

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

In the Matter of)	
)	
National Cable And Telecommunications Association Petition For Rulemaking To Reduce Universal Service High-Cost Support Provided To Carriers In Areas Where There Is Extensive Unsubsidized Facilities-based Voice Competition)	WC Docket No. 05-337
)	GN Docket No. 09-51
)	RM-11584
)	

COMMENTS OF SPRINT NEXTEL CORPORATION

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Executive Summary

Sprint agrees with the National Cable and Telecommunications Association (“NCTA”) that the Universal Service Fund (“USF”) is broken and in need of significant reform. Telecommunications carriers are currently required to contribute 14.1% of their interstate and international voice revenue to the USF. The high-cost portion of the USF has been rising at an alarming rate. These increases have been due to: (1) the creation of new subsidy mechanisms, including \$2.2 billion per year in switched access revenue replacement, (2) payment of funds for lines on which the incumbents no longer provide service, and (3) funding for competitors. The high-cost fund has increased from \$1.7 billion in 1999 to over \$4.5 billion today. This system is neither competitively nor technology neutral in its application.

Sprint also agrees with NCTA that high-cost USF subsidies to incumbent local exchange carriers (“ILECs”) should cease in areas where facilities-based competitors are present. Facilities-based voice competition is available to at least 97% of all Americans, and it appears to be available to at least 85% of rural Americans. Sprint agrees with NCTA that providing USF subsidies to ILECs where private investment has resulted in competitive entry “is exactly the opposite of what should occur under a well-structured program.”¹

Sprint suggests, however, that the Commission take two additional steps that would directly address the transition to broadband networks. First, Sprint recommends that the current USF system recognize that multiple services are using the local loop and that 100% of the cost of this facility need not be attributed to the high cost fund. Instead, a portion of those costs should be recovered through the alternative revenue streams available to the ILEC through the provision of broadband and other services. Second, Sprint recommends that the FCC move away from carrier-based “supply side” funding, to more competitively neutral, customer-based, “demand

¹ NCTA Petition at 10.

side” funding for any new broadband subsidy system. Specifically, Sprint proposes that demand be stimulated in rural areas and among low income groups through creation of a coupon program that encourages consumer adoption of broadband.

USF support should reflect availability of alternative revenue sources.

The Commission should recognize that multiple services are provided over the common network for which ILECs receive USF support. ILEC calling features, long distance service, broadband service and video entertainment services are all offered using common network components that are also used to provide basic local voice service. After removing USF subsidies for ILECs that face facilities-based competition, a further allocation of common plant costs to the various services that each use the loop should be made and USF payments should be adjusted for this allocation. An administratively simple solution would be to allocate a set amount, such as the \$6.50 subscriber line charge, to each service category a carrier could sell using the common facility, and the total amount subtracted from the per-line support. For example, if an ILEC that is eligible to continue to receive high-cost USF provides (1) broadband and (2) other services over common network facilities, per-line high-cost subsidy would be reduced by a total of \$13 for these additional service categories.

Further, the Commission should consider making this allocation even when an ILEC has not made its loops broadband and/or video capable as an incentive to upgrade its plant and provide additional value to customers. This would partially offset the tendency of the “[h]igh-cost funding mechanism [to] reward[] inefficiency,” and would incent ILECs to invest in additional broadband and video entertainment build-out in order to earn broadband and other service revenue from their customers.

Broadband subsidies should be consumer, not carrier, focused.

As the Commission considers the manner in which broadband services will be subsidized in the future, it should create a competitively neutral system focused on broadband adoption rather than expanding the existing fundamentally flawed USF system. Sprint proposes that the Commission stimulate broadband deployment and adoption by providing consumers Broadband User Coupon Kits (“BUCKs”). BUCKs would make broadband hardware and services more affordable for low income groups and would allow consumers to direct federal dollars to those carriers that are best able to meet their needs. Coupons could be provided based on income and other qualification criteria for discounts on the initial purchase of broadband hardware and the recurring charges for broadband services. Coupons could be used with any broadband provider, whether wireline or wireless. This demand-side system would provide support to consumers on a targeted basis, encourage broadband service adoption, and promote broadband competition.

Address remaining barriers to broadband competition.

The Commission can stimulate broadband supply by reforming special access pricing for last mile, second mile and middle mile facilities to encourage competitive deployment of broadband facilities. Excessively priced last mile special access (channel termination) is one of the most significant stumbling blocks to the provision of competitive broadband by CLECs and wireless carriers, while the excessive cost of middle mile (transport) purchased from larger ILECs deters investment in rural broadband deployment and helps push retail rates to levels beyond the reach of some consumers. Likewise, the broken intercarrier compensation system is simply another hidden subsidy program distorting competition. The Commission should reform intercarrier compensation by adopting either a bill-and-keep system or one with low prices based

on the Faulhaber method advanced by the Commission in 2008. Transition to bill-and-keep or Faulhaber rates should be rapid, over the next four years.

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Sprint Nextel Corporation (“Sprint”) hereby respectfully submits its Comments on the National Cable and Telecommunications Association (“NCTA”) Petition for Rulemaking to Reduce Universal Service High-Cost Support In Areas Where There Is Extensive Unsubsidized Facilities-based Voice Competition.² Sprint agrees with NCTA that the USF subsidy system is broken and in need of significant reform. Sprint also agrees with NCTA that incumbent local exchange carriers (“ILECs”) which face unsubsidized facilities-based competition should not receive a USF subsidy payment for those areas. Sprint suggests, however, that the Commission take two additional steps that would directly address the transition to broadband networks: (1) recognize the alternative revenue streams being generated by the subsidized local loop, and (2) encourage broadband adoption in a competitively neutral manner by allowing consumers to direct the funds used to subsidize broadband services.

² Public Notice, Comment Sought on the National Cable & Telecommunications Association Petition for Rulemaking to Reduce Universal Service High-cost Support Provided to Carriers in Areas where there is Extensive Unsubsidized Facilities-based Voice Competition, DA 09-2558 (rel. Dec. 8, 2009).

I. Introduction

The goal of “Universal Service” is to promote the availability of and subscribership to voice telecommunications service. That goal has been met.³ The advent of Internet Protocol (“IP”) and the deployment of broadband capability have spawned a new vision for America – Universal Service aimed at the widespread deployment of broadband capability and significantly increased adoption of IP-based services. The new goal is to “ensure that all people of the United States have access to broadband capability.”⁴ This goal cannot be met, however, without significant reform to the current USF system, as well as removal of other roadblocks to deployment and adoption of broadband and IP-based services.⁵

While Sprint strongly supports the goal of the NCTA proposal, Sprint is concerned about certain aspects of this plan and suggests modifications of the NCTA proposal to ease administrative cost. Sprint also proposes two additional reforms to the current USF system that will more directly support broadband adoption and competition. First, Sprint suggests that current USF subsidies be reduced to recognize that there are multiple services being provided over the local loop that provide additional revenue sources for ILECs. Second, Sprint recommends implementation of a program that will empower consumers to choose the broadband services that meet their needs. Instead of subsidizing broadband suppliers through USF payments, Sprint proposes that demand be stimulated in rural areas and among low income groups through the creation of a coupon program. A coupon program aimed at qualifying

³ See, Telephone Subscribership in the United States (Alexander Belinfante, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Aug. 2009) which states, at 4, “Census Bureau figures for March 2009, the most recent data available, show that the percentage of households subscribing to telephone service was 95.6%. This is the highest reported penetration rate since the CPS began collecting this data in November 1983.” This data includes ILEC, wireless, and broadband telephone data.

⁴ American Recovery and Reinvestment Act of 2009 (“Recovery Act”), Pub. L. No. 111-5, 123 Stat. 115 § 6001 (k)(2) (2009).

⁵ See, Comments of Sprint Nextel Corporation, NBP Public Notice #25, GN Docket Nos. 0947, 09-51, and 09-137, Dec. 21, 2009.

individuals, especially those in rural areas, will result in both increased deployment and adoption of broadband. Supply could then be increased by special access reform that lowers last mile and transport costs as well as intercarrier compensation reform.

Sprint recognizes that its proposal, outlined below, to promote widespread broadband availability and adoption may include components and changes to the current USF that the Commission might hesitate to undertake without additional legislative direction. If that proves to be the case, Sprint urges the Commission to endorse its plan and to seek any additional authority it believes it needs to implement this proposal, which, Sprint believes, contains the best USF structure to promote broadband availability and adoption.

II. The Current Universal Service Fund Is Broken

The USF is made up of multiple mechanisms with various purposes, including support for schools and libraries, rural health care, low income individuals, and high-cost areas. Telecom providers are required to contribute a portion, currently 14.1%, of their interstate and international end user revenue from telecommunications services to these funds and are permitted to recover contributions, typically through customer surcharges.⁶

The schools and libraries and rural health care funds have been capped at the same level since their inception and the low-income support fund has seen modest increases. The high-cost fund, however, has come under intense scrutiny due to significant increases caused by (1) the creation of new subsidy mechanisms, including \$2.2B per year in switched access revenue replacement, (2) funding for lines on which the incumbents no longer provide service, and (3) funding for competitors, primarily wireless providers, which obtained eligibility to receive high-cost support at a competitively and technology neutral “per-line” amount equivalent to that

⁶ Public Notice, Proposed First Quarter 2010 Universal Service Contribution Factor, DA 09-2588 (rel. Dec. 11, 2009).

received by incumbent telephone companies. Total fund size has increased from \$1.7 billion in 1999 to over \$4.5 billion in 2008 as shown in the table below.

High Cost Fund Distributions (\$ Billions)											
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Total
ILEC	\$1.7	\$2.2	\$2.6	\$2.9	\$3.1	\$3.2	\$3.2	\$3.1	\$3.1	\$3.1	\$28.2
CETC	\$0.0	\$0.0	\$0.0	\$0.0	\$0.1	\$0.3	\$0.6	\$1.0	\$1.2	\$1.3	\$4.5
Total	\$1.7	\$2.2	\$2.6	\$2.9	\$3.2	\$3.5	\$3.8	\$4.1	\$4.3	\$4.4	\$32.7

While changes have been made over the years, they have not addressed many of the core issues that are plaguing the high-cost USF. Rather than directly addressing the size of the high-cost fund in a manner that treats competitors and incumbents equitably, changes have included increased contributions from competitive providers, reduced contributions from incumbents, and capped and reduced distributions to competitors. Specifically, the Commission increased the level of contributions required from wireless providers, imposed contribution obligations on VoIP service providers, relieved ILECs from contributing on DSL and other broadband revenue, capped distributions to competitive providers, and required certain wireless providers, as conditions of merger transactions, to phase-out their high-cost fund support receipts. The current high-cost USF system is clearly neither competitively nor technology neutral in its application. It not only favors ILEC providers; it also excludes cable providers, CLECs and wireless providers, and taxes the customers of competitors to support the ILECs. Sprint agrees with NCTA that it is inappropriate to subsidize ILEC voice service in any area where facilities-based voice competition is present and to skew competition in favor of incumbent LECs.

ILECs receive billions of dollars annually in USF ostensibly to promote universal narrowband voice subscribership. But times have changed, the goal of universal voice subscribership has been met, and the new goal of the nation is to advance broadband. Promoting broadband competition is the key to advancing broadband deployment and adoption, and the

current USF stifles broadband competition. Today, voice calls can and do travel over broadband networks that do not differentiate between interstate and intrastate calls, local or long distance, wireless or wireline, or data packets from voice packets. A USF that preserves outdated regulatory distinctions and technologies is unsustainable. If USF is to be continued in the future, it should be crafted to meet this new goal. The USF must be updated to promote new technology and competition.

A. High-cost USF Funding Should Cease in Areas Where Competitors Provide Facilities-based Service Alternatives

NCTA proposes that USF subsidies to the ILEC cease in areas where facilities-based competitors are present. Sprint agrees that it is discriminatory, economically inefficient, and that incorrect economic signals are sent to consumers when subsidies are provided to ILEC services, in any instance where unsubsidized substitute services are available from other service providers. NCTA points out that cable-based voice service is available to 80 percent of the nation's households and to 43 percent of rural households.⁷ NCTA goes on to note that this percentage would be even higher but for the aggressive and continuing efforts of many rural ILECs to refuse interconnection with cable and wholesale providers. Sprint can attest to this fact because it has been involved in numerous, costly, and extended proceedings where it is seeking to interconnect with rural ILECs that want to retain their monopoly.⁸

NCTA notes that wireless facilities-based competition is not included in its rural coverage figures. The omission of wireless facilities-based competition significantly underrepresents the true extent of competition in rural areas. For example, AT&T promotes the fact

⁷ NCTA Petition at 6-7.

⁸ See, e.g., In the Matter of Petition of Sprint Communications Company L.P. for Arbitration of an Interconnection Agreement with Star Telephone Membership Corporation Pursuant to Sections 251(a), (b) and 252 of the Communications Act of 1934, as Amended, Docket No. TMC-5, Sub 2, before The North Carolina Rural Electrification Authority Raleigh; Application of Sprint Communications Company L.P. to Expand Local Exchange Service Territory to Include the Territory Served by Hinton Telephone Company, Inc., Cause No. PUD 200700296 before The Corporation Commission of the State of Oklahoma.

that its cellular voice coverage reaches 300 million Americans, 97 percent of the population.⁹ Given AT&T's coverage, at least 85% of rural customers currently have a least one voice competitor.¹⁰

Sprint agrees with NCTA that providing USF subsidies to ILECs where private investment has resulted in competitive entry "is exactly the opposite of what should occur under a well-structured program."¹¹ In areas where facilities-based competitors are present, the Commission should remove high-cost USF support.¹² Sprint agrees with NCTA that the presence of actual-facilities based competitors providing alternative service at the consumer's location should ensure that consumers will have access to reasonably priced service even if government subsidies are reduced or eliminated.¹³ Sprint suggests that the Commission take the next step to that proposed by NCTA, and find that the presence of unsubsidized wireless competitors should also be sufficient to ensure that consumers will have access to reasonably priced service in the absence of USF subsidies to the ILEC.

In effect, an unsubsidized carrier that has built competitive facilities in a high cost area has bid "zero" in a hypothetical USF auction. It is this "zero" bid that should be used to determine the need for subsidy of cost in serving those customers. And since the competitive carrier has invested its money in a sunk network, the honesty of the "zero" bid is validated. Under these circumstances, USF subsidy of any carrier is inappropriate.

⁹ See, e.g., *you want coverage? We've got it.*, KC Star, Dec. 11, 2009, at A17 (AT&T notes that this figure includes unaffiliated carriers who cooperate with AT&T in providing service).

¹⁰ See, <http://www.fhwa.dot.gov/planning/census/cps2k.htm>, (last viewed Dec. 11, 2009) (2000 census data indicates that 80% of Americans live in urban areas). Assuming that all of the American households without cellular coverage are in rural areas, a conservative estimate of rural households without access to a wireless competitor would be 15 percent, resulting in at least 85 percent of rural households having a voice competitor to the ILEC.

¹¹ NCTA Petition at 10.

¹² NCTA estimates that its proposal to cease providing USF support in areas with multiple competitors could remove \$1 billion in high-cost support. NCTA Petition at 6.

¹³ NCTA Petition at 5.

B. The Current High-cost USF Fails To Recognize That Multiple Services Use Common ILEC Facilities

Even in areas where facilities-based competitors are not present, the Commission should recognize that multiple services are provided over the common network for which ILECs receive USF support. ILEC calling features, long distance service, broadband service and video entertainment services are all offered using common network components that are also used to provide basic local voice service. Under the current USF system, carriers recover all costs of their loop used to provide narrowband voice, even though much of this loop also provides, or could provide, broadband services. This premise creates numerous irrational incentives that undermine the deployment and adoption of broadband service. For example, under this system, carriers have reduced incentives to deploy broadband because they risk a customer to whom they provide broadband leaving their voice service and using a third party voice provider,¹⁴ thus eliminating a subsidized line. Sprint suggests that by recognizing that the loop facilities can be used for multiple services, the FCC can eliminate these disincentives.

To remedy this problem, Sprint proposes that remaining USF payments be reduced by allocating common plant costs to the various services that each use the loop. High-cost USF receipts would then be reduced to recognize that the traditional loop provides alternative revenue streams in addition to plain old telephone service, and that these alternative services must bear a portion of the cost of these common facilities. An administratively simple solution would be to recognize a set amount, such as the \$6.50 subscriber line charge, as a cost to be allocated to each alternative service category that a carrier could sell using the common facility.

¹⁴ See e.g., <http://www.magicjack.com/7/index.asp> (last viewed Nov. 20, 2009) where MagicJack details how simple using broadband for telephone service is. It states, “1) Plug any household phone into magicjack. 2) Plug the magicjack into any USB port on your computer. 3) Pick up the phone and talk for free anywhere in the USA and Canada.”

So, for example, if the ILEC facility could support narrow band voice, broadband internet access and “other” services (e.g. voicemail, long distance, entertainment,¹⁵ etc.), the ILEC’s USF receipts would be reduced by \$6.50 per line for the broadband service and \$6.50 per line for the other services. This would reduce the ILEC USF receipts by \$13 a line. Thus, if the LEC currently receives \$25 a line in a study area, application of this rule will recognize that the LEC can provide broadband and other services over those common facilities and that it obtains or is competing to obtain significant revenue streams from those services such that its USF will be reduced to \$12 ($\$25 - \$13 = \12) per line in that study area.

Sprint does not propose any new assessment of fees on broadband or other services, only that the USF distributions recognize that LECs receive or could receive substantial revenues from these services that utilize the same network facilities as the voice services currently being supported. Consumers’ bills will not automatically be increased as a result of this methodology. In fact, prices for broadband service will likely fall due to the increased incentive for ILECs to increase customer adoption of the broadband services they offer.

The Commission should also consider applying the \$13 reduction from ILEC high-cost USF receipts even when a LEC has not made its loops broadband- and/or video-capable. A company that has done nothing to upgrade its facilities for broadband use has demonstrated that it is content to collect high-cost USF while providing only voice services. It is not “working for its daily bread” by providing broadband service and capturing the associated revenue streams; it’s just collecting an easy subsidy. This policy would incent LECs to obtain more revenue through additional services sold to their own customers rather than complacently obtaining

¹⁵ The Commission should not create a USF support mechanism that subsidizes the acquisition of entertainment content or the delivery of entertainment services, including video entertainment services, by any provider otherwise eligible to participate in USF programs. It should, however, recognize that the loop is frequently used to provide such services and that this is an alternative revenue stream to support that loop.

subsidies from the USF. As the Commission recently recognized, the “[h]igh-cost funding mechanism rewards inefficiency.”¹⁶ This actually will incent more broadband and video entertainment build-out in ILEC networks and lower prices for these services as LECs vigorously work to earn broadband and other services revenue from their customers. This radically improves on the status quo as it both reduces the size of the USF and the resulting USF surcharges on customer bills and provides real incentives to LECs to offer lower priced broadband and video services. Customers benefit from lower USF surcharges and increased consumer choice of competitive broadband and other services.

The use of this proxy will reduce the size of the USF significantly. For example, if the LEC currently receives \$25 a line in a study area, application of this rule will recognize that the LEC can provide broadband and other services over those common facilities and it obtains or could obtain significant revenue streams from those services such that its USF take will be reduced to \$12 ($\$25 - \$13 = \12) in that study area. If a LEC’s USF take is \$10 a line in a study area, application of this rule will recognize that the LEC can provide broadband and other services over those common facilities and it obtains or could obtain significant revenue streams from those services such that its USF take will be reduced to \$0 ($\$10 - \$13 = \-3) in that study area. Therefore, under this methodology any line that currently receives \$13 or less from the USF will no longer be supported. Yet, the lines that receive the most support today will continue to receive annual support from the USF.

Finally, this methodology recognizes how networks are built and operate today, and that subsidies from USF have served as the funding mechanism to build and upgrade the networks enabling them to support these additional services. It is appropriate to recognize the additional

¹⁶ FCC Identifies Critical Gaps in Path to Future Universal Broadband, FCC Press Release (Nov. 18 2009) where the current USF structure is described as “High-cost funding mechanism rewards inefficiency and funds is [sic] not determined by broadband needs.”

revenue sources made possible from these USF-supported network upgrades. LECs deploy voice, broadband and other services all over the same network. Loops, feeder, and transport that carry voice calls are already capable, or can be made capable, and currently often are utilized to provide broadband Internet and other services, including video entertainment services. The broadband and video proxy reduction recognizes that revenues are earned and can be earned in the future over much of the same infrastructure that is used for providing voice services.

Utilizing this methodology of allocating \$13 per line to broadband and video, Sprint estimates that the total impact on the USF would be to decrease the USF from \$4.4 billion to approximately \$1.67 billion.¹⁷ Consumers undoubtedly will benefit from reduced USF surcharges and increased broadband competitive innovation and choice.

C. Recognize ILEC Pricing Flexibility Opportunities and other Revenue Sources

The Commission should also recognize that ILEC revenues available to support voice services should include those that would be produced if ILECs who have substantial or unlimited flexibility to price their services in most territories, appropriately exercise this pricing flexibility. As NCTA notes, because of the presence of competitors, incumbent telephone companies have sought and obtained retail pricing flexibility in a number of states.¹⁸ Many states have deregulated all retail service rates and bundled service rates for the largest carriers, with the exception of basic local single line service. But, even the basic rates of many carriers have been permitted flexibility to increase, often through multi-year phased increases, and some have even

¹⁷ The reduction to the USF caused by allocation of loop and transport costs assumes that this adjustment apply to all lines receiving USF support. Sprint recognizes that if the proposal to cease USF funding in areas with facilities-based competition is adopted, that the additional savings from the allocation of loop and transport costs will diminish.

¹⁸ NCTA Petition at 15.

received complete price deregulation.¹⁹ Sprint agrees with NCTA that deregulation of retail rates by a state commission is an appropriate trigger for removal of USF funding.

Since the intended purpose of high-cost support is to ensure ubiquitous availability of affordable services, it follows that in areas where competition has been found sufficient to constrain prices, support is no longer necessary. High-cost USF should be eliminated in exchanges where LECs have the regulatory flexibility to price their voice services based upon what the market will bear and where alternative voice service providers are present.

1. ILECs Have Multiple Revenue Opportunities To Replace USF Subsidy

The Commission must also recognize that the ILEC often operates as part of an integrated telecommunications company which manages its piece parts to maximize overall revenue and profit. When a company has both regulated and unregulated products and/or companies, it has a strong incentive to place expenses in the regulated company and products where regulators feel obligated to allow the company a reasonable opportunity to “cover costs”. However, the company also has the incentive to place revenues in unregulated subsidiaries and products where revenues can be sheltered from oversight and consideration by regulators. This practice occurs with ILECs because the company and products where common costs are

¹⁹ See, e.g., Order, In the Matter of the Board Investigation Regarding Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive, Docket No. TX07110873 and I/M/O the Application of United Telephone Company of New Jersey, Inc. d/b/a EMBARQ For Approval of a Plan for Alternative Regulation, Docket No. TO08060451, (Aug. 20, 2008) (finding that the availability of competitive products justified granting Verizon and EMBARQ the right to increase prices by set amounts once a year for three years); Order on Application, Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services are Competitive and Deregulatory and Detariffing of the Same, Case No. PUC-2007-00008, (Dec. 14, 2008) (finding that competition justified significant deregulation and allowing Verizon the flexibility to increase residential rates by \$1.00 and business rates \$3.00 per year for five years); Market Regulation Act of 2009, Tenn. Public Chapter No. 278, (May 21, 2009) (authorizing any ILEC that has elected price cap regulation to elect to be subject to market regulation except for exchanges of less than 3000 lines or comparable rate group classification).

recorded is often not associated with revenues that come from common facilities in regard to broadband and other services, including video entertainment services and VoIP services.²⁰

The loop and feeder plant of ILECs facilitate the provision of voice, special access, broadband, Internet and other services. While the cost of these facilities is on the regulated ILEC books charged to voice service, the revenues obtained from many of the services provided over these common facilities are claimed to be “out of bounds” for consideration by regulators. While charges for broadband, Internet and video entertainment provided by ILECs or their holding companies are not regulated, the revenues need not become invisible and should be reasonably considered when a regulator looks at the revenue needs of a regulated ILEC. The Third Quarter 2009 financial reports of AT&T and Verizon provide a clear view of massive revenue streams that flow from common facilities. And both show rapidly growing revenue and market penetration from broadband and video entertainment provided over ILEC common facilities.²¹

²⁰ See, e.g., Ohio Telecom Association, *Telecom Competition in Ohio (2009)* (small Ohio ILECs have already implemented Video over DSL/Fiber in 50% of the companies, have a cable subsidiary in 30% of the companies, offer broadband in 97% of the companies, and provide long distance in 90% of the companies all highlighting additional revenue streams associated with the local loop).

²¹ See, <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=27290> (last viewed Nov. 20, 2009). AT&T reports, in part:

- **Continued Strong AT&T U-verse Gains.** AT&T U-Verse TV subscribers increased by 240,000 – versus a net gain of 232,000 in the year-earlier third quarter – to reach 1.8 million, up more than 1.0 million over the past year. AT&T U-verse TV’s broadband attach rate continues to run well above 90 percent, and its U-verse Voice attach rate continues to run above 60 percent. More than three-fourths of U-verse TV subscribers have a triple- or quad-play option from AT&T. At the end of the third quarter, AT&T’s U-verse deployment passed more than 20 million living units. Companywide penetration of eligible living units was above 12 percent, and across areas markets to for 24 months or more, overall penetration now exceeds 20 percent.
- **Broadband Growth.** AT&T U-verse broadband continued its strong growth in the third quarter with a net subscriber gain of 252,000 subscribers, and growth in stand-alone broadband continues to be strong. These factors more than offset declines in traditional DSL connection for a 90,000 net gain in wireline broadband connections.
- **32.1 Percent Growth in Revenues from Consumer IP-Based Services.** Increased AT&T U-verse TV penetration with a greater number of triple- and quad-play customers drove 32.1 percent year-over-year growth in consumer IP revenues in the third quarter, AT&T’s best growth in this category to date. Broadband, U-verse TV and U-verse Voice now represent 32.4 percent of AT&T’s consumer wireline revenues, up from 23.2 percent in the year-earlier third quarter and 18.7 percent in the third quarter of 2007.
- **Further Growth in Revenues Per Household.** Driven by AT&T U-verse, wireline revenues per household served increased 2.5 percent versus the year-earlier third quarter and were up 1.3 percent

ILECs have multiple revenue streams that are facilitated by common loop and feeder facilities currently charged to voice services. The Commission should acknowledge the entire ILEC revenue picture, including revenues from broadband and video entertainment services, in determining USF needs for ILEC voice service support and appropriately recognizing that aggressive marketing of the entire portfolio of services provides an ILEC and its affiliates a reasonable opportunity to cover costs and replace USF subsidies.

2. LECs Should Use the Pricing Flexibility They Possess

To the extent basic local rates remain subject to regulatory price constraints, the ILEC should be required to make a showing that these regulatory constraints do not permit them to recover the cost of providing basic local service, show that they lack other revenue opportunities available using common plant, and demonstrate that due to regulatory price constraints, they lack a reasonable opportunity to cover their costs before they obtain subsidies. If the ILEC is successful, the per-line support amount would be available only for lines over which the customer subscribes to stand-alone basic local service, and should include a further adjustment that recognizes an allocation of costs to other services, until such time as the regulatory constraints on basic local rates are lifted.

Otherwise, to the extent an ILEC is permitted flexibility to raise prices it should be required to do so. Failure to exercise pricing flexibility and relying instead upon USF subsidies serves as a barrier to robust competition as the subsidized price sets an uneconomic price ceiling.

sequentially. This marks AT&T's seventh consecutive quarter with year-over-year growth in wireline consumer revenues per household.

See also, <http://newscenter.verizon.com/press-releases/verizon/2009/verizon-wireless-and-fios.html> (last viewed Nov. 20, 2009) where Verizon reports the addition of 198,000 net new FiOS Internet customers, 191,000 net new FiOS TV customers, with the product available for sale to 11.5 million premises. Verizon further reported broadband and video revenues in the wireline mass market growing 30.7 percent over the third quarter 2008. Broadband connections totaled 9.2 million at the end of the quarter.

D. The Commission Need Only Develop A Fact-Based Procedure To Verify The Presence Of Facilities-based Competitors Before Ending USF Subsidies

NCTA proposes that the Commission conduct a two-step process to reduce USF funding. First, NCTA urges the Commission to develop a “fact-based procedure to reassess the amount of support made available to a particular location where there is evidence that the market is working to make service available without subsidies.”²² This process would involve a finding that when an ILEC has a wireline competitor in either 75 percent of a study area or where it has a wireline competitor in 50 percent of a study area and where the costs of service due to terrain and density are no higher than the area where competition exists, the Commission should proceed to consider the amount of support given to that area required to cover “ILEC costs that are solely attributable to bringing service to the non-competitive portion of the study area and that cannot be recovered” through other services available in the non-competitive area.²³ Second, NCTA suggests that when a competitive trigger has been met, a proceeding where the Commission would “consider all of the relevant facts as to how competition has developed in that area, the prices that competitors are charging for regulated and unregulated services, and the effect on all providers, and on consumers, if high-cost support were reduced or eliminated.”²⁴

Sprint believes that NCTA’s proposal is aimed at the right target but suggests the appropriate process need not be this complex. Rather than examining the amount of support necessary in competitive areas on a location-by-location basis after considering multiple penetration triggers, Sprint recommends that the Commission simply determine that in areas with facilities-based competitors, no USF support is necessary. Those lines and the costs associated with those lines should be removed from the USF support base. And in areas where continued

²² NCTA Petition at 18.

²³ *Id.* at 12-13.

²⁴ *Id.* at 17.

support is justified because a facilities-based competitor is not present, Sprint's proposal to reduce the per-line assessment to the USF program would provide needed USF reductions while also encouraging ILECs to promote the other services that use their local loop facilities and grow their revenues, thus promoting broadband expansion, rather than relying on subsidies.

III. USF Reform Should Include Demand Stimulation For Broadband

The Commission should also consider USF reform that stimulates the adoption of broadband. The FCC recognizes that there may be barriers to broadband adoption, including affordability of service and affordability of broadband hardware.²⁵ There are two ways to address broadband penetration: supply incentives and demand incentives. The federal government is already acting on the supply incentive side. The Recovery Act adopted in 2009 included \$7.2 billion for grants largely targeted to support deployment of broadband facilities in unserved and underserved areas.²⁶ This is a significant and adequate broadband supply subsidy incentive. What is still lacking is adequate demand incentives.

As set out in greater detail below, Sprint urges the federal government to stimulate broadband demand by making broadband hardware and services more affordable for low income groups by offering consumers Broadband User Coupon Kits ("BUCKs"), and also by encouraging education on the value of broadband to citizens of the United States. Coupons could be provided based on income and other qualification criteria for discounts on the initial purchase of broadband hardware and the monthly and other service charges for broadband services. BUCKs will provide consumers the tools to stimulate the adoption of broadband at a higher rate and to bring the broadband future to all Americans.

²⁵ See, Comment Sought on Broadband Adoption, NBP Public Notice # 16, GN Docket Nos. 09-47, 09-51, 09-137, FCC DA 09-2403 (Released Nov. 10, 2009).

²⁶ American Recovery and Reinvestment Act of 2009, Pub.L.No. 111-5, 123 Stat. 115 (2009) ("Recovery Act").

Incumbents have grown accustomed to the existing USF which distributes funds directly to their coffers and have a strong preference for such a supply-side support approach, especially since the system favors incumbents. Not surprisingly, the primary beneficiaries of the supply side system, ILECs, are seeking a supply-side system for broadband. However, the mediocre broadband take-rate in the U.S. has less to do with a lack of supply than with factors which suppress demand. Supply-side support is already abundantly available through federal government programs which include additional RUS funding for broadband deployment over and above the \$7.2 billion contained in the Recovery Act,²⁷ state funds (e.g., the \$100M California Advanced Services Fund),²⁸ and numerous other state and local government programs.

Besides government-funded infrastructure investment, competition has driven billions of dollars in private investment in broadband networks. Even the smallest most rural providers boast broadband availability to 77% of their customers.²⁹ However, having a broadband network available to 100% of the population will not ensure 100% of the population will take broadband service. To the extent policymakers wish to boost broadband penetration and adoption, any new broadband support mechanisms should be designed to promote broadband competition and increase demand for broadband services. A demand-side support system provides support directly to broadband consumers. A demand-side support system would put the power directly into the hands of the consumer to decide the type of broadband technology they wish to obtain. A demand-side broadband support system promotes broadband competition.

²⁷ See, Order Instituting Rulemaking into the Review of the California High Cost Fund B Program, Rulemaking 06-96-028, Decision 07-12-054 (Dec. 20, 2007).

²⁸ See e.g., Before the Public Utilities Commission of the State of California, Order Instituting Rulemaking into the Review of the California High Cost Fund B Program, Rulemaking 06-06-028.

²⁹ See e.g., NTCA 2009 Broadband/Internet Availability Survey Report, <http://www.ntca.org/images/stores/Documents/Advocacy/SurveyReports/2009ntcabroadbandsurvcyrcport.pdf> (Nov. 2009, last viewed Jan. 6, 2010) where NTCA noted that their rural members intend to offer fiber to the node to nearly 75% of their customer base by 2011 and that currently 77% of their customers have access to 1.5-3 Mbps broadband service today.

This should not be taken to mean that the Commission should not take additional action to stimulate the supply side of broadband deployment, only that USF should not be targeted to the supply side. The Commission should take action on special access last mile, second mile and middle mile, significantly reducing channel termination, feeder and transport components, to encourage and promote broadband competition and broadband deployment. High priced last mile special access facilities (channel termination) are often the stumbling block to provision of competitive broadband by CLECs and wireless carriers. Further, excessive costs for middle mile (transport) facilities constitute a stumbling block to the construction of local broadband networks and, by increasing retail rates, is a deterrent to end user broadband adoption.

A. New USF Broadband Support Should Target Demand Stimulation

Data from the U.S. Census Bureau clearly show that demand for broadband services are influenced by household income and educational levels. For example, 71% of households with income less than \$35,000 have no home broadband service while only 31% of households above \$35,000 have no broadband service. Households with education attainment of high school diplomas or less do not have broadband service 69% of the time versus 35% of households with at least some college education.³⁰ Clearly, both of these factors influence the current demand for broadband services. The Commission highlighted similar information when it reported that “[b]roadband adoption levels vary widely across demographic groups” including much higher take rates as income increases, higher take rates in urban areas, and lower take rates in Hispanic and African-American households.³¹

These two influencing factors appeared to be stronger in rural areas.³²

³⁰ U.S. Census Bureau, Current Population Survey (October 2007).

³¹ FCC Press Release, *supra* note 16.

³² U.S. Census Bureau, *supra* note 21.

Percentage of Households without Broadband			
	<u>All of USA</u>	<u>URBAN</u>	<u>RURAL</u>
<u>Household Income</u>			
Less Than \$35000	71%	69%	80%
Over \$35000	31%	27%	46%
<u>Education</u>			
High School Education or Less	69%	67%	74%
Some College or More	35%	32%	47%

B. USF Support Should Go Directly To Targeted Individuals

To stimulate demand for broadband service, as an alternative to the proposals to expand the existing supply-side high-cost USF system, Sprint proposes the BUCKs system which supplements consumer purchases of broadband devices and services. Specifically, BUCKs would provide three types of coupons to low-income households defined as households with less than \$35,000 annually: one-time \$50 broadband device coupons available on a per household basis to be used toward the purchase of a broadband device; monthly \$13 broadband service coupons available on a per household basis to consumers residing in rural areas (as defined in the Census Bureau report on a CBG basis) to be used toward the purchase of broadband service; monthly \$6.50 broadband service coupons available on a per household basis to consumers residing in non-rural areas to be used toward the purchase of broadband service.

To facilitate consumer use of the new broadband devices and service, money should also be set aside to educate consumers on the use of Internet and broadband applications.

Coupon distribution and device/service provider reimbursement could be administered by the Consumer and Governmental Affairs (CGA) Bureau of the Commission or by a contractor. To illustrate how this system would operate, a consumer wishing to obtain a coupon would

submit a coupon request form to CGA. CGA would review and verify the information on the form and distribute the desired coupon(s) to the requesting consumer. The consumer would select a device/service provider and submit the coupon to the provider at the point of sale and the provider would discount the device or service accordingly. The device or service provider would submit the coupon to CGA for reimbursement. BUCKs would be reviewed and adjusted, if necessary, after 5 years.

Sprint estimates the three BUCKs Programs would require approximately \$2.5B annually once the estimated participation level is reached. We assume that approximately 50% of eligible participants will take part in the programs.

<u>Broadband Device Coupons (Link-up)</u>				
	<u>Qualifying</u>	<u>Likely Participating</u>	<u>Coupon</u>	
	<u>Number of HHs</u>	<u>Number of HHs</u>	<u>Level</u>	<u>Total Cost</u>
HH Income Less than \$35K - No Home Broadband	33,557,525	16,778,762	\$50	\$838,938,123
<u>Broadband Service Discount (Lifeline)</u>				
			<u>Service Discount</u>	<u>Total Cost</u>
HH Income Less than \$35K - No Home Broadband - Rural	7,699,390	3,849,695	\$13	\$600,552,395
HH Income Less than \$35K - No Home Broadband - Non-Rural	25,865,597	12,932,798	\$6.50	<u>\$1,008,758,281</u>
Total Service Broadband Service Discount				\$1,609,310,676
<u>Broadband User Education Program</u>				\$100,000,000
Total Annual Cost				\$2,548,248,799

Ideally, funding of BUCKS would be conducted through general tax revenue since it supports a broad societal goal. More realistically, however, such broadband subsidies would

most likely be funded through an assessment on the retail revenues associated with the provision of broadband connections. It is important, however, that funding not simply be created through an imposition of a fee on narrowband voice services. The assessment of BUCKS subsidies on broadband revenues matches broadband subsidy and support in the same industry segment. This cures the cross-industry funding problem inherent in taxing interstate voice revenues in the name of supporting “high cost local voice” but winking at the expenditure of these funds for ILEC broadband network upgrades that compete with investor funded cable and wireless broadband.

C. Reform of the USF Contribution Methodology Must Account for Lower-Income, Lower-Usage Prepaid Wireless Customers

In conjunction with its consideration of the prominent role that USF reform will have in furthering broadband availability and adoption, the Commission should also strive for another critical objective: stability and certainty in USF contributions. While this goal would benefit all end users of telecommunications services, it is especially critical for lower-income, lower-usage customers who are disproportionately affected by the extended recession and particularly sensitive to shifting and escalating USF contribution burdens. A significant portion of Sprint’s prepaid wireless customers are lower-income, lower-usage customers, and the company has a strong interest in ensuring that any reform of the USF contribution methodology does not create a regressive regime that adversely affects more vulnerable customers.

Regardless of whether the Commission pursues a number based contribution methodology, a revenues based contribution methodology, or some other proposal, Sprint urges the Commission to note that USF contributions based exclusively on numbers or connections can harm lower-income, lower-usage end users—especially prepaid wireless customers. Sprint estimates that a flat \$1.00 USF monthly assessment per number or connection would nearly triple the average monthly USF assessment per prepaid customer. USF contributions based on

numbers or connections would also shift a disproportionate burden of USF fees onto lower-usage prepaid wireless customers. For example, a \$1.00 USF pass-through assessment would represent only 2.5 percent of a typical \$40 end user monthly bill, while the same \$1.00 fee applied to the average prepaid wireless customer with \$20 in monthly voice revenue would represent 5 percent of the customer's monthly service charge. A numbers-based USF system also would impose an assessment even for those prepaid wireless customers who had no interstate usage and generated no monthly voice revenues in a given month.

It would be difficult for prepaid wireless customers to absorb the drastic price increases that would result from the transition to a flat USF contribution regime and would decrease the ability of carriers to offer flat rated pricing plans. Such price increases likely would cause many lower-income customers to decrease or discontinue their use of wireless services altogether. By shifting a disproportionate burden of USF assessments onto prepaid customers, a numbers- or connections-based USF contribution approach would also result in lower-volume, lower-income customers subsidizing higher-volume, higher-income users. Ironically, this approach would significantly impede lower-income customers' accessibility and affordability of telecommunications services—the very customers the USF was designed to benefit.

Recognizing the regressive consequences of a numbers-based USF contribution regime, and the unique circumstances of prepaid wireless services, the Commission's 2008 USF reform proposals proposed an alternate contribution methodology for prepaid wireless services.³³ Under this "USF by the Minute" proposal, USF assessments for prepaid wireless services would be calculated by dividing the residential per-number assessment by the number of minutes the average postpaid wireless customer uses in a month. This per-minute figure would be multiplied

³³ See *In the Matter of High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6555 (2008).

by the number of monthly prepaid minutes generated by the provider. The sum of this calculation would be the provider's monthly USF contribution obligation. This methodology would not exempt prepaid wireless services from USF fees. Instead, it would properly apportion USF payment from prepaid services on an equitable basis to account for their lower-volume usage.

IV. Intercarrier Compensation and Special Access Reform Should Accompany USF Reform

While reform of USF is critical, the picture will not be complete without also addressing intercarrier compensation ("ICC") and Special Access. The two are tied and problems in both areas contribute to incorrect economic incentives, inefficiency, and backward-looking programs. For the past several years, the industry has suffered as voice providers gorged on USF subsidies and manipulated ICC programs to implement various arbitrage schemes. Several years ago, the Commission proposed a bill and keep regime for all traffic, but companies benefitting from high access charges resisted this change.³⁴ While some reductions were made to switched access charges in the CALLS proceeding, much of the revenue reduction in switched access reform was simply transferred to an USF revenue replacement mechanism achieving far less than an optimal outcome.³⁵

Sprint submits that bill and keep should be adopted as the default form of compensation for the exchange of all traffic.³⁶ To the extent a party wished to impose charges on other carriers

³⁴ See, e.g., comments filed in CC Docket No. 01-92 by ICORE (Aug. 21, 2001, pp. 6-8); Rural Alliance (May 23, 2005, pp. 25-32, and June 27, 2008, p. 3); Montana Independent Telecommunications Systems, the Montana Telecommunications Association, and Mid-Rivers Telephone Cooperative (May 23, 2005, pp. 9-13).

³⁵ Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service, *Sixth Report and order in CC Docket No.s 96-262 and 94-1, Report and Order in CC Docket No. 96-45, 155 FCC Rcd 12962, 13039 (¶185) (2000)*.

³⁶ See, e.g., Sprint Corporation's Comments (Aug. 21, 2001) and Reply Comments (Nov. 5, 2001) in CC Docket No. 01-92; Sprint Nextel Corp.'s Comments (Oct. 25, 2006, pp. 7-9) and Reply Comments (Feb. 1, 2007, p. 4) in CC Docket No. 01-92; and Comments of Sprint Nextel Corporation (Dec. 22, 2009) in GN Docket No. 09-47, GN Docket No. 09-51, and GN Docket No. 09-137 (NBP Public Notice #25).

for traffic it terminates to its end-user customers, the Commission should require that all traffic be terminated to that carrier at a low, uniform rate. Rates based on the type of traffic, jurisdiction, or carrier should be removed. Only in this way can the industry cease uneconomic arbitrage and the increasingly common disputes between carriers about what rate to pay. This problem is compounded by the current lack of agreement concerning the interconnection rights of VoIP providers and what termination rate is to be paid for VoIP traffic whether it be VoIP/VoIP or VoIP/TDM. All of this could be swept away by an integrated ICC system based on low termination rates that are the same no matter the source or destination of traffic. Such a system would be technology neutral and promote competition.

The existing ICC system also encourages inefficiency and delays the move from outdated TDM connections to broadband where voice is simply an application that places voice in the IP stream with packets from other applications. In this regard, ICC is a roadblock to broadband deployment and the cost savings to the United States economy that voice over broadband connections would otherwise harvest. ILECs are working daily to patch up the levee holding back broadband progress so that they can continue to collect high access charges and narrow-band USF. Precious time, effort, and money are being spent on inefficient trunk groups that can jurisdictionally separate traffic so that uneconomic access charges can be applied. Costly and inefficient net protocol conversions are being required in the hope that VoIP originated traffic can be forced to pay access charges. Interconnection is being denied to VoIP originators with VoIP traffic at times being artificially forced through a CLEC that provides “approved” TDM interconnection. Costly systems designed to measure, bill, validate, and dispute access charges under the current system could be avoided, as could the costs of litigation associated with this system. None of these actions make sense today as the nation is setting a goal of broadband

deployment and adoption. Instead of encouraging broadband deployment and adoption, current USF funding and ICC policy encourage clinging to outdated technology and deny many of the benefits that broadband would otherwise provide to our national economy.

The Commission barely a year ago asked for comments on a proposal to reform ICC. Sprint provided Comments in that proceeding and respectfully refers the Commission to those comments as additional support and explanation of its Comments.³⁷

A. Uniform Low Interconnection Prices Are Appropriate

The Telecommunications Act of 1996 contains the pricing standard that should be used to set a uniform interconnection rate. Section 252(d) provides that “just and reasonable”³⁸ terms “for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network”³⁹ shall reflect “a reasonable approximation of the additional costs of terminating such calls.”⁴⁰ Additional costs, in the language of economists, are incremental costs. And it is clear that modern and cost effective technology is shifting from switched TDM to broadband, so forward-looking costs reflecting this change in technology should be applied under the statutory standard.

The Commission, in the Access and USF 2008 FNPRM, proposed in Appendix A (¶¶ 236-273) and Appendix C (¶¶ 231-271) versions of the draft item, that terminating rates ultimately be set using a forward-looking, long-run incremental cost standard (“Faulhaber rates”). The Faulhaber method identifies “the additional forward-looking cost that a network

³⁷ See, Comments of Sprint Nextel Corporation, pursuant to the Order on Remand and Report and Order and Further Notice of Proposed Rulemaking released November 5, 2008 (“Access and USF 2008 FNPRM”), (FCC 08-262) (Nov. 26, 2008).

³⁸ §252(d)(2)(A)

³⁹ §252(d)(2)(A)(i)

⁴⁰ §252(d)(2)(A)(ii)

would incur if it provided an additional service”⁴¹ and uses “the least overhead cost”.⁴² Sprint endorsed the Faulhaber method in its Comments in 2008 and endorses this standard today because it fulfills the requirements of §252(d)(2) of the Telecommunications Act of 1996, and because this method will promote competition, promote the advancement of broadband, eliminate traffic pumping schemes, eliminate unnecessary carrier-to-carrier transaction costs, eliminate costly litigation, and most importantly, reduce the communications costs for U.S. businesses and consumers.

A significant record in support of the Faulhaber methodology has already been built at the Commission. The Commission noted that the Faulhaber methodology is more rational from an economic perspective than TELRIC rates and it is supported by record evidence submitted by Sprint, three Intercarrier Compensation Forum economists, and AT&T.⁴³

B. Rapid Transition to Faulhaber ICC Rates is Needed

Sprint recognizes that a flash cut to reciprocal Faulhaber rates for the termination of all traffic may not be politically plausible because backward-looking regulations have caused companies to build their business model on a disproportionate reliance on receiving revenues from imposing high access charges on other carriers. Particularly, some small, rural companies may not have prepared for the future by expanding their business to include revenue streams such as broadband access and entertainment services.⁴⁴ In its Comments in the Access and USF 2008 FNPRM, Sprint proposed a five year transition to Faulhaber rates. However, in its Comments, Sprint also proposed that the Commission clarify for VoIP traffic that “access charges do not, and never have, applied to this traffic, and that wholesale telecommunications

⁴¹ See, Access and USF 2008 FNPRM, Appendix A, ¶ 251.

⁴² *Id.* at ¶¶272-273.

⁴³ *Id.* at ¶¶ 265-267 and 254-257.

⁴⁴ Comments of Sprint Nextel Corporation, Access and USF 2008 NPRM, *supra* note 24 at 4.

carriers providing service to VoIP service providers retain all of their existing rights to interconnections, [and] numbering resources....”⁴⁵ Because VoIP traffic should not have access charges applied to it, the only transition for VoIP should be from current reciprocal compensation rates to Faulhaber rates. Access traffic, on the other hand, should transition from Access rates down to Faulhaber rates over the next four years, because an entire year has passed since the Commission proposed the move to Faulhaber rates and carriers have already had the last year to prepare. In fact, carriers have been on notice for nearly 14 years since the Act adopted bill and keep or incremental cost as the standard compensation for the exchange of telecommunications traffic and ten years since the FCC proposed adoption of bill-and-keep in the unified intercarrier compensation rulemaking proceeding. In light of this, four years is an ample transition period.

The Commission should recognize that, vertically integrated companies that are or own ILECs have significant unregulated revenue streams in addition to those produced from regulated wireline voice services. These companies would not be competitively disadvantaged by an immediate transition to Faulhaber rates and they should be excluded from the four year transition.

This proposal has the added benefit of encouraging the deployment and use of broadband systems. As companies lose USF revenue and access charge revenue that they have been protecting through delayed retirement of TDM facilities, forced VoIP/TDM protocol conversions, duplicative and inefficient trunking requirements, and often unneeded interconnection intercession by CLECs for VoIP termination, broadband deployment and efficiencies have been stifled. These negative incentives are immediately removed by a rapid transition to Faulhaber termination rates for the large, vertically integrated carriers. And these

⁴⁵ *Id.* at 9.

positive broadband incentives increase over time as smaller carriers transition over the four year transition proposal.

C. The Commission Must Address the Failure of the Special Access Market

Over the past several years as wireless service penetration has grown in the United States, wireless carriers have offered customers buckets of minutes of use that do not distinguish between domestic jurisdictions with a separate charge for long distance. Often, unlimited any-distance calls between wireless carriers on the same network are included and not counted against the bucket of minutes purchased. During this period, broadband connections that facilitated all-distance voice service as an application over broadband proliferated. Both of these events resulted in changed behavior by end users. End users made an economic choice to avoid ILEC long distance services with the associated steep per-minute charge and to place their calls that would otherwise be long distance over the all-distance service offered by wireless providers and facilitated by broadband connections. The result of this change in behavior has been a noticeable drop in ILEC switched access revenue. But, again, this is only part of the picture. ILECs have used their market power to replace lost switched access revenue with special access revenue and this has caused other significant competitive problems.⁴⁶

Wireless providers and many broadband providers lack last mile (loop) and second mile (feeder) facilities between end user customers and their own facilities but ILECs have these

⁴⁶ The pernicious impact of unreasonably high special access charges is reflected in too many ways to fully explore here. However, two problems should be noted.

First, high special access rates lead to CLECs that are dependent on ILEC special access channel terminations and transport to claim that they are justified in pricing their switched access above that of the IELC because they must pass on the increased special access charges to carriers, like Sprint PCS, that terminate traffic to them.

Second, high special access prices are an expense to independent wireless carriers but are a free good in territory to the largest wireless carriers, AT&T and Verizon Wireless. Like CLECs, wireless carriers unaffiliated with AT&T and Verizon must price their services to end users to recover the bloated and excessive special access charges they pay AT&T and Verizon. This harms wireless competition by creating a price floor propped up by special access.

facilities to required locations. As a result, the ILEC is the company with market power over these facilities and offers them via special access arrangements only at unreasonable prices. As traffic on wireless carriers and over broadband facilities has increased, the demand for ILEC special access has kept pace because an increase in customer voice, data, or broadband traffic requires more special access facilities. The ILEC has simply migrated much of the switched access problem to what has become a growing and critical special access problem.⁴⁷

As Sprint has demonstrated in multiple filings, the failure of the special access market has resulted in unreasonable prices, terms and conditions. This in turn has placed a drag on broadband deployment and significantly distorts competition. The Commission must recognize that reforming switched access and interconnection without examining how special access impacts broadband deployment and competition is self-defeating. Simply reforming switched access and allowing the problem to further migrate to special access is not a real solution. Both switched and special access must be addressed in the same time period.

IV. Conclusion

Sprint agrees with NCTA that the Commission should reform the high-cost USF plan and fully supports the reasonable goal of significantly reducing funds allocated to high-cost voice support, particularly in areas in which facilities based competition has entered without subsidies. Sprint suggests, however, that the Commission take two additional steps that would directly address the transition to broadband networks: (1) recognize the alternative revenue streams being generated by the subsidized local loop, and (2) encourage broadband adoption in a competitively neutral manner by allowing consumers to direct the funds used to subsidize broadband services.

⁴⁷ See, e.g., *Ex parte* letter with attachment from Christopher J. Wright and A Richard Metzger, Jr. to Marlene Dortch, FCC Secretary, (Oct. 5, 2007) (examining competition in the ILEC special access services market and results of price cap regulation on special access pricing), WC Docket No. 05-25; Comments of Sprint Nextel Corporation, GN Docket Nos. 09-51 and 09-137 at 8-26 (June 8, 2009); Comments of Sprint Nextel Corporation, GN Docket Nos. 09-47, 09-51, and 09-137 (Nov. 4, 2009).

The Commission should further promote broadband competition and deployment through special access and ICC reform as quickly as possible.

Respectfully submitted,

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January 7, 2010

Certificate of Service

I hereby certify that a copy of the foregoing Comments of Sprint Nextel Corporation was filed electronically or via US Mail on this 7th day of January, 2010 to the parties listed below.

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