

03-109  
07-138

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
SPRINT SPECTRUM, L.P ) WC Docket No. \_\_\_\_\_  
 )  
Petition for Declaratory Ruling )

To: Wireline Competition Bureau,  
Telecommunications Access Policy Division

RECEIVED - FCC  
JUN -8 2007  
Federal Communications Commission  
Bureau / Office

PETITION FOR DECLARATORY RULING

Laura H. Carter  
Norina T. Moy  
Todd B. Lantor  
SPRINT NEXTEL CORP.  
2001 Edmund Halley Drive  
Mailstop: VARESP0204-A207  
Reston, VA 20191  
Phone: (703) 592-7185

June 8, 2007

No. of Copies rec'd \_\_\_\_\_  
List ABCDE

## TABLE OF CONTENTS

I.	Background.....	2
II.	Overview of Universal Service Support for Low-Income Consumers.....	3
	A. Lifeline.....	4
	B. Link Up.....	7
	C. Sprint's Lifeline Service Offering in Kansas.....	7
III.	State Administration of the Federal Universal Service Programs is Subject to Commission Oversight.....	9
	A. The Kansas Lifeline Rule Violates 47 U.S.C. § 254(f).....	9
	B. The Kansas Lifeline Rule Violates 47 U.S.C. § 32(c)(3)(A).....	10
IV.	Conclusion.....	11

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**In the Matter of** )  
 )  
**SPRINT SPECTRUM, L.P.** ) **WC Docket No. \_\_\_\_\_**  
 )  
**Petition for Declaratory Ruling** )

**To: Wireline Competition Bureau,  
Telecommunications Access Policy Division**

**PETITION FOR DECLARATORY RULING**

Pursuant to Section 554(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, Sprint Spectrum, L.P. ("Sprint") hereby requests that the Commission issue a declaratory ruling that the rule set forth in the Kansas Corporation Commission's ("KCC") 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 an ETC (hereafter, the "Kansas Lifeline Rule"), as opposed to the carrier's lowest cost generally available rate plan, violates federal law.<sup>1</sup>

Specifically, Sprint requests that the Commission declare that the Kansas Lifeline Rule violates 47 C.F.R. § 54.403(b) and 47 U.S.C. § 254(f) because it is inconsistent with the Commission's determination that federal Lifeline support "shall" be applied to reduce

---

<sup>1</sup> Sprint provides commercial mobile radio services (CMRS) in the state of Kansas and has been designated as a federal competitive ETC for a service area including much of the eastern one-half of the state. See *Application of Sprint Spectrum L.P. (d/b/a Sprint PCS) for Designation as an Eligible Telecommunication Carrier for Purposes of Receiving Federal and State Universal Service Support*, Docket No. 99-SSLC-173-ETC, Order #6 (rel. Jan. 18, 2000); see also *Application of Sprint Spectrum L.P. (d/b/a Sprint PCS) for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal and State Universal Service Support*, Docket No. 99-SSLC-173-ETC, Order #10 (rel. May 19, 2000).

the cost of an ETC's lowest-cost generally available residential rate. In addition, as applied to a Commercial Mobile Radio Service ("CMRS") provider, the Commission should further declare that the Kansas Lifeline Rule violates 47 U.S.C. § 332(c)(3)(A), because it requires a wireless competitive ETC to offer a reduced rate service without the ability to lawfully recover the subsidy from the federal universal service fund.<sup>2</sup>

## I. BACKGROUND

In October 2005, the KCC commenced an administrative rulemaking proceeding (Docket No. 06-GIMT-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 in the proceeding 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.<sup>3</sup>

In other words, the KCC directed all ETCs to apply the federal Lifeline discounts to any rate plan selected by the consumer, rather than an ETC's lowest-cost residential rate as required by 47 C.F.R. § 54.403(b). Sprint sought reconsideration of the KCC's

---

<sup>2</sup> 47 U.S.C. § 332(c)(3)(A) ("[N]o 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 . . ."). CMRS providers, like Sprint, are further exempt from the KCC's rate regulation under Kansas law. See K.S.A. §§ 66-104a(c) and 66-1143(b).

<sup>3</sup> See Order Adopting Requirements for Designation of Eligible Telecommunications Carriers, Docket No. 06-GIMT-446-GIT, ¶¶ 66, 77 (rel. Oct. 2, 2006) ("Order") (Attachment 1).

Order.<sup>4</sup> The KCC denied Sprint's petition for reconsideration of the Kansas Lifeline Rule.<sup>5</sup>

On March 23, 2007, Sprint filed a Complaint with the United States District Court for the District of Kansas (the "Court") challenging the Kansas Lifeline Rule and seeking injunctive relief.<sup>6</sup> On May 8, 2007, the Court, by agreement of the parties, referred the matter to the Commission under the primary jurisdiction doctrine.<sup>7</sup> All matters in the case have been stayed pending a decision by the Commission.

## II. OVERVIEW OF UNIVERSAL SERVICE SUPPORT FOR LOW-INCOME CONSUMERS

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.<sup>8</sup> This policy objective is referred to as "universal service."

Congress determined that universal service goals would be accomplished through competition, and directed the Commission 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 Commission. Carriers that qualify for such support are referred to as federal "eligible

---

<sup>4</sup> See Sprint Petition for Reconsideration of the Order, Docket No. 06-GIMT-446-GIT (Attachment 2). Alltel Kansas Limited Partnership also sought reconsideration of the specific requirement to allow Lifeline customers to choose any rate plan offered by an ETC (Attachment 3).

<sup>5</sup> See Order Addressing Petitions for Reconsideration, Docket No. 06-GIMT-446-GIT (rel. Nov. 20, 2006), ¶¶ 41-47, 58, (Attachment 4).

<sup>6</sup> *Sprint Spectrum, L.P. v. Moline et al.*, Complaint for Declaratory and Injunctive Relief, Case No. 2:07-cv-2130 (Mar. 23, 2007) (Attachment 5). See also *Sprint Spectrum, L.P. v. Moline et al.*, Sprint Spectrum, L.P.'s Motion for a Temporary Restraining Order and/or Preliminary Injunction, Case No. 2:07-cv-2130 (Mar. 23, 2007) (Attachment 6); *Sprint Spectrum, L.P. v. Moline et al.*, Memorandum of Law in Support of Its Motion for a Temporary Restraining Order and/or Preliminary Injunction, Case No. 2:07-cv-2130 (Mar. 23, 2007) (Attachment 7).

<sup>7</sup> *Sprint Spectrum, L.P. v. Moline et al.*, Case No. 2:07-cv-2130 (May 8, 2007) (Attachment 8).

<sup>8</sup> 47 U.S.C. §§ 214 and 254.

telecommunications carriers" or "ETCs." To further Congress' policy objective, the Commission has 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.<sup>9</sup>

#### A. Lifeline

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. As set forth in the Commission's universal service rules, Lifeline is defined as "a retail local service offering: (1) [t]hat is available only to qualifying low-income consumers;<sup>10</sup> and (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."<sup>11</sup>

Section 54.403 of the Commission's Rules defines both the amount of federal Lifeline support available to a qualified, low income consumer and the limitation on the application of such support to an ETC's lowest cost residential rate. Pursuant to 47 C.F.R. § 54.403(a), 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

---

<sup>9</sup> The Commission's regulations covering the Lifeline and Link Up programs are codified at 47 C.F.R. §§ 54.400-54.417.

<sup>10</sup> In Kansas, a consumer will be deemed eligible to receive federal Lifeline and/or Link Up assistance if the applicant's total household income is at or below 150% of the federal poverty guidelines or the applicant participates in any of the following public assistance programs: Medicaid, Food Stamps, Supplemental Security Income (SSI), General Assistance, Temporary Assistance for Needy Families (TANF) or the National School Free Lunch program. See 47 C.F.R. § 54.409(a). See also *Wireline Competition Bureau Answers Frequently Asked Questions Concerning Lifeline*, Public Notice, CC Docket No. 96-45, DA 05-1406 (rel. May 18, 2005); *In the Matter of Lifeline and Link-Up*, 19 FCC Rcd. 8302, CC Docket 96-45 (2004). A resident of federally-recognized Tribal lands will be eligible for enhanced Lifeline and/or Link Up assistance if the applicant satisfies any of the foregoing criteria or participates in any of the following additional programs: Bureau of Indian Affairs General Assistance, tribally-administered TANF or Head Start (based on income quantifying standards). See 47 C.F.R. § 54.409(b) (emphasis added).

<sup>11</sup> 47 C.F.R. § 54.403 (emphasis added).

primary residential End User Common Line charge<sup>12</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 of 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.

Application of the foregoing 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 Section 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.<sup>13</sup>

In adopting the regulations discussed above, the Commission 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:

---

<sup>12</sup> The "End User Common Line" charge is also referred to as the "Subscriber Line Charge" or "SLC."  
<sup>13</sup> CMRS providers, like Sprint, do not provide service pursuant to utility tariffs, but rather enter into individual service contracts with subscribers. See 47 C.F.R. § 20.15(c). Accordingly, CMRS providers are obligated under Section 54.403(b) of the Commission's Rules to apply the Lifeline discount to their lowest "generally available" residential rate.

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 [i.e., the supported services other than toll-limitation service] 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.<sup>14</sup>

Commission Rule 54.403(b) is unambiguous. The Commission clearly stated its intention to only apply the Lifeline discount to an ETC's lowest cost residential rate. Indeed, in so doing, the Commission relied on the Joint Board's recommendation that the "Lifeline rate" must be "the carrier's lowest comparable non-Lifeline rate reduced by at least the \$5.25 [now \$8.25] amount of federal support."<sup>15</sup> Commission Rule 54.403(b) also speaks in terms of applying the Lifeline support amount to the "lowest tariffed (or

<sup>14</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 8971, CC Docket No. 96-45, FCC 97-157, ¶ 368 (rel. May 8, 1997) (emphasis and brackets added). As originally promulgated, Commission Rule 54.403(b) provides, as it still does today, that federal Lifeline must be applied only to reduce the cost of an ETC's lowest cost generally available residential rate: "Eligible carriers that charge federal End-User Common Line charges or equivalent federal charges shall apply the federal baseline Lifeline support to waive Lifeline consumers' federal End-User Common Line charges. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the state has approved of such additional support. Other carriers shall apply the federal baseline Lifeline support amount, plus the additional support amount, where applicable, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in § 54.101(a)(1)-(9) of this part, and charge Lifeline consumers the resulting amount" (*"Universal Service Order"*) (Emphasis added).

<sup>15</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd. 87, 303, CC Docket No. 96-45, FCC 96] 3 (1996).

otherwise generally available) residential rate" - not multiple residential rates. Accordingly, all federal ETC's must apply the federal Lifeline support discounts to reduce the cost of the carrier's single lowest residential rate, not the cost of any residential rate plan the carrier offers.

#### **B. Link Up**

The federal Link Up program reimburses ETCs for providing discounted service activation or installation charges to qualified, low-income consumers. Consumers qualifying for Link Up assistance are eligible to save up to 50% of the first \$60 of the ETC's customary service activation or installation charges (*i.e.*, the subscriber will receive a 50% discount or \$30.00, whichever is less). Qualified, low-income consumers residing on federally-recognized Tribal lands may receive an additional \$70.00 to defray 100% of the service activation or installation charges between \$60.00 and \$130.00. Eligible consumers may also establish an interest-free 12-month deferred payment plan for the remaining activation or installation charges of up to \$200.00. Federal Link Up assistance may only be applied once to initiate service at the same principal residence, and Link Up assistance cannot be applied to customer facilities or equipment, including the cost of the customer's phone.

#### **C. Sprint's Lifeline Service Offering in Kansas**

In Kansas, Sprint's Lifeline service offering is based on the Company's lowest-cost \$29.99 base rate plan (called the Sprint Basic Plan), which includes 200 Anytime Minutes and unlimited Night and Weekend Minutes. The calling area for Sprint's Lifeline service offering is national, so Lifeline customers may make outgoing long distance calls without incurring an additional charge. After applying the total \$13.50 federal Lifeline discount, Sprint customers pay only \$16.49 per month for Lifeline

service.<sup>16</sup> Sprint also provides Link Up assistance to qualifying customers in accordance with the Commission's rules.

Conceivably, under the Kansas Lifeline Rule, an eligible Lifeline subscriber could choose to sign up for Sprint's \$149.99 monthly rate plan which comes with 4000 "Anytime Minutes" (as opposed to the Sprint Basic Plan) and receive a \$13.50 discount off the \$149.00 monthly rate, resulting in a Monthly Recurring Charge ("MRC") of \$136.49. For a Lifeline consumer whose total household income is at or below 150% of the federal poverty guidelines – a status that qualifies someone for Lifeline assistance in Kansas – a \$136.99 monthly bill would account for more than 13% of the Lifeline consumer's net monthly household income.<sup>17</sup> Of course, Sprint also offers rate plans with higher monthly rates. Surely, in adopting its Lifeline rules, the Commission did not intend for qualifying low-income consumers to subscribe to a carrier's premium plans. Rather, the Commission's goal was simply to ensure that low-income subscribers "maintained access to telecommunications services."<sup>18</sup> It was this same goal that led the Commission to follow the Joint Board's Recommended Decision in requiring ETCs to offer voluntary toll-limitation without charge to low-income consumers.<sup>19</sup>

---

<sup>16</sup> To enable Lifeline customers in Kansas to receive the full \$13.50 discount, Sprint voluntarily reduces its Sprint Basic Plan rate by \$3.50. These "carrier-matching funds" ensure that the Lifeline subscriber will receive \$1.75 in federal Tier 3 matching support. See 47 C.F.R. § 54.409(c) ("[Q]ualifying low-income consumers shall also qualify for Tier-Three Lifeline support, if the carrier offering the Lifeline service is not subject to the regulation of the state and provides carrier-matching funds. . .").

<sup>17</sup> Based upon a 15% federal tax rate and a 3.5% state tax rate, 150% of the 2007 Federal Poverty Guidelines for an individual is \$12,481.73 per year or \$1,040.14 per month. In contrast, the \$29.99 rate less the \$13.50 discount would result in a \$16.49 MRC, or 1.62% of the consumer's net monthly income.

<sup>18</sup> See *Universal Service Order*, ¶ 397.

<sup>19</sup> See *Id.*, ¶¶ 28 & 385 ("[W]e agree with the Joint Board that Lifeline service should include toll-limitation services, at the customer's request, to the extent that carriers are capable of providing them. We agree with the Joint Board that toll-limitation services will help low-income consumers control their toll bills and consequently be better able to maintain access to telecommunications services, as section 254(b)(3) envisions. . . . As the Joint Board observed, studies demonstrate that a primary reason subscribers lose access to telecommunications services is failure to pay long distance bills. . . . [therefore] we find that toll-limitation services are "essential to education, public health or public safety" and "consistent with the

### III. STATE ADMINISTRATION OF THE FEDERAL UNIVERSAL SERVICE PROGRAMS IS SUBJECT TO COMMISSION OVERSIGHT

#### A. The Kansas Lifeline Rule Violates 47 U.S.C. § 254(f)

Section 214(e) of the Act provides that a State commission – here the KCC – has the authority and responsibility to designate carriers as eligible to receive federal universal service support. Pursuant to this delegated authority, the KCC, in 2000, designated Sprint as a competitive federal ETC for a defined geographic “service area” within the State of Kansas.<sup>20</sup> Section 254(f) of the Act further provides that a State may adopt additional regulations governing the provision of universal service within its jurisdiction, provided: (1) any additional regulations are not inconsistent with the Commission’s universal service rules; and (2) the State adopts a separate funding mechanism to support compliance with the additional requirements. Section 254(f) provides in pertinent part:

A State may adopt regulations not inconsistent with the Commission’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 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.<sup>21</sup>

Thus, while the KCC may have some discretion to adopt additional Lifeline requirements, it cannot implement a rule that is inconsistent with Commission Rule

---

public interest, convenience, and necessity” for low-income consumers in that they maximize the opportunity of those consumers to remain connected to the telecommunications network.”) (internal footnotes omitted).”)

<sup>20</sup> For purposes of universal service requirements, an ETC’s designated “service area” is defined as the “geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal support mechanisms.” See 47 C.F.R. § 54.207(a) (emphasis added). Sprint’s designated service area covers only a portion of the State and is smaller than the Company’s licensed service area in Kansas.

<sup>21</sup> 47 U.S.C. § 254(f) (emphasis added).

54.403(b) and its requirement that federal Lifeline support be applied only to reduce the cost of an ETC's lowest-cost residential rate.

**B. The Kansas Lifeline Rule Violates 47 U.S.C. § 332(c)(3)(A)**

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 prohibits 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 . . . .<sup>22</sup>

Although a State may petition the Commission, pursuant to 47 C.F.R. § 20.13, for an exemption from Section 332(c)(3)(A), the KCC has not done so. Without such an exemption, the KCC's actions violate federal law because compliance with the Kansas Lifeline Rule requires a CMRS provider designated as a federal ETC to provide an equivalent monthly service discount to qualified, low-income consumers that is not lawfully reimbursable through federal universal service support, thereby amounting to rate regulation.<sup>23</sup>

More specifically, because 47 C.F.R. § 54.403(b) prohibits an ETC from applying federal Lifeline assistance to reduce the cost of any rate plan other than the carrier's lowest cost generally available residential rate plan, the ETC could not properly seek reimbursement from the federal universal service fund for discounts required to be

<sup>22</sup> 47 U.S.C. § 332(c)(3)(A) (emphasis added).

<sup>23</sup> See *WWC Holding Co. v. Sopkin*, 420 F.Supp.2d 1186, 1193-94 (D. Colo. 2006), *rev'd on other grounds*, 2007 U.S. App. LEXIS 12942 (10<sup>th</sup> Cir. 2007) (A CMRS provider's status as a federal ETC did not authorize the State regulatory commission to regulate the carrier's rates in violation of 332(c)(3)(A). The State commission must first petition the Commission for regulatory authority under 47 U.S.C. § 332(c)(3)(A) and 47 C.F.R. § 20.13.)

applied to premium rate plans under the Kansas Lifeline Rule. Therefore, carriers are forced to charge a different price to Lifeline customers than they charge to their customer base at-large. This KCC requirement to charge a certain price for Sprint's services -- without the ability to seek a USF payment for the difference in the Lifeline rate and the regular rate -- is a direct regulation of Sprint's rates.<sup>24</sup> The KCC's unfunded mandate, therefore, constitutes State rate regulation preempted by Section 332(c)(3)(A) of the Act.

#### IV. CONCLUSION

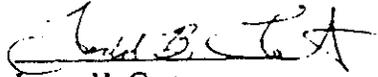
The Kansas Lifeline Rule violates federal law for the following three reasons: (1) compliance with the Kansas Lifeline Rule would require a federal ETC to inappropriately apply federal Lifeline support to reduce the cost of any rate plan selected by the consumer, rather than the carrier's lowest cost residential rate plan, as required by 47 C.F.R. § 54.403(b); (2) it is inconsistent and cannot be reconciled with the Commission's universal service rules in violation of 47 U.S.C. § 254(f); and (3) 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).

---

<sup>24</sup> It may be argued that USAC has reimbursed other carriers for Lifeline discounts applied to calling plans other than the lowest generally available residential rate, and thus, carriers like Sprint are not prohibited from obtaining reimbursement. However, to Sprint's knowledge, USAC has not audited whether carriers have applied for reimbursement for discounts given only to their lowest generally available residential rate. It is Sprint's position that proper application of 47 C.F.R. § 54.403(b) by USAC would lead to a denial of reimbursement and consequentially rate regulation since, under the KCC's Order, Sprint would be forced to give Lifeline discounts on rate plans for which it cannot be reimbursed.

For these reasons, the Commission should declare the Kansas Lifeline Rule preempted by federal law.

Respectfully submitted,



Laura H. Carter

Norina T. Moy

Todd B. Lantor

**SPRINT NEXTEL CORP.**

2001 Edmund Halley Drive

Mailstop: VARESP0204-A207

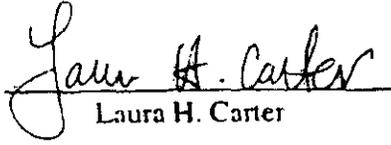
Reston, VA 20191

Phone: (703) 592-7185

June 8, 2007

**DECLARATION**

I, Laura H. Carter, Vice President, Government Affairs - Federal Regulatory, of Sprint Nextel Corp., hereby declare, under penalty of perjury, that I have reviewed and am familiar with this Petition for Declaratory Ruling, to which this Declaration is attached and that, to the best of my knowledge, information and belief, all statements of fact set forth in the Petition are true and correct.

  
Laura H. Carter

June 8, 2007

CERTIFICATE OF SERVICE

I, Todd B. Lantor, hereby certify that on this 8th day of June 2007, a true and correct copy of the foregoing Petition for Declaratory Ruling was sent via hand delivery, or overnight mail (indicated by \*), overnight mail to the following:

Thomas Navin  
Chief  
Wireline Competition Bureau  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Mark D. Hinderks\*  
Stinson Morrison Hecker LLP  
12 Corporate Woods  
10975 Benson, Suite  
550 Overland Park, KS 66210-2008  
*Counsel for Sprint Spectrum, L.P.*

Jeremy Marcus  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Matthew A. Slaven\*  
Briggs and Morgan, P.A.  
2200 IDS Center  
Minneapolis, MN 55402-2157  
*Counsel for Sprint Spectrum, L.P.*

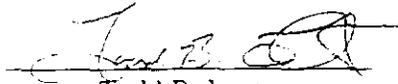
Thomas Buckley  
Senior Deputy Division Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Eva Powers\*  
Assistant General Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

Gina Spade  
Assistant Division Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

W. Bret Lawson\*  
Assistant General Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

  
Todd B. Lantor

**ATTACHMENT 2**

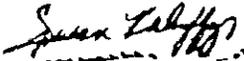
BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

Before Commissioners:

Brian J. Moline, Chair  
Robert E. Krebbiel  
Michael C. Moffet

OCT 19 2006

 Docket  
Room

In the Matter of a General Investigation )  
Addressing Requirements for Designation )  
of Eligible Telecommunications Carriers )

Docket No. 06-GIMT-446-GIT

SPRINT NEXTEL CORPORATION  
PETITION FOR RECONSIDERATION AND HEARING

**I. INTRODUCTION**

1. Sprint Nextel Corporation ("Sprint Nextel"), through counsel and pursuant to K.S.A. §§ 66-118b and 77-529, K.A.R. § 82-1-235 and applicable statutes and regulations, respectfully submits this Petition for Reconsideration and Hearing of the "Order Adopting Requirements for Designation of Eligible Telecommunications Carriers" issued October 2, 2006 ("*ETC Order*"). For the reasons set forth below, the Kansas Corporation Commission ("Commission") should reconsider certain issues of fact and law set forth in the *ETC Order*. Specifically, Sprint Nextel requests that the Commission reconsider adoption of the following requirements:

(a) That competitive eligible telecommunications carriers ("ETCs") include language in all their advertising in their Kansas ETC areas explaining their obligation to provide universal service and include information on how customers can contact the Commission's Office of Public Affairs and Consumer Protection. *ETC Order*, ¶¶ 12-13, 77(a)-(b).

(b) That ETCs that do not provide unlimited local usage must offer free per minute blocking of local usage to Lifeline customers within 90 days. *ETC Order*, ¶¶ 16, 77(c).

its *ETC Order* to omit the requirements. federal law. The Commission should, therefore, reconsider the adoption of such rules and amend 5. The foregoing competitive ETC advertising requirements are contrary to state and

ETCs are exempt from these requirements. does not include a termination fee in their advertisements. *ETC Order*, ¶¶ 12-13, 33. Incumbent areas reached and dates published; and (4) include information about at least one rate plan that annually certify and report the media in which advertisements have been placed, geographic information for the Office of Public Affairs and Consumer Protection in their advertisements; (3) obligation" in all of their advertisements in their Kansas ETC areas; (2) include the contact competitive ETCs will be required to (1) include language regarding their "universal service 4. Under the new requirements set forth in the Commission's *ETC Order*,

II. THE ETC ORDER'S COMPETITIVE ETC ADVERTISING REQUIREMENTS ARE CONTRARY TO STATE AND FEDERAL LAW

3. Sprint Nextel requests a hearing on the issues of fact and law set forth above. exceeds the Commission's jurisdiction and authority. requirements is unsupported by the record evidence, arbitrary and capricious, contrary to law and 2. For the reasons set forth below, the Commission's adoption of the foregoing apply the Lifetime discount to the plan selected by the customer. *ETC Order*, ¶¶ 66, 77(e).

(d) That all ETCs must allow Lifetime customers to choose a calling plan and termination fee. *ETC Order*, ¶¶ 33, 77(d). (c) That wireless ETCs must offer at least one calling plan without a

A. The Competitive ETC Advertising Requirements Violate K.S.A. § 66-1,143(b)

I. The Commission Is Prohibited From Regulating Wireless Carriers

6. As a threshold matter, the Commission is without jurisdiction or authority to regulate or direct the form or content of a wireless carrier's advertising materials. Kansas law exempts wireless carriers from all forms of Commission regulation, and the state statutes do not provide any exception for wireless carriers that are designated as ETCs for purposes of receiving federal universal service support.

7. K.S.A. § 66-104a(c) provides as follows:

The service of a telephone public utility, otherwise authorized to transact business pursuant to K.S.A. 66-131 and amendments thereto, relating to the provision of radio communication, including cellular radio, which is one-way, two-way or multiple, between mobile and base stations, between mobile and land stations, including land line telephones, between mobile stations or between land stations, shall not be subject to the jurisdiction, regulation, supervision, and control of the state corporation commission. (Emphasis added).

Similarly, K.S.A. § 66-1,143(b) provides that "no radio common carrier shall be subject to the jurisdiction, regulation, supervision and control of the state corporation commission." Shortly after the enactment of the Kansas Telecommunications Act, the Commission confirmed that "wireless providers are statutorily exempt from Commission jurisdiction" as a result of these statutes.<sup>1</sup>

8. The Kansas Supreme Court has similarly interpreted K.S.A. § 66-1,143(b) as prohibiting the Commission from asserting any jurisdiction, supervision or control over wireless carriers. In *CURB v. Kansas Corporation Commission, et al.*, 264 Kan. 363 (1998), the court broadly construed the statute's application as follows:

---

<sup>1</sup> *In the Matter of a General Investigation Into Competition Within the Telecommunications Industry in the State of Kansas*, Docket No. 190,492-U 94-GIMT-478-GJT, Order, ¶ 97 (Dec. 27, 1996).

From a straightforward reading of K.S.A. §66-1,143(b), it prohibits the KCC from exercising *any* jurisdiction, regulation, supervision, or control over radio common carriers. K.S.A. §66-1,143(b) does not merely prohibit the regulation of rates or market entry over radio common carriers, as 47 U.S.C. § 332(c) does. K.S.A. §66-1,143(b) imposes a broader prohibition on the KCC's regulation of radio common carriers than 47 U.S.C. §332(c) imposes on a state's regulation of radio common carriers. In comparing the language of the two statutes, K.S.A. §66-1,143(b) uses much broader language than 47 U.S.C. §332(c) and should be interpreted as such.

*Id.* at 392 (emphasis in original).

9. The competitive ETC advertising requirements set forth in the *ETC Order* clearly fall within K.S.A. § 66-1,143(b)'s prohibition against the regulation, supervision or control of wireless carriers. See *CURB*, 264 Kan. at 392. The rules would regulate not only the form and content of marketing materials used by wireless carriers to promote their services, but would also require a wireless ETC to annually certify compliance with the advertising requirements and report detailed information about the carrier's advertising efforts. As a result, the Commission should reconsider adoption of the advertising requirements as it is without jurisdiction to enforce the rules against wireless carriers.

**2. Nothing In The ETC Designation Process Supersedes The State Law Prohibition Against Commission Regulation Of Wireless Carriers**

10. Although the Commission acknowledges the limitations imposed by K.S.A. § 66-1,143(b), it suggests the statute does not apply in this case because “[w]ireless carriers that seek ETC designation for the purpose of receiving [federal] universal service support submit themselves to the Commission’s jurisdiction and assent to the imposition of certain conditions for the purpose of receiving that designation.” *ETC Order*, ¶ 33. Sprint Nextel respectfully disagrees. To the contrary, nothing in the ETC designation process grants to the Commission greater jurisdiction or authority than was granted by the Kansas Legislature. The Commission is a creature of statute and must act within the confines of its enabling statutes. See *Kansas*

cannot confer subject matter jurisdiction by consent, waiver, or estoppel.”). See also *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 583 N.W.2d 353, 357 (Neb. Ct. App. 1998); *Blackwell v. Commonwealth*, 567 A.2d 630, 636 (Pa. 1989).

**B. The Competitive ETC Advertising Requirements Violate 47 U.S.C. § 254(f)**

**I. The Competitive ETC Advertising Requirements Are Inconsistent With The FCC's Universal Service Rules**

13. As noted above, 47 U.S.C. § 254(f) recognizes that a state commission may adopt additional ETC regulations “not inconsistent” with the FCC’s universal service rules. In this case, the competitive ETC advertising requirements set forth in the *ETC Order* are entirely inconsistent with 47 U.S.C. § 214(c) and 47 C.F.R. § 54.201(d), which similarly provide that a federal ETC’s advertising obligation is limited to:

Advertis[ing] the availability of [the services enumerated in 47 C.F.R. 54.101(a)(1)-(a)(9)] and the charges therefor using media of general distribution.

47 U.S.C. § 214(c)(1)(B) and 47 C.F.R. § 54.201(d)(2).

14. The *ETC Order*’s competitive ETC advertising requirements go far beyond the federal advertising requirement and are entirely unrelated to the federal obligation to advertise the “availability of” and “charges for” the supported services. Indeed, the *ETC Order*’s advertising requirements mandate the advertising of a competitive ETC’s “universal service obligation,” contact information for the Office of Public Affairs and Consumer Protection and information about termination fees. While a competitive ETC’s “universal service obligation” may be related to the “availability of” and “charges for” the supported services, it is entirely unclear because the *ETC Order* fails to define which “universal service obligation” is at issue.<sup>2</sup> In any event, the requirement to advertise contact information for the Office of Public Affairs and Consumer Protection and information about termination fees is clearly unrelated to the

---

<sup>2</sup> See Section III. *infra*.

advertising requirement set forth in 47 U.S.C. § 214(e)(1)(B) and 47 C.F.R. § 54.201(d)(2). At no time has the FCC construed the federal advertising requirement as extending beyond the obligation to advertise the availability of and charges for the supported services. Accordingly, the competitive ETC advertising requirements are inconsistent with the FCC's universal service rules and must be rescinded.

**2. The Competitive ETC Advertising Requirements Are Not Competitively Neutral**

15. The competitive ETC advertising requirements adopted by the Commission are also inconsistent with the FCC's universal service rules because they violate the principle of competitive neutrality. In 1997, the FCC adopted the principle of competitive neutrality as a core principle for its universal service rules.<sup>3</sup> This principle means that universal service rules must not favor one competitor or technology over another. In its March 17, 2005 Order adopting additional requirements for carriers designated as ETCs under 47 U.S.C. § 214(e)(6), the FCC further cautioned state regulators to first consider the extent to which a particular regulation is necessary to protect consumers, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC.<sup>4</sup>

16. Contrary to the universal service principle of competitive neutrality, incumbent ETCs are exempt from the four competitive ETC advertising requirements set forth in the *ETC Order*. The sole basis for this exemption is the Commission's finding that "[s]ince incumbent ETCs are required to include such information in their telephone directories their customers have ready access to this information." *ETC Order*, ¶ 13 n. 19. Even if true, the advertising

---

<sup>3</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 97-157, ¶ 47 (rel. May 8, 1997) ("*Universal Service Order*").

<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 05-46, ¶ 30 (rel. March 17, 2005) ("*March 2005 Order*").

requirements imposed on competitive ETCs are far more burdensome and stringent than the obligation to place a notice in the incumbent's telephone directory.<sup>5</sup> Unlike the incumbent ETCs, competitive ETCs will be required to upend their current - and in many cases national - advertising campaigns to specially tailor their advertisements to satisfy the unique requirements of the *ETC Order*. Moreover, the *ETC Order* could be construed such that competitive ETCs will be obligated to include the required notices in every advertisement that may find its way into Kansas, regardless of the media channel used. These highly disparate requirements clearly discriminate against competitive ETCs solely because they are not the incumbent and, therefore, must be rejected as violating the principle of competitive neutrality.

**3. The Competitive ETC Advertising Requirements Constitute An Unfunded Mandate**

17. The Commission should further reconsider adoption of the competitive ETC advertising requirements because compliance with the rules will burden the federal universal service fund in violation of 47 U.S.C. § 254(f). As noted above, 47 U.S.C. § 254(f) provides that a state commission may adopt additional ETC regulatory obligations only to the extent that they are separately funded by state universal service mechanisms and do not burden the federal universal service fund:

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

---

<sup>5</sup> In fact, Sprint Nextel questions whether the Commission can even compare the obligations. It is doubtful whether a local telephone directory qualifies as "media of general distribution" as such directories are generally distributed only to customers of the incumbent ETC. Under federal law, every ETC has the obligation to advertise the availability of the services enumerated in 47 C.F.R. § 54.101(a)(1)-(a)(9) and the charges therefore using "media of general distribution." 47 U.S.C. § 214(e). Because of the limited distribution of local telephone directories, the incumbent ETCs' inclusion of such information in those directories may fail to satisfy the federal advertising obligation in any respect.

to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms. (Emphasis added).<sup>6</sup>

Stated otherwise, the Commission may not adopt additional ETC regulatory obligations without providing a separate support mechanism to defray the cost of compliance.

18. In this case, competitive ETCs will be forced to allocate additional resources to advertising in order to comply with the new advertising requirements. As discussed more thoroughly below, competitive ETCs that conduct regional or national advertising campaigns will have to specially tailor their advertising materials to the state-specific Kansas requirements. The additional costs associated with these efforts may be appropriately compensated through the application of federal universal service support. As a result, compliance with the competitive ETC advertising requirements will necessarily burden the federal universal service fund in violation of 47 U.S.C. § 254(f).

### III. THE COMPETITIVE ETC ADVERTISING REQUIREMENTS ARE UNREASONABLY VAGUE AND OVERBROAD

19. In addition to the defects addressed above, the Commission should also reconsider adoption of the competitive ETC advertising requirements because the rules are unreasonably vague and overbroad. First, the *ETC Order* fails to define the form and content of any of the prescribed notices to be included in a competitive ETC's advertisements. For example, the *ETC Order* fails to describe the "universal service obligation" competitive ETCs are required to inform consumers about. Likewise, the *ETC Order* fails to specify what information must be provided concerning a competitive ETC's termination fees. In fact, the *ETC Order* is virtually silent as to what would constitute compliant language other than a general directive to "work

---

<sup>6</sup> Consistent with the requirements of 47 U.S.C. § 254(f), the Commission has adopted additional requirements applicable to carriers designated as eligible to receive state support from the Kansas Universal Service Fund ("KUSF"). The KUSF requirements are not at issue in this proceeding.