

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Request for Review by IVANS, Inc. of a) WC Docket No. 06-122
Decision of the Universal Service Administrator)
)
Petition for Declaratory Ruling on the)
Assessability of Certain Information Services)
)

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”) submits these comments on IVANS, Inc.’s (“IVANS”) Request for Review of a Decision of the Universal Service Administrator and Petition for Declaratory Ruling (“IVANS Petition”).¹ In particular, Sprint urges the Commission to act expeditiously on IVANS’ request for a declaratory ruling regarding the universal-service contribution obligations associated with IVANS’ Multi-Protocol Label Switching (“MPLS”) based enterprise services.

The Petition represents yet another chapter in the long-running debate regarding MPLS classification. As IVANS discusses in its Petition, over the past six years, the Commission has received repeated requests to determine the classification of MPLS-based services but has yet to resolve this issue. For example, in 2009, Masergy Communications Inc. sought clarification that MPLS is an information service not subject to USF contribution requirements.² Later that year,

¹ See *Universal Service Contribution Methodology*, Wireline Competition Bureau Seeks Comment on IVANS, Inc. Request for Review of a Decision by the Universal Serv. Administrative Company and Petition for Declaratory Ruling, Public Notice, DA 13-1764, WC Docket No. 06-122 at 1 (rel. Aug. 16, 2013); *seeking comment on* Request for Review of a Decision by the Universal Serv. Administrator and Petition for Declaratory Ruling by IVANS Inc., WC Docket No. 06-122 (filed Aug. 6, 2013) (“IVANS Petition”)

² See Masergy Comms. Inc. Petition for Clarification, WC Docket No. 06-122 (filed Mar. 27, 2009).

USAC itself asked the Commission to clarify the regulatory classification of MPLS-based services.³ In 2011, XO Communications Services, Inc. sought review of a USAC audit finding that assessed USF surcharges on MPLS revenue.⁴ In 2012, Equant Inc. filed a similar request.⁵ In that proceeding, however, though Equant initially feared an adverse USAC finding, Equant withdrew its request for review after USAC decided to accept Equant's Form 499-A, which classified MPLS as information-services revenue. Significantly, Equant reported, "USAC further stated that because it currently has an open guidance request before the FCC regarding the treatment of IP-VPN revenue for federal universal service purposes, it takes no position at this time regarding Equant's IP-VPN revenue reclassification."⁶ More than six years after Masergy filed its request for review, the Commission has yet to resolve any of these proceedings, offering only opaque guidance⁷ and raising the issue in its universal-service reform FNPRM.⁸

³ See Letter from Richard A. Belden, USAC, to Julie Veach, Wireline Competition Bureau, FCC, WC Docket Nos. 06-122, 05-337 (filed Aug. 24, 2009).

⁴ See *XO Commc'n Servs. Inc., Request for Review of a Decision of the Universal Service Administrator*, WC Docket No. 06-122 (filed Dec. 29, 2010).

⁵ See *Equant Inc. Request for Review of Decision of the Universal Serv. Administrator*, Request for Review, WC Docket No. 06-122 (filed Jan. 3, 2012).

⁶ *Equant Inc. Request for Review of Decision of the Universal Serv. Administrator*, Motion for Partial Withdrawal of Request for Review of Decision of Universal Serv. Administrator, WC Docket No. 06-122, at 2-3 (filed Mar. 3, 2012).

⁷ See Letter from Jennifer K. McKee, Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, to Michelle Tilton, Director of Financial Operations, Universal Service Administrative Company, DA 09-748, at 1 (rel. Apr. 1, 2009) (referring to the inclusion of MPLS as an example of "interstate telecommunications" in the 2009 Form 499-A Instructions and directing filers to "consult the Commission's rules and orders to determine whether they must contribute" to USF).

⁸ See *Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, 27 FCC Rcd. 5357, 5382 ¶ 44 (2012) ("We have not formally addressed enterprise communications services such as Dedicated IP, VPNs, WANs, and other network services that are implemented with various protocols such as Frame Relay/ATM, MPLS and PBB for purposes of determining USF contribution obligations." Such services "may be information services.").

Failure to resolve this question has resulted in regulatory confusion and uncertainty, as the industry implements inconsistent approaches, and even USAC has reversed course over time. IVANS first tried to “follow AT&T’s lead” with respect to MPLS classification.⁹ Then, after consulting the tortured MPLS regulatory history described above, IVANS concluded that it should follow the approach of most of the industry, which does not treat MPLS as subject to USF contribution requirements.¹⁰ Today, uncertainty has left IVANS in the unfortunate position of having reported—and presumably having made associated contributions—MPLS revenue as USF assessable, while awaiting Commission action before it can recover its payments.

This regulatory uncertainty causes inefficiency and disincentives for investment. As IVANS demonstrates, MPLS-based service providers face two untenable options: (1) treat MPLS revenues as information services and risk USAC audit findings and Commission enforcement actions, or (2) treat MPLS revenues as telecommunications and operate at a competitive disadvantage that results from a 15%-17% tax that most other providers do not pay.

The Commission must end the uncertainty on this question and resolve the classification of MPLS. As IVANS notes, Sprint is part of a diverse collection of USF contributors who have proposed a sensible solution that would immediately resolve this issue while increasing aggregate USF contributions.¹¹ The Commission should either act on the coalition’s proposal, or it should adopt a reasonable solution of its own, but it should not continue to leave MPLS providers in regulatory limbo.

⁹ IVANS Petition at 25, n. 99.

¹⁰ *Id.*

¹¹ Letter from Sprint, BT Global Servs., NTT, Am., Inc., XO Commc’ns, Orange Bus. Servs., and Verizon to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Mar. 29, 2012), *cited by* Petition at 25 n. 100.

Respectfully submitted,

/s/ Brita D. Strandberg
Brita D. Strandberg
Walter E. Anderson
WILTSHIRE & GRANNIS LLP
1200 18th St. NW
Suite 1200
Washington, DC 20036
Tel: (202) 730-1300
Fax: (202) 730-1301

Counsel to Sprint Nextel Corporation

September 16, 2013