STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

SPRINT NEXTEL'S INITIAL COMMENTS ON "STRAWMAN" DRAFT OF PROPOSED ADMINISTRATIVE RULES FOR INDIANA LIFELINE ASSISTANCE PROGRAM 170 IAC 7-8-1 et. seq.

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Introduction

Sprint Nextel ("Sprint") sought and received designation as a competitive federal ETC. As a competitive ETC, Sprint is required to provide Lifeline and Link Up assistance to qualified, low-income consumers. However, nothing in the IURC's ETC designation order, state, or federal law, mandates that Sprint must participate in the Indiana Lifeline Assistance Program ("ILAP"). The ILAP statute applies to an "eligible telecommunications carrier" which is defined as "a local exchange carrier that is designated as an ETC by the IURC under 47 CFR 54.201." Indiana Code 8-1-32.5-5 defines a "facilities based local exchange carrier" as a "local exchange carrier (as defined in 47 U.S.C. 153(26)." That statute, 47 U.S.C. 153(26) explicitly exempts CMRS carriers from the definition of "Local Exchange Carriers." As such, Sprint cannot legally be compelled to participate in the ILAP. This conclusion is further supported by I.C. 8-1-2.6-1.1(6) which makes clear that "the commission shall not exercise jurisdiction over . . . commercial mobile service (as defined in 47 U.S.C. 332)." The Commission may rest assured, however, that Sprint's provision of Lifeline and Link Up assistance is already well regulated. Sprint's provision of Lifeline and Link Up assistance is strictly controlled by the Federal Communications Commission's ("FCC") low-income universal service rules set forth at 47 C.F.R. § 54.400, *et seq.*

If applied to wireless carriers, the proposed ILAP rules also constitute impermissible rate regulation and pose barriers to entry in contravention of federal law. As staff knows, the wireless industry provisions service and bills customer in a unique, transient, highly competitive manner that is not regulated like traditional wireline carriers. While Sprint is willing to pay into the ILAP and pass along such a surcharge to its customers if the Commission so mandates, any attempt to subject wireless carriers to the proposed ILAP rules would be an effort to fit the square peg of mobile wireless communications into the round hole of monopoly regulation. Thus, for numerous legal and policy reasons, the staff should interpret the ILAP statute and draft the rule so wireless ETCs are explicitly exempt from its requirements.

I. Indiana Law Excludes CMRS Carriers From Compulsory ILAP Participation

In Sprint's latest ETC designation Order[1], the IURC required Sprint to file a Lifeline tariff that it approved. (See Exhibit 10 to John Mitus' direct testimony). Nothing in the tariff or the IURC's designation order intimates there will be an additional state lifeline/linkup program that Sprint is required to also implement.

The Indiana Lifeline Assistance Program ("ILAP") statutes define which carriers are required to participate in the ILAP. The statute begins by indicating that the ILAP statutes "apply to an eligible telecommunications carrier that offers basic telecommunications service in one (1) or more exchange areas in Indiana." I.C. 8-1-36-1. The ILAP statutes go on to define an "eligible telecommunications carrier" as "a *local exchange carrier* that is designated as an ETC by the IURC under 47 CFR 54.201." I.C. 8-1-36-4 (emphasis added). Indiana Code 8-1-32.5-5 defines a "facilities based local exchange carrier" as a "local exchange carrier (as defined in 47 U.S.C. 153(26)...."

The federal law to which the Indiana definition of "local exchange carrier" refers is 47 U.S.C. 153(26), which specifically exempts CMRS carriers from the definition of "local exchange carriers." Therefore, since I.C. 8-1-32.5-5 refers back to the federal definition of local exchange carrier (which specifically excludes CMRS or wireless carriers), then the ILAP statute, which refers to not all ETCs but only to *local exchange carriers* designated as ETCs, necessarily excludes ETCs that are wireless carriers. As such, staff can properly interpret the ILAP statute to

[1] Cause No. 41052-ETC-47 dated March 7, 2007.

reflect the legislature's intent to exclude wireless ETCs from the rules promulgated under I.C. 8-1-36-8. This interpretation is further supported by the express language of I.C. 8-1-2.6-1.1(6), which states that "the commission shall not exercise jurisdiction over commercial mobile service (as defined in 47 U.S.C. 332)." Ultimately, Sprint is willing to pay into the ILAP and pass along appropriate surcharges as the Commission establishes, but the law does not require Sprint to participate in the ILAP by offering it to its customers.

II. If Applied to Wireless Carriers, the Proposed Rules Effectively Regulate Rates and Create Barriers to Entry in Contravention of Federal Law

Many of the provisions of the proposed rule are preempted. Federal law prohibits states from regulating the entry of or rates charged by wireless carriers. Federal law also prohibits states from enacting regulations that prohibit or have the effect of prohibiting the ability of a wireless carrier to provide service. Multiple proposed rules on their face will regulate the rates charged by wireless carriers and taken together, can be interpreted as regulating wireless carriers' entry into certain markets and have the effect of prohibiting the ability of wireless carriers to provide service.

Specifically, 47 U.S.C. § 332(c)(3)(A) provides: "No State or local government shall have any authority to regulate the entry of or rates charged by any commercial mobile service ..., except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." 47 U.S.C. § 253(a) states: "No state or local statute or regulation, other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

A close examination of the proposed rules demonstrates that many of them directly regulate the rates that can be charged by a wireless carrier and thus run afoul of federal law and are preempted by the Supremacy Clause of the United States Constitution. The FCC and the Courts have examined what types of state rules constitute unlawful rate regulation. A recent Eighth Circuit case that struck down a Minnesota statute as unlawful rate regulation summarized the FCC's interpretation of Section 332(c)(3)(A):

> As the agency charged with administering the Communications Act, *see 47 U.S.C. § 151*, the FCC has interpreted *§ 332(c)(3)(A)* on several occasions, often relying on the aforementioned legislative history. The FCC has determined that a State's review of the rates charged by providers prior to implementation of the rates, where the review often occasioned delays of 30 days before new rate offerings could take effect, is "rate regulation" for purposes of *§ 332(c)(3)(A). Pet. on Behalf of the State of Hawaii, Pub. Util. Comm'n, 10 F.C.C.R. 7872, 7882 (1995).* The Commission also has ruled that regulation of rates includes regulation of "rate levels and rate structures," such as whether to charge for calls in whole-minute increments and whether to charge for both incoming and outgoing calls, and that states are prohibited from prescribing "the rate elements for CMRS" and from "specifying which among the CMRS services provided can be subject to charges by CMRS providers." *Southwestern Bell Mobile Sys., Inc., 14 F.C.C.R. 19898, 19907 (1999).*[2]

In *Cellco v. Hatch,* the Eighth Circuit determined that Minnesota's statute requiring customers to affirmatively opt into a rate change before it could be become effective is prohibited rate regulation.[3] The Court reasoned:

> We agree [**13] with the FCC that "fixing rates of . . . providers" is rate regulation, *see Pet. of Pittencrieff Communications, Inc., 13 F.C.C.R. 1735, 1745 (1997)*, and we conclude that *subdivision 3* of the Minnesota statute constitutes impermissible rate regulation preempted by federal law. The requirement of *subdivision 3* that consumers consent to any substantive change prevents providers from raising rates for a period of time, and thus fixes the rates. The 60-day notification period created by *subdivision 3* effectively freezes rates for 60 days when the provider notifies a customer of a proposed change in rates.[4]

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[2] *Cellco v. Hatch*, 431 F.3d 1077, 1080-81 (8th Cir. 2005), *cert. denied*, 2006 U.S. LEXIS 7807 (U.S., Oct. 16, 2006).
[3] *Id.* at 1082.
[4] *Id.* at 1082.

Here, numerous of the proposed rules purport to regulate and fix certain rates of wireless ETCs and are impermissible rate regulation. The specific proposed code sections and reasons why the rules are preempted are set forth below:

- Proposed rule 170 IAC 7-8-3 would require wireless carriers to set a precise deposit amount, and apply a predetermined interest rate to customer deposits. Sprint has a national credit policy utilizing independent credit reporting agencies to determine whether a customer poses a credit risk, and whether a deposit is required. A customer's credit score, as calculated by a credit reporting agency, determines the amount of deposit that is required. Impermissible rate regulation occurs when Sprint is forced to abandon its own policy in favor of the deposit amounts mandated by the Indiana rules. Regulations requiring the acceptance of a deposit impermissibly set how customers pay for service from a wireless carrier, thereby regulating rate levels and structures and resulting in impermissible rate regulation. These rules would also require deposit refunds when the customer timely submits satisfactory payment in ten (10) out of twelve (12) consecutive months, which regulates rate levels and structures and constitute impermissible rate regulation.
- Proposed rule 170 IAC 7-8-9 would prohibit CMRS carriers from disconnecting a participant's "basic telecommunications service" because of nonpayment for other services billed by the CMRS carrier, including interexchange service. Aside from the technical and practical implications of this rule for wireless carriers (discussed in Section III below), there are contractual implications unique to the wireless industry. If a wireless carrier's contract with a customer has other provisions that allow it to discontinue service that conflict with the proposed rule, then imposition of the rule would

require the wireless carrier to continue offering service. This is impermissible rate regulation, as it would fix the rates of a customer for a period of time.

- Similarly, proposed rule 170 IAC 7-8-10(c) requires wireless carriers to continue providing "any service that is the subject matter of the dispute" while review or investigation is pending. See also 170 IAC 7-8-10(h). Not allowing a wireless carrier to terminate service if payment is not received according to the contract terms is impermissible rate regulation as it would fix the rates of a customer for a period of time.

As shown above, multiple provisions of the proposed rules will regulate rate structures and the rates charged by wireless carriers. The law is clear that such state rate regulation is prohibited.[5] The sheer breadth of impermissible rate regulation leads directly to the conclusion that the Commission is preempted from applying the proposed rules to wireless carriers.

In addition to the impermissible rate regulation found in several of the proposed rule provisions, many of the rules described above that regulate billing practices and many other proposed provisions have the effect of prohibiting the ability of a wireless carrier to provide any interstate or intrastate telecommunications service in violation of Section 253(a) of the 1996 Telecommunications Act or violate Section 332(c)(3)(a) and regulate "entry" of wireless carriers.[6]

Imposition of the billing requirements described above and control and regulation of additional business practices described below can be found to prohibit the entry of a wireless carrier and run afoul of Section 332(c)(3)(a). Courts also have found section 253(a) to be

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[5] *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd 6371 (released March 17, 2005) ("ETC Order"), ¶ 31.

[6] Indeed, the FCC has held that imposition of regulations "so onerous as to effectively preclude a prospective entrant from providing service" as an ETC would violate Section 253(a). *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, *Declaratory Ruling*, FCC 00-248 ¶¶ 11-18 (rel. Aug. 10, 2000).

violated when "certain features of regulations in combination, have the effect of prohibiting the provision of telecommunications services."[7] While one of the proposed rules alone may not prohibit a wireless carrier from providing service, in combination, it may be said that they do. The proposed regulation of wireless carriers in these rules is far-ranging, invasive and controls multiple business practices and interactions between wireless carriers and their customers by Indiana specific regulation that differs from existing business practices. The creditworthiness, deposit, and refund provisions, the disconnection and dispute resolution process requirements, and certain of the consumer education requirements are particularly harmful (and technically infeasible) and either could be said to impermissibly regulate entry and, in combination or alone, have the effect of prohibiting the provision of service by wireless carriers. Overall, these proposed rules violate federal law by regulating the entry of wireless carriers into designated service areas in Indiana and together can prohibit the offering of telecommunications services.

III. Technical, Practical, and Economic Concerns That are Unique to Wireless Carriers Suggest Mandatory ILAP Participation is Inappropriate

A. When Applied to Wireless Carriers, the Proposed Rule Attempts to Fit a Square Peg Into a Round Hole

Wireless service is not exclusively local exchange service under Indiana law. Indiana Code 8-1-32.5-5 defines a "facilities based local exchange carrier" as a "local exchange carrier (as defined in 47 U.S.C. 153(26)) …." Federal law, 47 U.S.C. 153(26) exempts CMRS carriers from the definition of "Local Exchange Carriers." While wireless can be a call between two points in an exchange, it also is inherently a mobile service and a call that begins as a local exchange call may not end that way due to one or both parties driving, or even walking, to

[7] *Sprint Telephony PCS v. County of San Diego*, 377 F. Supp. 2d 886, 893 (S.D. Cal. 2005), *aff'd* 2007 U.S. App. LEXIS 5753 (9th Cir. March 13, 2007).

locations outside of the original exchange. Federal law recognizes the mobility of wireless communications by requiring reciprocal compensation to apply to calls not within an exchange, but within a Major Trading Area, or MTA.[8] Consequently, Indiana and federal law do not recognize the distinction the proposed rules attempt to make regarding the purpose for applying the rules to wireless carriers.

Wireless services, by definition, are mobile services. Customers subscribe because they *can* utilize their wireless phone as they move around their community, state, and throughout the United States and abroad. Subscribers enjoy their service from Sprint and other wireless companies precisely because they can use it at the mall as well as at their home or business. Since subscribers utilize their wireless phones outside of their home or business, it appears to make little sense to impose LEC type wireline regulation on an inherently mobile service.

It is also important to note that wireless ETCs bring significant benefits that entrenched landline telephone company ETCs simply do not and cannot provide – the flexibility, productivity, and public safety features of mobility. In the 1900s, universal service was narrow-minded – getting everyone an inflexible, fixed line which tied them to their home or desk at the office. Modern communications happen anytime and anywhere. Emergencies are not confined to the home or office. Business is conducted on the construction-site, in the airport, really anywhere people go, not just in the office. People don't wait until they are at a home or office line to communicate. A modern ETC policy must advance, not stifle, the cause of anytime and anywhere mobile communications.

Instead of attempting to fit the square peg of mobile wireless communications into the round hole of monopoly regulation by applying the proposed rules to wireless carriers, the Commission should concentrate on placing customer service guarantees for wireless ETC

[8] 47 C.F.R. § 51.701(b)(2).

participants that are meaningful for wireless communications. The FCC did just that in its *ETC Order* by requiring compliance with the CTIA Code but did not impose other regulatory requirements. This Commission should do the same in this instance.

B. State-Specific Wireless ETC Rules Are Inappropriate For Wireless Companies Providing Mobile Services Nationwide.

Additionally, adoption of state-specific wireless ETC requirements via the proposed rule does not strike the appropriate balance for companies that compete on a nationwide basis. A number of wireless companies, including Sprint Nextel, utilize a nationwide footprint for their rate plans and services. Due to this national perspective, Sprint Nextel has implemented centralized-support systems that serve all customers in all states. These complex systems are in actuality a massive computerized infrastructure of databases and organizational interfaces. These systems were not designed to provide different information based on multiple state regulations. Since at least 1993, national wireless carriers like Sprint Nextel have relied upon national networks for voice and data transmissions. A natural adjunct of this strategy has been the development of back-office databases and systems on a national basis. Therefore state-specific rules pose significant implementation costs, numerous hours of software development and other back-office modifications for national wireless carriers. Due to the vast reach and complexity of these back-office databases and systems, making any modification based on state-specific rules impacts multiple systems and operating functions, adding another layer of complexity to an already complex set of systems and processes.

Additionally, if a wireless ETC wished to participate in the state lifeline program, the wireless industry is already sufficiently competitive to ensure service quality and billing practices that satisfy the needs of wireless customers. In the slightly different context where states consider whether to designate wireless ETCs for federal support, the FCC encouraged states to examine closely whether adding state-specific billing, collection and mediation obligations as a condition for ETC designation upon wireless carriers (who are not subject to those rules in the non-ETC context) is "*necessary* to protect consumers in the ETC context, as well as the extent to which it may *disadvantage* an ETC specifically because it is not the incumbent LEC."[9] The same analysis should apply when determining whether rules for a state lifeline program should apply to wireless carriers. Where, as here, imposition of the wireline centric rules are not necessary to protect consumers and result in specific disadvantages to wireless carriers that operate nationally, the appropriate decision is to exempt wireless ETCs from the proposed rules. If the Commission decides that wireless ETCs should have the ability to choose whether to participate in the ILAP program, then the FCC's guidance should apply and consumers should be protected in the manner that the FCC has suggested by requiring only that wireless carriers follow the CTIA code, which includes extensive consumer protection provisions.

C. The Proposed Rule is Riddled With Practical, Technical & Economic Problems

The proposed rules, if applied to wireless carriers, present technical, practical, and economic concerns that are unique to the wireless industry. The most compelling reason to avoid application of the rules to wireless ETCs is grounded in the fact that by law, the Commission cannot regulate the operations of wireless carriers that do not have ETC status. In Sprint's circumstance, this means that the Indiana rules would apply to Sprint's operations that are used to serve customers who reside in an ETC area, but not apply to operations that are used to serve customers in non-ETC areas. As such, Sprint would be faced with the impossible task of implementing a unique set of rules for a sub-set of its customers (those who reside in an ETC area). This is difficult enough, but Sprint would also face the impossible task of implementing

[9] *ETC Order*, ¶ 30 (emphasis added).

state-specific rules while it operates under another set of national standards for the rest of the country. This is precisely what federal policymakers sought to avoid by prohibiting state specific regulation of wireless services. There is an enormous cost impact associated with applying the proposed rules to a wireless ETC so that different regulatory requirements apply across the carrier's national service area and even within the state itself.

Additional specific examples of technical, practical, and economic problems include the following:

- 170 IAC 7-8-3(a)(2). Eligibility requirements are not tied to the customer, so the customer could qualify simply because roommates or children of roommates qualify. This is extremely difficult to police, and is inconsistent with the purpose and spirit of the rule, which is to tie benefits directly to the *customer*.

- 170 IAC 7-8-4. Creditworthiness and deposit rules create entirely new processes that conflict with Sprint's established operating procedures and that would require new and costly Indiana specific practices. To implement the changes to Sprint's deposit practices as required by the proposed rule, Sprint would be required to make changes to complex application processing systems, customer information and account data bases, its billing system, and its collections systems. 170 IAC 7-8-4(d) limits the amount of deposit to one-sixth of the estimated annual billings for local service. Limiting the amount of deposit as required by this rule represents significant modifications to Sprint's existing systems and operational procedures, which are based on a national credit policy that uses independent credit reporting agencies.

  Changes to these complex systems will impact Sprint's Customer Care organization as this group must have an understanding of the unique Indiana rule as well as the changes that must be made to Sprint's operating systems. Therefore, Sprint's Customer Service Representatives (CSRs) will need to be educated and trained on the additional Indiana requirements. Currently, CSRs are only trained and only need to be familiar with one set of deposit refund requirements. In the event that the proposed rule is imposed on wireless ETCs, Sprint's CSRs will need to be familiar with two sets of deposit refund requirements, one for Indiana and one for the rest of the country. In order to implement Indiana specific requirements, Sprint would be forced to modify its existing national procedures or establish separate processes for Indiana customers. Both alternatives are costly and would require a significant departure from existing procedures. Today, all calls from Indiana customers can be routed to any of the call centers that handle general customer information calls. If Sprint were to determine that an Indiana specific call center is not feasible, Sprint would be forced to train ALL call center employees to handle the Indiana specific requirements, and the cost would be approximately $1.1 million. This includes the costs associated with implementing training for 16,000 CSRs in 45 call centers that handle calls from every state. In addition, it is also conceivable that an Indiana customer will make wireless service purchases in retail stores located in states other than Indiana. Therefore, Sprint will need to train all retail store agents regarding the Indiana specific creditworthiness and deposit policy. Sprint estimates that it would be forced to incur approximately $196,000 to develop and deliver training to all retail agents in all stores.

- 170 IAC 7-8-4(e) requires the utility to accept a written guarantee from a third party. This rule represents a significant change from current practices for Sprint, and does not lend itself of the wireless industry. Allowing a customer to subscribe to a wireless service and in the process obtain a subsidized handset while transferring the deposit obligation to a third party imposes an unrealistic financial burden on the wireless provider. Currently, a wireless customer can walk into a Sprint store, pay a security deposit based on Sprint's internal creditworthiness inquiry, and leave with a new, sophisticated handset/computer that also makes phone calls. This rule is specifically problematic when a customer uses a third party guarantor and then defaults. Absent these rules, Sprint can simply apply the security deposit toward the balance. Under the proposed rules, Sprint's recourse would be to pursue both the customer and the guarantor.

- 170 IAC 7-8-5(b). Sprint has spent considerable time and money developing its own form (presently used throughout Sprint's system) that complies with federal regulations. A requirement to use an Indiana specific form injects an unnecessary level of administrative burden and expense.

- 170 IAC 7-8-6(a)(1), (2), (3). Verifications are tied to the customer's anniversary date, which is very time consuming to monitor. Sprint presently uses the FCC model, which requires annual verifications not tied to the customer's anniversary date.

- 170 IAC 7-8-9. This requirement is likely based on 47 CFR 54.400(d), which was not written with wireless carriers in mind. Wireless carriers like Sprint do not provision or bill their service in a way that allows stand alone basic service to be separated (either as service or on the bill). Thus, the provision of the disconnection rules that prohibits disconnection of basic service due to nonpayment of charges for other services billed by the ETC is impossible for wireless carriers to implement. For example, a Sprint customer may receive as part of one bundle or package: local & long distance, ring tone charges, internet charges, etc. Unlike a wire-line LEC, Sprint does not provision telephone service in a way that allows the basic telephone service component to be separated from, for example, the long distance component. Also, Sprint's systems are unable to treat telecom service on the invoice differently from third party vendor charges, like music or movies.

Compliance with this rule will impact Sprint's complex billing system by requiring the wireless bill to designate charges as either "deniable" or "non-deniable." Sprint's wireless bill includes a bundle, which can be defined as unlimited access to Sprint's voice services, including toll service. Sprint's billing system as well all other systems that are interdependent upon the billing system would require significant modifications to separate the bundle of services. In addition, each charge for adjunct services, such as ring tones, music, movies, etc., must be identified in the billing system as "non-deniable"; i.e. failure to pay for adjunct services does not result in service suspension. Messaging would be required to appear on the bill and explain that non-payment of non-deniable charges will not result in the disconnection of service. This information must be retained in the billing system and flowed through to the downstream accounts receivable system and Customer Care systems that must have the ability to access the information. The collections treatment process must also be modified to identify customers who are only paying a deniable charge, and a partial-payment process must be developed.

Since wireless customers have access to sophisticated adjunct services using their wireless handset, a customer who is only paying the minimum deniable charge must be blocked from future use of adjunct services. An automated feed from the billing/payment systems to the collection treatment tables must be developed. In addition, customers must be notified that payment of only the minimum amount due will result in the discontinuance of adjunct services. Sprint estimates the cost of such development to its wireless billing platform for just the deniable/non-deniable portion of the rule will be approximately $2.7 million. This estimate does not include the cost to modify the Accounts Receivable and Collections systems. Modifications to these systems are estimated at an additional $1 million.

- 170 IAC 7-8-10. The dispute resolution rule creates an entirely new process that conflicts with Sprint's established operating procedures and that would require new, Indiana-specific practices. (As a wireless carrier, Sprint is not bound by the commission's existing customer dispute resolution rules). Additionally, in many cases, Sprint and the customer have a contract that establishes a different dispute resolution process.

IV. Other State Models

Sprint encourages the Commission to consider the state Lifeline rules in Arkansas, Georgia and Iowa (where Sprint Nextel and/or NPCR, Inc. are designated) and North Dakota (where no Sprint Nextel entity is designated). By and large, these states either determined that they are federal-default jurisdictions, or simply adopted the FCC's Lifeline Link Up rules as their own for purposes of state enforcement authority. The advantage to consumers is that these states' rules are generally consistent with the FCC rules; therefore, consumers receive a broad range of eligibility criteria and the ability to self-certify, but there is sufficient regulatory oversight to ensure that neither the Lifeline customer nor the carrier abuse the system. Likewise, the benefit to carriers is that the rules are generally consistent with the FCC default rules and, therefore, the implementation and administration costs are kept low. This means the carrier can spend more resources on provision and outreach, rather than diverting its resources to divergent state regulatory requirements. Copies of the orders setting forth the Lifeline rules for each of these example states are attached.

V. Proposed Rule Modification Language

In light of the foregoing legal, technical, economic, and practical considerations, Sprint respectfully requests that the Staff interpret the statute and draft the rule so that wireless ETCs are explicitly exempt from its requirements. Should the staff disagree, Sprint offers the proposed revisions to the Strawman Draft (attached hereto as Exhibit "A") which are designed to accommodate, to the extent possible, Sprint's concerns. Sprint underscores that many of its legal, technical, economic, and practical concerns will remain even if the attached proposed revisions are incorporated into the rule and as such, reiterates its request that the rule be constructed to explicitly exempt wireless ETCs.

Conclusion

Wireless ETCs are not included in the definition of ETCs to which the ILAP applies. When Sprint Nextel received its state ETC designation, Sprint did not automatically become subject to participation in the ILAP. Rather, Sprint's provision of Lifeline and Link Up service is already regulated by the FCC's low-income universal service rules (47 C.F.R. § 54.400, *et seq.*). The Strawman rule, if applied to wireless ETCs, constitutes impermissible rate regulation and poses barriers to entry in contravention of federal law. Sprint respectfully requests that staff acknowledge the pervasive legal, practical, technologic, and economic problems associated with applying the ILAP rules to wireless carriers and exempt wireless ETCs from its application.

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