to operate efficiently (and if possible, to reduce the costs that they incur) by allowing them to retain revenue if subscribership or demand increases, while placing them at risk if subscribership or demand decreases. ^{33/} In other words, the “dilutive” effect that Verizon fears – the loss of universal service or other revenues as competitors enter the market – is not a “problem” at all; it is inherent to the incentive structure of price cap regulation.

Moreover, the Commission should reject Verizon’s contention that the present magnitude of competitive ETC entry was not anticipated or expected at the time of the *CALLS Order*. Verizon misleadingly implies that the designation of Sprint and other competitive ETCs in areas served by non-rural ILECs will lead to “dilution of support” that could become “significant” enough to force ILECs to re-institute inefficient charges on interexchange carriers, and ultimately would cause universal service support to be “insufficient.” ^{34/} Sprint does not disagree with Verizon that competitive ETC entry in non-rural ILEC areas could cause ILECs to lose Interstate Access Support funds, which in turn could increase the Subscriber

^{33/} See, e.g., *CALLS Remand Order*, ¶ 4; *CALLS Order*, 15 FCC Rcd at ¶ 17; see also *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786 (1990) (“*ILEC Price Cap Order*”), *aff’d sub nom. National Rural Telecom Ass’n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

^{34/} Verizon Opposition at 7-8.

Line Charge paid by end users and/or access charges paid by interexchange carriers. However, Verizon greatly exaggerates the magnitude of this effect. ^{35/}

In addition, even if one were to accept Verizon's premise that competitive ETCs' receipt of portable Interstate Access Support funds could cause certain ILEC rates to increase, the appropriate remedy would *not* be to deny ETC applications or shut down competition. Rather, as the five-year duration of the CALLS plan draws to an end, the Commission should reform its high-cost universal service and access charge rules so as to eliminate inefficiencies that interfere with competition and harm consumers. Thus, in appropriate rulemaking proceedings, the Commission should seriously consider eliminating the economically inefficient caps on the Subscriber Line Charges paid by end users, so that implicit subsidies can be entirely eliminated, as the Act requires. ^{36/} The Commission should also

^{35/} In fact, Sprint calculates that, even if wireless carriers and other competitive ETCs were to *double* the amount of Interstate Access Support that they currently receive (from \$21.77 million, using 3Q03 USAC figures, to \$43.54 million annually), ILECs could avoid any increases to the Presubscribed Interexchange Carrier Charge ("PICC") and Carrier Common Line ("CCL") charges paid by long distance carriers if the cap on Subscriber Line Charges paid by end users were raised by a very modest amount, an overall average for price cap carriers of six tenths of one cent. Verizon's Subscriber Line Charges would increase by an average of just over one cent per month. This is hardly a "significant" amount, and cannot be characterized as threatening the "affordability" of service. (Sprint's analysis is based on data from the price cap ILECs' Tariff Review Plans filed with the FCC on June 16, 2003.)

^{36/} As the Commission has repeatedly conceded, the cap constraining the Subscriber Line Charges paid by end users (currently \$6.50 for residential and single-line business users) is economically inefficient, because it prevents the ILECs from recovering the non-traffic sensitive costs of loops from end users in the manner those costs are incurred, and thereby implicitly subsidizes end user rates. *See, e.g., CALLS Remand Order*, ¶ 2; *CALLS Order*, 15 FCC Rcd at ¶ 12; *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 15992-93, ¶ 24 (1997). And reviewing courts have held on numerous occasions that the Act prohibits the Commission from maintaining implicit subsidies. *See, e.g., Comsat Corp. v. FCC*, 250 F.3d 931, 939-40 (9th

work to reform and modernize the high-cost universal service mechanisms for both rural and non-rural ILECs in a manner that would be truly competitively neutral. If the Commission has the choice between solving a problem using anti-competitive policy options (*e.g.*, denying competitive ETC applications, as Verizon suggests) or competitively neutral options (*e.g.*, the universal service solutions discussed above), the Commission is obligated to select options that have the least negative effect on competition. ^{37/}

IV. THE COMMISSION HAS JURISDICTION OVER SPRINT'S APPLICATIONS

No party disputes that the Alabama, Georgia, New York, Tennessee, and Virginia state commissions lack jurisdiction over Sprint's ETC applications, and therefore these applications are properly before the Commission pursuant to Section 214(e)(6) of the Act. The Pennsylvania PUC, however, now raises questions

Cir. 2001); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999); *Alenco*, 201 F.3d at 623.

^{37/} Cf. 47 U.S.C. § 604 (requiring agencies to include in final rulemakings "a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected"); *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)*, Sixth Report and Order, 99 FCC 2d 1066, ¶ 28 (1985) (considering several proposed options and choosing the alternative "which will have the least long-time negative impact on competition in the communications industry and . . . will best promote competitive goals").

about its own earlier statement that it lacks jurisdiction over wireless carriers' ETC applications. 38/

The Pennsylvania PUC is already clearly and unequivocally on record as follows:

The Pennsylvania Public Utilities Commission hereby affirmatively states that the Commonwealth of Pennsylvania does not exercise jurisdiction over commercial mobile radio service providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations See 66 Pa. C.S. § 102. 39/

The PUC fails to provide any justification for its new-found uncertainty on this point, particularly given that it stated, and reiterated, that it disclaims a jurisdictional interest in response to the Nextel Partners petition. 40/ The agency's seemingly changed position appears, at a minimum, highly unfair, arbitrary and capricious. Moreover, it is beyond doubt that the statute governing the Pennsylvania PUC specifies that mobile wireless carriers are excluded from the definition of "public utilities," and therefore the Pennsylvania PUC has no jurisdiction over them. 41/

38/ Pennsylvania PUC Comments at 2-3 & Appendix A.

39/ Letter from James J. McNulty, Secretary, Pennsylvania PUC, to Ronald J. Jarvis (Feb. 28, 2003) (attached as Exhibit D to Sprint Pennsylvania Application).

40/ *Id.*; see also Pennsylvania PUC Reply Comments, *NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania*, CC Docket No. 96-45 (filed July 14, 2003), at p.2 ("Pennsylvania has refrained from exercising jurisdiction over CMRS for purposes of making determinations concerning eligibility for ETC designations")

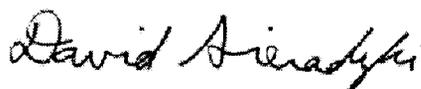
41/ See 66 Pa. C.S.A. § 102 ("The term ['public utility'] does not include . . . [a]ny person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular

CONCLUSION

The Commission should reject opposing parties' arguments for denying or deferring Sprint's ETC applications, and instead should grant those applications expeditiously.

Respectfully submitted,

SPRINT CORPORATION



By: _____

Luisa L. Lancetti
Vice President, Wireless Regulatory
Affairs
Roger C. Sherman
Senior Attorney
SPRINT CORPORATION
401 9th St., N.W., Suite 400
Washington, D.C. 20004
(202) 585-1924

David L. Sieradzki
HOGAN & HARTSON, LLP
555 – 13th St., N.W.
Washington, D.C. 20004
(202) 637-6462

Counsel for Sprint Corporation

November 20, 2003

radio telecommunications service"); *Re Omnibus Budget Reconciliation Act of 1993*, Docket Nos. L-00950104 & M-00950695, 1998 WL 842357 (Pa. PUC, Sept. 18, 1998), ordering clause 5 ("Personal Communications Services provided over Personal Communications Networks are hereby declared to be nonjurisdictional"); *Aronson v. Sprint Spectrum L.P.*, 767 A.2d 564, 569 (Pa. Super. Ct. 2001) ("Sprint Spectrum L.P. provides only wireless services and is not regulated by the [Pennsylvania Public Utilities] Commission. . . . Thus, Sprint Spectrum L.P. is not a 'public utility' within the meaning of the Code . . .").