

specific Federal agency programs and resources can best respond to rural broadband requirements; and describe goals and timeframes to achieve the purposes of the 2008 Farm Bill.

As the Commission has recognized (Public Notice, p. 1), broadband deployment is critical to the well-being of everyone who lives, works, goes to school, and travels in rural America. The Commission can draw on the record developed in other proceedings, and apply the lessons learned, to develop an effective new rural broadband strategy. If broadband deployment and availability of mobile data services are to become a reality throughout the Nation, and particularly in rural areas, the Commission must take the following steps:

- Fix the broken special access market;
- Adopt competitively and technologically neutral policies and standards that encourage sustainable broadband competition in rural areas; and
- Recognize that certain existing mechanisms and policies associated with the current federal Universal Service program are inapplicable to administration of the new broadband initiatives which are the subject of the instant inquiry.

II. THE BROKEN SPECIAL ACCESS MARKET MUST BE FIXED IF RURAL BROADBAND DEPLOYMENT IS TO BE ACHIEVED.

The lack or inadequacy of broadband capability in rural areas is attributable in large part to the difficult economics of deploying facilities in sparsely populated areas. The provision of rural broadband services depends to a great extent on piecing together network facilities owned by multiple entities, rather than end-to-end provisioning by a single service provider. For example, to provide wireless broadband data services, the wireless carrier needs backhaul links from its cell sites to its backbone network. Similarly, a rural wireline broadband service provider (*e.g.*, the RLEC) will require a backhaul link from its end office to the backbone network of its ISP (which is frequently

located outside the rural carrier's service territory). In both situations, these backhaul links are typically special access facilities provided by an RBOC.

Unfortunately, there is virtually no competition for special access services. AT&T and Verizon each control approximately 90 percent of special access lines in their respective geographic markets. Their dominance is even more complete in the rural areas they control. These companies use their dominance to impose excessive prices and to extract monopoly rents. The critical role of special access service in delivering rural broadband – one cannot exist without the other in most cases – means that these excessive rates undermine the development of rural broadband because they drive up the costs of anyone working to bring new service to rural America to levels that curtail network expansion. Access to special access facilities at reasonable rates, terms and conditions is therefore a critical prerequisite to widespread rural broadband deployment, and the RBOCs' relentless exercise of market power in their respective special access service areas threatens the goal of rural broadband availability.

The Commission has amassed a long and detailed record on the lack of competition in the special access market: the overwhelming market share controlled by AT&T and Verizon in their respective service areas; the excessively high rates charged by these carriers (even in markets that the Commission presumed were competitive); and the supra-competitive (up to triple digit) returns earned by these carriers for these services.² Independent parties have corroborated the lack of competition in the special access market. GAO, for example, concluded that in the 16 major metropolitan areas it

² See, e.g., comments filed by Sprint on October 5, 2007 in WC Docket No. 05-25 (*Special Access Rates for Price Cap Local Exchange Carriers*).

examined, “facilities-based competitive alternatives for dedicated access are not widely available.”³ Only a few weeks ago, the National Regulatory Research Institute released a report commissioned by the National Association of Regulatory Utility Commissioners documenting the ILECs’ “strong market power in most geographic areas, particularly for channel terminations and DS-1 services,” and the onerous terms and conditions which limit a customer’s ability to switch even a small portion of its demand to an alternative service provider (where such alternative providers are even available).⁴

The critical link between reasonable access to bottleneck special access facilities and broadband deployment cannot be overstated. Sprint needs such facilities to connect its tens of thousands of cell sites to its backbone network to handle not only its voice but also its growing volume of broadband data traffic. Despite its best efforts to promote competition in the special access market by using the services of alternative providers to the greatest extent feasible, ILECs still accounted for 89% of Sprint’s 2008 special access expenditures. Other independent wireless carriers (that is, those not affiliated with a dominant RBOC) have expressed similarly acute dismay over the lack of competitive alternatives and the excessively high rates they are forced to pay for special access.⁵ Every dollar in excessive special access costs reduces companies’ ability to expand broadband service in rural America – AT&T’s and Verizon’s monopoly profits drive up consumer mobile broadband bills and make new rural wireless towers more expensive.

³ See GAO Report to the Chairman, Committee on Government Reform, House of Representatives, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, released November 2006.

⁴ Peter Bluhm with Dr. Robert Loube, *Competitive Issues in Special Access Markets*, released January 21, 2009, p. iii.

⁵ See, e.g., comments filed by T-Mobile in WC Docket No. 05-25, August 8, 2007.

And the number of these dollars is far from insignificant: in 2007 and 2008, Sprint paid AT&T's and Verizon's ILEC entities several *billion* dollars in special access charges, contributing generously to their 138% (AT&T) and 62% (Verizon) interstate special access rate of return.⁶

Rural ILECs who need connectivity to their ISP's backbone network⁷ have also expressed serious concern about the excessive rates and lack of competitive alternatives to special access services provided by the RBOCs. For example, in the AT&T-BellSouth merger proceeding, OPASTCO urged the Commission to impose a rate cap on private line and special access services, as well as adoption of a "most favored nation" requirement for rates and terms for wholesale access to these (and other) services, for a

⁶ Rate of return calculations based on ILECs' FCC Form 43-01 reports for 2007. Because of the Commission's misguided decision to free AT&T and Verizon of the obligation to collect and file certain critical ARMIS data, information on AT&T's and Verizon's 2008 rates of return is not publicly available. However, there is no reason to suspect that their 2008 special access returns will be any less impressive than their 2007 returns. A petition for reconsideration and appeal of the relevant Commission decisions are pending (*see Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending*, NASUCA v FCC, Case No. 08-1226 (D.C. Cir. filed June 23, 2008); *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, et al.*, WC Docket Nos. 08-190, 07-139, 07-204, 07-273, 07-21, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (*Verizon/Qwest Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending*, NASUCA v. FCC, Case No. 08-1353 (D.C. Cir. filed Nov. 4, 2008).

⁷ According to NTCA, the "typical respondent [RLEC members participating in NTCA's broadband survey] is 98 miles from their primary Internet backbone connection." *See* www.ntca.org/images/stories/Documents/Advocacy/PositionPapers/2009/IssueBroadband.pdf. If the Internet backbone network is outside the RLEC's service territory, the RLEC likely needs to obtain the requisite backhaul special access facilities from another carrier, often AT&T or Verizon.

minimum of five years following the close of the merger.⁸ As OPASTCO emphasized, the AT&T/BellSouth merger would “increase AT&T’s market power over its bottleneck facilities,” and the proposed conditions were needed to protect against AT&T’s and BellSouth’s “unchecked market power” (*id.*, p. 2).

Rural ILECs have continued to voice concern over the RBOCs’ bottleneck over “middle mile” facilities and the need for reasonable access to such facilities. As an executive of Pioneer Communications stated only a few days ago, “While the broadband network is being extended further into areas where there’s no service, many companies cannot afford the large middle-mile facilities to connect these customers to the Internet backbone.”⁹ In like vein, NTCA has emphasized that large carriers’ middle-mile transport services must be cost-based to “accelerate broadband deployment and subscription, result in more affordable services to consumers, and drive economic development throughout the United States.”¹⁰

Concern over the lack of reasonably priced and provisioned special access services is certainly not limited to telecommunications service providers. The special access choke point causes unnecessary expense for small businesses, large employers struggling to protect jobs, schools, libraries, innovative data-driven entrepreneurs, and anyone else that depends on DS-1s and DS-3s. Businesses large and small rely upon

⁸ See *ex parte* letter dated June 14, 2006 from Stuart Polikoff, OPASTCO, to Marlene Dortch, FCC, in WC Docket No. 06-74, pp. 2-3.

⁹ “*All Communities Need Broadband to Survive Economically, Agencies Told*,” *Communications Daily*, March 19, 2009, pp. 2-5, quoting Catherine Moyer of Pioneer Communications of Ulysses, Kansas.

¹⁰ “*NTCA’s Mitchell Participates in NTIA/RUS Panel on Broadband Definitions*,” www.ntca.org/Images/Stories/Documents/Advocacy/Issues/Broadband/NTCA_BB_Definition_Position_Alert_Additional_Info.pdf (“Mitchell Presentation”).

special access to connect remote locations, transfer or share data files, handle customer service inquiries, and process credit card transactions.¹¹ Health care providers rely upon special access to transmit medical records and billing information, provide consumer and professional health education, and engage in telemedicine applications.¹² Schools rely upon special access to provide distance learning, and to transmit attendance, academic, and other records. Financial institutions rely upon special access to process banking, investment, and ATM transactions. Residential consumers are increasingly turning to broadband connections to access the Internet for work, commercial (*e.g.*, on-line shopping and banking), entertainment, and educational purposes.¹³ In short, special access is critical to huge swathes of the Nation's broadband economy.

To meet the ambitious economic and technological goals of the 2008 Farm Act and the Recovery Act,¹⁴ the Commission must act now to reform the broken special access market. It has spent more than four years developing an enormous record, and this record clearly justifies re-imposition of pricing discipline on special access services provided by the overwhelmingly dominant RBOCs. Sprint urges the Commission to act by year-end 2009 to bring RBOC special access services back under price cap regulation,

¹¹ *See, e.g.*, comments filed by the AdHoc Telecommunications Users Committee in WC Docket No. 05-25, August 8, 2007.

¹² *See, e.g., Rural Health Care Support Mechanism*, 22 FCC Rcd 20360, 20370-2 (¶¶ 22-30) (2007).

¹³ As of December 2007, there were an estimated 93.976 million residential high-speed lines, up from 5.170 million lines in December 2000. *See High-Speed Services for Internet Access: Status as of December 31, 2007*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, January 2009, Table 3.

¹⁴ *American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5, 123 Stat. 115 (2009).

re-institute the pre-CALLS productivity adjustment factor, and eliminate unjust and unreasonable terms and conditions.

NTCA recently proposed that large carriers that receive any stimulus money and that provide special access transport to the Internet backbone "...should be required to base these services on cost and offer them to unaffiliated broadband providers at the same price, terms and conditions as [they] offer to their affiliates."¹⁵ Sprint echoes NTCA's call for reasonable rates for these bottleneck facilities (both those used to transport traffic to the Internet backbone, and to transport traffic from a cell site to a carrier's backbone network).¹⁶ To the extent that the Commission prefers to avoid a full-blown rate case to determine the cost of providing service, it could simply bring the RBOC special access services back under price cap regulation as recommended above, or cap special access rates at the level of corresponding UNE rates.

III. THE COMMISSION SHOULD ADOPT COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL STANDARDS AND POLICIES THAT ENCOURAGE SUSTAINABLE BROADBAND COMPETITION IN RURAL AREAS.

To maximize the benefits of broadband deployment to rural consumers, Sprint urges the Commission and Department of Agriculture to adopt standards and policies that promote sustainable broadband competition in rural areas. To access the full power and

¹⁵ Mitchell Presentation, p. 1.

¹⁶ Sprint also agrees that special access services should be provided to affiliated and unaffiliated carriers on a non-discriminatory basis, but would point out that it is not enough to merely require the RBOCs to offer the same (excessively high) rate to all entities because of the "out one pocket, into the other" phenomenon (RBOC interexchange or wireless affiliate is willing to pay over-priced special access rates to the RBOC ILEC, because the corporation as a whole benefits, while the non-affiliated interexchange and wireless carriers are placed at a severe competitive and financial

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flexibility of broadband communications, rural consumers must have access to competitive alternatives from both wireline and wireless service providers. The government should not thwart competition by picking a single technological or competitive “winner.” Nor should the government thwart competition by spreading incentives to deployment so thinly that no competitive alternative to the monopoly incumbent can emerge.

First, the Commission and Department of Agriculture should pursue a policy of competitive and technological neutrality. These two principles, which already govern the existing federal universal service program, will help ensure that rural Americans enjoy the full benefits of wireless broadband. The Commission should refrain from imposing special burdens on or granting special advantages to any class of broadband service provider (incumbent versus competitive carriers, wireline versus wireless carriers, etc.), and should certainly avoid special treatment for individual entities. They should also adopt standards that do not foreclose technologies so that wireless, wireline, cable, and other types of service provider all have a fair opportunity to participate in rural broadband stimulus efforts. Thus, for example, the Commission should refrain from establishing preferences for incumbent LECs, and should not adopt “established local presence” requirements. Neutral standards will encourage participation by a variety of potential service providers using a variety of broadband technologies.

Second, the Commission and Department of Agriculture should encourage competitive alternatives to the established carriers, and should target grants in such a way

disadvantage). Instead, the Commission must ensure that the rates charged to all customers are just and reasonable.

as to ensure that competition develops. Competition obviously will suffer if only one entity can benefit from rural broadband stimulus efforts. Providing taxpayer support to a single entity could give that entity a significant and perhaps insurmountable competitive advantage that would likely forestall future competitive entry or expansion and consign rural consumers to dead-end technologies that the single, favored carrier would have no incentive to improve. It would be short-sighted to implement measures which discourage or even prevent the development of inter- and intra-modal broadband competition in rural markets. But competition will just as surely suffer if hundreds or thousands of entities can each lay claim to some small share of a rural broadband stimulus. However well intentioned, awarding rural broadband stimulus incentives more broadly than the rural market can support only sets up the new entrants to fail, which will only have the perverse effect of *strengthening* the position of the monopoly incumbent. The job of the Commission and the Department of Agriculture is to find the middle ground that neither relegates rural consumers to one provider *directly* by choosing one provider as the “winner,” or *indirectly* by supporting so many providers that all but one eventually surrenders to competitive pressures. Business and consumers benefit from competition among alternative service providers, and rural areas – even those with low population densities – are no exception. Striking the right balance for inter- and intra-modal broadband competition among carriers can provide rural consumers with the greatest access to the economic growth that comes from broadband services.

IV. EXISTING FEDERAL USF REQUIREMENTS AND MECHANISMS DO NOT AUTOMATICALLY APPLY.

The comprehensive rural broadband strategy being developed here by the Commission, in consultation with the Department of Agriculture, will indeed “inform

[the Commission's] effort to develop a comprehensive national broadband plan pursuant to the Recovery Act" (Public Notice, p. 1). In both this proceeding and any subsequent proceeding to implement the Recovery Act, the Commission should explicitly affirm that certain mechanisms and requirements associated with administration of existing federal USF programs do not automatically apply to any new broadband deployment programs. Under the existing federal USF program, broadband is not a supported service, and many of the mechanisms and requirements that may have made sense for voice-centric programs are inappropriate for the broadband initiative. Indeed, the existing voice-centric USF programs are now outdated and ripe for reform. Thus, it would be contrary to the public interest to automatically apply standards built around these "old" USF programs to new broadband programs.

The Commission should refrain from exporting the following practices to new broadband initiatives undertaken pursuant to either the 2008 Farm Bill or the Recovery Act:

Limitations on support received by CETCs: Over the past year, the Commission adopted several proposals which have limited support to competitive eligible telecommunications carriers (CETCs) both as a class and to individual carriers – an "interim" cap on the overall support available to CETCs,¹⁷ and a phase-out of high-cost support available to specific CETCs.¹⁸ The Commission took these actions to limit the growth in/reduce the

¹⁷ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, 23 FCC Rcd 8834 (2008) ("*Interim CETC Cap Order*"). In this Order, the Commission capped the amount of high-cost USF support available to CETCs at annualized March 2008 levels.

¹⁸ *Sprint Nextel Corporation and Clearwire Corporation, Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94,

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overall level of high-cost USF support received by CETCs. Any broadband support under consideration in the instant proceeding is outside the existing federal USF program and the reasoning which led the Commission to impose these CETC limitations do not apply.

Contribution mechanism: The Commission is considering adoption of a numbers- and connections-based USF contribution system to replace the existing revenues-based mechanism.¹⁹ While a numbers-based contribution mechanism may make sense for a voice-centric USF, it is not clear that a numbers-based system is at all appropriate for a fund that would support broadband (data, video, audio) services. Indeed, a contribution mechanism is not even necessary for Recovery Act funds, as such support is derived from federal tax revenues rather than industry contributions.

Reporting requirements: Recipients of existing USF support must comply with detailed and often burdensome application, reporting and audit requirements. While Sprint agrees that adequate controls are necessary to minimize waste, fraud and abuse, and to ensure that support is used in the manner intended, the Commission should not simply transfer any and all existing reporting/compliance requirements to the new broadband initiatives.

Memorandum Opinion and Order released November 7, 2008 (FCC 08-259); *Application of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings, LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling* released November 10, 2008 (FCC 08-258). Sprint and Verizon/Alltel are required under their respective orders to phase out their CETC high-cost USF support in five equal increments unless, prior to the expiration period, the Commission adopts a different plan or successor mechanism to the equal support rule.¹⁹ *High-Cost Universal Service Support* (WC Docket No. 05-337), *Universal Service Contribution Methodology* (WC Docket No. 06-122), *et al.*, *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking* released November 5, 2008 (FCC 08-262); *see, e.g.*, Appendix A, para. 97.

Instead, it must develop reasonable standards which provide adequate accounting controls without being so intrusive or bureaucratic as to discourage potential participants.

V. CONCLUSION.

As the Commission has recognized, broadband deployment and availability of mobile data services are critical to the future of the Nation, and the rural broadband strategy it adopts here will have significant implications for nationwide broadband deployment efforts. If broadband services – both mobile and fixed – are to be widely available, the Commission must take the following steps:

- Recognize that special access is at the core of the rural broadband challenge and therefore fix the broken special access market;
- Adopt competitively and technologically neutral policies and standards that encourage sustainable broadband competition in rural areas; and
- Refrain from transferring certain anti-competitive and burdensome mechanisms and policies associated with the current federal Universal Service program to the new broadband initiatives.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Nextel Corp. was filed electronically or via US Mail on this 25th day of March, 2009 to the parties listed below.


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