

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

In the Matter of)
) CC Docket No. 80-286
Jurisdictional Separations and Referral to the)
Federal-State Joint Board)

REPLY COMMENTS OF SPRINT NEXTEL CORPORATION

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Sprint Nextel Corporation (“Sprint”) hereby respectfully submits its reply comments on the Federal Communication Commission (“FCC or Commission”) *FNPRM*.¹ Sprint urges the FCC not to extend the separations freeze in its current form and thereby further exacerbate the significant market distortions that it creates. If the Commission continues the separations freeze for two more years, the Commission should take steps to limit the misuse of this data by carriers that continue to rely upon it in state ratemaking and in determination of any state subsidy funding.

Several parties – almost exclusively ILECs - submitted comments supporting an extension of the current separations freeze for two years or longer.² Sprint and NASUCA oppose an extension of the freeze.³ An extension of the freeze would continue to ignore the separations reform proposals of the State Members of the Federal State Joint Board on Separations in their

¹ *Further Notice of Proposed Rulemaking*, CC Docket No. 80-286, FCC 12-27 (released March 15, 2012) (“*FNPRM*”).

² See Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; Eastern Rural Telecom Association; Western Telecom Alliance; and Independent Telephone and Telecommunications Alliance (“Small Company Associations”) at 1; Comments of the United States Telecom Association (“USTelecom”) at 1; Comments of CenturyLink (“CenturyLink”) at 1; and Comments of the Public Service Commission of Wisconsin (“Wisconsin Commission”) at 2.

³ See Comments of Sprint Nextel Corporation (“Sprint Comments”) at 1 and Comments of The National Association of State Utility Consumer Advocates (“NASUCA”) at 1.

March 5, 2010 letter⁴ and continue to create problems in the states. While maintaining the status quo may appear harmless at the federal level, continuation of the separations freeze fails to recognize state interests and unduly burdens state ratepayers with costs that should not be allocated to the state jurisdiction.

I. SEPARATIONS REFORM IS IMPORTANT AND SHOULD NOT BE IGNORED AS OTHER REFORM OF INTERCARRIER COMPENSATION AND UNIVERSAL SERVICE IS UNDERWAY

CenturyLink would have the Commission believe that a failure to extend the separations freeze “would create uncertainty and instability that would discourage network and broadband investment” and that “reform is not a critical issue, and it has become increasingly unimportant as fewer and fewer ILEC access lines are subject to federal rate of return regulation.”⁵ This ILEC argument, however, ignores the other uses to which the separations process is applied. While the ILECs urge the Commission to get rid of separations because they claim that it is burdensome and the Commission does not use it, they fail to note that they are affirmatively using the separations process in the states to seek recovery of their separations determined costs.

The perfect time to reform separations is now, when intercarrier compensation and USF reform are already updating how ILEC costs are recovered to reflect a new regulatory and competitive paradigm. The Commission should act now to further this process and cut out all of the disease caused by outdated revenue, subsidy, and allocation relationships involving intercarrier compensation, USF and the separations process. The Commission should complete the patient treatment plan rather than continue to leave a large part of the disease unaddressed.

⁴ Letter from State Members of the Federal State Joint Board on Separation to Mignon Clyburn, Chair, Federal State Joint Board on Separations, dated March 5, 2010 (“March 5, 2010 letter”).

⁵ CenturyLink at 2.

USTelecom goes so far as to claim that as the Commission moves away from “interstate rate-of-return regulation by its extension of the corporate operations expense caps and use of regression analysis to limit recovery of certain capital and operating expenses” that the Commission need do no more.⁶ But this comment fails to address the significant interests of state ratepayers and state regulators. The truth continues to be that when the FCC seeks to encourage efficiency at its end of the balloon, the LECs seek to expand the balloon at the state end. A cap in the federal jurisdiction without similar discipline in the state jurisdiction often results in a state problem such as that in Oklahoma where ILECs seek to replace any and all revenue reductions resulting from federal reform by inflating state mechanisms.⁷ At the state level, even for those ILEC access lines subject to some sort of price cap regulation or expense cap, separations problems overhang the competitive market. The frozen separations factors often increase the claimed need for state subsidies, and when this claim is granted, the result is an increased burden on state ratepayers, as well as negative impacts on the competitiveness of markets in these states.

As Sprint pointed out in its comments, intrastate revenue requirements would decrease as would demand for state USF subsidies were separations factors to be updated.⁸ The State Members of the Joint Board noted that the current frozen factors “regardless of the actual uses of their current plant, is not sufficient to properly separate costs between jurisdictions.”⁹ NASUCA noted that the frozen separations process is “imbalanced to the tune of \$2-6 billion against” the

⁶ USTelecom at 7.

⁷ *See e.g.*, In the Matter of the Application of Totah Communications, Inc. for Funding From the Oklahoma Universal Service Fund, Cause No. PUD 201100069, and In the Matter of Petitions for Waiver of Universal Service High-Cost Filing Deadlines; Totah Communications, Inc. Petition for Waiver of Section 36.621(a)(4) of the Commission’s Rules, WC Docket No. 08-71, 26 FCC Rcd 11188.

⁸ Sprint Comments at 3.

⁹ May 5, 2010 letter at 5.

state ratepayers they represent.¹⁰ An imbalance of up to \$6 billion allocated to the states directly impacts the rates charged for ILEC telephone service in the states. It also directly impacts calls by ILECs for state subsidies. Separations changes would reduce upward pressure on intrastate rates and would also reduce state USF collections as the ILECs more properly recognize the actual use of broadband plant dedicated to interstate use and remove a significant part of the over allocation of 75% of the costs of that plant to intrastate regulated services. Further, reductions in state USF funding of ILECs would level the playing field so that the customers of competitors of ILECs, that generally do not receive a state USF subsidy, would not be providing an anti-competitive state USF subsidy to the ILEC. State USF subsidies provide significant competitive market distortions. The reforms proposed by Sprint would minimize that market distortion. And far from being unimportant, these reforms are critical.

CenturyLink goes so far as to claim that current intercarrier compensation and USF “reforms are likely to make separations wholly obsolete.”¹¹ If only this claim were true! None of the adopted intercarrier compensation and USF reforms bring all ILEC services under a single jurisdiction. There are no prohibitions on separate state USF or high cost funds. There is nothing that the Commission has proposed that would remove the 75% allocation of local loop plant to the intrastate jurisdiction. While federal reform includes a phase out of outdated intrastate carrier access, separations continues the existing intrastate allocations and ILEC revenue requirement claims. Separations only becomes obsolete if ILECs stop using it to support their demands that other carriers fund their operations or if all interstate and intrastate ILEC rates are controlled by the Commission under an exercise of federal authority over the total ILEC revenue requirement. No such proposal has been proffered by the ILECs.

¹⁰ NASCUA at 3.

¹¹ CenturyLink at 5.

CenturyLink notes that the Commission previously approved a separations freeze to ease “the transition from a regulated monopoly to a deregulated competitive environment in the local telecommunications marketplace” and goes on to quote the Commission when it stated that the freeze would assist in “achieving greater competitive neutrality during the transition to a competitive marketplace.”¹² This transition, however, will remain elusive so long as any regulatory mechanisms are based on the inaccurate reflection of costs produced by the separations freeze. As it stands, ILECs continue to use the inaccurate separations results when those results aid their efforts to maintain or expand anti-competitive rate levels or subsidies. A continuation of the separations freeze does nothing to either cure these competitive problems or assist in a transition to true competitive neutrality.

II. REFORM OF SEPARATIONS TO RECOGNIZE THE USE OF BROADBAND PLANT WILL NOT OVERBURDEN ILECS

CenturyLink and the Small Company Associations complain that it would be difficult, expensive, and time consuming to make any separations changes. They claim that expertise has been lost in the dusty halls of time and that it would be unreasonable to walk down those halls again to improve upon the grossly inaccurate allocation of costs to the intrastate jurisdiction.¹³ These claimed burdens are greatly overstated. Sprint recommended a simple two-step process that would provide rough justice in regard to the allocation of costs. First, directly allocate special access costs to interstate, and second, allocate an additional 50% of the cost of broadband capable lines to interstate.¹⁴ These are simple changes that would not require the creation of large work forces and should not be overly burdensome, but would much more accurately reflect the use of local networks. The results of these two simple changes would significantly improve

¹² Id at 6-7.

¹³ CenturyLink at 11 and Small Company Associations at 2-3.

¹⁴ Sprint Comments at 8-9.

the separations process and go a long ways to correcting the problems that Sprint, the State Members and NASUCA have identified.

III. CONCLUSION

As Sprint proposed in its initial comments, the Commission should either (a) reform the Part 36 allocations to reflect the direct assignment of the costs of special access circuits to the interstate jurisdiction and a more appropriate allocation of the costs of broadband capable loops to the interstate jurisdiction or (b) provide strong guidance to state commissions that the frozen Part 36 allocations should not be used for the purpose of determining state USF or state high cost subsidies without a thorough examination of need and a review of total company operations. The Commission should reject the “do nothing” suggestions of USTelecom, CenturyLink and the Small Company Associations.

Respectfully submitted,

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