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March 12, 2007

**VIA HAND DELIVERY**

Hon. Sara Kyle, Chairman  
c/o Sharla Dillon, Docket & Records Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

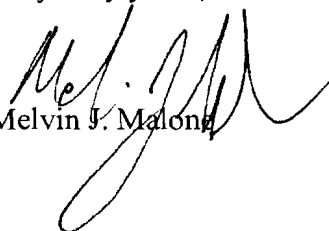
**RE: Rulemaking To Establish Criteria For Designating Eligible Telecommunications  
Carriers (ETCs) In Tennessee  
Docket 05-00284**

Dear Chairman Kyle:

Enclosed are the original and fourteen (14) copies of the Post-Hearing Comments of Sprint Nextel Corporation (formerly Sprint Corp.) and its subsidiary NPCR Inc. ("Nextel Partners") (collectively "Sprint Nextel") in the above-captioned docket. Copies of the enclosed are being provided to counsel of record.

If you have any questions or require additional information, please let me know.

Very truly yours,

  
Melvin J. Malone

clw  
Enclosure

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee**

<b>In the Matter of:</b>	)	
	)	
<b>Rulemaking to Establish Criteria for</b>	)	<b>Docket No. 05-00284</b>
<b>Designating Eligible Telecommunications</b>	)	
<b>Carriers (ETCs) in Tennessee</b>	)	
	)	

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**POST-HEARING COMMENTS OF SPRINT NEXTEL**

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Sprint Nextel Corporation (formerly Sprint Corp.) and its subsidiary NPCR, Inc. (“Nextel Partners”) (collectively “Sprint Nextel”) respectfully submit the following brief post-hearing comments in this proceeding.

**I.**

**INTRODUCTION**

As the Tennessee Regulatory Authority (“Authority” or “TRA”) is aware, Sprint Nextel Corporation and Nextel Partners are Commercial Mobile Radio Service (“CMRS”) providers that have been designated as competitive eligible telecommunications carriers (“ETCs”) in portions of Tennessee by the Federal Communication Commission (“FCC”).<sup>1</sup> Through its ETC designations, Sprint Nextel is

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<sup>1</sup> Because the Authority lacks jurisdiction over CMRS providers, it has determined that the FCC is the appropriate forum to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). *See Order, In Re: Application of Advantage Cellular Systems, Inc. to Be Designated as an Eligible Telecommunications Carrier*, TRA Docket No. 02-01245 (April 11, 2003) (“Advantage Cellular Order”)

already required to annually certify to the FCC that it continues to comply with the new, more rigorous ETC designation framework set forth in the FCC's March 17, 2005, Report and Order.<sup>2</sup>

Sprint Nextel previously filed comments on the initial draft rules on August 7, 2006, and we are pleased that many of our comments have been taken into consideration in preparing the revised draft rules that were issued with the Notice of Rulemaking Hearing on or about December 19, 2006. Pursuant to the Authority's invitation to keep the record open until March 12, 2007, Sprint Nextel respectfully encourages the Authority to consider the following additional comments.

## II.

### **DRAFT RULE 1220-4-15-.02, DEFINITIONS: "TOLL LIMITATION"**

Sprint Nextel agrees with the comments made by Mr. Mottern of TDS during the hearing and in his redlined version of the rules that the definition of "Toll Limitation" should be corrected to be consistent with 47 C.F.R. § 54.400(d). Specifically, under the FCC's universal service rules, "toll limitation" denotes either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both services. For carriers that are capable of providing both services, "toll limitation" denotes both. 47 C.F.R. § 54.400(d).

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<sup>2</sup> *In re Federal-State Joint Board on Universal Service, Report and Order*, FCC 05-46, CC Docket No. 96-45 (rel. March 17, 2005).

### III.

#### **DRAFT RULE 1220-4-15-.03, REQUIREMENTS FOR INITIAL DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

Sprint Nextel appreciates the Authority's efforts to clarify its intention to maintain the practice of referring CMRS providers seeking ETC designation to the FCC. As the Authority has previously determined, because it lacks jurisdiction over CMRS providers pursuant to Tenn. Code Ann. §§ 65-4-101 and 65-4-104, such applications shall be brought before the FCC pursuant to its authority under 47 U.S.C. § 214(e)(6).<sup>3</sup>

Consistent with this determination, Sprint Nextel understands that the Authority shall not apply the ETC rules proposed in this rulemaking proceeding to CMRS providers in the State of Tennessee. This understanding is confirmed by proposed rule 1220-4-15-.01, which generally provides that the rules shall only apply to "public utilities."<sup>4</sup> As set forth in Tenn. Code Ann. § 65-4-101, the Tennessee General Assembly specifically excluded CMRS providers from the definition of a "public utility," except in very limited circumstances not at issue in this proceeding.<sup>5</sup> Likewise, proposed rule 1220-4-15-.02(6) excludes CMRS from the definition of "local exchange carrier." The proposed ETC application requirements (1220-4-15-.03), in turn, shall apply only to "local exchange carriers" seeking to be designated as ETCs by the Authority, and the proposed annual certification requirements (1220-4-15-.05) shall apply only to ETCs designated by the

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<sup>3</sup> See *Advantage Cellular Order*.

<sup>4</sup> Although proposed rule 1220-4-15-.01 also provides that certain of the proposed rules apply to CMRS providers "where applicable," Sprint Nextel understands this refers only to those provisions of the rules where federal law may require the carrier to comply with State ETC requirements. Specifically, Sprint Nextel believes the rule is intended to acknowledge the FCC's Lifeline/Link Up rules, which require all ETCs to comply with State eligibility, certification and verification requirements in those States – like Tennessee – that have established their own Lifeline programs. See, e.g., 47 C.F.R. §§ 54.409(a) and 54.410(c).

<sup>5</sup> See also, *Advantage Cellular Order*.

Authority – that is, local exchange carriers designated under proposed rule 1220-4-15-.03.

In addition to these definitional terms, Sprint Nextel encourages the Authority to more explicitly define the exclusion afforded CMRS providers under the proposed rules. To make the rules perfectly clear, Sprint Nextel recommends that the Authority make the following changes in sections 1220-4-15-.03(1) and 1220-4-15-.03(3) (language to be added is underlined and language to be removed is stricken):

1220-4-15-.03(1) The Authority may upon its own motion or upon request, designate a ~~common carrier~~ local exchange carrier that meets the requirements below as an Eligible Telecommunications Carrier for a designated service area. CMRS providers shall be designated as ETCs for designated service areas by the Federal Communications Commission in accordance with 47 USC section 214(e)(6).

1220-4-15-.03(3) Any local exchange carrier, if certified to provide telecommunications services in Tennessee by the Authority, or CMRS provider licensed in Tennessee by the Federal Communications Commission, as applicable, may request designation as an Eligible Telecommunications Carrier for the purpose of receiving federal universal service support. Local exchange carriers certified by the Authority shall file, with its application to the Authority, the following:

#### IV.

#### **DRAFT RULE 1220-4-15-.04(G), ETC REQUIREMENTS FOR LIFELINE AND LINK UP SERVICE**

We support the change to 1220-4-15-.04(g) proposed by Mr. Mottern of TDS during the hearing and in his redline. Specifically, it would be more appropriate for an ETC to direct applicants who have applied to the ETC in error to contact the Authority directly by providing the applicant with the TRA's phone number and contact

information. Wireless ETCs often receive applications from consumers who do not reside in the ETC's designated area and it would be much more efficient to direct the customer to the Authority to get immediate help identifying the appropriate ETC instead of forwarding a Lifeline application. Furthermore, because applications contain sensitive and confidential information, the Authority should consider whether ETCs would be permitted to forward applications to any third parties without first obtaining the applicant's consent. The best way to address the confidentiality of applications is to have applicants contact the Authority directly.

## **V.**

### **LACK OF RULES ON SUBSCRIBER ELIGIBILITY CRITERIA**

Sprint Nextel notes that the draft rules do not identify the eligibility criteria for participation in the Lifeline and Link Up programs, or the process for determining whether a new applicant meets those eligibility criteria. We believe the draft rules should be amended to identify eligibility criteria specifically, or to make clear that the eligibility criteria previously adopted by the Authority continue to be in effect until amended. With regard to initial certification of eligibility, it appears that the draft rules contemplate that an ETC will review documentation presented by an applicant to determine whether the applicant meets the eligibility criteria. This would be a change from prior Authority orders, which provided that the Authority would certify an applicant's eligibility. Thus, the draft rules should be amended to clearly identify the process for ETCs to follow in determining whether an applicant is eligible for participation in the Lifeline and Link Up programs.

## **VI.**

### **RULES SHOULD BE COMPETITIVELY NEUTRAL AND CONSISTENT WITH FCC RULES**

Sprint Nextel urges the Authority to adhere to a policy of competitive neutrality for its ETC rules and to make the rules consistent with the new rules set forth in the FCC's March 17, 2005 Report and Order. As Embarq noted in its August 4, 2006 comments, the Authority's proposed rules "closely parallel" the FCC's new, more rigorous minimum requirements for designating ETCs and the FCC has "strongly encouraged state commissions to adopt its new requirements." (Embarq comments, page 1) Wireless ETCs like Sprint Nextel who are designated as ETCs by the FCC already are required to annually certify to the FCC that they continue to comply with the new, more rigorous FCC rules. Yet the rules urged by the ILEC parties in this proceeding would create an unlevel playing field by exempting ILEC ETCs from most of the new, more rigorous requirements, while enforcing even more stringent requirements in some cases on the competitive ETCs (other than wireless ETCs) that the Authority designates. Instead of applying few or none of the new FCC rules to one class of ETC and more onerous requirements to another class, the Authority should simply make all requirements for all ETCs it designates consistent with the FCC rules. In doing so, the rules would be competitively neutral for all providers, including local exchange carriers designated by the Authority and wireless ETCs designated by the FCC. Thus, we recommend the Authority reject the redlined proposals presented at the hearing that create special treatment based solely on the ETC's status as an ILEC. Sprint Nextel does support not requiring existing ETCs to re-apply for designation with the Authority as long as it applies to all ETCs with existing designations and not only ILEC ETCs.

In the interest of competitive neutrality, Sprint Nextel also urges the Authority to reject Embarq's proposed provisions to protect against "creamskimming." As Embarq itself noted at the hearing, "creamskimming" is a term of art used by the FCC. Unfortunately, Embarq attempts to redefine "creamskimming" to require a wire center-by-wire center service analysis. The measures proposed by Embarq are unnecessary because the FCC already has considered the issue and has created a remedy for "creamskimming." Specifically, to prevent competitive ETCs from serving only the city center and rely on resale to serve the remainder, the ILEC may disaggregate its USF support under 47 C.F.R. § 54.315. In doing so, the ILEC can define cost zones within its wire centers so little or no support is available in the city center and carriers that use resale will not receive a windfall.

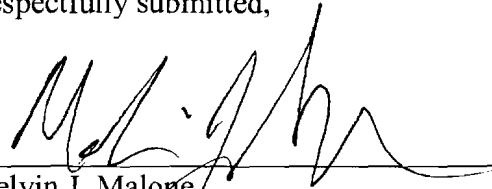
Sprint Nextel would like to highlight one particular requirement in the proposed rules that the Authority may want to correct to make its rules for ETCs it designates consistent with FCC rules. Proposed rule 1220-4-15-.05(1) would require that each ETC designated by the Authority shall submit certain information by August 1<sup>st</sup> covering the previous twelve month period ending June 30<sup>th</sup>. The FCC requires that ETCs provide this information for the period ending June 30<sup>th</sup> by October 1<sup>st</sup>, not August 1<sup>st</sup>. One month from the close of the period to the reporting date will not give ETCs enough time to collect and submit the data. If the Authority wants to collect the data earlier than October 1<sup>st</sup>, it may wish to consider requiring information from a reporting period that ends earlier, such as a calendar year as some other states have required.

## VII.

### Conclusion

In recognition of the foregoing, Sprint Nextel respectfully requests that the Authority adopt all of its recommendations in this proceeding. Finally, Sprint Nextel appreciates being provided the opportunity to submit post-hearing comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. J. Malone', written over a horizontal line.

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