

will be sufficiently addressed in docket 06-187, and argue that the current docket is the best venue for a determination.<sup>72</sup>

53. Staff agreed that RCC and USCOC are participating in docket 06-187 and acknowledged that the issue of applicability of the standards to wireless ETC has not been addressed. Staff stated that the parties to that docket are determining what issues can be agreed to and what issues will need to be presented to the Commission for decision.<sup>73</sup> Staff stated that to the extent agreement is not reached on standards and on which providers the standards should apply to, a procedural schedule will need to be established to address those issues.<sup>74</sup> Staff supported the Commission's decision to defer to docket 06-187, stating that it is premature to decide whether standards that are not yet determined should apply to wireless ETCs.

54. The Commission will not reconsider whether to address the applicability of the billing standards in this docket. As the Commission said in its Order, it would be premature to decide applicability. Parties are currently reviewing the billing standards and are working to determine whether agreement can be reached on standards. The better process is to determine applicability to wireless ETCs in the docket opened to review the billing standards rather than in this proceeding.

### VIII. Summary of Decisions

55. On the issue of the advertising requirements, the Commission grants reconsideration as follows: The advertising requirements are to be applied only to print advertising that is designed to reach those customers in a CETC's designated service area. If a

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<sup>72</sup> RCC and USCOC Petition at ¶23.

<sup>73</sup> Staff Response at ¶25.

<sup>74</sup> Staff Response at ¶25.

CITC chooses not to advertise through print in its designated area, the advertising requirements must be met through another form of advertising.

56. On the issue of requiring optional per minute blocking to Lifeline subscribers,

reconsideration is granted to obtain additional information. The Commission seeks additional comment on whether it is technically feasible for CITCs to offer per minute blocking.

Additionally, comments are requested that address the incremental cost of such blocking.

Comments may address other issues related to per minute blocking. Comments are due

**December 20, 2006.** Reply comments are due **January 12, 2007.**

57. Given the arguments and information presented in the Petitions for

Reconsideration, the Commission reconsiders its ruling that all CITCs must provide a plan

without a termination fee. The offering of such a plan will not be a requirement. Given that

decision, the request to reconsider the requirement to advertise a plan without a termination fee is

moot.

58. The Commission denies reconsideration of its decisions to allow Lifeline

customers to choose a plan and to have the Lifeline discount applied to that plan, its finding that

CITCs must file two-year quality improvement plans on an annual basis, and its decision to

address the applicability of the billing standards in docket 06-187.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Petitions for Reconsideration are denied in part and granted in part as set

forth above.

B. Any party may file a petition for reconsideration of this order within fifteen days

of the date this order is served. If service is by mail, service is complete upon mailing and three

days may be added to the above time frame. K.S.A. 66-118; K.S.A. 2005 Supp. 77-529(a)(1).

C. To the extent that this order constitutes final agency action that is subject to judicial review, K.S.A. 77-607(b)(1), the agency officer designated to receive service of any petition for judicial review is Susan K. Duffy, Executive Director, K.S.A. 77-529(c).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order or orders, as it may deem necessary

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Comm.; Moffet, Comm.

Dated: NOV 20 2006

ORDER MAILED

NOV 20 2006

 Executive Director

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Susan K. Duffy  
Executive Director

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**ATTACHMENT 5**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

Sprint Spectrum, L.P., )  
 )  
 )  
 Plaintiff, )  
 v. ) CIVIL ACTION  
 ) No. 07- \_\_\_\_\_ - \_\_\_\_\_  
 Brian Moline, Robert Krehbiel and Michael )  
 Moffet, in their Official Capacities as the )  
 Commissioners of the Kansas Corporation )  
 Commission, )  
 )  
 Defendants. )  
 )

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**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint"), by and through its undersigned counsel, hereby brings this action for declaratory and injunctive relief against defendants Commissioners of the Kansas Corporation Commission ("KCC") (in their official capacities and not as individuals): Brian Moline, Robert Krehbiel and Michael Moffet. In support of its Complaint, Sprint states and alleges as follows:

**I. INTRODUCTION**

1. Sprint seeks a declaratory ruling from this Court that the rule set forth in the KCC's October 2, 2006 Order in Docket No. 06-GIMT-446-GIT requiring an eligible telecommunications carrier ("ETC") to apply federal Lifeline support to reduce the cost of any rate plan offered by the carrier violates federal law (hereafter, the "Kansas Lifeline Rule").

2. Specifically, the Court should declare that the Kansas Lifeline Rule violates 47 U.S.C. § 254(f) and 47 C.F.R. § 54.403(b) because it is inconsistent with the FCC's determination that federal Lifeline support must be applied to reduce the cost of an ETC's lowest-cost generally available residential rate plan.

3. As applied to a CMRS provider, the Court should further declare that the Kansas Lifeline Rule violates 47 U.S.C. § 332(c)(3)(A) as it would require the carrier to provide a reduced rate service without the ability to lawfully recover the subsidy from the federal universal service support fund.

4. Sprint further seeks an *initial restraining order and preliminary and final injunctive relief* prohibiting the Defendants and any employees or agents of the KCC from taking any action to enforce or attempt to enforce any provision of the Kansas Lifeline Rule against Sprint.

## II. PARTIES, JURISDICTION AND VENUE

5. Plaintiff Sprint Spectrum, L.P. is a Delaware limited partnership having its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. Sprint provides commercial mobile radio services (“CMRS”) in the State of Kansas. Sprint has also been designated as a federal ETC throughout certain defined service areas within the State of Kansas.

6. The KCC is a State agency organized under section 74-601 of the Kansas statutes. The KCC is generally authorized to regulate the activities of public utilities providing telephone service in the State of Kansas. However, CMRS providers, like Sprint, are expressly exempt from the KCC’s “jurisdiction, regulation, supervision and control” under Kansas law. K.S.A. §§ 66-104a(c) and 66-1,143(b).

7. Defendant Brian Moline is the Chair of the KCC. Chair Moline is sued in his official capacity for declaratory and injunctive relief.

8. Defendant Robert Krehbiel is a Commissioner of the KCC. Commissioner Krehbiel is sued in his official capacity for declaratory and injunctive relief.

9 Defendant Michael Moffet is a Commissioner of the KCC. Commissioner Moffat is sued in his official capacity for declaratory and injunctive relief.

10. This court has subject matter jurisdiction of the action pursuant to 28 U.S.C. § 1331, in conjunction with 47 U.S.C. § 254, 47 U.S.C. § 332 and 47 C.F.R. § 54.403.

11. An actual, bona fide and justiciable controversy exists between the parties pursuant to 28 U.S.C. § 2201.

12. Venue is proper in this district under 28 U.S.C. § 1391(b) because the Defendants reside in this District and because a substantial part of the events giving rise to this action occurred in this District.

### III. FACTUAL ALLEGATIONS

#### A. The Federal Universal Service Program

13. The Telecommunications Act of 1996, which amended the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (collectively, “the Act”), established a federal program to ensure that affordable telecommunications services are available to all Americans. 47 U.S.C. §§ 214 and 254. This policy objective is referred to as “universal service.”

14. Congress determined that universal service goals would be accomplished through competition, and directed the *Federal Communications Commission* (“FCC”) to create a federal universal service funding mechanism that would provide financial support to both incumbent and competitive telecommunications carriers that satisfy basic criteria established by the FCC. Carriers that qualify for such support are referred to as federal “eligible telecommunications carriers” or “ETCs.”

15. The FCC began implementing Sections 214 and 254 of the Act when it issued its first universal service order in 1997. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 97-157 (rel. May 8, 1997) ¶ 4 (“*Universal*

*Service Order*”). The FCC’s universal service regulations are set forth at Title 47, Part 54 of the Code of Federal Regulations, 47 C.F.R. § 54.1, *et. seq.*

16. As set forth at 47 C.F.R. § 54.101(a)(1)-(a)(9), the FCC designated the following core telecommunications services or functionalities to be supported by the federal universal service support mechanisms (hereafter, the “Supported Services”):

- (a) Voice-grade access to the public switched telephone network;
- (b) Local usage;
- (c) Dual tone multi-frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange services;
- (h) Access to directory assistance; and
- (i) Toll limitation for qualifying low-income consumers.

**B. The Federal Lifeline and Link Up Assistance Programs**

17. The FCC has also established federal universal service mechanisms that provide public assistance to qualified, low-income consumers. These universal service mechanisms are known as the federal “Lifeline” and “Link Up” programs. The FCC regulations governing the Lifeline and Link Up programs were codified at 47 C.F.R., Part 54, Subpart E (47 C.F.R. §§ 54.400 through 54.417).

**I. Lifeline**

18. The federal Lifeline program reimburses an ETC for providing qualified, low-income consumers a monthly discount off the cost of the carrier’s lowest-cost residential rate plan. As set forth in the FCC’s universal service rules, Lifeline is defined as “a retail local

service offering: (1) [t]hat is available only to qualifying low-income consumers; (2) [f]or which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in [47 C.F.R. §] 54.403." 47 C.F.R. § 54.401(a) (emphasis added).

19. FCC Rule 54.403 defines both the amount of federal Lifeline support available and the limitations on the application of such support. Pursuant to 47 C.F.R. § 54.403, federal Lifeline support is comprised of four assistance credits or "Tiers." "Tier One" support is equal to the monthly "tariffed rate in effect for the primary residential End User Common Line charge"<sup>1</sup> of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service." "Tier Two" support is equal to \$1.75 per month. "Tier Three" support is equal to "one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of \$1.75 per month." If applicable, "Tier Four" provides up to an additional \$25 per month for an eligible resident of Tribal lands, provided the additional support does not bring the basic local residential rate below \$1 per month.

20. Application of the federal Lifeline support credits to a qualifying customer's basic residential rate is governed by 47 C.F.R. § 54.403(b), which provides in pertinent part:

Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in Sec. 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.

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<sup>1</sup> The "End User Common Line" charge is also referred to as the "Subscriber Line Charge" or "SLC."

47 C.F.R. § 54.403(b) (emphasis added)

21. In adopting the regulations discussed above, the FCC clarified that a federal ETC must apply the federal Lifeline support it receives to the carrier's lowest generally available rate for the Supported Services:

These rules require that carriers offer qualified low-income consumers the services that must be included within Lifeline service, as discussed more fully below, including toll-limitation service. ILECs providing Lifeline service will be required to waive Lifeline customers' federal SLCs and, conditioned on state approval, to pass through to Lifeline consumers an additional \$1.75 in federal support. ILECs will then receive a corresponding amount of support from the new support mechanisms. Other eligible telecommunications carriers will receive, for each qualifying low income consumer served, support equal to the federal SLC cap for primary residential and single-line business connections, plus \$1.75 in additional federal support conditioned on state approval. The federal support amount must be passed through to the consumer in its entirety. In addition, all carriers providing Lifeline service will be reimbursed from the new universal service support mechanisms for their incremental cost of providing toll-limitation services to Lifeline customers who elect to receive them. The remaining services included in Lifeline must be provided to qualifying low-income consumers at the carrier's lowest tariffed (or otherwise generally available) rate for those services, or at the state's mandated Lifeline rate, if the state mandates such a rate for low-income consumers.

*Universal Service Order*, ¶ 368 (emphasis added).

22. Likewise, in formulating its initial universal service recommendations to the FCC in 1996, the Federal-State Joint Board on Universal Service (the "Joint Board") determined that the "Lifeline rate" to be made available to qualified, low-income consumers shall be "the carrier's lowest comparable non-Lifeline rate reduced by at least the \$5.25 [now \$8.25] amount of federal support." *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Recommended Decision*, FCC 96J-3, ¶ 424 (rel. Nov. 8, 1996).

23. Accordingly, all federal ETCs must apply the federal Lifeline support discounts to reduce the cost of the carrier's lowest residential rate.

A State may adopt regulations not inconsistent with the [FCC's] rules to preserve and advance universal service. [ . . . ] A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service

requirements. Section 254(f) provides in pertinent part:

State adopts a separate funding mechanism to support compliance with the additional additional regulations are not inconsistent with the FCC's universal service rules, and (2) the regulations governing the provision of universal service within its jurisdiction, provided (1) any Section 254(f) of the Act further provides that a State may adopt additional

service support.

the authority and responsibility to designate carriers as eligible to receive federal universal Section 214(e) of the Act provides that a State commission – here the KCC – has

**C. State Administration of Federal Universal Service Programs**

equipment, including the cost of the customer's phone.

same principal residence, and Link Up assistance cannot be applied to customer facilities or Federal Link Up assistance may only be applied once to initiate service at the

plan for the remaining activation or installation charges of up to \$200.

25. Eligible consumers may also establish an interest-free 12-month deferred payment

charges between \$60 and \$130.

lands may receive an additional \$70 to defray 100% of the service activation or installation whichever is less). Qualified, low-income consumers residing on federally-recognized Tribal activation or installation charges (i.e., the subscriber will receive a 50% discount or \$30.00, Link Up assistance are eligible to save up to 50% of the first \$60 of the ETC's customary service activation or installation charges to qualified, low-income consumers. Consumers qualifying for

24. The federal Link Up program reimburses ETCs for providing discounted service

**2. Link Up**

within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

47 U.S.C. § 254(f) (emphasis added).

29. A State's adoption of additional universal service regulations may be further restrained by certain jurisdictional limitations. Specifically relevant to this case are the jurisdictional limitations set forth in Section 332(c)(3)(A) of the Act, which expressly prohibit State regulation of CMRS carrier rates and entry as follows:

Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services . . . .

47 U.S.C. § 332(c)(3)(A) (emphasis added).

**D. The Kansas Lifeline Rule Violates Federal Law**

30. In October 2005, the KCC commenced an administrative rulemaking proceeding (Docket No. 06-G1MT-446-GIT) to review the adoption of certain additional regulations and requirements applicable to carriers designated as federal ETCs in Kansas. On October 2, 2006, the KCC released an Order adopting the following requirement:

ETCs are required to allow Lifeline customers to choose a calling plan and to apply the Lifeline discount to the plan selected by the customer. Any ETC that does not allow customer selection at this time must do so within 180 days [i.e., by March 31, 2007] of the date of this Order.

31. In other words, the KCC directed all ETCs to apply the federal Lifeline discounts to any calling plan selected by the consumer, rather than a carrier's lowest cost residential rate plan as required by 47 C.F.R. § 54.403(b).

32. Sprint sought reconsideration of the KCC's Order. The KCC denied Sprint's petition for reconsideration of the Kansas Lifeline Rule. At this time, the KCC's rulemaking proceeding is still pending with respect to other issues.

33. The Kansas Lifeline Rule set forth above violates federal law for the following three reasons:

(a) The Kansas Lifeline Rule is inconsistent and cannot be reconciled with the FCC's universal service rules in violation of 47 U.S.C. § 254(f);

(b) Compliance with the Kansas Lifeline Rule would require a federal ETC to inappropriately apply federal Lifeline support to reduce the cost of any calling plan selected by the consumer, rather than the carrier's lowest cost residential rate plan as required by 47 C.F.R. § 54.403(b); and

(c) Compliance with the Kansas Lifeline Rule would require a CMRS provider designated as a federal ETC to provide an equivalent monthly service discount to qualified, low-income consumers that will not be reimbursed by federal universal service support. As a result, the rule would impermissibly regulate a CMRS carrier's rates in violation of 47 U.S.C. § 332(c)(3)(A).

34. Compliance with the Kansas Lifeline Rule will cause irreparable harm as Sprint would be required to violate federal law to satisfy the State law requirement.

35. Enjoining the enforcement of the Kansas Lifeline Rule will maintain the *status quo* and serve the public interest by ensuring eligible, low-income consumers are not denied federal Lifeline assistance.

36. Enjoining the enforcement of the Kansas Lifeline Rule will not adversely affect Defendants or Kansas universal service consumers.

37. For these reasons, the Court should declare the Kansas Lifeline Rule preempted by federal law and issue a temporary restraining order and preliminary and permanent injunction against the enforcement of the requirement against Sprint.

**IV. CLAIMS FOR RELIEF**

**COUNT I**

**Violation of 47 U.S.C. § 254(f)**

38. Sprint incorporates by reference the preceding paragraphs as though fully set forth herein.

39. By adopting regulatory requirements that are inconsistent with the FCC's implementation of the federal Lifeline and Link Up requirements, the Kansas Lifeline Rule violates 47 U.S.C. § 254(f).

40. Sprint therefore seeks a declaration pursuant to 28 U.S.C. § 2201 that the Kansas Lifeline Rule is preempted by federal law and a temporary restraining order and orders preliminarily and permanently enjoining the enforcement of the requirement against Sprint.

**COUNT II**

**Violation of 47 C.F.R. § 54.403(b)**

41. Sprint incorporates by reference the preceding paragraphs as though fully set forth herein.

42. By adopting regulatory requirements that are inconsistent with the FCC's implementation of the federal Lifeline and Link Up requirements, the Kansas Lifeline Rule violates 47 C.F.R. § 54.403(b).

43. Sprint therefore seeks a declaration pursuant to 28 U.S.C. § 2201 that the Kansas Lifeline Rule is preempted by federal law and a temporary restraining order and orders preliminarily and permanently enjoining the enforcement of the requirement against Sprint.

### COUNT III

#### Violation of 47 U.S.C. § 332(c)(3)(A)

44. Sprint incorporates by reference the preceding paragraphs as though fully set forth herein.

45. By adopting regulatory requirements that are inconsistent with the FCC's implementation of the federal Lifeline and Link Up requirements, the Kansas Lifeline Rule would require Sprint to provide an equivalent monthly service discount to qualified low-income consumers that will not be reimbursed by federal universal service support. As a result, the Kansas Lifeline Rule would impermissibly regulate Sprint's rates in violation of 47 U.S.C. § 332(c)(3)(A).

46. Sprint therefore seeks a declaration pursuant to 28 U.S.C. § 2201 that the Kansas Lifeline Rule is preempted by federal law and an Order preliminarily and permanently enjoining the enforcement of the requirement against Sprint.

**WHEREFORE**, Sprint prays for the following relief:

1. For an Order declaring that the Kansas Lifeline Rule is preempted by federal law, specifically 47 U.S.C. § 254(f), 47 U.S.C. § 332(c)(3)(A) and 47 C.F.R. § 54.403(b);
2. For temporary restraining order and preliminary injunction enjoining the Defendants and any employees or agents of the Kansas Corporation Commission from taking any action to enforce or attempt to enforce any provision of the Kansas Lifeline Rule against Sprint;
3. For an Order permanently enjoining the Defendants and any employees or agents of the Kansas Corporation Commission from taking any action to enforce or attempt to enforce any provision of the Kansas Lifeline Rule against Sprint; and

4. For and Order granting Sprint such further relief as the Court may deem just and reasonable.

Dated: March 23, 2007.

Respectfully submitted,

STINSON MORRISON HECKER LLP

/s/ Mark D. Hinderks

Mark D. Hinderks (KS 11293)  
12 Corporate Woods  
10975 Benson, Suite 550  
Overland Park, Kansas 66210-2008  
Telephone: (913) 344-6706  
Facsimile: (913) 344-6794  
[mhinderks@stinson.com](mailto:mhinderks@stinson.com)

BRIGGS AND MORGAN, P.A.  
Matthew A. Slaven (MN 288226)  
2200 IDS Center  
Minneapolis, Minnesota 55402-2157  
Telephone: (612) 977-8400  
Facsimile: (612) 977-8650  
[msslaven@briggs.com](mailto:msslaven@briggs.com)

*ATTORNEYS FOR PLAINTIFF  
SPRINT SPECTRUM, L.P.*

**ATTACHMENT 4**

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners:                    Brian J. Moline, Chair  
   Robert E. Krehbiel  
   Michael C. Moffet

In the Matter of a General Investigation            )     Docket No. 06-GIMT-446-GIT  
Addressing Requirements for Designation of        )  
Eligible Telecommunications Carriers.            )

**ORDER ADDRESSING PETITIONS FOR RECONSIDERATION**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas ("Commission"). Having reviewed its files and records and being fully advised in the premises, the Commission finds as follows:

I. Background

1.        On October 2, 2006, the Commission issued its Order Adopting Requirements for Designation of Eligible Telecommunications Carriers. *Sprint Nextel Corporation (Sprint)* filed its Petition for Reconsideration on October 19, 2006. *RCC Minnesota, Inc., USCOC of Nebraska/Kansas LLC (RCC and USOCC)* and *Alltel Kansas Limited Partnership (Alltel)* filed their Petitions for Reconsideration on Friday, October 20, 2006.

2.        Sprint requested reconsideration of the following four requirements: that competitive telecommunications carriers (CETC) include language in all their advertising on their obligation to provide universal service and contact information for the Commission's Office of Public Affairs and Consumer Protection; that CETCs that do not provide unlimited local usage must offer free per minute blocking of local usage to Lifeline customers; that wireless eligible telecommunications carriers (ETC) must offer at least one calling plan without a termination fee; and, that ETCs must allow Lifeline customers to choose a plan.

3 Alltel requested reconsideration of the advertisement requirement and the requirement to allow Lifeline customers to choose a plan.

4 RCC and USCOC requested reconsideration of the toll blocking requirement and the requirement that wireless ETCs offer a calling plan without a termination fee. Additionally, RCC and USCOC argued that service quality improvement plans should apply to all ETCs and that the Commission should address, in this docket, the applicability to wireless ETCs of the billing practice standards being considered in Docket No. 06-GIMT-187-GIT.

5. On November 1, 2007, the Commission's staff (Staff) filed its response to the Petitions for Reconsideration. Staff addressed the issues raised in the Petitions for Reconsideration and provided its recommendation to the Commission on how to address those issues.

## II. Advertising Requirement

6. In its Order, the Commission concluded that CETCs must provide information in all of their advertisements in the ETC areas they serve explaining the CETCs' universal service obligations. Within 90 days of the Commission's order, CETCs must provide the language to Staff for review so that the language can be included in advertising. CETCs were also required to include in their advertising the contact information for the Commission's Office of Public Affairs and Consumer Protection.

7. Sprint and Alltel request reconsideration of this issue. Sprint argues that the Commission's advertising requirements, when applied to wireless carriers, violates the prohibition in state law against regulating such carriers.<sup>1</sup> Sprint claims that K.S.A. 66-104a(c) and K.S.A. 66-1,143(b), which state that wireless carriers "shall not be subject to the jurisdiction,

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<sup>1</sup> Sprint Petition at ¶6.

11 The Commission agrees that it does not have authority to impose regulation on wireless carriers as such, but that is not the issue presented here. The Commission is imposing advertising requirements on all ETCs, some of which are wireless carriers. The Commission has in prior dockets addressed the question of whether the Commission has authority to impose requirements on ETCs that are wireless carriers and has consistently concluded that it does. In Docket 00-GIMT-584-GIT, the Commission said the following about the issue:

Conditioning receipt of state universal service support on non-discriminatory requirements on all ETCs related to the provision of universal service would not be an unlawful exercise of jurisdiction over radio common carriers. Radio common carriers would obviously be free to decide whether they are prepared to comply with any such conditions or to abstain from receiving support.<sup>8</sup>

Sprint raised the issue again in Docket No. 05-GIMT-187-GIT. Again, the Commission concluded that it has jurisdiction to impose conditions such as these advertising requirements in the context of ETC designation. In response to Sprint's arguments in that case, the Commission said the following:

Sprint may be arguing that the jurisdictional discussion in the 584 Docket was dicta, and, given further determinations below, Sprint may hold a similar interpretation of this order in the future. Regardless, the Commission made a legal determination therein which was unchallenged. The Commission again reaffirms that it is consistently holding to that legal determination and, until it is presented with clear and controlling authority to the contrary -- something Sprint has failed to produce in this docket -- the Commission determines that it has the jurisdiction to impose quality of service standards on wireless ETC carriers as a condition to the distribution of KUSF funds in addition to the ETC designation. If a wireless carrier makes the decision to avail itself of the benefit of universal service funds, that carrier also subjects itself to commission jurisdiction which is based on the

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<sup>8</sup> *In the Matter of a General Investigation into Quality of Service Standards to Determine whether a Uniform Set of Standards Can be Applied to all Eligible Telecommunications Carriers*, Docket No. 00-GIMT-568-GIT (584 Docket), Order 3: Addressing Jurisdiction, issued May 5, 2005.

Commission's duty to effectively and reasonably carry out its duties under federal and state statutory provisions.<sup>9</sup>

12. While these earlier dockets were focused on quality of service, the rationale is the same. The Commission has consistently held that it has jurisdiction over wireless ETCs in their capacity as an ETC. Neither Sprint nor Alltel has pointed to any "clear and controlling authority" that justifies a departure from this Commission's prior holdings on the issue. A wireless carrier that submits to the jurisdiction of this Commission for the purpose of ETC designation is subject to the conditions imposed by the Commission in order to be designated as an ETC.

13. Beyond the jurisdictional arguments, Sprint complains that the Commission's requirements that ETCs advertise their universal service obligations and include contact information for the Commission's Office of Public Affairs and Consumer Protection is inconsistent with the FCC's universal service rules. Those rules require carriers to advertise the availability and charges for universal services using media of general distribution.<sup>10</sup> Sprint appears to agree that the Commission has authority to require a carrier to advertise its "universal service obligations," but states it is unclear which "universal service obligations" are at issue.<sup>11</sup> Regardless, Sprint states that requiring the Commission's contact information does conflict with the FCC rules because the FCC has not "construed the federal advertising requirement as extending beyond the obligation to advertise the availability of and charges for the supported services."<sup>12</sup>

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<sup>9</sup> *In the Matter of General Investigation into Modification of the Quality of Service Standards*, Docket No. 05-GIMT-187-GIT (187 Docket), Order on Motions of Sprint, SWBT, and COX issued March 7, 2006.

<sup>10</sup> See, 47 U.S.C. § 214(e)(1)(B) and 47 C.F.R. § 54.201(d)(2)

<sup>11</sup> Sprint Petition at ¶14.

<sup>12</sup> Sprint Petition at ¶14.

14 Staff argues that the advertising requirements simply ensure compliance with 47 U.S.C. § 214(e)(1), which requires ETCs to offer universal services and to advertise those services and charges.<sup>13</sup> In addition, Staff states that the advertising requirements ensure that customers know what to expect from CETCs and further ensure that the designation as an ETC is in the public interest.<sup>14</sup> Staff states that the requirements are consistent with the FCC's rules, but that the Commission is not obligated to mirror those rules. Staff cites the FCC's March 17, 2005 *Report and Order*<sup>15</sup> which states that state commissions are "well-equipped to determine their own ETC eligibility requirements."<sup>16</sup>

15. 47 U.S.C. § 214(e)(2) delegates to the state commissions the authority to designate a carrier as an ETC. That section requires the state commission to find that the designation is in the public interest and that the requirements of 47 U.S.C. § 214(e)(1) are met. Those requirements are to:

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) [47 USCS § 254(c)], either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier; and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

The Commission views the requirement that CETCs include language regarding their universal service obligation in their advertising as merely a mechanism to ensure the requirements of 254(e)(1) are met. The Commission agrees with Staff that the requirement to include the contact information for the Office of Public Affairs and Consumer Protection simply ensures that

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<sup>13</sup> Staff Response at ¶7.

<sup>14</sup> Staff Response at ¶6.

<sup>15</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, Rel. March 17, 2005 (March 17, 2005 *Report and Order*)

<sup>16</sup> Staff Response at ¶7 citing March 17, 2005 *Report and Order* at ¶61

customers know where to turn with questions and complaints, a requirement that will help ensure designation of an ETC is in the public interest. The Commission concludes that the advertising requirements are consistent with the FCC's rules. Additionally, to the extent Sprint views these requirements as going beyond the federal requirements, the FCC, as explained by Staff, has determined that state Commissions are in the best position to determine their own eligibility requirements.

16. Sprint argues that the advertising rules are inconsistent with the FCC's rules because they are not competitively neutral because they only apply to CETCs and not incumbent ETCs. Sprint claims this puts CETC at a disadvantage because they will have to modify their national advertising campaigns whereas incumbent ETCs will not.<sup>17</sup> Alltel also argues that the advertising requirements should be applied to all ETCs, not just CETCs.<sup>18</sup>

17. Staff explains that the application of the rules to CETCs is necessary because CETCs do not have directories.<sup>19</sup> The Commission agrees. Incumbent ETCs have directories with contact information for the Commission. As explained by Staff, customers of the incumbent ETCs are generally aware of the obligations to provide services and can obtain contact information for the Commission if consumers have questions or complaints with the services provided. Providing information about services and the Commission's contact information will ensure that a CETC's customers have the same information available to customers of incumbent ETCs. As discussed below, the Commission will reconsider its order regarding advertising to ameliorate concerns Sprint and Alltel have concerning the obligation CETCs have to modify national advertising campaigns.

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<sup>17</sup> Sprint Petition at ¶16.

<sup>18</sup> Alltel Petition at ¶7.

<sup>19</sup> Staff Response at ¶8.

18. Sprint claims the advertising requirements amount to an unfunded mandate. 47

U.S.C. § 254(f) provides as follows:

A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

Sprint argues that the advertising requirements violate this provision by placing an additional burden on CETCs without providing support to defray the costs of implementing the requirements.<sup>20</sup>

19. The Commission does not view these advertising requirements as a burden on “Federal universal service support mechanisms” in any way. As Staff states, the new rules are simply a cost of doing business and a necessary requirement if a company is seeking universal service support.<sup>21</sup> If additional costs are incurred, they are the costs necessary to meet the requirements of meeting eligibility requirements and can be recovered in the ETCs’ rates.

20. Sprint states the advertising requirements are vague by not detailing the services that must be advertised.<sup>22</sup> Sprint also argues that the Commission’s order improperly delegated the job of determining the proper wording of the advertisements to Staff.

21. The Commission is confident that Staff and the CETCs can work together to develop language that is clear and satisfies the advertising requirement. As explained by Staff, Alltel, RCC and USCOC, and other companies have been able to work with Staff to comply with the advertising requirements in their individual ETC designation dockets.<sup>23</sup> Finally the Commission does not view its directive to work with Staff as a delegation of power. If Sprint

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<sup>20</sup> Sprint Petition at ¶17.

<sup>21</sup> Staff Response at ¶8.

<sup>22</sup> Sprint Petition at ¶19.

<sup>23</sup> Staff Response at ¶ 9.

and Staff work together and either party believes the results of that work are not consistent with the advertising requirements of this order, that dispute can be brought to the Commission for resolution. The Commission fully expects to resolve any disputes between Staff and the CETC's on this issue.

22. Finally, Sprint argues that the advertising requirements are overbroad and burdensome. Sprint argues that the requirements can be construed as applying to all advertising, not just print advertising.<sup>24</sup> Sprint states that tailoring national advertising to state-specific advertising requirements is overly burdensome.<sup>25</sup>

23. Alltel proposes what it believes are less burdensome alternatives that will accomplish the same goals. Alltel says that periodic and targeted advertisements to customers in ETC areas would be effective and less burdensome than requiring that all advertisement include the information required by the Commission.<sup>26</sup> Alltel suggests that a workshop to discuss this targeted approach is a better solution than the requirements implemented in the Commission's order.<sup>27</sup>

24. In its response, Staff agreed that it is not reasonable to include the required language in "all" advertising.<sup>28</sup> Staff believes that the Commission should follow prior precedent in the prior ETC dockets and limit the advertising requirements to print advertisements that are designed to reach customers in the CETC's designated service area.<sup>29</sup>

25. The Commission agrees with the concerns raised by petitioners regarding the burden that will be imposed if the advertising requirement is imposed on all advertising. The

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<sup>24</sup> Sprint Petition at ¶ 21.

<sup>25</sup> Sprint Petition at ¶ 22.

<sup>26</sup> Alltel Petition at ¶ 5.

<sup>27</sup> Alltel Petition at ¶ 8.

<sup>28</sup> Staff Response at ¶ 9.

<sup>29</sup> Staff Response at ¶ 10.