

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

JAN 12 2007

Before Commissioners: Brian Moline, Chair
Robert E. Krehbiel, Commissioner
Michael C. Moffet, Commissioner

 Docket
Room

In the Matter of a General Investigation)
Addressing Requirements for Designation of) Docket No. 06-GIMT-446-GIT
Eligible Telecommunications Carriers.)

REPLY COMMENTS OF THE CITIZENS' UTILITY RATEPAYER BOARD

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following reply comments in this docket related to the Kansas Corporation Commission's (KCC or Commission) November 20, 2006, Order Addressing Petitions for Reconsideration (November 20th Order) soliciting additional information and comments regarding the feasibility and cost of requiring optional per-minute blocking of local usage for Lifeline customers.

I. INTRODUCTION

1. In the Commission's October 2, 2006, Order Adopting Requirements for Designation of Eligible Telecommunications Carriers (October 2nd Order), the order stated:

The Commission is persuaded that free optional per-minute blocking of local usage will assist Lifeline customers in managing their communications bills and adopts such free optional blocking as a requirement for ETCs that do not provide unlimited local usage. The Commission finds that customers must be assured access to 911 service at all times even if they choose optional per-minute blocking.

CURB supports the Commission's finding and urges its implementation.

2. The Commission's November 20th Order granted reconsideration to obtain additional information on whether it is technically feasible for CETCs to offer per-minute blocking of local usage for Lifeline customers when the carrier does not offer unlimited local calling and to address the incremental cost of such blocking, as well as any other issues related to per-minute blocking.¹

II. COMMENTS

3. CURB has reviewed the comments filed by Sprint Nextel Corporation (Sprint Nextel), Alltel Kansas Limited Partnership (Alltel), and the joint comments of RCC Minnesota, Inc. (RCC) and USCOC of Nebraska/Kansas LLC (USCOC). None of the filed comments adequately address the issues delineated by the Commission in its November 20th Order.

4. When reviewing all of the filed comments it is important to remember that the Commission's questions only apply to companies that do not provide unlimited local calling plans. Such plans still provide the best solution for the control of costs by Lifeline customers. A rate plan that allows free per-minute blocking or other means of cost control, is a second best solution that does not need to be implemented by companies that offer unlimited local calling plans.

5. Sprint Nextel begins with an admonition to the Commission that, "the Commission is without authority to impose the per minute call blocking requirement on wireless CETCs."² While the Commission and parties to this docket are aware of Sprint Nextel's position on the Commission's authority over wireless CETCs, the Commission has addressed this concern numerous times and reiterated its position in Paragraph 11 of the November 20th Order:

¹ Order Addressing Petitions for Reconsideration, ¶¶ 33, 56

² Comments of Sprint Nextel Corporation on Reconsideration, p. 2 (Because Sprint Nextel failed to number its paragraphs as required by K.A.R. 82-1-219(c), CURB will reference only the page.)

The Commission has in prior dockets addressed the question of whether the Commission has authority to impose requirements on ETCs that are wireless carriers and has consistently concluded that it does.³

The Commission has consistently recognized this authority in prior dockets:

Conditioning receipt of state universal service support on non-discriminatory requirements on all ETCs related to the provision of universal service would not be an unlawful exercise of jurisdiction over radio common carriers.⁴

While these earlier dockets were focused on quality of service, the rationale is the same. The Commission has consistently held that it has jurisdiction over wireless ETCs in their capacity as an ETC. Neither Sprint nor Alltel has pointed to any “clear and controlling authority” that justifies a departure from this Commission’s prior holdings on the issue. A wireless carrier that submits to the jurisdiction of this Commission for the purpose of ETC designation is subject to the conditions imposed by the Commission in order to be designated as an ETC.⁵

The Commission again reaffirms that it is consistently holding to that legal determination and, until it is presented with clear and controlling authority to the contrary – something Sprint has failed to produce in this docket – the Commission determines that it has the jurisdiction to impose quality of service standards on wireless ETC carriers as a condition to distributions of KUSF funds in addition to the ETC designation. If a wireless carrier makes the decision to avail itself of the benefit of universal service funds, that carrier also subjects itself to Commission jurisdiction which is based on the Commission’s duty to effectively and reasonably carry out its duties under federal and state statutory provisions.⁶

Because this issue has been decided by the Commission and was not an issue reconsidered by the Commission in its November 20th Order, CURB will not address it further in these reply comments.

6. In response to the questions posed by the Commission in its November 10th Order, Sprint Nextel argues, “*It is currently technically infeasible and cost prohibitive for Sprint Nextel to provide per minute call blocking,*”⁷ yet admits that “Sprint Nextel *cannot definitively*

³ Order Addressing Petitions For Reconsideration, Docket No. 06-GIMT-466-GIT, ¶ 11.

⁴ Order 3: Addressing Jurisdiction, Docket No. 00-GIMT-584-GIT, ¶ 24.

⁵ *Id.* at ¶ 12.

⁶ Order on Motions of Sprint, SWBT, and Cox, 05-GIMT-187-GIT, ¶ 13.

⁷ Comments of Sprint Nextel Corporation on Reconsideration, p. 2 (emphasis added).

*state whether it is technically feasible to provide per minute call blocking at this time.*⁸ One is left to wonder which statement is correct. In addition, while Sprint Nextel admits that it does not “have any plans to develop the capability to provide per minute call blocking,” it is somehow able to provide an unsupported estimate that development costs “may” exceed \$7 million and require 10 to 12 months of development time.⁹

7. While Sprint Nextel does not provide a clear picture of the feasibility or cost of implementing per-minute blocking, it does provide what appears to be an acceptable alternative. Sprint Nextel states, “the Company does offer its Lifeline subscribers the ability to control the charges they incur through the use of an account spending limit.”¹⁰ CURB is unable to understand how Sprint Nextel can possess the ability to control the charges Lifeline subscribers incur through an account spending limit without having the ability to monitor minutes of use on a real-time basis or to provide call blocking. However, based on Sprint Nextel’s description of the account spending limit available to Lifeline subscribers, CURB recommends that the Commission determine that Sprint Nextel’s account spending limit option meets the purpose and the spirit of the per-minute blocking requirement.

8. Alltel does not provide any adequate solutions. Alltel asserts the lack of real-time billing capability¹¹ and provides no meaningful estimate of the cost of implementing either an unlimited local calling option or a per-minute blocking option. Nor does Alltel offer an account spending limit option similar to Sprint Nextel’s. The only suggested option is for Lifeline customers to select a prepaid plan that apparently does have real-time minute of use

⁸ *Id.* (emphasis added).

⁹ *Id.*

¹⁰ *Id.*, at p. 3.

¹¹ Comments of Alltel Kansas Limited Partnership, ¶¶ 2-7.

monitoring.¹² CURB recommends the Commission determine Alltel's response is inadequate and that Alltel and all CETCs be required to provide Lifeline customers an unlimited local calling option, a free per-minute blocking option, or an account spending limit option.

9. Similarly, RCC and USCOC provide inadequate information and alternatives. USCOC does offer prepaid service, but not to Lifeline customers.¹³ RCC does offer prepaid service to Lifeline customers.¹⁴ USCOC apparently does provide a minute blocking offer to tribal Lifeline customers but asserts without explanation that it cannot offer this service to all Lifeline customers.¹⁵ CURB recommends the Commission require USCOC to explain why per-minute blocking can be provided to tribal customers but not all customers. CURB recommends the Commission determine RCC's and USCOC's response is inadequate and that CETCs be required to provide Lifeline customers an unlimited local calling option, a free per-minute blocking option, or an account spending limit option.

III. CONCLUSION

10. CURB urges the Commission to reiterate support for free optional per-minute blocking of local usage for Lifeline customers. The relatively few companies that responded to the questions posed by the Commission, and the paucity of data presented by the respondents, does not justify removing support for free optional per-minute blocking of local usage for Lifeline customers. CURB appreciates the opportunity provided in this docket to submit comments on behalf of Kansas small business and residential ratepayers regarding requirements for designation of eligible telecommunications carriers.

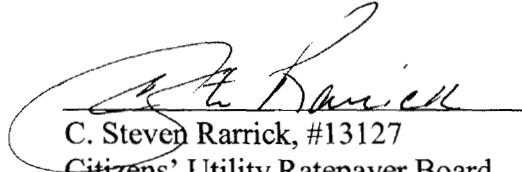
¹² *Id.*, at ¶ 8.

¹³ Joint Comments of RCC Minnesota, Inc. and USCOC of Nebraska/Kansas LLC Regarding Feasibility of Per-Minute Usage Blocking For Lifeline Customers, ¶ 3.

¹⁴ *Id.*

¹⁵ *Id.*, at ¶ 4.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line. The signature is fluid and cursive, with a large initial "C" that loops back.

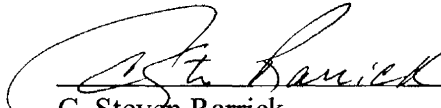
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VERIFICATION

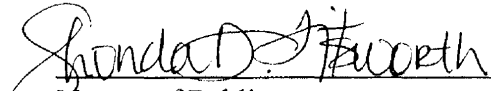
STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

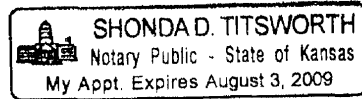
That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 12th day of January, 2007.


Notary of Public

My Commission expires: 8-03-09



CERTIFICATE OF SERVICE

06-GIMT-446-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, or hand-delivered this 12th day of January, 2007, to the following:

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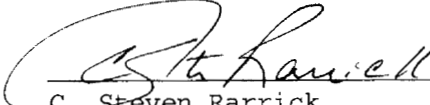
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