

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

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| A National Broadband Plan for Our Future |) | GN Docket No. 09-51 |
| |) | |
| Establishing Just and Reasonable Rates for Local Exchange Carriers |) | WC Docket No. 07-135 |
| |) | |
| High-Cost Universal Service Support |) | WC Docket No. 05-337 |
| |) | |
| Developing a Unified Intercarrier Compensation Regime |) | CC Docket No. 01-92 |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 |
| |) | |
| Lifeline and Link-Up |) | WC Docket No. 03-109 |
| |) | |

**COMMENTS
OF
SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”), pursuant to the Public Notice released on January 12, 2012 (Report No. 2945), comments on the Petitions for Reconsideration of the Commission’s *USF/ICC Transformation Order*¹ filed by several parties on December 29, 2011. Sprint discusses below three issues raised by petitioners: improvements to and clarification of the rules designed to curtail traffic pumping; the applicability of the general rule governing the phase out of high-cost USF to competitive eligible

¹ *Connect America Fund, et al., Docket Nos. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (Nov. 18, 2011), published in 76 Fed Reg. 73830 (Nov. 29, 2011) (“USF/ICC Transformation Order”).*

telecommunications carriers (“CETCs”) to Sprint and Verizon Wireless; and the use of conditional ETC designation for carriers bidding for Mobility Fund or Connect America Fund support.

1. Traffic Pumping Rules Must be Tightened

Every party that requested reconsideration and/or clarification of the Commission’s newly adopted traffic pumping rules has stated that such rules can and should be tightened in order to increase their effectiveness, to ensure that these rules achieve their stated purpose, and to minimize pumpers’ ability to game the system at the expense of the public interest:

- Sprint has requested that the Commission clarify that the *USF/ICC Transformation Order* does not overturn the statutory requirement that telecommunications services be offered “for a fee”; and that the price cap LEC benchmark used by a traffic pumping CLEC may include only those elements associated with functions the CLEC actually performs, and should reflect the lower of the price cap LEC’s average local transport miles or actual CLEC miles, whichever is less. Sprint also requested reconsideration of the applicable rate to be charged by LECs that meet the traffic pumping triggers (\$.0007); that the Commission commit to re-evaluating whether further rate reductions are warranted when a CLEC’s stimulated traffic volumes exceed the price cap LEC’s traffic volumes; that a LEC that has ceased traffic pumping may not simply revert back to the old way of establishing rates and must instead incorporate a true-up mechanism to squeeze out overearnings generated while it was pumping traffic; and that a LEC has 15 rather than 45 days after meeting the trigger to file a revised access tariff.²
- MetroPCS has requested that the Commission clarify its definition of “access stimulation” to include “any arrangement between a LEC and a third party that results in the generation of switched access traffic to the LEC” (not just payments directly based on the billing or collection of access charges), and to include arrangements involving any affiliate of a CLEC.³ MetroPCS also requests clarification that the 3:1 traffic standard cannot be circumvented “by offsetting a one-way business plan in one discrete line of business that generates high volumes of inbound traffic against a separate and distinct one-way business plan

² Sprint Petition for Reconsideration and Clarification, pp. 5-11.

³ MetroPCS Petition for Clarification and Limited Reconsideration, pp. 10-11.

in a different line of business that generates high volumes of outbound traffic only.”⁴

- The United States Telecom Association (“USTA”) has also requested reconsideration of the applicable rate for LECs engaged in traffic pumping, recommending that the Commission not permit CLECs engaged in access stimulation “to recover more than \$.0007 per minute for terminating access,”⁵ and has noted the need to address “the ability of a LEC engaged in access stimulation to route traffic merely to increase its recovery of mileage-sensitive charges.”⁶

The Commission recently clarified two aspects of its traffic pumping rules – that the *USF/ICC Transformation Order* “complements” and in no way overturns or supersedes previous orders resolving complaints about traffic pumping; and that revenue sharing encompasses arrangements between a LEC and any other party that result in the generation of switched traffic to the LEC and provides for the net payment of consideration of any kind to the other party.⁷ Sprint welcomes these clarifications, which are clear indications of the Commission’s on-going concern about minimizing the deleterious effects of traffic pumping schemes.

Building on the Transformation and Clarification Orders, the Commission should also adopt the other changes to the *Transformation Order* that Sprint and MetroPCS have recommended as well as grant USTA’s reconsideration petition. The clarifications requested by Sprint and MetroPCS do not alter the intent of the Commission’s rules, but rather make the rules more explicit, or confirm existing Commission or statutory requirements, so as to prevent perpetrators of traffic pumping schemes from using loopholes -- real or imagined -- to continue to engage in such schemes which “impose[] undue costs on consumers [and] inefficiently divert[] capital away from more productive

⁴ *Id.*, p. 13.

⁵ USTA Petition for Reconsideration, p. 36.

⁶ *Id.*, p. 35.

⁷ *Connect America Fund*, WC Docket No. 10-90, *et al.*, *Order* released February 3, 2012 (DA 12-147), paras. 25 and 27 (“Clarification Order”).

uses such as broadband deployment.”⁸ These clarifications do not impose additional burdens on any party (indeed, by forestalling traffic pumping parties from misrepresenting the Commission’s rules and the *Transformation Order*, the clarifications would actually help avoid pointless disputes), promote the public interest, and should be issued expeditiously.

The requests for reconsideration by Sprint and USTA also should be granted. These proposed revisions are designed to help ensure that the rates charged by LECs engaged in traffic pumping schemes are in the range of being just and reasonable (assuming, of course, that pumped calls may even be considered to be telecommunications traffic subject to access charges). While use of the price cap LEC rates as a benchmark is a step in the right direction, such rates are still far above cost, especially when the volume of traffic pumped by the CLEC exceeds the price cap LEC’s traffic volumes. Unless the Commission mandates a rate that more closely reflects actual economic cost, traffic pumping will continue and the statutory requirement that rates be just and reasonable will remain unmet.

To reduce the financial incentive to engage in traffic pumping, the Commission should require LECs that meet the traffic pumping triggers to charge a rate no higher than \$.0007 per minute, until the transition to bill-and-keep has been completed. As petitioners have demonstrated, a rate of \$.0007 is compensatory, is widely used in other intercarrier compensation situations, and has passed judicial review.⁹ Application of a flat rate of \$.0007 is also simpler to implement than is either the Section 61.38 rate-

⁸ *Transformation Order* at para. 663.

⁹ *See, e.g.,* Sprint Petition, p. 8; USTA Petition, p. 36.

setting process (for rate-of-return LECs that meet the triggers) or the process of computing the price cap LEC rate benchmark (for CLECs that meet the triggers).

Unless the \$.0007 rate is applied to all terminating functionalities (including transit and transport),¹⁰ Sprint remains concerned that certain LECs will continue to engage in various forms of traffic pumping. In particular, local transport mileage pumping – dragging a call to a far distant interconnection point, even if there is a closer end office or access tandem, merely to inflate the number of local transport miles – remains a significant problem.¹¹ Therefore, the Commission must take steps to limit the number of allowable local transport miles a LEC that has met the triggers is allowed to charge for.

2. High-Cost CETC Phase-Out

In the *USF/ICC Transformation Order*, the Commission adopted rules of general applicability for the phase-out of high-cost USF support received by CETCs; however, it noted that “Verizon Wireless and Sprint will continue to be subject to the phase-down commitments they made in the November 2008 merger Orders.”¹² Verizon Wireless asserts that the “new general CETC support rule must apply instead of Verizon’s merger-specific phase-down,” pointing out that its commitment was to remain in effect until such time as the Commission adopted rules of general applicability for the treatment of high-

¹⁰ Under the transition plan set forth in the *USF/ICC Transformation Order*, terminating local transport rates remain frozen at interstate levels for several years, and are not reduced to bill-and-keep until July 1, 2018 for price cap LECs, and July 1, 2020 for rate-of-return LECs. So long as traffic pumping LECs can charge above-cost rates for transport elements, they will have an incentive to continue to engage in traffic pumping.

¹¹ Sprint Petition, p. 7; USTA Petition, p. 36.

¹² *USF/ICC Transformation Order*, para. 520, footnote omitted.

cost support to CETCs. The generally applicable rule supplants the individual phase-out requirements imposed on individual CETCs.¹³

Sprint, like Verizon Wireless, committed to phase out its high-cost USF over a five-year period or until such time as the Commission adopted a generally applicable rule governing the phase-out of CETC high-cost USF support.¹⁴ Like Verizon Wireless, it was Sprint's understanding that the Commission accepted the companies' phase-out commitments pending adoption of a generally applicable rule.¹⁵ Now that the Commission has adopted such a rule, it is only reasonable to apply it on an even-handed basis to all CETCs, including Sprint. Application of the rule to all CETCs would lessen the competitive imbalance under which Sprint has been operating, vis-à-vis other CETCs which have continued to receive full (or at least capped) support, for the past 3+ years. Accordingly, the Commission should grant Verizon Wireless' petition, and allow Sprint the option of freezing its high-cost support at 2011 levels, and phasing out such support by July 1, 2016.

3. ETC Designation as a Precondition for Bidding on Mobility Fund and CAF Support

The Commission's existing rules require, among other things, that a recipient of Mobility Fund support must be designated as an ETC in the areas on which it wishes to bid. Similarly, where the incumbent LEC declines to accept support from the Connect

¹³ Verizon Wireless Petition for Reconsideration, pp. 3-8.

¹⁴ See letter from Lawrence R. Krevor, Sprint, to Marlene H. Dortch, FCC, WT Docket No. 08-94, dated November 3, 2008.

¹⁵ *Sprint Nextel Corp. and Clearwire Corp. Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, 23 FCC Rcd 17570, paras. 107-108 (2008) (citing Sprint's voluntary commitment that after 5 years, it would not seek high-cost USF support for its wireless service unless the Commission "adopts a different transition mechanism or a successor mechanism to the current equal support rule..." in which case "that rule of general applicability would apply instead").

America Fund (CAF), such support will be distributed through a competitive bidding process in which bidders will presumably be required to have ETC designation in the relevant geographic area. Phase I of the Mobility Fund auction is scheduled for September 27, 2012.¹⁶

NTCH has requested that the Commission “simplify the ETC designation system so that potential Mobility Fund recipients can...acquire ETC status based upon their receipt of such support....”¹⁷ Specifically, NTCH has proposed that parties interested in bidding for Mobility Fund support declare their interest in doing so, and apply immediately for tentative ETC status, conditioned on receipt of Mobility Fund funding. The ETC application would be “held in abeyance pending completion of the Mobility Fund auction. Award of Mobility Funds through the auction process...would be deemed to automatically qualify a Mobility Fund awardee as an ETC in the areas it applied for.”¹⁸

This aspect of NTCH’s petition is in the public interest and should be granted. The auction process is generally more robust if many carriers participate. Making ETC designation a pre-requisite to bidding for Mobility Fund support could foreclose participation in the bidding process by many carriers who might otherwise be interested in bidding and capable of meeting the performance standards. The ETC designation process can take many months; if a carrier does not already have ETC designation in an area in which it is interested in seeking Mobility Fund support, there is no guarantee that

¹⁶ *Mobility Fund Phase I Auction Scheduled for September 27, 2012*, Public Notice released February 2, 2012 (DA 12-121) (“Mobility Fund PN”).

¹⁷ NTCH Petition for Reconsideration, p. 2.

¹⁸ *Id.*, p. 9.

it will obtain such designation by September 27, even if it files an ETC application today (or indeed, even if it has an ETC application pending).¹⁹

Moreover, ETC designation involves a host of obligations, some of which a carrier may be willing to accept only if it receives Mobility Fund support. If a carrier is unsuccessful in its bid for Mobility Fund Phase 1 support and derives no other financial benefit from its ETC designation, it may well opt to relinquish such ETC designation. To rush an ETC application, only to relinquish it a few months later, is a waste of resources both for the carrier and the regulatory body responsible for the ETC designation (and relinquishment) process.

Conditional grant of ETC designation upon award of Mobility Fund support avoids both of these problematic scenarios – it allows carriers who are not (yet) designated as an ETC to participate in the Mobility Fund bidding process, and avoids imposition of a significant burden on carriers who do not receive support from the new broadband universal service fund.

Finally, conditional ETC designation should also extend to situations in which a wireless carrier is interested in bidding for CAF support which has been declined by the incumbent local exchange carrier. Competitive carriers do not know which ILECs will decline their “right of first refusal” for CAF support, which makes it very difficult for a competitive carrier to anticipate in which states it might need ETC designation. And, as is the case in the Mobility Fund auctions, carriers of course will not know whether their bids for CAF support are successful until after the auction is over. Given these

¹⁹ While the recently released Mobility Fund PN does include a tentative list of geographic areas for which Mobility Funding may be available, the list is not yet final (PN at paras. 18-20), and wireless carriers can hardly be faulted for not having already sought ETC designation in all of the geographic areas in which they might be interested in bidding.

uncertainties, the Commission should allow conditional ETC designation status for carriers participating in CAF auctions as well as the Mobility Fund auction.

Respectfully submitted,

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