

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of)	
)	
Federal-State Board on)	
Universal Service: Petition of)	
TDS Telecommunications Corp.,)	
Fairpoint Communications, Inc.,)	CC Docket No. 96-45
and Burke's Garden Telephone)	
Company for Revocation of)	
Sprint Nextel's ETC Designation)	
in Virginia, or, in the Alternative,)	
Motion to Show Cause)	

Comments of the

INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE

ORGANIZATION FOR THE PROMOTION and ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES

and the

WESTERN TELECOMMUNICATIONS ALLIANCE

To the Commission:

I. INTRODUCTION

The Independent Telephone and Telecommunications Alliance (ITTA),¹ the Organization for the Promotion and Advancement of Small Telecommunications

¹ ITTA represents mid-size local exchange companies that provide a broad range of high-quality wireline and wireless voice, data, Internet, and video telecommunications services to more than 13 million customers in 43 states.

Companies (OPASTCO),² and the Western Telecommunications Alliance (WTA)³ hereby submit these comments in the above-captioned proceeding. The Petition of TDS Telecommunications Corp. (TDS), FairPoint Communications, Inc., and Burkes Garden Telephone Company, Inc. (Petition)⁴, implicates not only the issues related immediately to Sprint/Nextel Corporation, but also processes of general applicability governing support for competitive eligible telecommunications carriers (CETCs).

The Petitioners seek revocation of Sprint/Nextel's designation as an eligible telecommunications carrier (ETC) in Virginia or, in the alternative, to require Sprint/Nextel to show cause why it should retain its ETC status in Virginia.⁵ At the heart of the Petition is the assertion that Sprint/Nextel has not fulfilled obligations to build out its network and expand into rural areas in accordance with commitments made in its CETC application process. This Petition provides the Commission with a litmus test that can be used to govern how CETCs will be held accountable and can moreover inform the Commission's current efforts undertaking critical reform of the Universal Service Fund (USF) and its processes.

² OPASTCO is a national trade association representing over 520 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

³ WTA is a trade association that represents approximately 250 rural telephone companies operating west of the Mississippi. Most members serve fewer than 3,000 access lines overall, and fewer than 500 access lines per exchange.

⁴ *Federal-State Joint Board on Universal Service: Petition for Revocation of Sprint/Nextel's Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45 (filed Jun. 4, 2007).

⁵ Sprint/Nextel was granted ETC status in 2004. See, *Federal-State Joint Board on Universal Service, NCPR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier: Order*, CC Docket No. 96-45, 19 FCC Rcd 16530 (2004) (*Sprint/Nextel Order*).

II. CURRENT USF CONCERNS

Recent growth in the High-Cost program of the USF has generated increased Congressional and regulatory scrutiny of the Fund. Decision-makers' stated goals include stability of the Fund itself and control of Fund growth. The largest and most rapid growth in the USF has occurred in support for CETCs.⁶ Although the instant Petition is not *per se* related to the other current proceedings, the backdrop of that other USF activity demonstrates that the issues raised in the Petition are hardly theoretical but in fact implicate concerns arising out of other aspects of the USF currently under review. The disbursement of support to any carrier must be matched by the recipient's demonstrated commitment to fulfill universal service principles.

In 2005, ITTA, WTA, and TDS noted that “[t]he long-term viability of the Fund has become an area of increasing concern as both the numbers of carriers drawing universal service support and overall size of the Fund have increased sharply.”⁷ The Commission itself in 2004 expressed its “increasing[] concern[] about the impact on the universal service fund due to the rapid growth in high-cost support distributed to

⁶ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-1, at para. 4 (rel. May 1, 2007) (*Joint Board Recommended Decision*). See also Statement of FCC Chairman Kevin Martin Before the Federal-State Joint Board on Universal Service, (Feb. 20, 2007) (Martin *en banc* Statement); Letter from Kathleen Grillo, Verizon Communications, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Service Commission, regarding the *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (Feb. 9, 2007) (Verizon Proposal); Letter from Mary L. Henze, AT&T, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Service Commission, regarding the *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, at 2 (Mar. 22, 2007) (AT&T plan, or filing).

⁷ *Federal-State Board on Universal Service: Petition for Reconsideration of TDS Telecommunications, Inc., Independent Telephone and Telecommunications Alliance, and Western Telecommunications Alliance*, CC Docket No. 96-45 (filed Jun. 24, 2005).

competitive ETCs.”⁸ In fact, OPASTCO had urged the Commission to consider the impact on the overall Fund size that grant of CETC applications could engender.⁹ The Commission rejected this recommendation, stating that “analyzing the impact of one ETC on the overall Fund may be inconclusive,” and that “given the size of the total high-cost fund – approximately \$3.8 billion a year – it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund.”¹⁰ Between 2001 and 2006, however, competitive ETC support grew from \$15 million to almost \$1 billion, an annual growth rate of over 100 percent. And, the Commission has noted that high-cost support to CETCs is estimated to grow to almost \$2 billion in 2008 and \$2.5 billion in 2009, even without additional CETC designations in 2008 and 2009.¹¹

And yet, the Commission, has been clear that CETC designations are not be a *carte blanche* ticket to future support. Rather, the Commission has warned that a CETC’s eligibility can be revoked if that carrier fails to comply with applicable standards. The *ETC Designation Order* provides that “[i]f a review of the data . . . indicates that the ETC is no longer in compliance with the Commission’s criteria for ETC designations, the Commission may suspend support . . . or revoke the carrier’s designation[.].”¹²

⁸*Federal-State Board on Universal Service – Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia: Memorandum Opinion and Order*, CC Docket No. 96-45, 19 FCC Rcd 1563, FCC 03-338, at para. 31 (*Virginia Cellular*) (rel. Jan. 22, 2004).

⁹ Comments of OPASTCO, at 36-38 (filed Aug. 6, 2004).

¹⁰ *ETC Designation Order* at para. 54. The Commission, however, seems to have acknowledged the logic of restraining CETC grants: “While Congress delegated to individual states the right to make ETC decisions, *collectively* these decisions have national implications that affect . . . the overall size of the universal service fund. *Id.* at 60.

¹¹ *Joint Board Recommended Decision* at para. 4. Support to incumbent LECs has been flat or decreased since 2003. *Id.*

¹² *ETC Designation Order* at para. 72.

III. DISCUSSION

Petitioners cite Sprint/Nextel application materials in which the company committed it would construct 16 new sites, and that in supplemental filings, specified that it sought CETC designation in 14 study areas, 12 of which were rural. The Petitioners allege that, three years after Sprint/Nextel was granted, various data reveal that Sprint/Nextel has sought support for only four lines in rural study areas. The Petitioners argue that the rural areas in which Sprint/Nextel provides service are limited to those that intersect with major highways.¹³

As described above, the Commission has been clear that it may suspend or revoke a carrier's ETC designation. ITTA, OPASTCO, and WTA submit that in the instant matter, disposition of the Petition can rely not only upon the Commission's generalized standards, but also upon the specific commitments pledged by Sprint/Nextel in its application.

In the Commission's words,

Nextel's public interest showing here is sufficient, based on the detailed commitments Nextel has made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Nextel has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.¹⁴ . . . Moreover, Nextel has committed to improve its network and reach out to areas that it does not currently serve.¹⁵

The Commission also noted,

. . .designating Nextel as an ETC will further the Commission's universal service goals by enabling Nextel to better expand and improve its network to serve a greater population and increase competitive choice for

¹³ See, generally, Petition at 7-10.

¹⁴ *Sprint/Nextel Order* at para. 16 (internal citations omitted).

¹⁵ *Sprint/Nextel Order* at para. 19 (internal citations omitted).

customers within the study areas of its ETC designation.¹⁶

The Petitioners have compiled extensive data in support of their claim that Sprint/Nextel has failed to meet its commitments. These data include coverage maps and USAC-generated support data. In each instance, the data presented begs the question of how (or whether) the USF support is being used to enable Sprint/Nextel to “reach out to areas that it does not currently serve.” In this instance, and as noted by the Petitioners,¹⁷ the Commission has the opportunity for a *post hoc* review, rather than a test of hypothesis. The Commission can compare prior commitments to current achievement and adjudge whether the facts support continuation of the CETC designation. ITTA, OPASTCO, and WTA submit that if a carrier is found to have not met the commitments outlined in its application, then the CETC designation should be revoked. The Commission, as it stated in the *ETC Designation Order*, has this right, and it should be exercised. The current pressures bearing upon the high cost fund leave little, if any, room for waste or abuse. Accountability of all parties receiving support is imperative to the efficient operation of the Fund and public confidence in its success. Carriers “gaming” the system or otherwise drawing support without corresponding deployment should be ejected from the system.

¹⁶ *Sprint/Nextel Order* at para. 20.

¹⁷ Petition at 3.

IV. CONCLUSION

For the reasons stated above, ITTA, OPASTCO, and WTA urge the Commission to address the Petition and to affirm accountability in the USF and CETC process.

Respectfully submitted,

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