

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IURC RM 09-09
LSA Document # 09-478

**SPRINT NEXTEL'S COMMENTS ON
IURC FINAL ADMINISTRATIVE RULES
AFFECTING COMMUNICATIONS SERVICE PROVIDERS
170 IAC 7-1.2 et. seq.; 170 IAC 7-1.3 et. seq.; 170 IAC 7-2.1 et. seq.; 170 IAC 7-6 et.
seq.; 170 IAC 7-7 et. seq.**

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Submitted on behalf of Sprint Nextel by:

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SPRINT NEXTEL'S COMMENTS ON IURC RULEMAKING AMENDING
ADMINISTRATIVE RULES GOVERNING COMMUNICATIONS SERVICE PROVIDERS

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At the May 24, 2010 public hearing conducted in connection with the above-referenced rulemaking, the IURC's Office of General Counsel invited parties to submit comments on the final rules adopted in IURC RM 09-09. As a commercial mobile radio services provider, Sprint is generally exempt from IURC jurisdiction. Sprint's comment relates to one provision of the Final Rule that applies to Eligible Telecommunications Carriers ("ETCs"), which are defined by I.C. 8-1-36-4 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, in turn, 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. Likewise, I.C. 8-1-2.6-1.1(6) provides that "the [IURC] shall not exercise jurisdiction over ... commercial mobile service (as defined in 47 U.S.C. 332)." Although Sprint reserves its right to object to the Commission's unauthorized exercise of jurisdiction, Sprint is pleased to offer the following comment on the Final Rule.

Sprint' Concern. Sprint submits the following comment regarding **170 IAC 7-1.2-3(e)**, which adds a requirement that previously did not apply to Sprint, and that will create costs and administrative burdens for Sprint:

(e) Requirements for reports of outages are as follows:

(1) Each ETC shall provide notice to the commission's consumer affairs division and the utility consumer counselor of outages as required by 47 CFR 4.9* for all outages meeting that criteria and affecting at least ten percent (10%) of the end users served in a designated service area or a 911 special facility as that term is defined in 47 CFR 4.5(e)* within two (2) hours during normal work hours of the business day after the ETC becomes aware of such interruption to service and shall notify the consumer affairs division and the utility consumer counselor when service has been restored.

This new rule imposes new and different outage reporting requirements that will require Sprint to report outages within two (2) hours of certain interruptions rather than the *annual* outage reporting presently required of Sprint pursuant to Sprint's 2007 ETC Designation Order in Cause No. 41052-ETC-47. There, the Commission imposed the following outage reporting requirements, which emanate from the FCC:

Finally, we find that Petitioner should be required to meet all of the following prospective reporting requirements established by the *2005 FCC ETC Order* and currently applicable to all Indiana ETCs by submitting the following information on an annual basis around the September timeframe as required by this Commission:

(b) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities that it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the Outage Reporting Order). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected.

2007 Ind. PUC LEXIS 71 at *40-*42. The Rule's two hour outage reporting requirement was also not required in the Commission's June 25, 2009 Revised High Cost Universal Service Funding Certification for ETCs in Cause No. 42067. Paragraph 4 of Attachment B to that Order required an ETC to:

provide information regarding outages that have lasted 90 minutes or more for any facilities that your company owns, operates, leases, or otherwise utilizes that would have affected at least ten percent of the end users served in a designated area. This would also include any 911 facilities. Also include in this report the time/date of outage, the number of customers affected by the outage, the services affected, the geographic areas affected by the outage and steps taken to prevent similar outages in the future.

Sprint's Cost Estimate to Comply With Rule. As outlined in its Fiscal Impact Statement submitted to the Commission on February 11, 2010, Sprint's cost to comply with this provision and report certain outages within two (2) hours is \$2,755 annually. Sprint's subject matter experts estimate that its cost to report each outage is \$72.50, which represents one hour of contract labor from Sprint's existing network management vendor, which Sprint estimates will be necessary to comply with the Proposed Rule for each outage report. Sprint's subject matter experts reviewed Sprint's historic outage and FCC reporting records and determined that, for the past two years, the average number of outage reports per year was 38. Thus, the per-outage estimated cost of \$72.50 times 38 average outages per year equals an estimated annual compliance cost of \$2,755.

Opportunity to Avoid Cost Created by Rule. The compliance cost created by this Rule could be completely eliminated if the Commission amended 170 IAC 7-1.2-3(e) to state that "the requirements of this section do not apply to CMRS providers designated as ETCs" or to state that "the requirements of this rule shall not apply if the Commission order designating the carrier as an ETC specifies alternative requirements for outage reporting." Sprint notes that the Commission included similar exemption language at 170 IAC 7-1.2-3(b).

Sprint appreciates the opportunity to express its concerns, and respectfully requests that the Commission consider changing the language of 170 IAC 7-1.2-3(e) as suggested above.

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