



ATTORNEYS AT LAW

1200 ONE NASHVILLE PLACE
150 FOURTH AVENUE, NORTH
NASHVILLE, TENNESSEE 37219-2433
(615) 244-9270
FAX (615) 256-8197 OR (615) 744-8466

Sarah Lodge Tally
Direct Dial (615) 744-8432
Direct Fax (615) 744-8612
stally@millermartin.com

September 25, 2009

BY HAND DELIVERY

Darlene Standley
Chief-Utilities Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

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T.R.A. DOCKET ROOM

RE: Docket No. 09-00096, *Docket to Study Merits of Rural Affordability Fund*

Dear Ms. Standley:

Pursuant to the Tennessee Regulatory Authority's ("TRA" or "Authority") September 4, 2009 Data Request in the above-captioned matter, Sprint Communications Company L.P., Sprint Spectrum, L.P., Nextel South Corp., and NPCR, Inc. ("Sprint Nextel") provides the enclosed response relating to proposed House Bill 2117 / Senate Bill 2147 concerning implementation of a "Tennessee Rural Affordability Fund" ("TRAF").

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Sarah Lodge Tally

SLT/sc

ENCLOSURE

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

In Re:

**Docket to Study Merits of Rural
Affordability Fund**

Docket No. 09-00096

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Pursuant to the Tennessee Regulatory Authority's ("TRA" or "Authority") Data Request issued on September 4, 2009 in the above-captioned matter, Sprint Communications Company L.P., Sprint Spectrum, L.P., Nextel South Corp., and NPCR, Inc. ("Sprint Nextel") provides the following response relating to proposed House Bill 2117 / Senate Bill 2147 that would require implementation of a "Tennessee Rural Affordability Fund" ("TRAF"). General comments are provided first followed by specific responses to items listed in the Data Request.

I. General Comments

The legislation is ill-advised because it would replace the current reasonable statute permitting creation of alternative universal service mechanisms and discretion to adjust subsidies with a one-sided fund designed to permanently guarantee revenues for incumbent local exchange carriers, and rural incumbent local exchange carriers in particular. The legislation creates a permanent subsidy for one class of carrier that the Authority has no discretion to adjust and places the burden of the perpetual subsidy

squarely on the shoulders of Tennessee's consumers. Over time, consumers would pay more for service, see less innovation and have fewer alternative communications options.

The current relevant Tennessee Code section provides the Authority with the tools necessary to implement universal service fund alternatives in a rational manner. The Authority can implement an alternative form of universal service "only if it determines that the alternative will preserve universal service, protect consumer welfare, be fair to all telecommunications service providers, and prevent the unwarranted subsidization of any telecommunications service provider's rates by consumers or by another telecommunications service provider." *See* Tenn. Code 65-5-107(b). Thus, the present statute permits a universal service program that is balanced and takes into consideration, among other things, the well-being of Tennessee consumers. An alternative universal service program under current law must ensure that the support received and the amount paid to the fund is restricted to the amount necessary to support universal service; it must be administered in a competitively neutral fashion; the actual costs of providing basic local exchange service, including carrier of last resort obligations, must be considered along with the extent to which they exceed revenues; and the fund must be monitored and adjusted based on investigation as well as in response to petitions and complaints. In short, current law requires that the fund be created for a good reason, be sized correctly, not harm consumers or competition, and be adjustable to respond to changes in circumstances and the need for support.

Unfortunately, the proposed legislation expressly eliminates all of these balanced provisions and replaces them with provisions that are very nearly their polar opposites. Under the proposed legislation, ascertaining the amount necessary to support universal

service or the actual costs of providing universal service/carrier of last resort and the amount they exceed revenue is prohibited (*See* proposed section (n): “The authority shall not require or conduct a rate case, earnings review or cost analysis in connection with the revenue recovery of the access rate reductions.”) The “TRAF” is not to be administered in a competitively neutral fashion. (*See* proposed section (d) stating that the TRAF shall provide funding only to the local exchange carrier serving as carrier of last resort.) The fund cannot be adjusted based on investigation, petitions, etc. *See* proposed sections (k), (l) and (m) which sets forth a mechanism in which the TRAF support amount is set based on the difference between intrastate and interstate switched access rates as of December 31, 2009. The only adjustments that can be made are automatic and based on how much the carrier’s interstate rates rise or fall. This mechanism operates to guarantee on a permanent basis the same total intrastate access revenue received as of December 31, 2009. Most importantly, the TRA would have no authority to adjust the TRAF subsidy based on changes in the cost of service, changes in service offerings, changes in market conditions, or any other consideration that would affect the need for more or less subsidy. Essentially, the proposed legislation would create an ongoing, immutable subsidy for one class of carrier based on the level of access revenue that exists on December 31, 2009 and places the burden of paying the subsidy on all consumers of communications services in Tennessee. (*See* proposed section (h): “The contributing providers may pass on a surcharge to their end user customers to recover the TRAF charge paid by the provider.”)

It is not hard to imagine the significant problems with this approach. The TRAF would be created without any evaluation of whether the current revenue collected by rural ILECs through their high intrastate switched access rates is necessary today. This

begs the question of when these rates and the costs they are intended to recover were last reviewed. Yet the TRAF would preserve this level permanently. It also begs the question of how the subsidy will be adjusted in the future as costs and revenues change, The proposed legislation permits no such adjustment. The reason subsidies must be set at the right level and be adjustable over time is that they do come with real costs to consumers in the marketplace. In addition to the obvious cost of the consumer surcharge, subsidies can unduly enrich the subsidized carrier while increasing the rates charged by the carrier who pays the subsidy. This distorts market signals and results overall in consumers paying more for service. It also saps the resources available to most communications providers to invest in new products and facilities. In Tennessee, while TRAF would guarantee that rural ILECs enjoy a guaranteed revenue stream, everyone else will be guaranteed to pay inflated prices due to the surcharge.

Further, a TRAF would not even serve the customers of the subsidized carriers over time. Any such fund that is designed to make up incumbent LEC revenue lost to competitors will reduce the competitive pressure on them to become more efficient, and so will contribute to higher service charges for consumers in the long run. Further, moving cost recovery from a charge to end users or carriers, which can be avoided if a cheaper alternative is found, to a fund that cannot be avoided, as in the case of the proposed TRAF, will also reduce the competitive pressure on the subsidized incumbents to become more efficient, contributing to higher cost of service in the long run.

Any legislation or rulemaking to address universal service or subsidies of any kind should consider as a first step a full evaluation of the costs claimed as justification

for receiving the subsidy, as well as the supported carriers' ability to recover those costs from services provided to their own customers. Such an evaluation should include revenues available from all services provided, including broadband, television, long distance and wireless revenues. In today's communications market, many carriers, including rural incumbent LECs, offer a variety of services that produce revenue. To avoid the market distortions caused by subsidies, no competitor should be afforded exclusive access to government-sanctioned funds, especially if those funds are not even demonstrated to be necessary. Specifically, the presumption should be that all competitors should be required to recover their full costs of providing service across the full line of products offered to their own customers before placing a burden on the customers of other providers. One carrier should not subsidize another unless there is a clearly identified, quantified, and justified public policy need. The proposed legislation fails to ensure the subsidy is necessary, or that it will be set at an appropriate level.

II. Responses to Specific Items

The following are Sprint Nextel's responses to specific questions posed:

1. Please discuss in detail the financial impact of reducing your company's access rates to the interstate level as proposed in the legislation.

RESPONSE: Sprint Nextel is a large net payer of switched access and Sprint Nextel and its customers are disadvantaged by continuing high intrastate switched access rates. This is true of many carriers, particularly wireless carriers, that must pay but cannot collect intrastate switched access. Reductions in switched access rates will lower the cost of exchanging in-state traffic in Tennessee for all of the State's competitors who exchange intrastate calls, will lower and simplify all carriers' billing, tracking and monitoring transaction costs, and increase the efficiency with which traffic is exchanged. In today's telecommunications marketplace where carriers offer not just standard local voice services but also broadband and other services, carriers can offset any decreases in access revenues with decreases in access expenses associated with their other services (e.g., long distance), through greater efficiencies, and by more aggressively marketing new service offerings such as broadband.

2. Please discuss the merits of the TRAF as proposed and any changes/modifications that you believe would be necessary in establishing this fund.

RESPONSE: See General Comments above. Current law provides all authority necessary to create a balanced universal service fund if necessary and the proposed legislation creating a TRAF would unnecessarily and unwisely remove that flexibility and unduly create a permanent subsidy favoring one class of carrier without any demonstration that the subsidy is needed or is correctly sized, and would remove all discretion to adjust the subsidy. Overall, the TRAF would deter broadband deployment and broadband customer adoption. If a carrier is guaranteed revenue from other carrier's customers through a "TRAF", it has less incentive to develop and aggressively market new services to end user consumers.

3. What should be the determining factors and criteria in determining whether to establish a TRAF?

RESPONSE: A TRAF is not necessary and is counterproductive. Current law provides the TRA with the flexibility to adjust switched access rates and to create a universal service fund if necessary. Most importantly, current law requires that a clear need for

subsidies be established, that they be sized correctly and that they be subject to review. The TRAF unnecessarily removes that discretion. Broadband deployment and adoption would not be served by a TRAF. If any subsidy fund is created, it should provide support directly to those consumers that want to purchase broadband devices or services but cannot afford it.

4. Please discuss whether prices and service offerings should be comparable between all rural and urban areas, and how this determination should be made?

RESPONSE: In competitive markets, price levels reflect underlying cost. And to foster competition, carriers need to recover their costs from their own end-user customers rather than by taxing other carriers' customers. Any price equalization mechanism should be provided directly to those customers that need support.

5. Should the earnings of incumbent local exchange companies (ILECs) operating under rate-of-return regulation be examined prior to receiving TRAF funds?

RESPONSE: Yes, but more importantly, before any action is taken to create a fund, the need should be carefully assessed as required under current law. Any subsidy fund should go directly to supporting consumers, not carriers. If, however, funding is made available to carriers, a rigorous financial review should be required of the carrier requesting support. The burden to demonstrate need should be on the requesting carrier and the review should encompass all of the services the carrier is capable of providing on its network. The review should also take into consideration the impact on competition and all Tennessee citizens of supporting a carrier that is incapable of supporting itself through revenues generated from its own customers.

6. Should the TRAF target funds for expanding a recipient company's broadband deployment?

RESPONSE: Broadband deployment is driven by competition. Any broadband support mechanism should be provided directly to consumers to increase broadband adoption rates and to ensure the consumer gets to choose the broadband provider and technology.

7. Should the TRAF be expanded to replace other sources of implicit funding used to support universal service?

RESPONSE: No. Replacing an uneconomic pricing scheme with a different uneconomic scheme and calling it a "universal service fund" simply prolongs the harm to competition and consumers.

8. Should TRAF disbursements be portable to Eligible Telecommunications Carriers ("ETCs") for customers they serve in these rural areas?

RESPONSE: No. Instead of disbursing funds to carriers, a better approach would be to provide support directly to consumers to determine which carrier to support.

9. Should the TRA establish a state-wide local residential benchmark rate for universal service and determine necessary universal funding based upon the benchmark, i.e., a company could draw money out of a universal fund if its rates are below the benchmark?

RESPONSE: Allowing companies to draw revenue from their competitor's customers (either through inflated access rates or through a fund) harms both competition and consumers. If adopted, the size of the TRAF should be minimized by requiring carriers to recover a minimum of revenue from services offered to their own customers before taxing other carriers' customers. A rate benchmark is one way to minimize the TRAF and should be set at a level that recognizes all of the revenue that a carrier can derive from services available to end users on its network. If the benchmark does not include all services, then any disbursements must be limited to those lines capable of providing only basic service.

10. Please provide your thoughts/suggestions on whether there should be a phase out or reduction in the amount of TRAF funding once carriers elect Market Regulation.

RESPONSE: Any TRAF availability should be eliminated in areas subject to market regulation just as it should be reduced or eliminated based on any change that affects the need for subsidy. As stated throughout these comments, before any subsidy fund like a TRAF is instituted, the need for subsidization in the first instance should be established as required by the current relevant Tennessee Code section.

11. What factors and procedures should be considered in determining the per line support amount for rural carriers?

RESPONSE: If a per-line support mechanism is created, the amount should be provided directly to the consumer for the consumer to use in purchasing the service of their choice from the service provider of their choice.

12. Which companies should contribute to the TRAF, and state why or why not?

RESPONSE: If Tennessee considers a subsidy fund to be beneficial for all citizens of Tennessee, it should collect the funds through general tax revenue rather than requiring carriers to be the state's tax collector. But if the TRAF is to be collected from carriers, only those carriers that receive money from the TRAF should be required to contribute.

13. What method should be used to determine the TRAF contribution per company?

RESPONSE: See response to 12 above.

14. If intrastate access rates are reduced in Tennessee, should language be incorporated into the proposed legislation to ensure that companies subscribing to intrastate access do not receive windfall profits, but rather return the access savings to their customers.

RESPONSE: No legislative prescription for flowing through any access reduction is necessary. In highly competitive markets such as the wireless and long distance markets, competitors will be forced by the market to utilize any cost reductions, including those realized through reduced switched access rates, to invest in new and improved services and to provide higher quality service, more value, and lower rates to their customers. There is no need to seek to micromanage what is best addressed by the market. The windfalls which LECs have received by imposing excessive access rates will be returned to consumers by exposing the excess profits currently trapped in a monopoly function (i.e., terminating an incoming phone call) and allowing competitors to put that money to work in providing competitive services.

II. Conclusion

Before any additional fund is considered seriously, the Legislature and TRA should first develop a full evidentiary record to determine if subsidies are needed and at what level. The record should consider the following at a minimum:

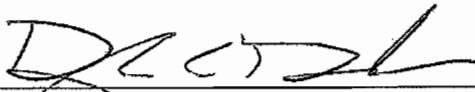
1) An analysis of the need for the present substantial subsidies received by the rural ILECs through their switched access rates. This should include a full examination of these carriers' finances and an evaluation of the specific costs that are associated with the carrier of last resort obligation. The subsidy should not be perpetuated for its own sake, but should be tied instead to some quantifiable need. An evaluation of the appropriate level of switched access subsidies is long overdue.

2) An analysis of the revenues from unregulated services available to the rural ILECs to contribute to the support of their networks and to recover the costs of providing services. Many rural ILECs today offer several services, including broadband, long distance, wireless and even television. Revenues from such services support their overall cost of operations, meaning less subsidy is required. All revenues should be counted toward the ability to support network and services just as they are for other carriers who do not enjoy subsidies. In today's telecommunications marketplace, all competitors should recover the cost of providing service across all product offerings from their end users and not rely on subsidies from other providers.

3) An analysis of the effects of such ongoing subsidies on all consumers in Tennessee.

Sprint Nextel respectfully requests that the TRA advise the Legislature that these matters should be examined carefully, in order to ensure all consumers are protected, before seriously considering new legislation that would undo the current balanced approach to universal service in the Tennessee Code in favor of a one-sided perpetual subsidy guaranteeing incumbent LEC revenues.

Respectfully submitted this 25th day of September, 2009.


Douglas C. Nelson
Regulatory Counsel
233 Peachtree Street N.E. Suite 2200
Atlanta, GA 30303
(404) 649-8983
douglas.c.nelson@sprint.com