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Sprint Nextel

KSOPHN0314-3A753

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Honorable Jaclyn A. Brillling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

**Re: Notice Suspending Briefing Schedule And Establishing Schedule For
Statements In Support Of Or Opposition to Phase II Joint Proposal;
Case 09-M-0527**

Dear Secretary Brillling,

Sprint Nextel Corporation ("Sprint") submits these comments to the Joint Proposal intended to resolve all of the issues in Phase II of this Proceeding. Sprint files these comments in support of the Joint Proposal and Settlement Agreement ("Joint Proposal"). As a wireless and wireline carrier in New York, Sprint's support of the Joint Proposal is subject to the reservations contained in the Joint Proposal, these comments, and the specific circumstances and conditions surrounding this case in New York. As the Joint Proposal indicates, it is a compromise and does not reflect any party's view of the ideal resolution of all Phase II issues. (Joint Proposal, Recital k.)

After receiving written testimony and oral evidence in this matter, Judge Jack issued a Recommended Decision ("RD") on January 4, 2012 establishing a State Universal Service Fund ("SUSF") and included provisions on the term, funding levels, funding qualifications and other items to make funds available to the NYSTA ILECs collected from wireless and wireline carriers in the state.¹ The RD suggested that the

¹ Sprint's positions on the various legal and factual issues in the matter can be found in its testimony and briefs filed in Case 09-M-0527.

Commission hold a PSL Section 5(6) proceeding in order to require wireless carriers to contribute to the SUSF. Sprint and other wireless carriers disagreed with the RD's recommendation on the Section 5(6) proceeding and various other matters regarding the need for and creation of a SUSF to fund the NYSTA ILECs. Chief among those concerns, Sprint argued that if a SUSF is created it must be consistent with federal universal service principles and federal law. Shortly before the RD's release the FCC issued its *USF/ICC Transformation Order*² that addressed among other items federal and state issues surrounding intercarrier compensation and universal service and has a significant impact upon the issues in this case.³

Here, in light of the RD and other circumstances, as a compromise to the multiple issues in this case, Sprint is able to support the Joint Proposal for several reasons.⁴

First, the Joint Proposal recognizes that wireless carriers and their customers should not be required to contribute to a state fund that benefits only ILECs. See, Joint Proposal, Section 4(a). This is consistent with the rational principle that markets and competition should not be distorted by providing subsidies to one set of companies while its competitors do not receive them. The exclusion of wireless carriers from funding the SUSF and the avoidance of the Section 5(6) proceeding mentioned in the RD are the primary reasons why Sprint supports the Joint Proposal. Wireless services have not been subject to New York PSC regulation under the Public Service Law. The NYSTA ILECs request for additional funding from other carriers is not a sufficient reason to impose any sections of the Public Service Law upon wireless carriers. Customers in New York have benefited from a wireless market regulated under a national framework. Without the provisions excluding wireless from contributing to the SUSF, Sprint would not be able to support the Joint Proposal.

Second, while Sprint does not believe that a SUSF is necessary for the NYSTA ILECs, a commendable provision of the Joint Proposal is that the SUSF has an established end date of January 1, 2017. [Joint Proposal, Section 2(a)] The inclusion of an explicit end to the fund recognizes that a fund where money is collected for the benefit of a subset of the carriers in the State is a novel approach in New York and recognizes that such a fund should not be open ended. There must come a time when all providers fund their operations from services they provide to their own customers rather than from the pocketbooks of other carriers and their customers. Under the Joint Proposal, the SUSF ends after four years and the Commission is requested to initiate a proceeding to determine if any successor arrangement is prudent following the 4 year Term. The

² *In the Matter of Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al. FCC 11-161 (November 18, 2011).

³ Sprint's position is that many of the conclusions of the RD are inconsistent with the FCC's Order.

⁴ While Sprint's wireless operations would not contribute to the SUSF under the Joint Proposal, its local and long distance wireline retail operations would be assessed.

bright-line ending date to the SUSF is a crucial component of Sprint's support of the Joint Proposal.

Given the many challenges in this case, the positions taken by all the parties, and existing federal and state law, on balance Sprint supports the Joint Proposal and urges the Commission to adopt it. Sprint's support of the Joint Proposal is based upon the specific circumstances presented in this case and is not an indication of how Sprint would react to the same or similar proposal in another state.

Sincerely,

A handwritten signature in black ink that reads "Ken Schiffman". The signature is written in a cursive, slightly slanted style.

Kenneth A. Schiffman

pc: Judge Jack
Service List