

April 18, 2006

EX PARTE PRESENTATION – FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Regulation of Prepaid Calling Card Services, WC Docket No. 05-68;
Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-
92**

Dear Ms. Dortch:

Sprint Nextel Corporation hereby responds to the April 7, 2006 Ex Parte letter of Verizon in the above-referenced dockets, in which Verizon urges the Commission to “clarify its rules so that all providers of these [prepaid calling card] services are subject to the same access charge and universal service obligations *going forward*.” (Emphasis added.)

As Sprint argued in detail in its April 15, 2005 Comments and May 16, 2005 Reply Comments in WC Docket 05-68, the use of prepaid cards to make voice telephone calls is manifestly a telecommunications service regardless of whether the card can also be used to access other information and regardless of the use of intermediate IP transport to deliver the call to the terminating LEC. Any suggestion on Verizon’s part that access charge and universal service obligations with respect to such calls should only apply on a going-forward basis is unsound as a matter of both law and public policy.

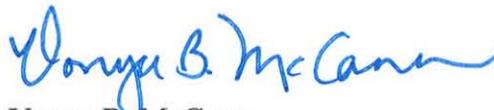
As Verizon itself has argued in WC Docket 05-68 (and without any suggestion that the conclusion should only be given prospective effect), calls made using the cards at issue here are no different than calls made with the cards addressed in the *AT&T Calling Card Order*, 20 FCC Rcd 4826 (2005) or calls using Internet Protocol for intermediate transmission that were addressed in the *Phone-to-Phone IP Order*, 19 FCC Rcd 7457 (2004). *See* Comments of Verizon, April 15, 2005. Verizon there urged the Commission to avoid the “latest attempt to avoid universal service and access charge payment obligations for ... prepaid calling cards. These cards have no relevant differences from the ones the Commission already found to be telecommunications services subject to those obligations.” *Id.*, at 1. Assuming that the Commission agrees with the substantive positions of Sprint and Verizon, the fact that these cards are being considered in the context of a rulemaking, rather than a declaratory ruling proceeding, does not require the

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Commission to limit its ruling to prospective application. The assumed result would not overturn previous law that was reasonably clear – for which only prospective effect would be justifiable – but instead would merely be a new or clarified application of existing law, for which retroactive effect is entirely appropriate. *See, e.g., Public Service Co. of Colorado v. F.E.R.C.*, 91 F.3d 1478, 1489 (D.C.Cir., 1996); and *Farmers Telephone Co., Inc. v. F.C.C.*, 184 F. 3d 1241, 1250 (10th Cir. 1999).

To rule (correctly) that the calls in question are telecommunications services but explicitly make the ruling prospective-only would seriously disserve sound public policy. At best, such a ruling would create a legal vacuum as to the past status of these calls that could only be resolved by further requests for Commission rulings or other litigation. At worst, a declaration that universal service and access charge obligations cannot be applied to these services in the past would reward carriers which employ risky regulatory avoidance strategies. Competitors who played by the rules in the meantime would be competitively harmed; the universal service fund would be negatively impacted; and suppliers of access would be forced to forgo revenues to which they are entitled.

Sincerely,



Vonya B. McCann

Cc: Kevin Martin, Chairman
Michael J. Copps, Commissioner
Deborah Taylor Tate, Commissioner
Jonathan S. Adelstein, Commissioner
Ian Dillner
Jessica Rosenworcel
Dana Shaffer
Scott Bergmann
Thomas Navin
Tamara Preiss