

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Application for Review of Decision of) CC Docket No. 02-6
The Schools and Libraries Division of the)
Universal Service Administrative Company)
)
Appeal of Commitment Adjustment)
Funding Year: 2005)
Form 471 Application Number: 469552)
Applicant: Rockdale County Public Schools)

APPEAL OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint Nextel”), pursuant to Section 54.719 of the Commission’s Rules, hereby respectfully appeals the above-referenced Commitment Adjustment (“COMAD”) request letter, dated August 28, 2006, from the Universal Service Administrative Company (USAC) to Rockdale County Public Schools.¹ In this letter, USAC requested that Rockdale return \$6602.17 in Telecommunications Services funds that USAC claims were disbursed in error. According to USAC, these funds were used to purchase Blackberry service, which USAC asserts is ineligible.

This COMAD request should be overturned, because, contrary to USAC’s assertion, no E-rate funding was received for Blackberry service provided by Sprint Nextel or its predecessor companies to Rockdale County Public Schools. Sprint Nextel requests that the Commission also overturn USAC’s decision to classify Blackberry service as ineligible. USAC’s decision in this regard is contrary to the principle of

¹ The August 28 letter is included as Attachment 1.

technological neutrality and to the guidance provided by the Commission regarding Internet access service from portable devices.

1. Because Rockdale Did Not Receive E-Rate Funding for Blackberry Service, No Refund Is Required or Appropriate.

Sprint Nextel did indeed provide Rockdale County Public Schools with Blackberry service, as well as with a number of other services, including basic voice cellular service and voicemail service, in funding year 2005. Out of an abundance of caution, pending FCC clarification of this matter (see Section 2 below), Sprint Nextel has classified its Blackberry service as ineligible for E-rate purposes. The charges included in the BEAR Form 472 submitted to USAC did **not** include any Blackberry service charges – a fact which Rockdale explicitly stated in a letter of appeal to USAC dated July 6, 2006. The charges included on the Form 472 were for indisputably eligible services such as cellular and voicemail services. Because Rockdale did not receive E-rate funds for Blackberry service provided by Sprint Nextel or its predecessor companies, the instant COMAD request is invalid and should be overturned.

2. USAC Has Improperly Classified Blackberry Service As Ineligible.

The Blackberry service provided by Sprint Nextel offers broadband Internet access, e-mail, text messaging, and voice services, carried over Sprint Nextel's wireless network. Because each of these capabilities is E-rate eligible, it is unclear why USAC considers Blackberry service to be ineligible. The Commission has explicitly stated that

“wireline and wireless telecommunications services are equally eligible under our current rules,”² and has emphasized (*id.*) that

It would be inappropriate...to presume that wireline services are used for educational purposes while presuming that wireless services are not used for similar purposes. What is relevant, for purposes of determining compliance with the statutory standard, is whether the service in question is integral, immediate, and proximate to the provision of education or library services, regardless of the technology platform.

By this standard, there would seem to be no doubt that Blackberry service is E-rate eligible. To Sprint Nextel’s knowledge, USAC has never publicly explained its reasons for classifying Blackberry service as ineligible.

It is possible that USAC has reservations about Blackberry service because it is used from a portable device. However, the Commission has explicitly stated that wireless Internet access from portable devices is eligible, “as long as the applicant has in place an auditable system to allocate between eligible and ineligible uses.”³ Insofar as Sprint Nextel is aware, USAC has never asked Rockdale County Public Schools, or any other Blackberry customer participating in the E-rate program, whether it has in place such an auditable system. USAC may not issue a blanket declaration of service ineligibility based on a fear that the service might be used in an ineligible fashion, nor may it assume that there is no auditable system that can accurately or reasonably allocate between eligible and ineligible uses.

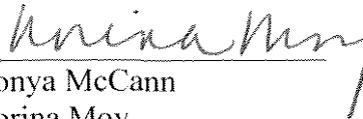
² *Schools and Libraries Universal Service Support Mechanisms*, 18 FCC Rcd 9202, 9211 (para. 26) (2003).

³ “*Release of Funding Year 2006 Eligible Services List for Schools and Libraries Universal Service Mechanism*,” Public Notice released November 22, 2005 (FCC 05-197), p. 2.

Last year, Sprint Nextel requested clarification as to whether use of a wireless Internet Access service from a portable device, for legitimate, covered educational purposes, from a location other than school or library grounds, constitutes an eligible or an ineligible use, and what constitutes an acceptable “auditable system.”⁴ This request for clarification remains pending before the Commission. Sprint Nextel urges the Commission to act expeditiously on this pending petition so that all parties (applicants, service providers, and USAC) know what is and is not eligible, and so that schools and libraries can plan their service requests and arrange their funding sources accordingly.

Respectfully submitted,

SPRINT NEXTEL CORP.



Vonya McCann
Norina Moy
2001 Edmund Halley Drive
Reston, VA 20191
(703) 433-4503

October 20, 2006

⁴ See Petition for Clarification filed by Sprint Nextel in CC Docket No. 02-6 on December 23, 2005. In this petition, Sprint Nextel suggested various tools that could be used to help ensure that wireless Internet Access service from a portable device for which E-rate funding is requested is used only for legitimate educational purposes.

ATTACHMENT 1

Demand Payment Letter
Funding Year 2005: 7/01/2005 - 6/30/2006

August 28, 2006

Charles Bennett
ROCKDALE COUNTY PUBLIC SCHOOLS
954 MAIN ST NW
CONYERS, GA 30207

Re: Form 471 Application Number: 469552
Funding Year: 2005
Applicant's Form Identifier: Rock FY06cell
Billed Entity Number: 127263
FCC Registration Number: 0004579520
SPIN Name: Nextel South Corp.
Service Provider Contact Person: Christina Halley

You were previously sent a Notification of Commitment Adjustment Letter informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to the Notification of Commitment Adjustment Letter. A copy of that Report is attached to this letter. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

If the Schools and Libraries Division (SLD) has determined that both the applicant and the service provider are responsible for a program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181), the SLD will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If the SLD has determined that both the applicant and the service provider are responsible for a program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report.

If the SLD is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with your service provider to determine who will be repaying the

debt to avoid duplicate payment. Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full "Funds to be Recovered from Applicant" amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Universal Service Administrative Company
1259 Paysphere Circle
Chicago, IL 60674

If you are located in the Chicago area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
Lockbox 1259
540 West Madison 4th Floor
Chicago, IL 60661

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

Payment is due within 30 days from the date of this letter.

Complete program information is posted to the SLD section of the USAC web site at www.universalservice.org/sl/. You may also contact the SLD Technical Client Service Bureau by e-mail using the "Submit a Question" link on the SLD web site, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company
Schools and Libraries Division

cc: Christina Halley
Nextel South Corp.

A GUIDE TO THE FUNDING COMMITMENT ADJUSTMENT REPORT

A report for each E-rate funding request from your application for which a commitment adjustment is required is attached to this letter. We are providing the following definitions for the items in that report.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each individual request in your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

CONTRACT NUMBER: The number of the contract between the applicant and the service provider. This will be present only if a contract number was provided on your Form 471.

BILLING ACCOUNT NUMBER: The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a. This number will only be present for "site specific" FRNs.

ORIGINAL FUNDING COMMITMENT: This represents the original amount of funding that SLD had reserved to reimburse you for the approved discounts for this service for this funding year.

COMMITMENT ADJUSTMENT AMOUNT: This represents the amount of funding that SLD has rescinded because of program rule violations.

ADJUSTED FUNDING COMMITMENT: This represents the adjusted total amount of funding that SLD has reserved to reimburse for the approved discounts for this service for this funding year. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.

FUNDS DISBURSED TO DATE: This represents the total funds that have been paid to the identified service provider for this FRN as of the date of this letter.

FUNDS TO BE RECOVERED FROM APPLICANT: This represents the amount of improperly disbursed funds to date as a result of rule violation(s) for which the applicant has been determined to be responsible. These improperly disbursed funds will have to be recovered from the applicant.

FUNDING COMMITMENT ADJUSTMENT EXPLANATION: This entry provides an explanation of the reason the adjustment was made.

**Funding Commitment Adjustment Report
Form 471 Application Number: 469552**

Funding Request Number: 1293109
Services Ordered: TELCOMM SERVICES
SPIN: 143000892
Service Provider Name: Nextel South Corp.
Contract Number:
Billing Account Number:
Site Identifier: 127263
Original Funding Commitment: \$16,982.47
Commitment Adjustment Amount: \$16,982.47
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$6,602.17
Funds to be Recovered from Applicant: \$6,602.17

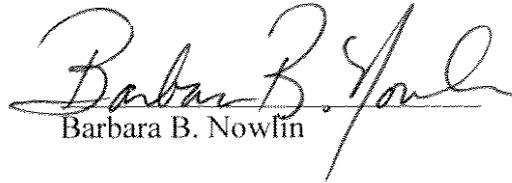
Funding Commitment Adjustment Explanation:

After a thorough review, it was determined that the funding commitment for this request must be rescinded in full. During the course of a review it was determined that funding was provided for the following ineligible items: Blackberry service, which is internet over cellular lines. The pre-discount cost associated with this item is \$2,282.59 per month, for a total ineligible amount of \$27,391.08. At the applicant's 62 percent discount rate this resulted in an improper commitment of \$16,982.47. FCC rules provide that funding may be approved only for eligible products and/or services. The USAC web site contains a list of eligible products and/or services. See the web site, www.universalservice.org/sl/about/eligible-services-list.aspx for the Eligible Services List. In this situation, both the applicant and the service provider made the certifications on the BEAR Form listed below indicating that the services and/or equipment provided to the applicant were eligible for funding. On the BEAR Form, the authorized person certifies at Block 3, Item A that discount amounts for which reimbursement is sought represent charges for eligible services delivered to and used by eligible entities. Therefore, SLD has determined that the applicant is responsible for the rule violation. Accordingly, the commitment has been rescinded in full and if recovery is required SLD will seek recovery from the applicant.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR
CHECK TO ENSURE TIMELY PROCESSING**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Appeal of Sprint Nextel Corporation were delivered by electronic mail on this 20th day of October, 2006, to the parties listed below.


Barbara B. Nowlin

VIA ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

VIA E-MAIL

Tom Navin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Thomas.Navin@fcc.gov

Gina Spade
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Gina.Spade@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW. Rm CY-B402
Washington, DC 20554
fcc@bcpiweb.com