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**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of the  
WASHINGTON INDEPENDENT  
TELEPHONE ASSOCIATION  
For Establishment of a Moratorium on  
Designation of Competitive Eligible  
Telecommunications Carriers

DOCKET NO. UT-073032

REPLY OF WASHINGTON INDEPENDENT  
TELEPHONE ASSOCIATION TO SPRINT  
NEXTEL CORPORATION'S RESPONSE TO  
THE WASHINGTON INDEPENDENT  
TELEPHONE ASSOCIATION'S PETITION  
FOR MORATORIUM

1. Sprint Nextel Corporation ("Sprint") has filed a Response to the Petition for Moratorium that the Washington Independent Telephone Association ("WITA") has filed with the Commission.

In this Reply, WITA will respond to some of the arguments raised by Sprint.

I. Sprint's Arguments that WITA and its Members have no Interest in ETC Application Proceedings are Clearly Unsupported.

2. Sprint makes a number of arguments that suggest that WITA and its members lack standing or otherwise have no interest in ETC proceedings and therefore cannot bring the Petition for Moratorium. In response, WITA will point out WITA's interest in bringing the Petition for Moratorium. Then WITA will spend a brief moment going over the issues related to standing.

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MORATORIUM - 1

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1           A.     WITA's<sup>1</sup> Interest is to Preserve the Federal Universal Service Fund.

2     3.     Sprint argues that WITA has no interest which can be the basis of the Petition for  
3     Moratorium because the Joint Board's recommended emergency cap will not affect its members.<sup>2</sup>  
4     It is correct that the Joint Board recommendation applies a freeze to funds received in a state by  
5     competitive ETCs.<sup>3</sup> However, there are two primary reasons for WITA's concern which prompted  
6     the filing of the Petition for Moratorium. The first is that WITA is vitally interested in the health of  
7     the federal high-cost fund. The Joint Board pointed to the almost uncontrolled and extremely rapid  
8     growth in the size of the fund.<sup>4</sup> While no one designation of a company as an ETC may, in itself,  
9     cause the high-cost fund to collapse, there will come a day when there is a straw that breaks the  
10    camel's back.

11    4.     It is not far fetched to say that the high-cost fund is in immediate danger. In the words of  
12    the Joint Board: "High-cost support has been rapidly increasing in recent years and, without  
13    immediate action to restrain growth in competitive ETC funding, the federal universal service fund  
14    is in dire jeopardy of becoming unsustainable."<sup>5</sup> It is this very high level of concern which led to  
15    the Joint Board's Recommendation. WITA has a very legitimate concern that the federal high-cost  
16    fund remain healthy and be able to carry on without interruption.

17    5.     The second reason that there is a legitimate interest in WITA asking for a moratorium at this  
18    time is one that is actually set out by Sprint itself. Sprint correctly points out that at the present  
19    time is one that is actually set out by Sprint itself. Sprint correctly points out that at the present  
20    time is one that is actually set out by Sprint itself. Sprint correctly points out that at the present  
21    time is one that is actually set out by Sprint itself.

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<sup>1</sup> In describing WITA's interest, this includes the interest of the WITA member companies.

23    <sup>2</sup> Sprint Response at p. 3.

24    <sup>3</sup> In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No.  
25    05-337 and CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (Rel. May 1, 2007) ("Recommendation").

26    <sup>4</sup> Recommendation at ¶4.

<sup>5</sup> Recommendation at ¶4.

1 time the Joint Board's Recommendation is simply that, a recommendation. It does not become  
2 effective until the Federal Communications Commission ("FCC") acts. WITA agrees.

3 6. Because the Recommendation does not become effective until the FCC acts, WITA believes  
4 a moratorium is appropriate. As proposed, the cap that would be imposed by the Recommendation  
5 is predicated on the amounts received by competitive ETCs in each state during the 2006 calendar  
6 year. Not surprisingly, there are those carriers that are submitting arguments to the FCC that if a  
7 cap is adopted, it should be based on 2007, not 2006 receipts. Thus, there is the potential for a rush  
8 to receive designations in the hope that the cap will be based on 2007 receipts, rather than 2006  
9 receipts. It is WITA's position that a moratorium is an appropriate means to remove the incentive  
10 for carriers to seek designation as an ETC before the FCC acts and thereby prevent an unexpected  
11 upward increase in the size of the high-cost fund.  
12

13 B. WITA has Standing.

14 7. Sprint makes the unsupported argument that WITA and its members lack standing  
15 concerning the ETC application proceedings.<sup>6</sup> Sprint confuses an argument related to due process  
16 property rights with standing. Sprint cites to the Washington Supreme Court's decision in Wash.  
17 Ind. Tel. Assoc. v. Wash. Util. and Trans. Com., 149 Wn.2d 17, 65 P.3d 319 (2003). However,  
18 instead of a discussion of standing, Sprint cites to the Supreme Court's discussion of whether  
19 WITA's members have protected property rights that would require a due process proceeding. The  
20 Supreme Court had no problem with WITA having standing to bring its challenge to the ETC  
21 designations.  
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25 <sup>6</sup> Sprint Response at p. 1.

1 8. It will only prolong this Reply to go through a technical analysis of the “zone of interest”  
2 basis for standing and WITA believes that such is not needed at this time. Clearly, WITA and its  
3 members have standing to address such things as whether or not an application for ETC status  
4 constitutes impermissible creamskimming in an area.<sup>7</sup> In addition, the designation of an ETC  
5 applicant must be found to be in the public interest. 47 U.S.C. §214(e)(2). Clearly, WITA and its  
6 members are entitled to participate in presenting arguments about whether a particular application is  
7 in the public interest or not. Sprint’s arguments on standing are not supported.  
8

9 II. The Commission Should Enact a Moratorium.

10 9. Sprint advances arguments that a moratorium should not be enacted because we do not  
11 know if the FCC will adopt the Joint Board Recommendation and points to historical events under  
12 which applications for ETC status have been granted while waiting other Joint Board  
13 determinations.<sup>8</sup> The problem with Sprint’s arguments is that Sprint ignores current reality.  
14 Sprint’s arguments about what has happened historically ignore the fact that the crisis in the federal  
15 high-cost fund is one that has grown over time. As the Joint Board pointed out, competitive ETC  
16 funding has grown from \$15 million in 2001 to almost \$1 billion in 2006, an annual growth rate of  
17 over 100 percent.<sup>9</sup> This astounding rate of growth is precisely the problem that the Joint Board’s  
18 recommendation to cap competitive ETC funding intends to control. In arguing that a moratorium  
19 should not be imposed (and that its application should be granted), Sprint would have this  
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23 <sup>7</sup> This is one element of the public interest test. See, e.g., the FCC’s discussion of creamskimming at ¶¶48-53 of its  
24 decision in In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, Report and Order, FCC  
25 05-46 (Rel. March 17, 2005).

26 <sup>8</sup> Sprint Response at p. 4-8.

<sup>9</sup> Recommendation at ¶4.

1 Commission ignore the issue at hand and continue to be part of the process that contributes to this  
2 substantial rate of growth. Rather than suggesting a reason not to enact a moratorium, the historical  
3 trends support enactment of the moratorium.

4 III. Sprint's Arguments Concerning WITA's Benefit from ETC Designations are Misfounded.

5 10. Sprint makes two arguments on this point. First, Sprint argues that WITA's members have  
6 received ETC designation and therefore have benefited from the process. However, as the Joint  
7 Board recognized, the issue that is leading to the crisis is the growth in competitive ETC funding.  
8 Funding for incumbent ETCs has remained steady or even declined.<sup>10</sup> Thus, Sprint's argument on  
9 this point is a non-sequitur.

10 11. Sprint's next argument is that somehow WITA has benefited from the designation of United  
11 States Cellular and Inland Cellular as ETCs since these entities are affiliates of WITA member  
12 companies. This argument is factually untrue as demonstrated by the Declarations of Ms. Long and  
13 Mr. Brooks, attached hereto.

14 12. Sprint makes other colorful statements which are ultimately meaningless and WITA will not  
15 reply to those somewhat inflammatory comments.

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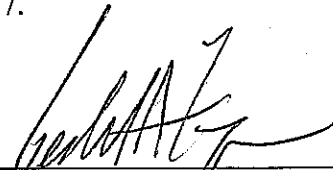
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<sup>10</sup> Recommendation at ¶4 .

CONCLUSION

13. WITA respectfully requests that the Commission adopt the moratorium on competitive ETC designation as set out in WITA's Petition.

Respectfully submitted this 5th day of July, 2007.



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RICHARD A. FINNIGAN, WSB #6443  
Attorney for the Washington Independent  
Telephone Association

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DOCKET NO. UT-073032  
  
DECLARATION OF JAMES K. BROOKS

I, James K. Brooks, hereby declare under penalty of perjury under the laws of the state of Washington that the following statements are true and correct:

1. I am the Treasurer and Controller of Inland Telephone Company and the Treasurer and Controller for Inland Cellular Telephone Company and make this Declaration in those capacities.

2. In Sprint Nextel's response to the Petition of the Washington Independent Telephone Association in this docket, Sprint implies that the Inland Telephone Company has somehow received a benefit from the fact that the Commission designated Inland Cellular as an eligible telecommunications carrier ("ETC") in the State of Washington. See page 9 of Sprint Nextel's Response.

DECLARATION OF  
JAMES K. BROOKS - 1

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1           3.     Inland Telephone Company actively opposed the designation of United  
2 States Cellular Corporation (USCC) and the application of RCC Minnesota, Inc. (RCC) as  
3 eligible telecommunications companies in the State of Washington. At that time, a  
4 statement was made on behalf of Inland Cellular that if USCC and RCC received  
5 designation as ETCs, Inland Cellular would seek designation as an ETC because it directly  
6 competes with USCC and RCC as wireless entities.

7  
8           4.     After the designation of USCC and RCC as ETCs in the State of  
9 Washington, Inland Cellular reluctantly applied for ETC status. The application was filed  
10 by Inland Cellular Telephone Company on behalf of Eastern Sub-RSA Limited Partnership  
11 d/b/a Inland Cellular and Washington RSA Number 8 Limited Partnership d/b/a Inland  
12 Cellular in Docket No. UT-023040.

13           5.     The Washington Independent Telephone Association and Inland Telephone  
14 Company opposed the applications of Inland Cellular. In fact, WITA and Inland  
15 Telephone Company, among others, appealed the Commission's decision granting Inland  
16 Cellular ETC status to Superior Court.

17  
18           6.     Inland Cellular has consistently taken the position that, at most, only one  
19 wireless company should be designated as an ETC in any particular service area. Inland  
20 Cellular believes that the limited resources of the federal universal service fund should not  
21 be used to support multiple wireless networks in a single service area.

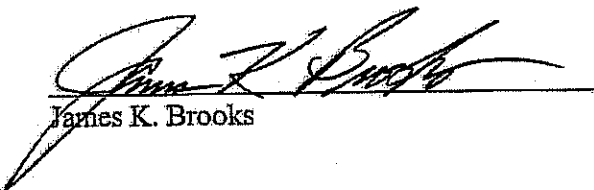
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25     DECLARATION OF  
26     JAMES K. BROOKS - 2

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1           7.     Inland Telephone Company has received no benefit, financial or otherwise,  
2 from the designation of Inland Cellular as an ETC in the State of Washington. To suggest  
3 otherwise is to suggest Inland Telephone Company improperly receives funds in violation  
4 of accounting standards and statute and regulation related to the federal high-cost fund,  
5 which is untrue.

6           DATED the 3rd day of July, 2007.

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10           James K. Brooks

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25   DECLARATION OF  
26   JAMES K. BROOKS - 3

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DOCKET NO. UT-073032

DECLARATION OF GAIL LONG

I, Gail Long, hereby declare under penalty of perjury under the laws of the state of Washington that the following statements are true and correct:

1. I am the Manager, State Government Affairs, for TDS Telecom's Western Division, which includes the operating companies in the State of Washington of Asotin Telephone Company d/b/a TDS Telecom, Lewis River Telephone Company d/b/a TDS Telecom and McDaniel Telephone Company d/b/a TDS Telecom and I make this Declaration in that capacity.

2. In Sprint Nextel's response to the Petition of the Washington Independent Telephone Association in this docket, Sprint implies that the TDS Washington land line companies have somehow received a benefit from the fact that the Commission designated

DECLARATION OF  
GAIL LONG - 1

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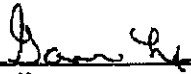
1 United States Cellular Corporation (USCC) as an eligible telecommunications carrier in the  
2 State of Washington. See page 9 of Sprint Nextel's Response.

3 3. USCC is an affiliate of the TDS land line companies. However, the TDS  
4 land line companies have no operational control or influence over USCC, nor does USCC  
5 have any control or influence over the TDS land line companies. Sprint Nextel mistakenly  
6 describes USCC as a subsidiary of the TDS land line companies, which is not correct.  
7

8 4. The TDS land line companies actively opposed the application of USCC for  
9 an ETC designation in the State of Washington, including the judicial appeal.

10 5. The TDS land line companies have received no benefit, financial or  
11 otherwise, from the designation of USCC as an ETC in the State of Washington.

12 DATED the 3rd day of July, 2007.

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15 \_\_\_\_\_  
16 Gail Long

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25 DECLARATION OF  
26 GAIL LONG - 2

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