

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 Reduction of Funding)
Funding Year: 2006)
Form 471 Application Number: 510137)
Funding Request Number: 1409806)
Applicant: North Clackamas School District 12)

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 funding commitment decision letter (“FCDL”), dated September 19, 2006, from the Universal Service Administrative Company (“USAC”) to North Clackamas School District 12 (“North Clackamas”).¹ In this letter, USAC reduced North Clackamas’ funding request by 46%, to a pre-discount amount of \$27,124.92, and reduced the number of months of eligible recurring service from 12 to 6 months, on the grounds that the contract under which North Clackamas was to obtain service from Nextel of California, Inc. expired on December 31, 2006, prior to the end of the funding year. However, the customer intended to remain with its existing service provider, and a new state master contract under which North Clackamas will obtain service from Sprint Nextel was appropriately

¹ The September 19 FCDL is included as Attachment 1.

executed and will be in effect through the end of the 2006 E-rate funding year.

Therefore, the FCDL should be revised to provide funding for the requested services for the entire 12-month funding period.

The sequence of events associated with the instant funding request is as follows:

August 2, 2001: Representatives of the Western States Contracting Alliance (“WSCA”) (of which North Clackamas is a member) and Nextel sign contract 12-00115, which has an expiration date of June 30, 2004. The contract specifies that it may be mutually renewed for two additional one-year terms.

June 29, 2004: WSCA and Nextel sign an amendment to contract 12-00115 which extends the expiration date of the contract to June 30, 2005.

April 23, 2005: WSCA and Nextel sign an amendment to contract 12-00115 which extends the expiration date of the contract to June 30, 2006.

May 5, 2006: WSCA and Nextel sign an agreement which extended contract 12-00115’s service period through December 31, 2006 (see Attachment 2).

October 10, 2006: Effective date of a new contract between WSCA and Sprint Solutions, Inc.² This new contract has an expiration date of October 9, 2010 (see relevant pages included as Attachment 3).

The situation with North Clackamas is virtually identical to a case recently decided by the Commission on appeal. Paterson School District (of Paterson, New Jersey) obtained E-rate service under a state master contract that expired during the funding year; however, the customer intended to extend that contract (as it had several

² In August 2005, Sprint Corporation and Nextel Communications merged to form Sprint Nextel Corp. Sprint Solutions is a unit of Sprint Nextel Corp.

times previously), with no intent to seek a new bid. USAC had rescinded Paterson's funding on the grounds that Paterson did not have a contract in place for the relevant funding period, and that the applicant did not indicate on its Form 471 that there would be a replacement state master contract. On appeal, the Commission found that "USAC's policy on expiring state master contracts is not applicable to the instant situation because New Jersey simply extended the existing state master contract as it had done numerous times previously and did not intend to select a new service provider."³ The Commission therefore granted Paterson's appeal, concluding that it did have a valid contract that covered the funding year at issue (*id.*).

A similar finding should be made for North Clackamas. The contract at issue here had been routinely renewed/extended prior to its expiration, and there was no intent on the customer's part to select a new service provider – North Clackamas intended to obtain service for the entire funding year from Sprint Nextel, and indeed, the executed contract under which Sprint Nextel will provide service to North Clackamas extends through 2010. Thus, USAC's rule that applicants file two funding requests (one to govern service obtained under the expiring contract, one for a new "State Replacement Contract" with a new to-be-determined service provider)⁴ is simply not applicable to North Clackamas' situation. Consistent with the *Paterson Order*, the Commission should affirm that there is a valid contract covering the entire 2006 funding year in place, and

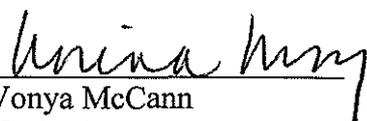
³ *Request for Review of a Decision of the Universal Service Administrator by Paterson School District*, File No. SLD-397016, *Order* released November 2, 2006 (DA 06-2269), para. 7 ("*Paterson Order*").

⁴ See www.universalservice.org/sl/applicants/step04/contract-guidance.aspx. This USAC process is extremely cumbersome, and requires SPIN changes and marked up FCDLs.

reverse USAC's decision to reduce North Clackamas' funding. North Clackamas should receive E-rate funding based on the \$50,231.34 pre-discount amount, for telecommunications services to be received for the entire 2006 funding year, which it had requested.

Respectfully submitted,

SPRINT NEXTEL CORP.


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

November 9, 2006

ATTACHMENT 1

FUNDING COMMITMENT REPORT
 Service Provider Name: Nextel of California Inc.
 SPIN: 143000891
 Funding Year: 2006

Name of Billed Entity: ~~NORTH CLACKAMAS SCHOOL DIST 12~~
 Billed Entity Address: 4444 SE LAKE RD
 Billed Entity City: MILWAUKIE
 Billed Entity State: OR
 Billed Entity Zip Code: 97222-4740
 Billed Entity Number: 144913
 Contact Person's Name: Blair Loudat
 Preferred Mode of Contact: EMAIL
 Contact Information: loudat@nclack.k12.or.us
 Form 471 Application Number: 510137
 Funding Request Number: ~~149806~~
 Funding Status: Funded
 Category of Service: Telecommunications Service
 Form 470 Application Number: 618700000556655
 Contract Number: WSCA 12-00015-04
 Billing Account Number: 134693420
 Service Start Date: 07/01/2006
 Contract Expiration Date: 12/31/2006
 Number of Months Recurring Service Provided in Funding Year: 6
 Annual Pre-Discount Amount for Eligible Recurring Charges: \$50231.34
 Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$0.00
 Pre-Discount Amount: \$50231.34
 Applicant's Discount Percentage Approved by SLD: 54
 Funding Commitment Decision: \$27124.92 - ERN approved; modified by SLD
 Funding Commitment Decision Explanation: The dollars requested were changed to reflect the correct number of months based on the contract award date, the contract expiration date, and the service start date. The shared discount was reduced to a level that could be validated by third party data.

FCDL Date: 09/19/2006

Wave Number: 022

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2007

ATTACHMENT 2

AMENDMENT #3 TO CONTRACT

Between the State of Nevada
Acting By and Through Its

Department of Administration, Purchasing Division
On behalf of Western States Contracting Alliance
515 East Musser St., Ste. 300
Carson City, NV 89701
Contact Person: Teri Smith
Phone: 775-684-0178 Fax: 775-684-0188

And

Nextel Communications
Sprint Nextel Public Sector
2001 Edmund Halley Drive
Mail Stop A2-5
Reston, VA 20191
Contact Person: Mary Lou Close
Phone: 703-592-7846

WHEREAS the State of New Mexico, (the Original Lead State), has assigned all management and administration of the Western States Contracting Alliance Master Price Agreement No. 12-00115 to the State of Nevada (the Assigned Lead State); and

WHEREAS the State of Nevada, the Participating States and Nextel Communications (the Contractor) wish to continue the Agreement until a new procurement process is completed;

The parties agree as follows:

1. **AMENDMENTS.** For and in consideration of mutual promises and/or their valuable consideration, all provisions of the original Master Price Agreement #12-00115 and dated July 1, 2001, attached hereto as Exhibit A, remain in full force and effect with the exception of the following:

2. Paragraph 7 of the Master Price Agreement, Agreement Terms, is amended to read as follows:
The Agreement is effective on July 1, 2001 for a term of five (5) calendar years, plus an additional six (6) months, through December 31, 2006, unless terminated pursuant to the terms of this agreement.

3. **INCORPORATED DOCUMENTS.** Exhibit A (Original Contract), Exhibit B (Nevada Terms and Conditions), Exhibit C (Assignment Agreement) are attached hereto, incorporated by reference herein and made a part of this amended contract.

4. **REQUIRED APPROVAL.** This amendment to the original contract shall not become effective until and unless approved by the Nevada State Board of Examiners or representative thereof.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to the original contract to be signed and intend to be legally bound thereby.

W. Gordon Trayer
Independent Contractor's Signature

5/1/06 VICE PRESIDENT
Date Independent Contractor's Title

Greg Smith
Signature

5-5-06 Administrator
Date Title

Signature

Date Title

[Signature]
Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS
On 6/2/06
(Date)

Approved as to form by:
Susan E. Lee
Deputy Attorney General for Attorney General

On 5-5-06
(Date)

ATTACHMENT 3

51523

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

Various State Agencies
Monitored By: Department of Administration
Purchasing Division
515 E Musser Street, Room 300
Carson City NV 89701
Contact: Teri Smith, Buyer
Phone: (775) 684-0178 • Fax: (775) 684-0188
Email: tismith@purchasing.state.nv.us

And

Sprint Solutions, Inc.
2001 Edmund Halley Drive
Reston VA 20191
Contact: Mary Lou Close, WSCA Contract Manager
Phone: (703) 592-7846 • Fax: (703) 433-4996
Email: mary.close@sprint.com

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS §41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This Contract shall be effective upon Board of Examiners' approval (anticipated to be October 10, 2006) to October 9, 2010, unless sooner terminated by either party as specified in paragraph (9).
4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 60 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:
ATTACHMENT AA: STATE SOLICITATION (RFP #1523) and AMENDMENTS 1 & 2; SCOPE OF WORK
ATTACHMENT BB: NEGOTIATED ITEMS
ATTACHMENT CC: CONTRACTOR'S RESPONSE
6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph (5) at a cost of the following Percentage Discounts on Standard Retail Rates as displayed on Sprint's website: Rate Plans: 25% discount:

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

H. [Signature] 9/8/06
Independent Contractor's Signature Date

VP, Public Sector
Independent's Contractor's Title

Greg Smith 9-11-06
Greg Smith Date

Administrator, Purchasing Division
Title

[Signature]
Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

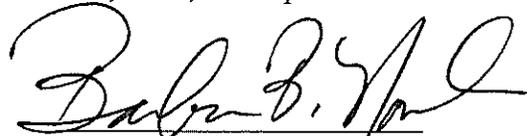
On 10-10-06
(Date)

Susan E. Lee
Deputy Attorney General for Attorney General

On 9-19-06
(Date)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Appeal of Sprint Nextel Corporation were delivered by electronic mail on this 9th day of November, 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

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