

**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 Florida)	
)	
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 North Carolina)	
)	
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 CORPORATION REPLY TO COMMENTS ON
SUPPLEMENTAL FILING**

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Sprint Corporation (“Sprint”) hereby submits its reply comments in the above-captioned proceeding. [1](#)

[1](#) Public Notice, “Parties are Invited to Update the Record Regarding Pending Petitions for Eligible Telecommunications Carrier Designations,” 69 Fed. Reg. 22029 (Apr. 23, 2004); Public Notice, “Due Date Extended for Reply Comments Concerning Supplemented Petitions for Eligible Telecommunications Carrier Designations,” CC Docket No. 96-45, DA 04-1628 (released June 3, 2004). Sprint is aware of five initial comments regarding Sprint’s May 14, 2004 supplemental filing: those filed by CenturyTel of Alabama, et al. (“CenturyTel”), the Communications Workers of America (“CWA”) the New York State Telecommunications Association (“New York ILECs”), the Pennsylvania Public Utilities Commission (“PaPUC”), and the Verizon telephone companies (“Verizon”).

INTRODUCTION AND SUMMARY

Sprint's applications for designation as an eligible telecommunications carrier ("ETC") should be granted expeditiously, and the Commission should reject the commenting parties' meritless arguments that Sprint should be required to make additional showings or commitments. Indeed, Sprint has already gone above and beyond what the FCC's existing rules require. ^{2/} Sprint's initial applications for designation amply demonstrated that Sprint met the Commission's established criteria. Nonetheless, in its Supplemental Filing submitted on May 14, 2004, Sprint offered additional commitments consistent with those that the FCC approved in the *Virginia Cellular* and *Highland Cellular* orders. ^{3/} Despite the fact that the statute requires no public interest showing for ETC applications in areas served by non-rural incumbent local exchange carriers ("ILECs"), Sprint nonetheless provided a demonstration that the public interest supports its designation in its Supplemental Filing.

In this reply comment, Sprint refutes other parties' arguments and demonstrates that: (1) Sprint meets the requirement of having the capability and commitment to serve customers throughout its service area; (2) Sprint can be designated without imposing undue burdens on the overall fund; (3) designating

^{2/} 47 C.F.R. §§ 54.101, 54.201. *See also* 47 U.S.C. § 214(e)(6).

^{3/} Sprint Corp. Supplemental Filing, CC Docket No. 96-45 (filed May 14, 2004) ("Sprint Supplemental Filing"). *See Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular Order*"); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 6422 (2004) ("*Highland Cellular Order*").

Sprint as an ETC will advance the public interest, and (4) the Commission has jurisdiction to perform the designation in each of the affected states.

I. SPRINT HAS THE COMMITMENT AND CAPABILITY TO SERVE REQUESTING CUSTOMERS

First, Sprint has demonstrated its commitment and capability to provide service to requesting customers. Sprint showed, both in its initial applications and in its Supplemental Filing, that it already provides wireless service today to virtually the entirety of its proposed ETC Service Area either using its own facilities or a combination of its own facilities and resale of another carrier's services. ^{4/} There is no real question that Sprint satisfies the Commission's requirement that it has the capability and commitment to meet its statutory obligations *going forward*; and the Commission has consistently made it clear that an ETC applicant need not demonstrate that it *already* provides ubiquitous service to all requesting customers. ^{5/}

Moreover, Sprint also made precisely the same service provisioning commitments that the Commission approved in *Virginia Cellular* and *Highland Cellular*. Having approved applications based on the same provisioning

^{4/} 47 U.S.C. § 214(e)(1)(A); Sprint Supplemental Filing at 9-10.

^{5/} See, e.g., *Virginia Cellular*, ¶¶ 17, 23. Accordingly, allegations regarding Sprint's past service quality records for wireline or wireless services are completely irrelevant, and should be disregarded by the Commission. CWA at 6-9. Moreover, the comments acknowledge Sprint's substantial capital expenditures in its wireless network. *Id.* at 7.

commitments in the recent past, the Commission cannot now, as some parties suggest, find those commitments “inadequate” or “not reassuring.” [6/](#)

Sprint has committed to expend significant resources on investments that will not only contribute to Sprint’s “provision, maintenance, and upgrading” of supported services, but will also improve and expand the reach of its services.

Sprint’s Supplemental Filing demonstrated that Sprint is planning to spend over \$150 million to construct over 500 new cell sites in the eight states, and over \$40 million to upgrade and add capacity to over 500 existing cell sites, between Jan. 2004 and June 2005. [7/](#) Sprint also demonstrated that it is making available innovative new technologies to benefit consumers throughout its ETC service areas, and expects to continue rolling out industry-leading technological improvements and service offerings. [8/](#) The Commission must reject the claims of parties who ignore this evidence and wrongly contend that Sprint “is not offering any new services or improvements in service for the benefit of customers.” [9/](#) In response to criticism about the lack of detailed construction data by comparison to that submitted by Virginia Cellular and Highland Cellular, Sprint respectfully submits that such a detailed showing would not be useful to the Commission and would not be necessary

[6/](#) *Contra*, CWA at 9, 10.

[7/](#) Sprint Supplemental Filing at 10.

[8/](#) *Id.* at 17-18.

[9/](#) CenturyTel at 4.

for purposes of this proceeding. [10/](#) Moreover, it would be extremely burdensome for Sprint provide the same level of minute detail for its over 1,000 planned cell site projects as Virginia Cellular and Highland Cellular offered with regard to those carriers' plans to build, respectively, eleven and three cell sites. [11/](#)

II. DESIGNATING SPRINT AS AN ETC WILL NOT BURDEN THE UNIVERSAL SERVICE FUND

Designating Sprint as an ETC will not have a material impact on the overall size of the fund. [12/](#) Sprint demonstrated that the impact of its application is expected to increase the overall size of the high-cost fund by no more than 0.0096 percent – in other words, to increase it by a factor of 0.000096. [13/](#) This is hardly significant, particularly given the Commission's ready willingness to grant waiver petitions to facilitate rural ILECs exchange sale transactions based on a showing that the transactions will increase the overall fund by up to one percent [14/](#) – over 100 times greater than the fund increase at issue here.

[10/](#) There is no requirement that ETCs – whether incumbents or competitors – use all the universal service support they receive to construct new facilities in unserved or underserved areas. Moreover, such a requirement would make little sense in the context of an application like this one to serve *non-rural* ILEC areas. To the contrary, the statutory requirement is merely to use funds “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 U.S.C. § 254(e); *see also* 47 C.F.R. § 54.313(b); Sprint Supplemental Filing at 11 n.22.

[11/](#) CWA at 9 & n.28.

[12/](#) *Contra*, CenturyTel at 4-5; CWA at 2-5; New York ILECs at 3-4; Verizon at 2-6.

[13/](#) Sprint Supplemental Filing at 17. This equates to an annual amount of less than \$350,000 – a relatively trivial amount in the context of the over \$3.5 billion high-cost fund.

[14/](#) *See, e.g., M&L Enterprises, Inc. d/b/a Skyline Tel. Co. Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules*, 19 FCC Rcd 6761, ¶ 15 (2004) (“In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, we analyze whether a study area waiver will result in an annual aggregate shift in

The Commission should once again reject Verizon’s argument that the cumulative impact of all pending and potential future ETC applications should be considered, or that all ETC applications should be delayed until the pending rulemaking proceeding is complete. [15/](#) There is no statutory or regulatory basis for imposing such a requirement in the context of an individual ETC application, and the Commission has consistently rejected such arguments in granting ETC applications, most recently in the *Virginia Cellular* and *Highland Cellular* orders. The Commission was aware that other ETC applications were pending, and specifically recognized that a pending rulemaking would address issues relating to the growth of support amounts to competitive ETCs (as well as to incumbents), when it granted those ETC applications. [16/](#) As noted in those orders, it would be difficult or impossible for the Commission to “provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms” outside the context of the general rulemaking proceeding. [17/](#)

high-cost support in an amount equal to or greater than one-percent of the total high-cost fund for the pertinent funding year.”)

[15/](#) Verizon at 2-6; *accord* New York ILECs at 3-4; CWA at 3-5.

[16/](#) *Virginia Cellular*, ¶ 31; *Highland Cellular*, ¶ 25. In the instant case, the Commission should decline to utilize the counter-factual hypothetical employed in those two orders – “assuming that [the applicant] captures each and every customer located in the [] affected study areas” *Virginia Cellular*, ¶ 31 n.96; *Highland Cellular*, ¶ 25 n.73. Given the competition among CMRS carriers, as well as the intermodal competition between wireless and wireline carriers, there is zero chance Sprint could capture each and every customer in the non-rural study areas at issue here.

[17/](#) *Virginia Cellular*, ¶ 31; *Highland Cellular*, ¶ 25.

In addition, the funds that Sprint will receive from the Interstate Access Support (“IAS”) mechanism will not increase the total size of the high-cost universal service fund, since that fund is capped at \$650 million per year. Moreover, Sprint’s receipt of IAS funds is fully consistent with the Commission’s goals and expectations in establishing that support mechanism, contrary to some parties’ arguments. [18/](#) These parties ignore Sprint’s repeated showing, including in the Supplemental Filing itself, that the whole point of creating the portable IAS fund in the *CALLS Order* was to “mak[e] implicit universal service funding in access charges explicit and portable” in order to remove artificial regulatory barriers to competition. [19/](#)

Moreover, the parties who express concern regarding the fact that some non-rural ILECs may receive reduced IAS payments on a per-line basis [20/](#) ignore the fact that, when the FCC created the capped IAS fund, it never intended to guarantee carriers a fixed amount of per-line support.. [21/](#) Because the amount of support was a fixed \$650 million from the fund’s inception, it was obvious at that time that any increase in access line counts – even among price cap ILECs

[18/](#) CenturyTel at 4-5; CWA at 3-4; Verizon at 3-4.

[19/](#) *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12969, ¶¶ 29, 32 (2000) (“*CALLS Order*”) (cited in Sprint Supplemental Filing at 16).

[20/](#) See, e.g., CenturyTel at 5; Verizon at 4; CWA at 3. Like all other companies operating in a competitive marketplace, price cap ILECs facing revenue losses have opportunities to increase revenues by more successfully selling services to consumers, reduce costs by operating more efficiently, or reduce their shareholders’ equity value or dividends. It is simply incorrect to assert that companies like Verizon and other price cap ILECs, faced with the loss of revenues from universal service programs, have no alternative but to raise rates, reduce capital spending and employment, or sell off rural high-cost wire centers. CWA at 4.

[21/](#) See, e.g., *CALLS Order*, 15 FCC Rcd at ¶¶ 201-205; *Access Charge Reform*, Order on Remand, 18 FCC Rcd 14976, ¶ 31 (2003) (“*CALLS Remand Order*”);

themselves – would have the effect of reducing the per-line amount available to all recipients. In other words, the “dilutive” effect that these parties attempt to dramatize was built into the IAS mechanism from day one.

III. SPRINT SATISFIES THE *VIRGINIA CELLULAR* PUBLIC INTEREST TEST, EVEN THOUGH NON-RURAL ETC APPLICANTS NEED NOT MAKE SUCH A SHOWING

Sprint showed in its initial applications that designating it as an ETC would serve the public interest. Sprint made a more detailed showing in its Supplemental Filing that it satisfies the public interest standard adopted for rural study areas in the *Virginia Cellular* order – even though Sprint believes that no such public interest standard applies to non-rural applications such as this one. Yet most of the commenting parties barely address Sprint’s public interest showing. A few of them, however, continue to advocate alternative criteria or standards beyond even those that the Commission adopted in the *Virginia Cellular* and *Highland Cellular* orders.

For example, CenturyTel continues to suggest that a quantitative cost/benefit analysis should be conducted, even though neither the FCC nor any state commission has ever conducted such an analysis, and such an analysis plays no role in the *Virginia Cellular* or *Highland Cellular* orders. ^{22/} Similarly, given that the

^{22/} CenturyTel at 4-5. *Compare Federal-State Joint Board on Universal Service*, Recommended Decision, 19 FCC Rcd 4257, ¶ 42 (Jt. Board 2004) (“*CETC Recommended Decision*”) (declining to recommend use of quantitative cost/benefit analysis); *see Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127, ¶ 2 (released June 8, 2004) (“*CETC NPRM*”). Moreover, contrary to CenturyTel’s contention that “each additional cell phone . . . may do nothing to enhance universal service” and that “consumers continue to view CMRS as complementary to, but not a substitute for, their wireline local exchange service,” CenturyTel at 5; *accord*, New York ILECs at 2-3, the

Commission's rules do not contain any specific minimum local usage requirements, the Commission appropriately has declined to invent a minimum local usage standard in the context of ETC applications, and should once again reject CenturyTel's suggestion to the contrary. [23/](#) Similarly, a pending rulemaking proceeding is addressing the issue of whether wireless consumers will be deemed to be located at their billing addresses or at their place of primary use, and it would be improper for the Commission to address this issue here. [24/](#)

Verizon continues to press its argument that the Commission "should reject any pending petition for ETC status in non-rural areas that fails to analyze whether such designation would satisfy the public interest standard set forth in the *Virginia Cellular Order*." [25/](#) Not only is this analysis wrong, as Sprint and other

Commission's most recent CMRS Competition Report makes it clear that consumers in rural as well as non-rural areas are increasingly relying on their wireless phones for their basic communications needs. The FCC reported that "there is much evidence . . . that consumers are substituting wireless service for traditional wireline communications. . . . The long distance, local, and the payphone segments of wireline telecommunications have all been losing business to wireless substitution." *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 Services*, Eighth Report, 18 FCC Rcd 14873, ¶¶102-03 (2003). Wireless telecommunications is an increasingly important means for delivering universal service to consumers. *Accord, Virginia Cellular*, ¶ 29; *Highland Cellular*, ¶ 23.

[23/](#) See, e.g., *Highland Cellular*, ¶ 15; cf. CenturyTel at 5-6.

[24/](#) CenturyTel at 6-7; see *CETC Recommended Decision*, ¶¶ 102-03; *CETC NPRM*, ¶ 1.

[25/](#) Verizon at 7. Verizon wastes eight pages of its comments pressing this argument. *Id.* at 6-14; see also CenturyTel at 8-9; New York ILECs at 4-5. To the extent Verizon is attempting to respond to Sprint's Petition for Reconsideration of the *Virginia Cellular Order* (CC Docket No. 96-45, filed Feb. 23, 2004), its filing is out of time and must be dismissed or disregarded. See N.E. Colorado Cellular, Inc., Midwest Wireless Holdings LLC, Rural Cellular Corp., and U.S. Cellular Corp. Response to Opposition of Verizon, CC Docket No. 96-45 (May 14, 2004).

parties have shown in the past; [26/](#) it is also misplaced, since Sprint has submitted a public interest justification in this proceeding demonstrating that it meets the *Virginia Cellular* standard. [27/](#) Indeed, Verizon admits that Sprint has made a detailed showing “regarding why its petitions for ETC status in non-rural areas meet the new public interest test,” [28/](#) but it does not even bother to address the merits of Sprint’s public interest showing.

[26/](#) Verizon contends that the phrase “consistent with the public interest, convenience, and necessity” at the beginning of Section 214(e)(6) requires ETC applicants to make a “public interest” showing in non-rural ILEC as well as in rural ILEC areas, and supports its argument by citing Supreme Court precedent supporting “the well-established principle that statutes must be read ‘to give effect, if possible, to every clause and word of a statute’ and to avoid ‘emasculat[ing] an entire section.’” Verizon at 11, citing *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) and other sources. Yet Verizon’s own interpretation of the statute would render irrelevant and meaningless the final sentence in Section 214(e)(6), which requires the Commission to “find that the designation is in the public interest” prior to designating an additional carrier in *rural* telephone company areas. If the Commission must make a public interest finding in every case, then the last sentence is meaningless. The Commission has already provided a reading that avoids “disregarding” either the statutory requirement that all applications be “consistent with the public interest, convenience, and necessity” or the statutory requirement of a “public interest” showing in rural ILEC areas: “For 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.” *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) (“*Verizon Wireless Delaware ETC Order*”). Contrary to Verizon’s argument, this interpretation is not “absurd” and does not compel a conclusion that “no application is required at all” in non-rural ILEC areas. Verizon at 10. Rather, under this approach, an application is required in non-rural ILEC areas, but if the applicant shows that it meets the basic statutory “checklist,” then it has effectively demonstrated that designation is in the “public interest, convenience, and necessity” and no further “public interest” showing is required. This is the only interpretation that “give[s] effect . . . to every clause and word” of Section 214(e)(6) and makes sense, reading the section as a whole.

[27/](#) Sprint Supplemental Filing at 13-19.

[28/](#) Verizon at 13 n.22.

IV. THE COMMISSION HAS JURISDICTION TO DESIGNATE SPRINT AS AN ETC

While the PaPUC takes no position on the substantive merits of Sprint's Supplemental Filing, [29/](#) the agency continues to vacillate regarding whether or not it has jurisdiction to designate wireless carriers as ETCs. [30/](#) The PaPUC's relatively newfound uncertainty is in stark contrast to the agency's previous unequivocal ruling, concluding generically that it "does not exercise jurisdiction over commercial mobile radio service providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations." [31/](#)

The PaPUC's equivocation and "active consideration" at present of whether it may – or may not – someday possess jurisdiction over ETC eligibility simply does not justify denial of Sprint's Pennsylvania application, which was properly filed given the February 28, 2003 PaPUC's express statement of no jurisdiction. [32/](#) With regard to the PaPUC's concerns that Sprint did not request a specific jurisdictional ruling from that agency, [33/](#) the FCC recently affirmed that, where a state commission was "given the specific opportunity to address and resolve the issue of whether it has authority to regulate CMRS providers as a class of

[29/](#) PaPUC at 4.

[30/](#) PaPUC at 1-6.

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

[32/](#) PaPUC at 5 ("[T]he FCC should conclude that, as a general matter, any state commission's active consideration of the question of state jurisdiction precludes federal jurisdiction of a wireless carrier's petition for ETC designation.")

[33/](#) PaPUC at 2, 3-4.

carriers” and determined generically that it has no such jurisdiction, subsequent wireless carriers are not obligated to seek an individualized “affirmative statement” from that state commission. [34/](#)

Sprint recognizes that this question is at issue in two proceedings before the PaPUC. [35/](#) However, in the 15 months since February 28, 2003, the PaPUC has not resolved its own equivocation as to its jurisdiction. While Sprint encourages the PaPUC to do so as expeditiously as possible, Sprint also respectfully submits that the PaPUC’s continuing equivocation at this late date appears somewhat unfair, arbitrary and capricious. This is particularly problematic given that the agency’s governing statute specifies that mobile wireless carriers are excluded from the definition of “public utilities,” and given that a Pennsylvania state court has specifically found that the PaPUC lacks jurisdiction over Sprint’s wireless operations. [36/](#) At some point, further unjustified delays by the PaPUC would have

[34/](#) *Highland Cellular Order*, ¶¶ 13-14.

[35/](#) Sprint is mystified by the PaPUC’s completely incorrect allegation that “Sprint’s footnoted reference to the Initial Comments of the PaPUC demonstrates willful ignorance of the PaPUC’s stated position on the question of state jurisdiction to designate wireless carriers as ETCs.” PaPUC at 2. To the contrary, Sprint specifically acknowledged the PaPUC’s most recent statements on the jurisdictional issue. *See* Supplemental Filing at 2.

[36/](#) *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 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 . . .”).

the effect of posing a barrier to competition, in violation of Sections 214 and 253 of the Act. [37/](#)

CONCLUSION

In sum, Sprint has fully met the requirements for ETC designation, and its applications should be granted without further delay.

Respectfully submitted,

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[37/](#) See *Federal-State Joint Board on Universal Service*, Twelfth Report and Order, 15 FCC Rcd 12208, ¶¶ 94, 114 (2000) (“excessive delay in the designation of competing providers may hinder the development of competition”); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 n.31 (5th Cir. 1999) (“if a state commission imposed such onerous eligibility requirements that no otherwise eligible carrier could receive designation, that state commission would probably run afoul of § 214(e)(2)’s mandate to ‘designate’ a carrier or ‘designate’ more than one carrier.”); *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, ¶ 8 (2000) (state commission conduct that effectively “provides support to ILECs while denying funds to eligible prospective competitors . . . may well have the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a).”); *Federal-State Joint Board on Universal Service; Western Wireless Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168 (2000) (a state commission’s interpretation of ETC designation requirements that effectively precludes competitive carriers from receiving ETC status would violate Section 253).