**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Federal-State Joint Board on Universal Service | ) | WC Docket No. 05-337 |
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| | ) | CC Docket 96-45 |
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**To: The Federal-State Joint Board**

## REPLY COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation ("Sprint Nextel") hereby submits its reply to the comments filed in response to the Federal-State Joint Board's August 11, 2006 Public Notice released in the above-captioned dockets.[1] Sprint Nextel joins those commenters who support the concept of reverse auctions to determine high-cost support based on competitively and technologically neutral standards and procedures. Sprint Nextel cautions, however, that much consideration would have to be given to how to put the reverse auctions concept into practice in a way that would enhance consumer welfare while reducing the burdens imposed by the current high-cost support system.

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[1] *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, Public Notice, WC Docket No. 05-337, CC Docket No. 96-45, FCC 06J-1 (rel. Aug. 11, 2006).

## I. WHILE THERE ARE MANY PRACTICAL ISSUES THAT MUST BE RESOLVED, IN THEORY COMPETITIVE BIDDING WOULD BE AN APPROPRIATE MEANS TO DETERMINE UNIVERSAL SERVICE SUPPORT.

While some commenters have opposed the use of reverse auctions in the universal service context,[2] a significant number of commenters have indicated support for an auctions system that would ensure the availability to consumers of quality services at reasonable rates, and offer subsidies for this purpose to carriers that could provide such services on an economically efficient basis.[3] Consistent with the Commission's and Joint Board's original insights into the use of competitive bidding as a market-based approach that would enable more efficient carriers to reduce the amount of support needed for universal service,[4] Sprint Nextel could support an appropriately crafted system of reverse auctions to determine the level and beneficiaries of high cost universal service funding. However, any recommendation by the Joint Board to adopt a system of competitive bidding as a universal service support mechanism must balance needs for support with the overall goal of the Communications Act to encourage competition in the provision of telecommunications service. Thus, a well-designed competitive bidding system can address the overriding concerns that universal service support not be limited to only one carrier (and thus restrict the growth of competition), nor be based on the firm-specific

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[2] *See, e.g.*, Comments of Frontier Communications, Comments of Alaska Telephone Association, Comments of NASUCA, Comments of NTCA.

[3] *See, e.g.*, Comments of AT&T, Comments of Verizon and Verizon Wireless, Comments of CTIA, Comments of NCTA.

[4] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 16 FCCR 32862, FCC 97-157 at ¶¶ 207, 320 (rel. May 8, 1997).

costs of each carrier that receives support (thus enabling inefficient carriers to compete at the subsidized rate).

To Sprint Nextel's knowledge, reverse auctions have not been used to determine universal service funding in other countries in any way commensurate with the U.S. experience. Rather, reverse auctions have been used to facilitate "universal access," a minimal level of service in underdeveloped areas that previously had no service at all. The Joint Board would find little practical help in studying other countries' efforts in this area, as the current level of service to U.S. high-cost areas is the best in the world. There are significant practical problems in the design and implementation of a system based on reverse auctions, which the Commission must resolve in a detailed rulemaking before such auctions could be used in the Untied States.

The Public Notice spells out many of the issues that the Joint Board and the Commission would have to face as matters of first impression. The comments add to this list of complexities, while providing few clear-cut solutions. While parties in this proceeding may have widely differing opinions about the concept of reverse auctions and its worth as applied to determinations of high-cost support, there is a sufficient record to justify further consideration of competitive bidding. Regardless of the theoretical debate, the process of creating rules to govern competitive bidding for universal service support must be based on a practical problem-solving approach.

Perhaps foremost among the practical problems to be addressed is the policy determination of the minimum acceptable level of service that a low-bid auction winner must provide using the subsidies it will acquire. In a competitive marketplace, consumers, who vote with their feet, determine the minimum acceptable level of service.

A firm acting as a market participant determines the level of investment needed to meet the level of service demanded by consumers. If sufficient demand for the firm's services does not materialize, then the firm must alter its course of business, perhaps increasing its investment or changing the service it provides. Even when such changes are made, the firm may still fail, but this is an ordinary consequence of the market. Such a failure of a universal service auction winner, by contrast, would reflect a failure of government policy and the exit from the market of a government-subsidized carrier of last resort. Making the determinations about auctions that will directly affect the level of service and investment of universal service fund ("USF")-funded carriers thus will require a detailed and perhaps multi-phase rulemaking, wherein the interests and views of all the stakeholders must be carefully scrutinized and balanced by the Joint Board and the Commission.

Contrary to the view of some commenters, there is nothing inherent in competitive bidding to determine the level or recipients of universal service funding that violates the Communications Act, as long as the requirements of Sec. 254(b), (d) and (e) of the Act are met. Words such as "predictable" and "sufficient" used in these provisions to describe universal service support are not meant to enshrine incumbent local exchange carrier ("ILEC") embedded costs as the sole measure of determining the appropriate level of high-cost support.[5] Rather than constituting an insurmountable legal barrier, it is ensuring that the statutory requirements will be met that could engender some of the practical problems of designing an auctions system described above.[6]

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[5] *Cf.* Comments of Frontier Communications at 2-3, Comments of USTA at 15.

[6] *See* Comments of CTIA at 10-15.

Auctions should be designed and conducted by experienced FCC staff, with the outcomes and winners determined by the Commission. An independent entity such as USAC should be responsible for distribution of funds. State commissions should retain responsibility for the designation of Eligible Telecommunications Carriers ("ETCs") where they have such authority today.

## II. THE COMMISSION'S APPROACH TO ADDRESSING THE SPECIFIC PRACTICAL PROBLEMS POSED BY REVERSE AUCTIONS SHOULD BE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL.

The most important considerations for the Joint Board and the Commission in their rulemaking to craft a system of reverse auctions would be to remove obstacles to heightened levels of competition in high-cost areas, and to begin a transition away from government subsidies toward market mechanisms that could ensure the appropriate level of affordable service. If auctions are used to determine USF funding levels and recipients, then the competitive bidding system the Commission utilizes should have the following characteristics. First, all current study areas should be subject to competitive bidding. Wireless carriers should be able to submit bids covering multiple study areas, which would be matched against bids in specific study areas offered by incumbent local exchange carriers or other wireline ETCs. If no bid is offered for a given area, no support would be provided for that area.

The auction rules should set forth the specific services to be provided auction participants. Any ETC properly designated for a particular geographic area by a state commission or the FCC should be allowed to participate in competitive bidding. Petitions for ETC status should be processed rapidly pursuant to Commission guidelines.

Participants in the auctions would certify that, if chosen as an auction winner, they will provide supported services in the designated areas where they offer bids.

To limit the size of the USF, the auction structure should use current funding levels as a maximum, with the expectation that those levels would be reduced over time. To ensure that competition is not harmed, the Joint Board and the Commission must devise a system of determining multiple winners. However, in order to ensure that companies submit honest bids, the lowest bidder must receive a higher value subsidy than other "winning" bidders. In the event bids are made but there is an auction failure (*i.e.*, a failure to garner bids at or below current funding levels), the Commission should retain a modified version of the current system, using modeled costs rather embedded costs.

Open bidding with multiple rounds will ensure the lowest bids, and should prevent most instances of auction failure.

The comments of many of the opponents of competitive bidding in the proceeding simply reveal their sense of entitlement to receipt of subsidies based on their embedded costs. These opponents argue that reverse auctions, if adopted, should only be applied to the competitive Eligible Telecommunications Carriers ("CETCs") with which these subsidized ILECs compete, and that the current system of subsidies to these ILECs should continue as is.[7] While this approach would reduce the number of subsidized carriers, it would be a step back from competition and market-based mechanisms, and simply entrench the inefficiencies and disadvantages to consumer welfare that are inherent in monopoly provision of service. Any decision to adopt a system of competitive bidding should be part of an overall reform of the high-cost support system.

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[7] *See, e.g.*, Comments of CenturyTel at 21, Comments of Western Telecommunications Alliance at 13-14.

Some commenters have argued that the services provided by ILECs in high-cost areas are inherently superior to wireless services, and thus more deserving of subsidized support.[8] Sprint Nextel strongly disagrees with this position. While traditional fixed plant may provide quality service to *locations*, wireless services provide optimum service to *consumers*, who are inherently mobile. A consumer who is away from a location served by a wireline provider has no service at all from that provider. Section 254(b)(3) of the Act concerns high-cost support for service to consumers, not locations. Moreover, the wireless industry's tide of technological innovation will soon ensure equivalence in broadband services,[9] as Sprint Nextel's recent introduction of the first EV-DO Rev. A network augurs.

All auctions should thus be conducted in a technologically neutral fashion. No advantage should be given to wireline providers over wireless providers. Services to be funded can be defined as basic connectivity to the PSTN, within the service parameters set forth in the auction rules' specific performance standards.

The end goal of a system based on competitive bidding should be that the determination of which providers will receive universal service funding will be based on carrier efficiency mirroring the conditions of a competitive marketplace. Incumbents should have no special claim to support from the USF. While a transition may be necessary and appropriate, retaining the status quo indefinitely for a privileged set of

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[8] *See* Comments of Frontier Communications at 4.

[9] *But see id.* (wireless carriers have ". . . a substantially lower amount of bandwidth available per person for the provision of broadband services." ) Sprint Nextel's broadband wireless service provides substantially more bandwidth than a wireline dial-up connection, but even if Frontier's premise were accurate, it remains irrelevant, as broadband services are outside the range of services subject to high-cost support. *See* 47 CFR § 54.101(a).

ILECs, immune from competitive forces and subsidized by all ratepayers without economizing restraints, is unacceptable. If the Commission does decide that a transition period during which incumbents are "weaned" from their current excessive USF levels is necessary, it should be for only a very limited time period. During this transition, incumbents would have to participate in the auction process and receive the same level of funding as other similarly-situated auction winners. They would, however, also retain a guarantee of continued funding over the transition at declining levels of support, which could temporarily exceed the level of support garnered through the auctions process.

## III. CONCLUSION

Pursuant to the suggestions offered above, the Joint Board should make, and the Commission should seek comment on, recommendations regarding a model reverse auctions system and process. Such recommendations should reflect a pro-competitive approach that will mirror marketplace principles, reward more efficient service providers, and serve to reduce the overall level of subsidies provided through the Universal Service Fund.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Sprint Nextel Corporation's Reply Comments in WC Docket No. 05-337 and CC Docket 96-45 was delivered by electronic mail or First Class, postage prepaid, U.S. Mail on this 8th day of November, 2006 to the parties listed below.

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