Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
APCC Petition for Rulemaking and Petition for Interim Relief Regarding Universal Service and Payphone Issues	)))	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation ("Sprint"), pursuant to the Public Notice released on December 16, 2010 (DA 10-2360), respectfully submits its comments on a "petition for rulemaking to provide lifeline support to payphone line service" and an "emergency petition for interim relief to prevent the disappearance of payphones," both filed by American Public Communications Council ("APCC") on December 6, 2010, in the above-captioned proceedings. As discussed below, the rule changes and relief requested by APCC are without merit and should be denied.

In the instant petitions, APCC has asked that the Commission revise Section 54 of its Rules to allow payment of Low Income USF support to payphone service providers, and that the Commission "immediately declare Eligible Telecommunications Carriers ("ETCs") providing payphone lines eligible for Lifeline support" (Emergency Petition, p. 1). APCC declares that immediate action by the Commission is necessary before payphone deployment "ceases to be a viable business" (*id.*). APCC attributes the sharp decline in payphones in part to the Commission's decisions to allow Low Income USF support for mobile phones (*id.*).

Sprint acknowledges that the dramatic increase in mobile phone service subscriptions, including among low income consumers, has had a significant impact on the public's use of payphones. The estimated 292.8 million wireless subscribers in the United States (as of June 2010)[1] can use their mobile service wherever they are, not only to place calls, but also to access the Internet, send text messages, read e-mails, watch videos, etc. Given the availability of a wide range of wireless service plans, including free service from certain carriers to eligible Lifeline customers,[2] and the power and convenience of mobile service, it is hardly a surprise that demand for payphone service has declined so precipitously.[3]

There is very little else in APCC's petitions, however, with which Sprint agrees. As discussed briefly below, expanding the Low Income USF to support payphones would violate the Act, the Commission's Rules, and the principles underlying universal service. The instant petitions should accordingly be rejected.

First, the Lifeline universal service program is, by its terms, limited to "qualifying low-income *consumers*" (*see, e.g.,* Section 54.400 of the Commission's Rules, emphasis added). It is clear from Section 54 that "consumer" in the Lifeline context is a person,

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[1] *See CTIA Annualized U.S. Survey Results – June 1985 to June 2010*, available at http://files.cita.org/pdf/CTIA_Survey_Midyear_2010_Graphics.pdf.

[2] For example, Virgin Mobile (under the Assurance Wireless brand) currently provides free mobile Lifeline service in 20 states, offering a handset and 250 minutes per month at no charge to eligible consumers, with no long-term contracts, activation fees, recurring fees, or surcharges.

[3] APCC states that the deployed base of payphones has fallen by more than 75% over the last ten years (Petition for Rulemaking, p. 1).

not a business entity.[4] There is not even the slightest hint that the Low Income fund was ever intended to provide support to non-consumer entities such as payphone service providers, and APCC has offered no reasonable basis to justify such a radical expansion of the beneficiary class. Providing support to qualifying low income consumers who might otherwise be unable to afford telephone service is very different from providing on-going corporate subsidies to prop up an increasingly obsolete business model.

Second, providing universal service support for payphone service would violate the statutory mandate that eligibility be based on consumer demand. As specified by Section 254(c)(1)(B) of the Act, the Commission is to define services eligible for federal universal service support based (among other factors) upon a finding that the services "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers…." By APCC's own admission (Petition for Rulemaking, p. 5), payphone service "by definition" cannot meet this criterion.

APCC asserts that the "subscription by a substantial majority of residential customers" criterion "is not mandatory" and may somehow be overruled by the "public interest" benefits of providing Lifeline support to payphone providers *(id.)*. APCC is mistaken. Section 254(c)(1) states that the Commission "shall" (the "language of command")[5] consider the extent to which a telecommunications service meets *all* of the listed criteria (A, B, C *and* -- not *or* -- D). For purposes of determining which services

[4] *See, e.g.,* Section 54.409, "Consumer qualification for Lifeline," which lists eligibility qualifications based on consumer's income or consumer's participation in programs such as Medicaid or Food Stamps. Obviously, a business entity would not satisfy any of those eligibility criteria.

[5] *See, e.g., MCI v. FCC*, 765 F.2d 1186 (D.C.Cir. 1985) ("shall…is the language of command").

are eligible for federal USF support, the Commission cannot pick and choose which of the criteria apply. Because payphone service fails to meet at least one of the listed criteria, it cannot be deemed eligible for USF support.

Third, one may reasonably question the degree to which APCC's assertion that Lifeline support to payphone providers is in the public interest is true. The environment today is very different than it was even a decade ago (notably, the boom in wireless service subscribership), and the sharp decline in the number and use of payphones reflects a market reality which cannot be ignored. APCC asserts that Americans who use payphones risk being left "with no other access to essential phone services" absent Commission action here (Petition for Rulemaking, p. 4). However, chances are very high that in any given location, there will be someone – a friend or family member, a stranger passing by, a customer or employee of a near-by business, public service agency representatives or caseworkers – who has a mobile or wired phone that could be used or borrowed, particularly in an emergency.

Moreover, as payphones are now quite scattered geographically, it is not at all clear to Sprint that consumers without phone service of their own are willing or able to travel blocks or miles to place a call from a payphone. Furthermore, it is reasonable to expect payphones to remain in locations where there is sufficient demand to make them profitable, such as airports, bus stations, tourist attractions and prisons. These payphones do not require any subsidization.

Even granting that there may indeed be some public interest benefit to having a base of public payphones, such limited benefit must be balanced against the cost of subsidizing payphones as requested by APCC. APCC estimates that grant of its petitions would cost approximately $57 million per year (Petition for Rulemaking, p. 26). The USF contribution factor for the first quarter of 2011 is 15.5%,[6] and increasing the USF burden by an additional $57 million per year would only add to the threat to the viability of the federal USF. Where resources are limited, not every project can be funded.

Finally, APCC incorrectly states that "Section 276 of the Communications Act… directed the Commission to 'ensure the widespread deployment of payphone services to the benefit of the general public.'"[7] In fact, §276(b)(1) required the Commission to take certain actions (including the establishment of regulations to establish a per call payphone compensation plan, and to discontinue access charge payphone service rate elements and payments) "in order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public," within 9 months after the date of enactment of the Telecommunications Act of 1996. The Commission undertook and succeeded in meeting this mandate.

Indeed, in its Payphone Third Report and Order, the Commission accurately predicted that wireless service might well provide a competitive alternative to payphones, causing a decrease in the number of payphones. The Commission also made clear that it would not provide artificial subsidies to payphones, but would instead rely upon state commissions to take whatever action the PUCs deemed necessary to support appropriate payphone deployment:

> We believe…that other factors, such as the decreasing prices for cellular and PCS service, may reduce the number of payphones. Such a reduction in the number of payphones would be the result of a competitive marketplace. That does not mean that state commissions should not take action regarding payphones if they believe

[6] *See* Public Notice DA-10-2344, released December 13, 2010.
[7] Emergency Petition at 2, citing 47 U.S.C. §276.

> market forces are causing the removal of payphones in locations where they continue to be needed.[8]

On balance, the statutory conflicts, the inconsistency with the Commission's Rules, and the cost of the proposed subsidies outweigh any benefits to be gained from APCC's proposal. Accordingly, the instant petitions should be denied.

Respectfully submitted,

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[8] *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, 14 FCC Rcd 2545 (¶ 141, fn. 182) (1999).

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 18th day of January, 2011 to the parties listed below.

/s/ Norina T. Moy

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