Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	

SPRINT CORP. PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

Pursuant to Section 1.3 of the FCC's rules, Sprint Corporation hereby respectfully requests that the Commission immediately grant a waiver of Section 54.502 of its Rules, to the extent that this rule prohibits grant of Priority 1 E-rate funding for PBX and key systems as part of an existing end-to-end telecommunications service arrangement. This waiver request applies only to E-rate applicants who have previously (between 1999 through December 1, 2003) received Priority 1 funding for such arrangements provisioned under multi-year contracts, for the remaining term of such contracts. The waiver would not apply to applicants who agree to subscribe to new end-to-end telecommunications service arrangements after December 1, 2003.

I. BACKGROUND AND INTRODUCTION.

In August 1999, the Commission released an order regarding whether certain facilities located on an applicant's premises (routers and hubs) are part of an end-to-end

Internet access service or part of internal connections.[1] The Commission concluded that such facilities could be deemed to be part of a Priority 1 end-to-end service offering (rather than a Priority 2 internal connection) so long as the applicant's internal connections network continued to function without the facilities at issue, and so long as the applicant met several other criteria (non-ownership of the facility, lack of a lease-purchase agreement, lack of a contractually exclusive arrangement, service provider responsibility for maintenance of the facility). On the basis of the *1999 Tennessee Order*, SLD began approving Priority 1 funding requests for end-to-end service arrangements, including scores of funding requests for PBXs and key systems as part of end-to-end telecommunications service arrangements.

On December 1, 2003, SLD posted a revision to its "On-premise Priority 1 Equipment" document in which it stated that Priority 1 funding would not be available for PBXs "because they are utilized to route calls within the premises of a school or library." PBXs would continue to be eligible as Priority 2 Internal Connections. In the recently released *Third Report and Order* in CC Docket No. 02-6, the Commission affirmed that PBXs would no longer be eligible for Priority 1 funding as part of an end-to-end configuration because "the PBX is necessary to maintain the internal communications network, but not its end-to-end access to telecommunications services."[2]

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[1] *Request for Review by the Dept. of Education for the State of Tennessee of the Decisions of the Universal Service Administrator*, 14 FCC Rcd 13734 (1999) ("*1999 Tennessee Order*").

[2] *Schools and Libraries Universal Service Support Mechanism, Third Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket No. 02-6, released December 23, 2003 (FCC 03-323), para. 47.

The Commission's and SLD's reversal of the previous policy of treating PBXs and key systems as Priority 1-eligible so long as they meet the end-to-end service offering criteria poses a serious hardship to schools and libraries who are in the midst of a multi-year contract to obtain telecommunications service under these end-to-end service configurations. These applicants reasonably expected to continue to receive Priority 1 funding for these configurations for the entire contract term, and the elimination of such funding threatens their ability to obtain critical services within budget. To ensure that these schools and libraries are able to continue to obtain these end-to-end telecommunications services, Sprint requests that the Commission waive Section 54.502 of its rules to the extent that this rule embodies the Commission's revised PBX/Priority 1 eligibility policy, as it applies to applicants in the midst of a multi-year contract for end-to-end telecommunications arrangements. As demonstrated below, granting Priority 1 funding to the set of applicants who previously received Priority 1 funding for these services, for the balance of their multi-year contract term, is warranted by the special circumstances at issue here, and would be in the public interest.

II. REQUEST FOR WAIVER

From the date the *1999 Tennessee Order* was released through December 1, 2003, when the policy underlying this order was reversed (at least insofar as it pertained to PBXs and key systems), scores of applicants requested and obtained Priority 1 funding for end-to-end telecommunications service arrangements which included these equipment components. Many schools and libraries entered into multi-year contracts under the reasonable assumption that Priority 1 funding would continue to be available for this end-to-end configuration through the life of their contracts; Sprint alone has 80 customers

who previously obtained Priority 1 funding for their end-to-end telecommunications arrangements, and who have 2-4 years remaining in their contract term. With the SLD's December 2003 announcement that Priority 1 funding for such configurations will no longer be available, affected schools and libraries now face a dire choice: either pay out of pocket for any end-to-end services for which they contracted, and for which they will no longer receive E-rate support, for the balance of the contract term; or get out of the contract (with or without the acquiescence of the service provider), and forego at least some portion of a critical service.[3] In most cases, the cost of replacement equipment would be much greater than completing monthly payments under their term contracts.

Both of these options involve serious hardship to affected schools and libraries. In a time of extremely tight budgets, few if any schools and libraries have any discretionary funds available to make up for any lost Priority 1 E-rate funding, or any leeway to engage in deficit spending.[4] Moreover, even if the service provider were to voluntarily release a school or library from its contract for the end-to-end arrangement,[5] the service provider will not then provide the needed services for free; the applicant will, absent other funding, be forced to do without at least some of the services it had previously assumed would be available.

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[3] It is possible that some applicants might split the service offering and seek Priority 1 funding for the telecommunications service portion, and Priority 2 funding for the PBX/key system portion. However, Priority 2 funding will not be available to any school with a discount percentage below the Priority 2 cut-off point (currently 85%). Almost all of Sprint's affected customers have a discount percentage below 80%.

[4] Indeed, one of Sprint's E-rate customers, a charter school, has advised us that it is a federal offense for it to exceed its mandated budget.

[5] Multi-year contracts often include penalties for early termination.

To minimize the harm and hardship inflicted by the unexpected reversal of the Commission's PBX/Priority 1 eligibility policy, Sprint requests that this policy (and any implementing rule) be waived as it applies to applicants who previously received Priority 1 funding for these facilities as part of an end-to-end telecommunications service arrangement, for the remaining term of their multi-year contract. Grant of this waiver request will provide critical E-rate support to help ensure that affected schools and libraries continue to receive necessary telecommunications services. This waiver request is limited in scope (to a specific body of affected applicants) and duration, and is unlikely to impose an undue burden on the universal service fund.[6]

Sprint also requests expedited action on this waiver request. The new PBX/Priority 1 eligibility policy has a direct impact on funding requests for the funding year beginning July 1, 2004; funding requests for that year are due by February 4, 2004.[7] Prompt action on the instant waiver request is needed to avoid any interruption in service during the upcoming funding year.

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[6] Although we have no information on the financial impact of the revised PBX/Priority 1 eligibility policy on the customers of other service providers, Sprint estimates that the dollar value of the equipment portion of the contracts for their unexpired term for our own E-rate customers who have end-to-end telecommunications service arrangements is approximately $4 million.

[7] Many affected schools and libraries submitted their funding requests for their end-to-end telecommunications arrangements prior to the SLD's December 1, 2003 announcement that Priority 1 funding for PBXs would no longer be available. It is not clear how these applications will be treated (or indeed, how any of these applications should have been filed under the revised policy), and Sprint therefore requests that any application denied on the basis of the revised PBX/Priority 1 eligibility policy be automatically re-evaluated upon grant of the instant waiver request.

The Commission may grant a waiver of its rules for good cause shown.[8] Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.[9] As demonstrated above, because such special circumstances and valid public interest considerations are present here, there is good cause to grant the requested relief.

Respectfully submitted,

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February 3, 2004

[8] 47 C.F.R. Section 1.3.

[9] See *United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules, Order*, 13 FCC Rcd 214 (CCB 1997) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C.Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C.Cir. 1969), cert. denied, 409 U.S. 1027 (1972)).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **SPRINT CORP. PETITION FOR WAIVER in CC Docket No. 02-6** was sent via electronic mail on this 3rd day of February 2004 to the below-listed parties.

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