

Table of Contents

Summary of Comments.....	ii
I. Important Trends and Developments in the Wireless Space During 2009 and 2010	1
A. The Launch of 4G Mobile Broadband Service Has Been the Most Significant Recent Development in the Wireless Ecosystem	1
B. Sprint Has Been an Industry Leader in Environmentally Responsible (or “Green”) Initiatives	5
C. Sprint Has Recently Introduced a Wide Variety of Different Plans for Consumers Not Interested in Contract Plans	10
D. Sprint Has Developed a New Service Plan Designed Specifically to Help Those Americans Most Negatively Impacted by the Recession	13
E. Wireless Providers Have Made Impressive Gains in Providing Consumers With a Positive Customer Experience, as Recent Surveys Confirm.....	14
II. The Retail Mobile Wireless Market Is Effectively Competitive.....	21
A. There Exists Today Effective Competition in the Retail Market for Mobile Wireless Services	21
B. High Penetration Rates Should Ensure That the Retail Market for Mobile Wireless Services Will Remain Effectively Competitive in the Near Term.....	26
III. The Commission Must Address Promptly the Critical Inputs That AT&T and Verizon Control Over the Mobile Wireless Ecosystem.....	28
A. The Commission Should Promptly Resolve Its Long-Standing Special Access Backhaul Investigation	29
B. The Availability of Data Roaming at Reasonable Rates and Terms Is a Critical Input to the Provision of Mobile Broadband Service	30
C. The Harmful Impact of Today’s Antiquated and Discriminatory Intercarrier Compensation Regime on the Wireless Ecosystem.....	32
IV. The Commission Should Assure the Availability of Additional Spectrum for Competitive Mobile Broadband Services	34
V. Conclusion.....	36

Summary of Comments

Sprint addresses three general subjects in response to the Commission's request for input and data on mobile wireless competition.

A. Important Developments in the Wireless Space During 2009 and 2010. Sprint addresses five developments in these comments:

1. The launch of this nation's first 4G mobile broadband network. Sprint describes this network, including the introduction last month of the nation's first 4G smartphone. Sprint submits that 4G networks will not only enrich the Internet experience of mobile broadband users, but also provide more effective competition to fixed broadband service providers.
2. A review of Sprint's environmentally responsible (or "green") initiatives. Sprint briefly describes some of the steps it has taken in the past 18 months, including the introduction of three eco-friendly phones and numerous "green" accessories, and the success it has achieved with its device recycling programs. Since 2001, Sprint's take back programs have diverted more than 20 million phones from landfills for reuse and recycling.
3. In response to the FCC's ongoing examination of service plans with term contracts and early termination fees ("ETFs"), Sprint describes its set of six different plans that it offers to consumers who do not want to sign a term service contract that includes an ETF.
4. Sprint describes its new Lifeline service that it developed specifically for those Americans most negatively impacted by the recession.
5. Sprint finally discusses the impressive gains that the wireless industry has made in providing consumers with a positive customer experience. Sprint also summarizes the numerous steps it takes to ensure that consumers select the right plan and device, that they truly understand the plan and phone they choose, and that they remain satisfied and may freely modify plans as circumstances change.

B. The Retail Mobile Wireless Market Is Effectively Competitive. Among other things, Sprint notes that the wireless Consumer Price Index ("CPI") continued to fall during the first half of this year. And Sprint compares several of its plans with those available to consumers in the United Kingdom ("U.K."), which demonstrates that American consumers receive a better value than their counterparts in the U.K. Sprint observes the Ofcom, the U.K. regulator, has determined that its mobile wireless market is effectively competitive.

Sprint further documents the high-level of penetration that exists in the wireless space. Because the wireless market is effectively saturated, the only way a provider can increase its customer base is by (1) retaining as many of its current customers as possible, and then (2) attracting current customers away from its competitors by convincing them they would receive lower prices and/or better value by switching providers. In this environment, competition in the retail market is likely to continue to be strong in the near term to the benefit of con-

sumers. Maintenance of this competition, however, depends upon carrier access to the critical inputs for their service.

C. Critical Inputs to the Provision of Mobile Wireless Services. The FCC should be commended for examining for the first time in its recent 14th annual competition report, the critical inputs carriers need to provide their services. Sprint discusses four such inputs in this section:

1. The need for the FCC to promptly resolve its long standing special access backhaul investigation;
2. The critical role of data roaming to the provision of mobile broadband services;
3. The harmful impact of today's antiquated and discriminatory intercarrier compensation regime on the wireless ecosystem; and
4. The importance of additional spectrum for competitive mobile broadband services.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
The State of Mobile Wireless Competition) WT Docket No. 10-133
_____)

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”) submits these comments in response to the Commission’s request for “input and data on mobile wireless competition” as part of its preparation of its Fifteenth Annual Report on the State of Mobile Wireless Competition.¹

I. IMPORTANT TRENDS AND DEVELOPMENTS IN THE WIRELESS SPACE DURING 2009 AND 2010

The Commission seeks comment on “any trends or developments that have occurred during 2009 or 2010,” the period that will be covered in the next wireless competition report.² Sprint below discusses the trends and developments it believes are the most significant over the past 18 months.

A. THE LAUNCH OF 4G MOBILE BROADBAND SERVICE HAS BEEN THE MOST SIGNIFICANT RECENT DEVELOPMENT IN THE WIRELESS ECOSYSTEM

Mobile broadband service, until recently, was available only *via* third-generation (“3G”) technologies. As discussed below, mobile broadband services using fourth-generation (“4G”) technologies have now become available to an increasing number of American consumers and businesses. Sprint submits this development will revolutionize the broadband

¹ See Public Notice, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, WT Docket No. 10-133 (June 30, 2010)(“Public Notice”).

² See Public Notice at 2.

market as 4G networks support faster speeds and provide users with an all-Internet Protocol (“IP”) connection. 4G networks will not only enrich the Internet experience of mobile broadband users, but also provide more effective competition to fixed broadband service providers.

Sprint became the first national carrier to introduce 4G mobile broadband service with its launch in September 2008 of a mobile WiMAX network in Baltimore.³ Two months later, in November 2008, following Commission approval,⁴ Sprint and the “old” Clearwire merged their WiMAX spectrum and other WiMAX assets into “new” Clearwire (hereafter, “Clearwire”), with Sprint contributing \$3.3 billion of net assets to the venture.⁵ Google, Intel, Comcast, Time Warner Cable, and Bright House Networks contributed \$3.2 billion in Clearwire, and became important investors in the new company.⁶

The new Clearwire launched its first mobile WiMAX market in January 2009 (in Portland).⁷ This network uses open industry standards (specifically, IEEE 802.16e), which enable

³ See Sprint News Release, *XOHN WiMAX Broadband Service Debuts in Baltimore, New 4G Wireless Era Dawns* (Sept. 29, 2008). This news release, as other Sprint news releases referenced in these comments, are available at: http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-news_newsroom&nyo=0.

It appears that DigitalBridge Communications was the first company to introduce a mobile WiMAX service, launching its 4G service in Jackson Hole, Wyoming – three months before Sprint launched service in Baltimore. See DigitalBridge News Release, *DigitalBridge Communications Deploys the first Mobile WiMAX Network, BridgeMAXX Mobile Services Is Now Commercially Available in Jackson, Wyoming* (June 30, 2008), available at http://www.digitalbridgecommunications.com/Portals/0/About%20DBC/DBC_Jackson%20Network_063008.pdf.

⁴ See *Sprint/Clearwire WiMAX Merger Order*, 23 FCC Rcd 17570 (Nov. 7, 2008).

⁵ See Sprint 2008 SEC Form 10-K, at 3 (Feb. 27, 2009).

⁶ See Clearwire News Release, *Clearwire Completes Transaction With Sprint Nextel and \$3.2 Billion Investment to Launch 4G Mobile Internet Company* (Dec. 1, 2008), available at <http://investors.clearwire.com/phoenix.zhtml?c=198722&p=irol-newsArticle&ID=1231015&highlight=>.

⁷ See Clearwire News Release, *Clearwire Introduces Clear 4G Mobile Internet Service to Portland* (Jan. 6, 2009), available at <http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle&ID=1240894&highlight=>.

any manufacturer to design devices to work on the 4G network. Clearwire provides its own set of services under the CLEARTM brand,⁸ and it has executed mobile virtual network operator (“MVNO”) agreements with Sprint and some of its other investors so they can resell WiMAX services under their own brands.⁹ Likewise, Sprint has executed MVNO agreements with Clearwire and other Clearwire investors so they can access and resell Sprint’s nationwide 3G services.¹⁰

At the end of 2009, Clearwire’s mobile WiMAX network was operational in 27 markets covering 34.5 million people.¹¹ Clearwire’s most recent information shows that its WiMAX network serves 44 markets covering approximately 51 million people.¹² And Clearwire expects to reach approximately 120 million people by the end of 2010 with the launch of many new markets including cities such as New York, Los Angeles, the San Francisco Bay Area, Boston, Denver, Minneapolis, Miami, Cincinnati, Cleveland and Pittsburgh.¹³

In addition to the impressive and ongoing WiMAX network build-out, it is important to note that the 4G network is creating its own competition as several companies will be selling/reselling 4G mobile services under their respective brands and in the same markets. Clearwire is, of course, selling its own CLEAR line of home, mobile and voice products. Sprint is selling 4G services through a variety of devices including hotspots, modems and

⁸ See generally <http://www.clear.com/>.

⁹ See Clearwire 2009 Form 10-K at 119.

¹⁰ See Sprint 2009 Form 10-K at F-17. In fact, Comcast recently launched for its customers a 3G-only service. See Comcast News Release, *Comcast Expands National Rollout of High-Speed 2go by Adding 3G-only Wireless Data Service* (May 5, 2010), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=989>.

¹¹ See Clearwire 2009 SEC Form 10-K, at 2 (Feb. 24, 2010).

¹² See <http://investors.clearwire.com/phoenix.zhtml?c=214419&p=irol-corpoverview>

¹³ *Id.*

handsets (discussed below). In addition, about one year ago, Comcast began reselling Clearwire's 4G services in selected markets under the High-Speed 2go™ brand.¹⁴ And, Time Warner Cable – under a similar resale agreement – sells 4G service branded Road Runner Mobile™.¹⁵

Initially, the only devices available for use with this 4G network were 4G modems and data cards attached to computers. In December 2008, Sprint introduced the nation's first dual-mode (3G/4G) modem so 4G customers could access its nationwide 3G network when traveling outside the 4G coverage area – and further, so its 3G customers could take advantage of the 4G network when traveling within 4G coverage areas.¹⁶ In August 2009, Sprint introduced the nation's first Wi-Fi router so consumers could connect any Wi-Fi device (e.g., MP3 and game players) to either the 3G or 4G networks.¹⁷ In January 2010, Sprint introduced the nation's first 3G/4G mobile hotspot that allows up to five Wi-Fi enabled devices to connect to these networks.¹⁸

The 4G marketplace changed dramatically on June 4, 2010, when Sprint introduced the HTC EVO™ 4G.¹⁹ This Android-based phone provides numerous capabilities, including

¹⁴ See <http://www.comcast.com/highspeed2go/>; see also Comcast News Release, *Comcast Begins National Rollout of High-Speed Wireless Data Service; Portland First to Launch Comcast High-Speed 2go with Atlanta, Chicago, Philadelphia and More Launching Before Year-End 2009* (June 29, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=887>.

¹⁵ See <http://www.timewarnercable.com/KansasCity/about/inthenewsdetails.ashx?PRID=2948&MarketID=22>

¹⁶ See Sprint News Release, *Sprint Extends 4G Leadership with Nation's First 3G/4G Dual-Mode Mobile Broadband Service* (Dec. 17, 2008).

¹⁷ See Sprint News Release, *Sprint Adds 4G Mobile Broadband Router Portfolio as It Prepares to Launch 4G in More Markets* (Aug. 5, 2009).

¹⁸ See Sprint News Release, *Overdrive 3G/4G Mobile Hotspot by Sierra Wireless Can Bring Sprint's 4G Speeds to More Than 400 Million Wi-Fi Enabled Devices* (Jan. 10, 2010).

¹⁹ See Sprint News Release, *The Wait Is Over – America's First 3G/4G Phone, ETC EVO 4G, Available Nationwide Today, Exclusively from Sprint* (June 4, 2010).

a 4.3-inch display, dual cameras, a video chat capability, an HDMI connector port so the phone can be connected to a big-screen TV, and a built-in hotspot functionality allowing up to eight Wi-Fi enabled devices to share the 3G/4G experience.²⁰ This phone sells for \$199.99 with a two-year service contract and after a \$100 mail-in rebate (taxes excluded).²¹ The EVO 4G has already received numerous awards, including CNET, Laptop Magazine and eWeek awards for Best of Show when it was announced at CTIA this spring. And, Sprint will soon launch the Samsung Epic – which will be the first 4G handset with a slide-out keyboard.

B. SPRINT HAS BEEN AN INDUSTRY LEADER IN ENVIRONMENTALLY RESPONSIBLE (OR “GREEN”) INITIATIVES

Our planet is facing increasing environmental challenges, and Sprint believes corporations have a social responsibility to help create a “greener,” more sustainable future. Sprint has taken this responsibility seriously, as evidenced by its 15th overall ranking of the nation’s 500 largest companies in Newsweek’s inaugural 2009 Green Rankings survey.²² The Environmental Protection Agency (“EPA”) has further given Sprint a 19th ranking on its Green Power Partnership Fortune 500 list.²³ Sprint also scored highest among U.S. based wireless companies on the Carbon Disclosure Project’s 2009 Global 500 Report on carbon disclosure.²⁴

²⁰ See http://shop.sprint.com/assets/pdfs/en/shop/why_htc_even_wins.pdf.

²¹ See <http://shop.sprint.com/NASApp/onlinestore/en/Action/DisplaySelPhoneDetail?phoneSKU=APA9292KT&INTCID=AB:UPU:HERO:060410:EvoLaunch:960x320>.

²² See <http://greenrankings.newsweek.com/top500>. See also Daniel McGinn, NEWSWEEK, *The Greenest Big Companies in America* (Sept. 21, 2009), available at <http://www.newsweek.com/2009/09/20/the-greenest-big-companies-in-america.print.html>.

²³ See EPA, *Fortune 500 Partners* (April 6, 2010), available at <http://www.epa.gov/greenpower/toplists/fortune500.htm>.

²⁴ See Carbon Disclosure Project 2009, *Global 500 Report*, at 151-60, available at <https://www.cdproject.net/en-US/Results/Pages/reports.aspx>.

Sprint has launched “green” initiatives throughout all aspects of its operations.²⁵ For example,

- Sprint has set a greenhouse gas reduction goal of 15 percent by 2017.²⁶ In 2009, Sprint achieved a 9.6 percent reduction, up from 6.8 percent in 2008.²⁷
- Over 80 percent of the electricity used at Sprint’s corporate headquarter campus in Overland Park, Kansas is generated by a wind farm (outside Dodge City) that was built after Sprint negotiated a purchase contract with the local electric utility.²⁸ Sprint’s purchase of 87 million kilowatt hours annually has provided a reduction of over 87,000 metric tons of CO2 equivalents – the equivalent of taking over 16,000 cars off the road for one year.²⁹
- Sprint has stopped purchasing municipal water for landscape irrigation on its 200-acre headquarters campus as water requirements are instead now met by the capture of on-site run-off water and use of a water re-circulation pond.³⁰
- All new and refurbished retail stores will utilize Leadership in Energy and Environment Design (“LEED”) standards that will reduce the carbon footprint of each store by about 19,000 pounds of CO2 annually.³¹ By late 2009, approximately 500 stores were updated.³²

²⁵ See generally <http://www.sprint.com/responsibility/environment/index.html>;
<http://green.sprint.com/?ECID=vanity:green>;
<http://www.sprint.com/responsibility/environment/environmentalpolicy.html>;
http://www.sprint.com/responsibility/communities_across/index.html?ECID=vanity:recycle.

²⁶ See Written Testimony of Daniel R. Hesse, Sprint CEO, *Improving Energy Efficiency Through Technology and Communications Innovation*, before the Senate Committee on Commerce, Science and Transportation, Subcommittee on Communications, Technology and the Internet, at 7 (Feb. 23, 2010) (“Hesse 2010 Senate Testimony”), available at http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=9d6c3d7d-db4c-4475-8d60-822ccfd0266c&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=2&YearDisplay=2010.

²⁷ See <http://www.sprint.com/responsibility/environment/index.html>

²⁸ See *id.*

²⁹ See *id.*

³⁰ See Hesse 2010 Senate Testimony at 9.

³¹ See Hesse 2010 Senate Testimony at 10.

³² See <http://www.sprint.com/responsibility/environment/greenfacilities.html>.

Sprint is also using solar-powered energy at cell sites in several States, and it has deployed more than 250 hydrogen fuel cells at some of its sites.³³ In April 2009, the Department of Energy (“DOE”) announced a \$7.3 million grant to Sprint so it can expand this program to additional cell sites and to extend unassisted backup power to 72 hours (57 percent more than that typically available today).³⁴ Sprint also has a partnership with DOE to conduct alternative-energy research, and it currently works with two national laboratories.³⁵

Sprint was the first wireless carrier to establish a set of “green” design criteria for consumer devices, and last year it developed an industry-first environmental “scorecard” to bolster progress towards these design standards.³⁶ Among other things,

- Sprint has introduced an increasing array of “green” accessories, including solar-powered chargers; an all-in-one vehicle and wall charger that meets EPA’s Energy Star guidelines; and a variety of device cases made from either recycled water plastic bottles or cotton and linen.³⁷
- In August 2009, Sprint became the first wireless carrier to introduce an eco-friendly phone, the Samsung ReclaimTM, the hardware of which is made from bio-plastic materials extracted from corn, making 80 percent of the device recyclable.³⁸ Sprint recently introduced two more “green” devices, the LG RemarqTM and the Samsung RestoreTM.³⁹

³³ See Hesse 2010 Senate Testimony at 5.

³⁴ See DOE News Release, *Secretary Chu Announces \$41.9 Million to Spur Growth of Fuel Cell Markets* (April 15, 2009), available at <http://www.energy.gov/news/7262.htm>; Hesse 2010 Senate Testimony at 6.

³⁵ See Hesse 2010 Senate Testimony at 5.

³⁶ See Hesse 2010 Senate Testimony at 16.

³⁷ See Sprint News Releases, *Sprint Launches Eco-Friendly Phone Accessories* (May 18, 2009), *Sprint Expands Portfolio of Eco-Friendly Phone Accessories* (Sept. 8, 2009); see generally <http://green.sprint.com/eco-accessories.php>.

³⁸ See Sprint News Releases, *Sprint Expands Environmental Leadership with New Initiatives and Debut of Eco-Friendly Samsung Reclaim* (Aug. 6, 2009); *Samsung Reclaim Fact Sheet Updated* (Feb. 11, 2010).

³⁹ See Sprint News Releases, *Affordable and Eco-Friendly LG Remarq Continues Sprint’s Wireless Industry Green Leadership* (March 22, 2010); *Sprint and Samsung Mobile Celebrate Earth Day by Continuing Their Green Leadership with the Eco-Friendly Restore* (April 20, 2010).

To help inform consumers regarding which products are more economically responsible than the average wireless device, Sprint recently introduced an Eco-Logo on those products satisfying specified criteria.⁴⁰

The EPA estimates that only about 10 percent of all cell phones are recycled.⁴¹ Sprint accordingly has made a public commitment to achieve by 2017 a reuse and recycling rate of 90 percent of device sales,⁴² and it has established two recycling programs to achieve this objective:

- *Sprint Buyback* – Current or new customers can bring in old devices (even if they are from other carriers) and they will receive account credit of up to \$250 on over 900 eligible devices;⁴³ and
- *Sprint Project Connect* – Anyone can recycle for free any phone, battery, accessory or data card – regardless of carrier or condition.

Sprint has already made substantial progress towards its 2017/90 percent goal. Its collection rate for 2009 was 42 percent, up from 34 percent in 2008 (which, in turn, was up over 22 percent in 2007) – rates well above the industry average.⁴⁴ Since 2001, Sprint's take back

⁴⁰ See Sprint News Release, *CEO Dan Hesse Profiles Environmental Leadership and Growing Portfolio of Green Products at Earth Day Even Co-hosted by Rep. Markey* (April 20, 2010); <http://www.sprint.com/responsibility/environment/devicemarkercriteria.html>.

⁴¹ See EPA News Release, *EPA Highlights Recycling Opportunities During National Cell Phone Recycling Week* (April 1, 2010), available at http://www.epa.gov/aging/press/epanews/2010/2010_0401_3.htm.

⁴² See Hesse 2010 Senate Testimony at 19; Sprint Press Release, *Sprint Sets Ambitious 90 Percent Wireless Recycling Goal* (Feb. 12, 2009).

⁴³ See Sprint News Releases, *Sprint Partners of the U.S. EPA to Urge Americans to Recycle Their Unwanted Cell Phones* (April 1, 2010); *Sprint Expands Its "Buyback" Program; Customers Can Trade in Any Eligible Cell Phone, Even from Other Carriers, for Account Credit* (Feb. 23, 2010).

⁴⁴ See Sprint News Releases, *Sprint Partners of the U.S. EPA to Urge Americans to Recycle Their Unwanted Cell Phones* (April 1, 2010); *Sprint Sets Ambitious 90 Percent Wireless Recycling Goal* (Feb. 12, 2009).

programs have diverted more than 20 million phones from landfills for reuse or recycling,⁴⁵ while further generating more than \$7 million in charitable contributions to such programs as 4NetSafetySM that supports Internet safety for our children.⁴⁶

In addition to being environmentally and socially responsible, Sprint has found that its green efforts are good business practices. To begin, Sprint is addressing the growing environmentally-conscious consumer market. Indeed, Sprint's three eco-conscious handsets have proven to be popular devices and market differentiators. In addition, adoption of environmentally responsible practices can also result in sizable cost reductions. For example,

- Last November, Sprint redesigned its packaging for its entire accessory line, resulting in packaging that is smaller, fully recyclable, free of polyvinyl chloride ("PVC"), and includes recycled content – saving 647 tons of waste annually, while reducing packaging costs by over \$2 million annually.⁴⁷
- A 2009 independent audit determined that efforts by Sprint's IT department to eliminate redundancies reduced the group's carbon footprint by over 10,000 metric tons – while cutting the group's operation costs by \$20 million and avoiding the need to build a new data center facility.⁴⁸

⁴⁵ Under Sprint's ZerO e-waste policy, none of the electronics collected through its recycling/reuse programs ever enters landfills or waste incinerators. Obsolete and non-functioning equipment/parts are recycled for base materials that receive a "second life" in other products. Importantly, user data is erased from all handsets received, and recycling occurs only in OECD countries in ISO-certified facilities that meet EPA R2 standards.

⁴⁶ See Sprint News Releases, *Sprint Partners of the U.S. EPA to Urge Americans to Recycle Their Unwanted Cell Phones* (April 1, 2010); *Sprint Expands Its "Buyback" Program; Customers Can Trade in Any Eligible Cell Phone, Even from Other Carriers, for Account Credit* (Feb. 23, 2010); <http://www.sprint.com/4netsafety/>.

⁴⁷ See Hesse 2010 Senate Testimony at 11; Sprint News Release, *Sprint Redesigns Accessory Packaging for the Eco-Conscious Consumer* (Nov. 4, 2009).

⁴⁸ See Sprint News Release, *Sprint Greens IT, Reduces Carbon Emissions and Operating Costs* (April 20, 2009).

Sprint's overall objective in this area is to help change norms so that what we define as "green" today is "average" tomorrow. And, Sprint is hopeful that its leadership in this area will provide our competitors with the impetus to take similar eco-friendly action.

C. SPRINT HAS RECENTLY INTRODUCED A WIDE VARIETY OF DIFFERENT PLANS FOR CONSUMERS NOT INTERESTED IN CONTRACT PLANS

The Commission over the past year has had a keen interest in examining service plans with term contracts and early termination fees ("ETF"). Although most consumers choose a term/ETF plan, a growing number of consumers are opting for service plans without contracts and without ETFs. Indeed, Sprint alone offers a set of six different plans to consumers who do not want to sign a term service contract that includes an ETF:

1. Pay-as-You-Go Prepaid Plans. Sprint introduced in May 2010 a new no-frills pay-as-you-go plan, known as Common Cents MobileSM, which is available online and at 700 Walmart stores.⁴⁹ Customers do not pay any activation, long distance or roaming fees, and they pay only seven cents (\$0.07) for each voice minute – and with the new Round DownTM feature, calls are also rounded down (so, for example, customer pays only 7¢ for a call lasting 1 minute and 46 seconds).⁵⁰ Customers also pay 7¢ per text, email or instant message and 7¢ per picture message (an unlimited messaging option is available for \$20/monthly). Mobile web is also available at \$1 per day per megabyte ("MB").

⁴⁹ See <http://www.commoncentsmobile.com/> (visited July 15., 2010); Walmart Press Release, *Walmart Adds New Hi-Tech Devices and More Ways to Save for the Always-Connected Life* (May 13, 2010), available at <http://walmartstores.com/pressroom/news/9864.aspx>.

⁵⁰ See <http://www.commoncentsmobile.com/shop/pay-per-minute-phone-plans/minute-phone-plans.jsp> (visited July 15, 2010).

2. A Budget, Lower Voice Usage Prepaid Plan. Two weeks ago, Sprint introduced payLo™, a prepaid plan designed for budget conscious consumers.⁵¹ Two options are available:

1. The 400-Minute Monthly Plan. This plan costs \$20 for 400 minutes each month.
2. The 20¢/Minute Basic Plan. For those consumers that use their phone less frequently, a customer adding \$20 maintains an active account for 90 days and pays the basic rate of 20¢/minute – for a monthly cost that can be as low as \$7.00.

Additional minutes are 20¢/minute; the price for a basic text message is 15¢; the rate for a picture message is 25¢; and the rate for 3G data is \$1.50/MB per day. Currently, four phones are available and they range in price from \$9.99 to \$39.99.⁵² These plans are available online,⁵³ at Best Buy and RadioShack, and at many drug and convenience stores.

3. An Unlimited Prepaid Plan. For customers who use their wireless more extensively, Sprint – *via* its Boost Mobile brand – introduced in January 2009 a \$50 monthly unlimited plan for voice, text, data and walkie-talkie services.⁵⁴ And, Sprint has improved the plan by adding even more value including unlimited calls to 411, and unlimited access to email and instant messaging – for no additional fee.⁵⁵ This plan also includes voicemail, call waiting

⁵¹ See <http://www.virginmobileusa.com/paylo/paylo-plans.html>; see also Sprint News Release, *payLo by Virgin Mobile Launches with Minutes as Low as 5 Cents* (July 15, 2010).

⁵² <http://www.virginmobileusa.com/paylo/paylo-plans.html> (visited July 18, 2010).

⁵³ See <http://www.virginmobileusa.com/paylo/paylo-plans.html> (visited July 18, 2010).

⁵⁴ See Fierce Wireless, *Boost Mobile Debuts \$50 Unlimited Voice/Data Plan*, (Jan. 15, 2010), available at <http://www.fiercemobilecontent.com/story/boost-mobile-debuts-50-unlimited-voice-data-plan/2009-01-15>

⁵⁵ See Business Wire, *Boost Mobile \$50 'Monthly Unlimited Plan' Keeps Getting Better -- 411, Email and Instant Messaging Now Included*, (May 4, 2010), available at http://www.businesswire.com/portal/site/home/permalink/?ndmViewId=news_view&newsId=20100504005451&newsLang=en

and call forwarding.⁵⁶ For an extra \$10 (\$60 monthly), customers can also select a Blackberry option.⁵⁷

4. Text and Data Prepaid Plans. For consumers who principally use text and data, Sprint introduced in May 2010 three Beyond Talk™ plans on its Virgin Mobile platform. These plans include unlimited messaging email, data and web.⁵⁸ The \$25/monthly plan also includes 300 anytime voice minutes, the \$40/monthly plan includes 1,200 minutes, and the \$60/monthly plan includes unlimited voice – and for an additional \$10/monthly, a customers can choose the Blackberry option, which includes web-based mail, BlackBerry^R Messenger, and BlackBerry App World™.⁵⁹

5. A 3G Broadband Prepaid Plan. For consumers interested in mobile broadband, Sprint – also *via* its Virgin Mobile platform – offers several different Broadband2Go plans, ranging from a \$10 option for 100 MB (expires in 10 days) to a \$60 option for five gigabytes (“GB”) (expires in 30 days).⁶⁰

6. Non-Contract/No ETF Postpaid Plans. Sprint offers a basic month-to-month post-paid plan. Consumers selecting this plan, however, are not eligible to receive any handset subsidy; in other words, the customer must purchase a phone at the full retail price.⁶¹ Again, however, the customer is not subject to any contract, any term or any ETF.

⁵⁶ See <http://plans.boostmobile.com/monthlyunlimited.aspx> (visited July 15, 2010).

⁵⁷ See <http://plans.boostmobile.com/blackberry.aspx> (visited July 15, 2010).

⁵⁸ See <http://www.virginmobileusa.com/cell-phone-plans/beyond-talk-plans.html> (visited July 15, 2010).

⁵⁹ See *id.*

⁶⁰ See <http://www.virginmobileusa.com/mobile-broadband#> (visited July 15, 2010).

⁶¹ Smartphone devices, however, require the purchase of a Simply Everything or Everything Data plans).

As seen above, clearly, consumers who do not wish to sign a contract or who wish to avoid ETFs have ample affordable choices available to them from Sprint alone (with dozens of additional options available from Sprint's competitors).

D. SPRINT HAS DEVELOPED A NEW SERVICE PLAN DESIGNED SPECIFICALLY TO HELP THOSE AMERICANS MOST NEGATIVELY IMPACTED BY THE RECESSION

While most Americans have been touched by what is being called the "Great Recession" (*e.g.*, eroded retirement savings, depressed home values), some have been impacted more severely, whether by reduced hours or job losses. In December 2009, Sprint launched a new Lifeline program, Assurance Wireless.⁶² Assurance Wireless is a free wireless service developed specifically for the 37 million eligible low-income households who need it most.

With this service, eligible customers receive a free phone, 200 free weekday minutes of voice (and unlimited usage during nights and weekend), free voicemail, and free call waiting. Beyond the free 200 minutes, customers can pay 10¢/minute for additional domestic calls, 10¢ for text, email or instant messages, and more. Assurance Wireless is currently available in nine States,⁶³ and hundreds of thousands of customers have already signed up for this uniquely tailored offering. Sprint anticipates the service will be available in approximately 25 states by the end of the year.

⁶² See <http://www.assurancewireless.com/Public/Welcome.aspx> (visited July 15, 2010).

⁶³ The nine States are: Florida, Louisiana, Maryland, Michigan, New York, North Carolina, Tennessee, Texas and Virginia.

In response to this new Sprint program, other wireless carriers offering Lifeline plans have increased the number of minutes they make available to their Lifeline customers.⁶⁴ This is yet another example of how American consumers have benefited by competition.

E. WIRELESS PROVIDERS HAVE MADE IMPRESSIVE GAINS IN PROVIDING CONSUMERS WITH A POSITIVE CUSTOMER EXPERIENCE, AS RECENT SURVEYS CONFIRM

The Commission, over the past year, has shown an increased interest in learning whether consumers are getting the information they need to make informed decisions.⁶⁵ All recent surveys show that consumers are increasingly satisfied with their mobile wireless services, which suggest strongly that consumers are receiving timely the information they require.

Indeed, the FCC's own survey results, released last month, found that 59 percent of the respondents were very satisfied with their mobile service (with another 33% somewhat satisfied); 58 percent were very satisfied with their coverage (with another 29% somewhat satisfied); and 62 percent were very satisfied with the performance of their mobile device (with another 28% somewhat satisfied).⁶⁶ A recent Government Accountability Office ("GAO") survey similarly found that overall, 84 percent of wireless customers were satisfied with their service while only three percent ("3%") were very dissatisfied.⁶⁷ Similarly, the University of

⁶⁴ For example, historically, with its Safelink Lifeline plan in Florida, TracFone included only 68 free minutes a month. In response to Sprint's Lifeline service, TracFone increased its plan to include 150 free minutes/monthly.

⁶⁵ See, e.g., *Consumer Information and Disclosure NOI*, 24 FCC Rcd 11380 (Aug. 28, 2009); *Bill Shock Public Notice*, 25 FCC Rcd 4838 (May 11, 2010); *Mobile Broadband Network Performance and Coverage Public Notice*, GC Docket No. 09-158, DA 10-988 (June 1, 2010).

⁶⁶ John Horrigan and Ellen Satterwhite, *Americans' Perspective on Online Connection Speeds for Home and Mobile Devices*, Summary of Findings, at 4 (June 1, 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298516A1.pdf.

⁶⁷ See GAO, *Preliminary Observations About Consumer Satisfaction and Problems with Wireless Phone Services*, GAO-09-800T (July 17, 2009).

Michigan's 2010 American Customer Satisfaction Index survey found that since 2005, the wireless industry as a whole increased its customer satisfaction rate by 10.8 percent, with Sprint alone increasing its rate by 18.6 percent.⁶⁸

These impressive results should not be surprising. The fact is that unhappy customers will not remain customers for long. Gone are the days where subscriber losses could be replaced with first-time buyers of wireless service. As discussed below, given high penetration levels, the only way a provider can increase its subscriber base is first, by retaining existing—and then, by convincing the customers of its competitors to switch to it. In this environment, wireless providers have a powerful economic incentive to ensure their current customers are satisfied – which includes giving them timely the information they need (because customers receiving surprises generally become unhappy customers).

Sprint has dedicated itself to improving its customer satisfaction levels. As part of this effort, Sprint has revamped its practices involving its customer “touch points” to help ensure consumers are well-informed at all stages of the customer life cycle. And, Sprint's efforts are paying dividends and receiving recognition. Sprint received the Gartner and 1to1 Media CRM Excellence Award, one of five gold medal winners, as an organization that uses customer-focused strategies to improve their business performance.⁶⁹ And, the J.D. Power & Associates Wireless Business Satisfaction Survey recognized Sprint as the only carrier to see its scores improve in the small/mid size business category in each of the 2008, 2009, and 2010 surveys.

It is useful to review these practices through use of three categories:

⁶⁸ See http://www.theacsi.org/index.php?option=com_content&task=view&id=205&Itemid=218.

⁶⁹ See <http://www.1to1media.com/View.aspx?ItemID=30794>

1. Ensuring Consumers Select the Right Plan and Device. Sprint provides to consumers a variety of tools to help them decide which plan and device is right for them. Among other things, Sprint provides:

- A sophisticated online coverage map tool so a consumer can assess the Sprint coverage is available in the areas where they travel and further, the level of service (e.g., best, good, fair, roaming) a consumer can expect to receive in a given area.⁷⁰
- An easy-to-understand chart demonstrating what consumers can expect in terms of mobile broadband consumption:

Here's what you can do with 5GB or 300MB of data a month:*

	Approximate file size*	How many of these can I send or receive in a month (300MB) while roaming?*	How many of these can I send or receive in a month (5GB) while on the Sprint network?*
Email (Text only, no images)	3 KB	100,000	1,700,000
Photo (Low resolution image)	500 KB	600	10,000
Music (3 minute song)	3 MB	98	1,667
Movie (full length feature)	700 MB	0	7

*These file sizes and downloads are estimated and will vary widely depending on lots of different factors. So, you shouldn't really use this information to decide how many videos or songs you can download. To check your current data usage, log on to My Sprint.

- Online access to thousands of peer reviews of every device Sprint sells, as well as links to third party expert reviews (e.g., CNET).⁷¹ As but one example, the nation's first 4G smartphone, the HTC EVO 4G, which Sprint introduced only last month, already contains over 740 different customer reviews.⁷²
- Online access to Sprint's networking community of more than 50,000 registered contributors to "buzzaboutwireless," an open forum with discussions about products, services and all things wireless.
- Sprint is also in compliance with the CTIA Consumer Code for Wireless Service ("CTIA Code" or "Code") which contains industry best practices for a variety of consumer disclosures including in advertising

⁷⁰ See <http://coverage.sprint.com/IMPACT.jsp?ECID=vanity:coverage> (visited July 22, 2010).

⁷¹ See <http://community.sprint.com/baw/reviews.jspa?INTCID=CM:AB:20091224:SHOP:Promo2:Community:170x92> (visited July 22, 2010).

⁷² See <http://community.sprint.com/baw/device-reviews.jspa?deviceId=3562&prodId=BBA9292W1> (visited July 22, 2010).

and at the point-of-purchase.⁷³ And, CTIA recently announced updates to the CTIA Code to improve upon consumer disclosures especially as they pertain to messaging and data services for both prepaid and post-paid wireless customers (effective on January 1, 2011).⁷⁴ Sprint applauds the CTIA for its update of the CTIA Code. As one of the original signatories of the Code, Sprint believes these updates address consumer needs brought about by today's rapidly evolving wireless market, and the expanding array of consumer choices. Sprint has already addressed many of the Code changes in its consumer disclosures and will continue to adjust its policies to ensure that they are consistent with the provisions of the updated code. While the wireless retail market is highly competitive, the CTIA and its carrier members understand fully that a well-functioning market requires a free flow of information in order to support and protect consumers in their wireless choices.

2. Ensuring Consumers Truly Understand the Plan and Phone They Select. Once a person selects a plan, Sprint then undertakes numerous steps to help ensure the person understands the plan. Among other things,

- During the sales process, customers visiting a Sprint store are led through the sales process by a Sprint representative. As the customer chooses his or her plan, device and other services, the sales agent enters information into Sprint's front-end order entry system. This system then auto-populates information that is displayed to the customer who can review the information in real-time. As part of this process, the sales agent seeks the customer's acknowledgment of key terms and conditions. For example, with respect to the ETF, the customer reads and acknowledges – by clicking on a signature capture device – the following statement, “An early termination fee (ETF) of up to \$200 per line applies if you terminate service early. Contracts starting after 11/2008 are subject to Sprint's prorated policy (\$200 through month 5 of term, decreasing \$10 a month until \$50 minimum applies to remaining term). For more information, visit www.sprint.com/etf.”
- At the end of the sales process, the customer is then asked to sign the electronic agreement. This information is captured in Sprint's systems and the customer is provided a Transaction Summary and a Subscriber Agreement that contains the information reviewed and acknowledged

⁷³ See http://www.ctia.org/consumer_info/index.cfm/AID/10352

⁷⁴ See CTIA Press Release, *CTIA-The Wireless Association® Announces Updates to Its “Consumer Code for Wireless Service,”* (July 28, 2010), available at <http://www.ctia.org/media/press/body.cfm/prid/1992>

by the customer. The Summary also includes a “Casual Usage and Overage” section so the new customer understands the cost to send/receive text messages or to download ringtones and songs if the customer chooses a plan that does not include some text or data usage.

- With its Ready Now program, a Sprint retail associate works with customers, one-on-one, to personalize their phone, set up its features, and show them how to use it – before they leave the store.
- Sprint sends, generally within a day or two of the sale, a Welcome Letter to new customers that discloses prominently the terms of service (including ETF) and the contract start and end dates. Sprint also sends a similar Confirmation Letter for customers who make a significant change to their plan.
- Upon activation, each new customer’s first call is routed automatically to Sprint’s Welcome Center, which gives Sprint an additional opportunity to answer questions and to confirm the customer understands the plan purchased.
- Customers receive their first bill within 7-10 days of activation, which because it is received well before the 30-day trial period ends, provides customers with a good chance to reaffirm they chose the right plan (or alternatively, cancel service or change the plan).

Perhaps the best way for a new customer to confirm that the plan and device selected are, in fact, the right ones is to take advantage of the one-month free trial period, available with Sprint’s “Free Guarantee.”⁷⁵ Under this program, a person can, within 30 days of activation, cancel service for any reason. Sprint will then:

- Refund the monthly charges incurred as part of the service plan;
- Refund the activation fee and the purchase price of the device;
- Refund taxes and surcharges associated with the above charges; and
- Waive the ETF and restocking fee.

A person cancelling service under this program is only responsible for extras not included in the plan, premium content, third-party billing, and any taxes/surcharges associated with such extras.

⁷⁵

See

http://shop.sprint.com/en/shop/why_sprint/guarantee/index.html?INTCID=AB:UPU:1HERO:041110:Guarantee:960x320.

3. Ensuring Customers Remain Satisfied and Modify Their Plans as Their Circumstances Change. Sprint also takes many steps following the sale to help ensure new customers are satisfied, including:

- Sprint provides several different means for customers to contact it with questions or problems (*i.e.*, an 800 number, *via* the web, dialing *2 for a free call to customer service), and each of these methods is prominently displayed on the first page of each monthly bill.
- Sprint proactively calls new customers several times during the first year to “check in” to ensure the customer is satisfied and has no unresolved issues.
- Sprint has implemented a variety of means (using both “pull” and “push” methods) to minimize the risk of customers receiving unexpected charges on the wireless bill. Sprint discussed many of its efforts in its comments in the “bill shock” proceeding⁷⁶, but wishes to highlight a few more examples here:
 - International Roaming Alert – Sprint sends a “Welcome Message” when a subscriber first registers in a foreign country. It’s a text message that includes default rates for voice, texts and data. For example, a customer will receive the following text message upon registering in South Korea, “In South Korea to call US dial 002-1-area code-number. Calls:\$2.29/min, Data:\$0.002/KB, Txt sent:\$0.50 recvd:\$0.05. Sprint Care 002-1-817-698-4199.”⁷⁷
 - On-Line Alerts – Sprint recently launched a new Sprint.com which provides notifications and alerts concerning customers’ activity (through My Sprint) on their usage, billing, payment options, devices and more when they log onto Sprint.com. These alerts appear prominently upon the customer logging into their account. Sprint has included screen shot examples of these on-line alerts in Exhibit A.
 - Mobile Broadband Re-Direct Alerts – Sprint will soon implement a number of “re-direct” alerts warning mobile broadband data card users of their data consumption. The user will receive the re-direct on their computer as they use Sprint’s Smartview software to connect to the Internet. Importantly, for customers

⁷⁶ See Sprint Bill Shock Comments, CG Docket No. 09-158, at 5 (July 6, 2010).

⁷⁷ Due to technical limitation, Sprint is unable to send a similar welcome text alert to consumers roaming in Canada.

who have exceeded the 300 MB data roaming cap and/or the 5 GB total data usage limit, the customer's data service will be suspended and the customer must essentially opt-in (after receiving a message concerning data rates) in order to restore service. Sprint has included screen shot examples of these alerts in Exhibit B.

- Text Message and Email Alerts –As part of a new initiative scheduled to launch this summer, for customers subscribing to connection plans (e.g., mobile broadband cards, USB modems, embedded modems), Sprint will notify customers via text message and/or e-mail when they reach 75 percent and 90 percent of the 300 MB data roaming cap and the 5 GB total data usage limit.⁷⁸ Sprint has included examples of these alerts in Exhibit C.
- Sprint also offers (at no charge) a variety of parental controls that are also effective in preventing account holders from incurring unwanted charges.⁷⁹
- Sprint introduced an online Sprint Plan Optimizer so a customer can assess easily, based on past usage, what plan(s) may best fit that usage.⁸⁰ This tool provides customers with a transparent view into their plan usage and alternatives and is intended to build trust with Sprint while simultaneously helping customers make educated and informed decisions about their plans. Some of the features of the Sprint Plan Optimizer include:
 - Ability to change the billing-history range
 - Average monthly usage patterns for voice minutes, text messaging, data, etc.
 - Detailed current plan information
 - Breakout of monthly costs
 - Links to view monthly invoices
 - Average overage charges if applicable
 - Sprint has provided screen shot examples of the Sprint Plan Optimizer in Exhibit D.
- Perhaps most importantly of all, under Sprint's Right Plan Promise, customers can change their plan at any time – without extending their contract and without paying any penalties or fees.⁸¹

⁷⁸ See Sprint Bill Shock Comments, CG Docket No. 09-158, at 6 (July 6, 2010).

⁷⁹ See *id.* at 6

⁸⁰ See <http://www.sprint.com/landings/spo/?ECID=vanity:planfit> (visited July 22, 2010).

⁸¹ See http://search.sprint.com/inquirapp/ui.jsp?question_box=right+plan+promise

In summary, Sprint has taken a variety of steps to help ensure that consumers are informed in a timely fashion, do not experience and are ultimately satisfied customers. In the highly competitive retail mobile services market, transparency and customer satisfaction go hand-in-hand.

II. THE RETAIL MOBILE WIRELESS MARKET IS EFFECTIVELY COMPETITIVE

Sprint submits there exists effective competition in the retail market for mobile wireless services and further, given high customer penetration rates, effective competition in this wireless space will likely continue in the near term. Nevertheless, as discussed in Part III below, there remain several critical inputs to the production of retail wireless services which the Commission needs to address to “order to ensure a robust level of competition going forward.”⁸²

A. THERE EXISTS TODAY EFFECTIVE COMPETITION IN THE RETAIL MARKET FOR MOBILE WIRELESS SERVICES

Sprint believes there exists effective competition in the retail market for mobile wireless services, and CTIA’s comments in this docket will document this fact. Sprint below highlights three factors that demonstrate that today’s market for wireless services is effectively competitive.

1. Consumer Price Index (“CPI”). Over the 11-year period 1997 to 2008, the price urban consumers paid for goods and services generally increased by 34.1 percent, while the prices paid for local telephone service increased by 41 percent.⁸³ In stark contrast, over the

⁸² See *Fourteenth Annual Wireless Competition Report*, WT Docket No. 09-66, FCC 10-81, at ¶ 3 (May 20, 2010)(“14th Report”).

⁸³ See 14th Report at 110, Table 28.

same period, the price for wireless service decreased by 35.8 percent.⁸⁴ In other words, while goods and services generally increased by one-third, over the same period wireless prices decreased by a third.

The wireless services CPI has continued to fall since the end of 2008. Specifically, it fell 1.2 percent during 2009 (from 64.4 to 63.6) and another 1.1 percent during the first six months of this year (from 63.1 to 62.4) – for a total decrease over this 18-month period of 3.1 percent.⁸⁵ In contrast, during this same 18-month period, the CPI for goods and services generally increased by 3.2 percent (to 218.0 from 211.1).⁸⁶ Sprint submits this CPI government data is compelling evidence of effective competition in the retail market for mobile wireless services.

2. Sprint Value Enhancements. With respect to postpaid, term contract plans, Sprint's pricing has held steady during these difficult economic times. For example, Sprint's Simply EverythingSM Plan has remained at \$99.99 per month since its inception in February 2008 (nearly 2 ½ year ago).⁸⁷ And, Sprint's Everything DataSM has also remained at \$69.99 (with 450 anytime voice minutes) over this same time period.

⁸⁴ See *id.*

⁸⁵ See <http://data.bls.gov:8080/PDO/servlet/SurveyOutputServlet;jsessionid=6230d3b5ed80793b1b61>.

⁸⁶ See <http://data.bls.gov/cgi-bin/surveymost>.

⁸⁷ See Sprint News Release, *Sprint Launches Revolutionary \$99.99 "Simply Everything(SM)" Plan*, (February 28, 2008).

Sprint has, however, enhanced the value proposition of its plans. In September 2009, Sprint announced its Any Mobile, AnytimeSM plan.⁸⁸ This innovative plan was designed to burst the bubble of other carriers' so-called "calling circles." Sprint customers can experience the freedom of unlimited mobile-to-any-mobile (on any carrier) calling by signing up for one of the Everything Data or Everything Data Family plans. Additionally, when Sprint launched Any Mobile, AnytimeSM, the benefit was provided to millions of current customers on the Everything Data plans automatically, at no additional charge, and without any effort on the customer's part. Further, with Sprint's Right Plan Promise, existing customers who are on a different plan can take advantage of Any Mobile, Anytime by switching to an Everything Data plan without being required to renew or extend their existing service agreement.

3. Comparison of U.S. and U.K. Wireless Plans. It is, the Commission has recognized, an "established practice" to use "international benchmarking to assess effective competition in mobile markets."⁸⁹ Sprint below compares some of the plans its sells to American consumers with those Vodafone sells to U.K. consumers. Sprint chose the U.K. because the U.K. has the most competitive mobile market in Europe, has five national mobile operators, and has a Herfindahl-Hirschman Index ("HHI") comparable to that in our country.⁹⁰ This comparison confirms that American consumers receive good value compared to their counterparts in the U.K.

⁸⁸ See Sprint News Release, *Sprint Customers Can Break Free of Calling Circles with Any Mobile, Anytime*, (September 10, 2009).

⁸⁹ See 14th Report at 104 n. 961.

⁹⁰ See *id.* at 197, Table 41 and ¶ 366.

For example, both companies offer postpaid plans with two-year contracts. Sprint's Simply Everything® plan and Vodafone's £60 Plan are available at a similar monthly price: \$99.99 and \$99.16 respectively.⁹¹ With Sprint's plan, a consumer receives unlimited voice, unlimited push-to-talk and unlimited messaging (text, picture and video).⁹² With Vodafone's plan, a consumer receives lots of minutes (3,000 monthly) and unlimited text messaging; it is unclear whether picture and video messaging are included within this text messaging allotment.⁹³ There are, however, three major differences between the two, similarly priced plans:

1. *Data/Web Browsing.* With Sprint's Simply EverythingSM plan, one receives unlimited data/web usage.⁹⁴ In contrast, Vodafone's £60 Plan includes only 1 GB of usage, and usage above this limit is charged at 76¢ for each 25 MB consumed each day.⁹⁵ Thus, if a Vodafone customer wishes to download a movie and has already reached his 1 GB allotment, the customer would pay over \$21 simply to download the movie – a cost the Sprint customer would not incur.⁹⁶
2. *Long Distance.* Sprint's Simply Everything plan includes no long distance charges, so a customer can make a voice call to anyone in the U.S. without incurring any extra fees. In contrast, the 3,000 voice minutes included in Vodafone's £60 Plan apply only to calls made within the U.K. Thus, a £60 Plan customer must pay an additional £1 (or \$1.53) per minute to call someone located elsewhere within Europe.⁹⁷
3. *Coverage.* The unlimited usage in Sprint's Simply Everything plan applies regardless of where the customer travels on Sprint's nationwide

⁹¹ In the above analysis, Sprint uses the British pound (GBP)/dollar ("USD") exchange rate that applied on July 20, 2010. On this day, the exchange rate was one GBP = \$1.5253 and one USD = £0.66.

⁹² See <http://shop.sprint.com/NASApp/onlinestore/en/Action/DisplayPlans?INTNAV=ATG:FT:Plans> (visited July 20, 2010).

⁹³ See <http://shop.vodafone.co.uk/shop/mobile-price-plans/all-plans> (visited July 20, 2010).

⁹⁴ Sprint continues to offer unlimited data usage while on the Sprint network within their Simply Everything and Everything Data plans.

⁹⁵ See <http://shop.vodafone.co.uk/shop/mobile-price-plans/all-plans>.

⁹⁶ This example assumes a full-length motion picture consumes 700 MB.

⁹⁷ See <http://shop.vodafone.co.uk/shop/mobile-price-plans/all-plans>.

network. In contrast, Vodafone's £60 Plan applies to usage only within the U.K. If the U.K. customer wishes to use her mobile device while traveling elsewhere in Europe (including on Vodafone's EU network), the customer must pay extra for that usage and will be billed at high roaming rates.⁹⁸

Sprint submits that American consumers interested in postpaid plans receive a far better value than their counterparts in the U.K.

Similar differences exist with respect to non-contract plans. For example, both companies offer pay-as-you-go prepaid plans. With Sprint's Common Cents MobileSM plan, a customer pays seven cents (7¢) for each voice minute and 7¢ for each text message, instant message, picture message or email.⁹⁹ With Vodafone's "Vodafone Simply" plan, a U.K. consumer would pay 31¢ a minute for voice,¹⁰⁰ 15¢ for each text message, and 55¢ for each picture message; it is unclear whether email and instant messaging is available with this plan.¹⁰¹ Again, while Vodafone's prepaid plan applies to usage within the U.K. only, Sprint's plan applies regardless of where the customer travels on Sprint's national network. Sprint submits that American consumers interested in prepaid plans also receive a far better value than their counterparts in the U.K.

⁹⁸ The E.U. Parliament recently imposed caps on roaming prices within Europe because E.U. roaming charges were so high. See Sprint Bill Shock Comments, GC Docket No. 09-158, at 8-12 (July 6, 2010),

⁹⁹ See <http://www.commoncentsmobile.com/shop/pay-per-minute-phone-plans/minute-phone-plans.jsp> (visited July 20, 2010). Common Cents customers also have the option to obtain unlimited messaging (text, instant, email and picture) for \$20/monthly. No such unlimited option appears to be available with the Vodafone Simply plan.

¹⁰⁰ With Europe's calling-party-pays system, consumers typically pay only to originate a voice call, not to receive a call.

¹⁰¹ See <http://shop.vodafone.co.uk/pay-as-you-go/hub/vodafone/> (visited July 20, 2010).

The U.K.'s regulator, Ofcom, recently determined that "competition within the [U.K.] mobile sector is generally working well."¹⁰² For example, Ofcom decided last year not to adopt any net neutrality rules because "competition in the mobile sector is currently addressing access concerns adequately":

[I]n a competitive market we expect that the degree of "net neutrality" (if any) will be determined by consumer choice and therefore does not require regulation.¹⁰³

Sprint submits that if the mobile services sector in the U.K. is competitive, then the mobile services sector in the U.S. is competitive as well.

B. HIGH PENETRATION RATES SHOULD ENSURE THAT THE RETAIL MARKET FOR MOBILE WIRELESS SERVICES WILL REMAIN EFFECTIVELY COMPETITIVE IN THE NEAR TERM

Sprint believes that effective competition in the retail mobile wireless space will likely continue for sometime. This is because of the competition that necessarily results when a market like mobile wireless services becomes saturated. However, preserving this competition will require the Commission to address the serious market failures surrounding critical inputs to the wireless market, including special access services controlled by the two largest carriers in the United States, AT&T and Verizon.

The Commission has calculated that at the end of 2008, the nationwide penetration rate for mobile wireless service was 90 percent.¹⁰⁴ While this calculation is correct, the calculation includes children who do not make decisions regarding subscription to wireless services and generally are not heavy users of such services. If children under the age of 11 are ex-

¹⁰² Ofcom, *Mostly Mobile; Ofcom's Mobile Sector Assessment*, Second Consultation, at 42 ¶ 4.5 (July 8, 2009), available at <http://www.ofcom.org.uk/consult/condocs/msa/>.

¹⁰³ *Id.* at 67 ¶ 4.88, 69, Q 4.4, and 67, ¶ 4.91.

¹⁰⁴ *See* 14th Report at ¶ 156.

cluded from the calculation, the national wireless penetration rate at the end of 2008 would be 104.8 percent.¹⁰⁵ If children under the age of 14 are excluded, the national wireless penetration rate at the end of 2008 would instead be 113.3 percent.¹⁰⁶ Penetration rates at the end of 2009 may be even higher because CTIA estimates that wireless connections increased by 5.7 percent in 2009 (to 285.6 million from 270.3 million at the end of 2008),¹⁰⁷ while the Census Bureau estimates that our population increased by only 1.0085 percent between 2008 and 2009 (from 304.4 million in July 2008 to 307 million in July 2009).¹⁰⁸

Regardless of how penetration rates are calculated, the important point is that penetration rates for wireless service are very high. This fact has enormous ramifications for wireless providers. Specifically, given current penetration levels, the only way a provider can increase its customer base is by (1) retaining as many of its current customers as possible (*i.e.*, have a low churn rate), ***and*** (2) attracting current customers away from its competitors by convincing them they would receive lower prices and/or better value by switching providers. Put another way, the number of first-time buyers of wireless service has become so minuscule as to become largely irrelevant as a practical matter.

This situation becomes even more challenging given that new customers tend to generate lower revenues than existing customers. Part of this is due to the growing popularity of

¹⁰⁵ The Census Bureau has estimated that in July 2009, there were a total of 307 million Americans, of which 42.9 million were under the age of 11 and 265 million people over the age of 10. With 277.6 wireless subscribers at the end of 2008, the penetration rate of wireless subscribers over the age of 10 would be 104.8 percent.

¹⁰⁶ The Census Bureau's July 2009 estimate is that there were 61.9 million Americans under the age of 15 and 245.1 million people over the age of 14, resulting in a year-end 2009 penetration rate of 113.3 percent.

¹⁰⁷ See CTIA Semi-Annual Wireless Industry Survey, Annualized Wireless Industry Survey Results – December 1985 to December 2009.

¹⁰⁸ See <http://www.census.gov/popest/states/NST-ann-est.html>.

prepaid plans, which generally generate lower average revenue per unit (“ARPU”).¹⁰⁹ Part of this is also due to the fact that with continuing competition, the per unit price of wireless service – whether voice minutes, text messages sent and received, or gigabytes consumed – continues to fall.

As all wireless carriers know very well, it is considerably cheaper to retain an existing customer than to acquire a new customer. Service providers, therefore, have powerful incentives to improve customer satisfaction, build loyalty and reduce churn. The central point the Commission needs to understand is that when wireless penetration rates are high, competition in the retail market necessarily will be intense – and the beneficiaries of this competition are consumers.

III. THE COMMISSION MUST ADDRESS PROMPTLY THE CRITICAL INPUTS THAT AT&T AND VERIZON CONTROL OVER THE MOBILE WIRELESS ECOSYSTEM

One major risk to the future competitiveness of the mobile wireless space is vertically-integrated companies that hold virtual monopolies over critical upstream or input markets. It is no surprise and certainly not by chance that the two most powerful and vertically-integrated telecommunications service providers also control “60 percent of both subscribers and revenue” within the wireless market. These vertically-integrated providers also exert tremendous control over the LEC and wholesale markets. As such, Sprint applauds the recent 14th Wireless Competition Report because, for the first time in its annual reports, the Commission analyzed competition across “the entire mobile wireless ecosystem, including . . . in-depth analyses of ‘upstream’ and ‘downstream’ market segments.”¹¹⁰ The Commission correctly rec-

¹⁰⁹ See 14th Report at ¶ 98.

¹¹⁰ 14th Report at ¶ 2.

ognized that “input segments can affect entry, competition, output, or prices in the provision of mobile wireless services.”¹¹¹ Analysis of key inputs is thus important in order to “ensure a robust level of competition going forward.”¹¹²

Sprint below discusses three critical inputs to the production of wireless services. These three different inputs share one point in common – namely, this nation’s two largest communications corporations, AT&T and Verizon, have considerable control over each of these inputs. As a result, as the Commission has correctly recognized, wireless providers like Sprint that are “unaffiliated with a wireline provider often must rely on their competitors affiliates for access.”¹¹³ AT&T’s and Verizon’s bottleneck control over these critical inputs obviously poses problems in the retail market for mobile wireless services.

Indeed, the Commission has previously recognized that LECs with wireless affiliates, given their “control of ‘bottleneck’ wireline local exchange facilities,” have both the incentive and ability to engage in anticompetitive practices such as “unfair ‘price squeezes’” to harm wireless carriers not affiliated with any LEC.¹¹⁴ And, the Commission has noted, this LEC incentive increases when wireless services compete directly with the LEC’s own local exchange services.¹¹⁵

A. THE COMMISSION SHOULD PROMPTLY RESOLVE ITS LONG-STANDING SPECIAL ACCESS BACKHAUL INVESTIGATION

Cell site backhaul connections are “an integral component of a wireless service provider’s network”:

¹¹¹ *Id.* at ¶ 10.

¹¹² *Id.* at ¶ 3.

¹¹³ 14th Report at ¶ 296.

¹¹⁴ *See Wireless Safeguards Order*, 12 FCC Red 15668. 15670 ¶ 1, 15688-90 ¶¶ 27-30 (1997).

¹¹⁵ *See id.* at 15670 ¶ 1 and 15692 ¶ 36.

In light of the growing need for backhaul, cost-efficient access to adequate backhaul will be a key factor in promoting robust competition in the wireless marketplace.¹¹⁶

Record evidence before the Commission demonstrates that in many areas of the country, AT&T and Verizon possess monopoly (or bottleneck) control over special access backhaul facilities. The Commission has been examining AT&T's and Verizon's special access prices and practices since 2005 and is in the process of establishing an analytical framework to help examine whether or not the current regulation of special access services is ensuring rates, terms, and conditions that are just and reasonable as required by the Act.¹¹⁷ The Commission must promptly address this long-standing investigation and to again acknowledge in its next annual report that the availability of special access backhaul facilities, at reasonable rates and terms, remains a critical input to the provision of mobile wireless services – especially for those providers that are not affiliated with LECs.

B. THE AVAILABILITY OF DATA ROAMING AT REASONABLE RATES AND TERMS IS A CRITICAL INPUT TO THE PROVISION OF MOBILE BROADBAND SERVICE

Wireless carriers compete with each other based on their respective network coverage.¹¹⁸ As the Commission has recognized, “roaming remains an important means for mobile wireless providers in areas where they do not have coverage”:

Due to the challenges inherent in building out a wireless network, which can include both economic and environmental obstacles, it may be more cost-

¹¹⁶ 14th Report at ¶ 293 and ¶ 296.

¹¹⁷ See Public Notice, *Parties Asked to Comment on Analytical Framework Necessary to Resolve Issues in the Special Access NPRM*, 24 FCC Rcd 13638 (2009).

¹¹⁸ See, e.g., *Tenth Annual Wireless Competition Report*, 20 FCC Rcd 15908, 15949 ¶ 105 (2005). Verizon Wireless' advertising campaign last year, “There's a map for that,” illustrates the importance consumers place on coverage.

effective in some areas for a mobile wireless provider to attain roaming agreements with other providers than to build out its own facilities.¹¹⁹

Indeed, the fact is that “no mobile wireless provider – including the four nationwide providers – has built out its entire licensed service area, and consequently all providers employ roaming to some extent to fill gaps in their coverage.”¹²⁰

The Commission, “recogniz[ing] the importance of roaming,”¹²¹ recently reaffirmed that wireless carriers must provide roaming for voice services at just, reasonable and nondiscriminatory rates.¹²² It also issued a further NPRM asking whether it should “extend roaming obligations to data services such as mobile broadband and Internet access services.”¹²³ If, as the Commission has found, roaming is important for voice services, roaming certainly is important for broadband and other data services. Sprint therefore encourages the Commission to complete expeditiously this data roaming rulemaking.

While the 14th Report addressed the subject of roaming, it did so as part of its general discussion of the wireless ecosystem generally. Sprint submits that for its next report, the Commission should instead address roaming in the section discussing input segments. Input segments are those functions that can “affect entry, competition, output or prices in the provision of mobile wireless services,”¹²⁴ and data roaming certainly meets that definition.

¹¹⁹ 14th Report at ¶¶ 124-25.

¹²⁰ *Id.* at ¶ 125.

¹²¹ *See id.* at ¶ 126.

¹²² *See Roaming Reconsideration Order*, 25 FCC Rcd 4181 (2010).

¹²³ *See* 14th Report at ¶ 126. *See also Data Roaming Further NPRM*, 25 FCC Rcd 4181, 4207-24 ¶¶ 50-91 (April 21, 2010).

¹²⁴ 14th Report at ¶ 10.

C. THE HARMFUL IMPACT OF TODAY’S ANTIQUATED AND DISCRIMINATORY INTERCARRIER COMPENSATION REGIME ON THE WIRELESS ECOSYSTEM

There is one critical input to the provision of wireless services that the Commission did not address in its 14th Report, but which Sprint submits should be added to the 15th Report – namely, today’s severely broken system governing intercarrier compensation.

Congress determined in the 1996 Act that the exchange of *all* telecommunications traffic should be subject to reciprocal compensation.¹²⁵ Under the statutory “additional cost” standard,¹²⁶ such compensation is appropriate only if a LEC incurs additional costs in call termination – to wit, traffic sensitive end office costs.¹²⁷ Given the switching technologies in use today, most LECs no longer incur any traffic sensitive switching costs in terminating another carrier’s traffic. As a federal appellate court held in affirming a state public utility commission decision directing two interconnecting LECs to use bill-and-keep because they incurred no traffic-sensitive switching costs, “But if no additional costs are incurred, there is nothing to pay”:

The district court’s reading of § 251(b)(5) would force carriers to pay one another regardless of whether they incurred additional costs or not. Such a reading would directly contradict the plain meaning of § 252(d)(2)(A)(ii).¹²⁸

¹²⁵ See *2008 ISP Remand Order*, 24 FCC Rcd 6475, 6483 ¶ 15 (2008)(“[T]he transport and termination of *all* telecommunications exchanged with LECs is subject to the reciprocal compensation regime in sections 251(b)(5) and 252(d)(2)(italics added); *2001 ISP Remand Order*, 16 FCC Rcd 9151, 9166 ¶ 32 (2001)(“Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic – *i.e.*, whenever a local exchange carrier exchanges telecommunications traffic with another carrier.”)(italics in original).

¹²⁶ See 47 U.S.C. § 252(d)(2)(A)(ii).

¹²⁷ See *Local Competition Order*, 11 FCC Rcd 15499, 16025 ¶ 1057 (1996)(“For the purpose of setting rates under section 252(d)(2), only that portion of the forward-looking, economic cost of end-office switching *that is recovered on a usage-sensitive basis* constitutes an ‘additional cost’ to be recovered through termination charges.”)(italics added). The FCC later clarified that usage-sensitive costs also exclude the “getting started” costs of such switches. See *Virginia Arbitration Cost Order*, 18 FCC Rcd 17722, 17872 n¶ 378, 17876 n.1016, 17877 ¶ 391, 17912 ¶ 488 (2003).

¹²⁸ *Ace Telephone v. Koppendrayer*, 432 F.3d 876, 881 (8th Cir. 2005).

Accordingly, under the Act and given the evolution of switching technologies, Congress expected that all traffic today would be exchanged under a bill-and-keep arrangement.

Yet, most wireless-LEC traffic today is not exchanged per bill-and-keep, and a considerable volume of such traffic is rather exchanged at above-cost LEC access charges. This situation was initially caused by Congress' enactment of Section 251(g), a grandfather provision that permitted LECs to continue to impose access charges for traffic that was subject to access charges in 1996. But as the Commission and federal courts have recognized, this grandfather provision was to be temporary only:

[T]hat section [251(g)] is worded simply as a transitional device, preserving various LEC duties that antedated the 1996 Act until such time as the Commission should adopt new rules pursuant to the Act.¹²⁹

Thus, the principal reason that LECs have been able to assess above-cost terminating access charges on wireless carriers has been Commission inaction over the past 14 years.

But the situation is actually much worse. This is because while LECs have been permitted to charge above-cost access charges for terminating interMTA mobile-to-land traffic, the Commission has prohibited wireless carriers from accessing any access charges for terminating land-to-mobile traffic.¹³⁰ Thus, the pre-Act regime that still remains in place is grossly discriminatory, because intercarrier compensation for interMTA traffic flows in one direction only (to the benefit of LECs including Sprint's primary wireless competitors, namely AT&T and Verizon).

¹²⁹ *WorldCom v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002). See also *Feature Group IP Forbearance Order*, 24 FCC Red 1571, 1572 ¶ 2 (2009). It is perplexing how a LEC can claim its receipt of above-cost access charges constitutes a "LEC duty."

¹³⁰ See *Wireless Access Charge Declaratory Order*, 17 FCC Red 13192 (2002).

The consequence of this state of affairs is that there is an ongoing and massive wealth transfer from wireless carriers to LECs – in effect, the wireless industry subsidizes the LECs with whom they compete for the consumers’ telecommunications dollars. These wealth transfers have little impact on vertically integrated companies such as AT&T and Verizon – because at the holding company level, it makes little difference whether revenues, costs and profits are recorded by their wireless or wireline subsidiaries. But this arrangement has an enormous impact on carriers like Sprint that are not affiliated with a LEC, because money that could be spent on broadband or expanding coverage must instead be diverted to payment of above-cost LEC access charges – with many LECs having affiliates that also compete in the wireless space.

The Commission has been considering intercarrier compensation reform for nine years,¹³¹ and it has announced it will issue yet another further NPRM by the end of this year.¹³² Sprint urges the Commission to complete expeditiously this investigation once and for all. But at minimum, the Commission should address this important subject in its next annual report. Clearly, the continuation of this discriminatory system of implicit subsidies is having an enormous impact on robust competition within the mobile wireless ecosystem.

IV. THE COMMISSION SHOULD ASSURE THE AVAILABILITY OF ADDITIONAL SPECTRUM FOR COMPETITIVE MOBILE BROADBAND SERVICES

The Commission, in its National Broadband Plan, established as one of its overarching goals that our nation “should lead the world in mobile innovation, with the fastest and most

¹³¹ See *Unified Intercarrier Compensation Reform NPRM*, 16 FCC Rcd 9610 (2001).

¹³² According to its Proposed 2010 Key Broadband Action Agenda Items, the FCC intends to issue another NPRM before the end of this year. See FCC News, *FCC Announces Broadband Action Agenda* (April 8, 2010).

extensive wireless networks of any nation.”¹³³ Mobile broadband represents “the convergence of the last two great disruptive technologies – Internet computing and mobile communications – and may be more transformative than either of these previous breakthroughs.”¹³⁴

Consumers’ use of mobile broadband is already growing at “unprecedented rates.”¹³⁵ For example, Cisco projects that data usage on North American wireless networks will increase 40-fold in the next four years alone.¹³⁶ The Commission has further recognized, correctly, that the growth of mobile broadband will be “constrained if the government does not make spectrum available to enable network expansion and technology upgrades”:

If the U.S. does not address this situation promptly, scarcity of mobile broadband could mean higher prices, poor service quality, an inability for the U.S. to compete internationally, depressed demand and, ultimately, a drag on innovation.¹³⁷

The Commission has concluded that, to address this mounting demand for mobile broadband services, it needs to make “500 megahertz of spectrum newly available for broadband by 2020, with a benchmark of making 300 megahertz available by 2015.”¹³⁸ In implementing this goal, the Commission should assure that as it makes additional spectrum available, it is not concentrated in the hands of vertically integrated carriers exercising dominant market power. Spectrum is a critical input in fostering a robustly competitive mobile broadband marketplace.

¹³³ National Broadband Plan at 25.

¹³⁴ *Id.* at 75.

¹³⁵ *Id.* at 25.

¹³⁶ *Id.* at 76-77.

¹³⁷ *Id.* at 77.

¹³⁸ National Broadband Plan at 26. *See also id.* at 84.

V. CONCLUSION

In summary, Sprint submits these comments to help inform the Commission as it prepares its next, 15th annual wireless competition report.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

/s/ Charles W. McKee
Charles W. McKee
Vice President, Government Affairs
Federal and State Regulatory
Sprint Nextel Corporation
900 Seventh Street N.W., Suite 700
Washington, D.C. 20001
703-433-3786

Scott R. Freiermuth
Counsel, Government Affairs
Federal Regulatory
Sprint Nextel Corporation
6450 Sprint Parkway
Overland Park, KS 66251
913-315-8521

July 30, 2010