

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

**COMMENTS  
OF  
SPRINT NEXTEL CORPORATION**

Laura H. Carter  
Anna M. Gomez  
Norina T. Moy  
2001 Edmund Halley Drive  
Reston, VA 20191  
(703) 433-4503

June 6, 2007

## Table of Contents

Summary .....	iii
I. THE JOINT BOARD HAS MISCONSTRUED THE UNDERLYING PROBLEM AND THUS HAS RECOMMENDED AN ARBITRARY “SOLUTION” .....	2
II. THE RECOMMENDED CAP IS DISCRIMINATORY AND ANTI-COMPETITIVE .....	6
III. THE RECOMMENDED CAP IS UNFAIR TO CONSUMERS IN MANY STATES .....	11
IV. THE RECOMMENDED DECISION DOES NOT PROPERLY CONSIDER SECTION 254(b) AND SECTION 254(e) .....	12
A. The Joint Board’s <i>Recommended Decision</i> Does Not Meet the Requirements of Section 254(b) .....	12
B. The Joint Board’s <i>Recommended Decision</i> Does Not Meet the Requirements of Section 254(e) .....	15
V. CONCLUSION .....	16

## Summary

The proposed CETC cap is contrary to the public interest and fails to satisfy statutory requirements in many respects: it ignores the many factors contributing to the federal high-cost fund's precarious financial position; it is discriminatory and anti-competitive; it is unfair to the millions of consumers in the many states that received little or no CETC distributions in 2006; and it fails to properly consider the requirements of Section 254(b) and Section 254(e) of the Act. The proposed CETC cap – which represents a startling and inexplicable reversal of long-held Joint Board and FCC universal service principles and conclusions – must accordingly be rejected. If, despite the numerous serious flaws in this proposal, the Commission does adopt the Joint Board's recommendation, it should select 2007 rather than 2006 as the base year, in order to mitigate the negative impact of the proposed CETC cap on competition and on all consumers.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

**COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint Nextel”), pursuant to the Notice of Proposed Rulemaking (“NPRM”) released May 14, 2007 (FCC 07-88), hereby respectfully submits its comments on the Joint Board’s recommendation that the Federal Communications Commission (“FCC” or “Commission”) impose “an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive” (NPRM, para. 1). The Joint Board has recommended that competitive ETC (“CETC”) universal service support be capped for each state at the level of CETC support distributed in that state in 2006, and that the cap remain in place for “one year from the date of any Joint Board recommended decision on comprehensive and fundamental universal service reform.”<sup>1</sup>

The Joint Board’s recommendation should be rejected. As demonstrated below, the proposed CETC cap is flawed in four major respects: first, it was based on a faulty

---

<sup>1</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337 and CC Docket No. 96-45, Recommended Decision* released May 1, 2007 (FCC 07J-1) (“*Recommended Decision*”), paras. 8 and 13.

analysis of the basic problem, thus leading the Joint Board to an arbitrary “solution”; second, it is not competitively neutral, and discriminates unreasonably against CETCs, which are primarily wireless carriers; third, it is unfair to consumers in states that had little or no CETC high-cost Universal Service Fund (“USF”) distributions in 2006; and fourth, it does not properly consider Sections 254(b) and 254(e) of the Communications Act.<sup>2</sup> If, despite these serious flaws, the Commission does adopt the Joint Board’s recommendation, it should, at a minimum, select 2007 as the base year. This would avoid complications related to claims of retroactivity that could arise from the use of a past-period base year, and give affected parties a limited opportunity to accommodate this significant change to the high-cost support distribution methodology as best as they can or to the extent they believe is necessary and warranted.

**I. THE JOINT BOARD HAS MISCONSTRUED THE UNDERLYING PROBLEM AND THUS HAS RECOMMENDED AN ARBITRARY “SOLUTION.”**

In its *Recommended Decision* (para. 4), the Joint Board expressed deep concern that the federal high-cost universal service fund is “in dire jeopardy of becoming unsustainable.” Sprint Nextel shares this concern, and believes that there are multiple reasons why the fund is teetering on the edge of financial disaster. Unfortunately, rather than examining the myriad of factors which affect the size of the high-cost fund (and thus its sustainability), the Joint Board restricted its consideration to only one piece of the puzzle: CETCs’ receipt of high-cost USF support. By arbitrarily limiting the scope of its analysis in this way, the Joint Board then generated an arbitrary “solution” which,

---

<sup>2</sup> Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 *et seq.*

unsurprisingly, fails to address the entirety of the problem. By improperly defining the problem, the Joint Board has developed an improperly designed “solution.”

Federal high-cost USF support is disbursed to two categories of carriers: incumbent local exchange carriers (“ILECs”), and CETCs. In 2006, ILECs received \$3.116 billion in federal high-cost support (of which approximately 79% went to rural ILECs, and 21% to non-rural ILECs), while CETCs received \$.980 billion.<sup>3</sup> To focus only on the CETC segment – in effect, to place the entire responsibility for jeopardizing the high-cost fund on the group of carriers that accounts for less than a quarter of 2006 disbursements – makes no economic or policy sense. If the Joint Board’s goal here was to reduce the overall size of the high-cost fund to a sustainable level, it should have considered disbursements to *all* fund recipients, not just CETCs.

A more comprehensive approach would have identified some of the many other potential areas of reform that would be at least as efficacious (likely more so) at controlling the high-cost fund as would the proposed CETC cap. For example, the Joint Board could have recommended:

- revising the “interim modified embedded cost” methodology adopted by the Commission in 2001.<sup>4</sup> Reconsidering this cost methodology – which was estimated to increase rural carrier support by approximately \$1.26 billion over five years (*id.*) -- would provide critical and immediate relief to the federal high-cost fund by reducing subsidies

---

<sup>3</sup> See *Recommended Decision*, Appendix B. The allocation of support between rural and non-rural ILECs was based on Universal Service Administrative Company (“USAC”) Form HC-01 for 2006.

<sup>4</sup> *Federal-State Joint Board on Universal Service, Fourteenth Report and Order*, 16 FCC Rcd 11244, 11258 (para. 28) (2001).

to both rural ILECs (“RLEC”) and CETCs (in the form of portable support). Using forward-looking costs rather than embedded costs to determine RLEC high-cost support is economically rational and would be consistent with the costing methodology used for non-rural ILECs.<sup>5</sup>

- revising the rule which bases RLEC support on a comparison of each RLEC’s revenue requirement per line with a nationwide benchmark. This adjustment would reduce the artificial incentive RLECs have to increase their support by allowing (even actively encouraging) their cost per line to grow faster than the national average.

- limiting high-cost support to those ILECs that charge a certain minimum prescribed rate for basic local service.

- reducing explicit USF support to ILECs that earn supra-competitive rates of return (generated, for example, through inflated access rates (particularly in areas in which the ILEC has received pricing flexibility), or unlawful traffic pumping schemes).

---

<sup>5</sup> In 1997, the FCC endorsed the Joint Board’s findings regarding embedded costs, stating that:

...embedded cost provide[s] the wrong signals to potential entrants and existing carriers. The use of embedded cost would discourage prudent investment planning because carriers could receive support for inefficient as well as efficient investments.... [S]upport based on embedded cost could jeopardize the provision of universal service.... [T]he use of embedded cost to calculate universal service support would lead to subsidization of inefficient carriers at the expense of efficient carriers and could create disincentives for carriers to operate efficiently.

*Federal-State Joint Board on Universal Service First Report and Order*, 12 FCC Rcd 8776, 8901 (para. 228, footnotes omitted) (1997) (“*Universal Service First Report and Order*”).

Such reforms to ILEC high-cost support mechanisms, many of which have long been under consideration by the Joint Board and FCC<sup>6</sup> and could be expeditiously implemented, have the potential to affect the size of the high-cost USF to a far greater degree than would a cap on CETC disbursements. Yet nowhere in the *Recommended Decision* is there any indication that the Joint Board considered any measures that would have affected high-cost disbursements to ILECs, the main beneficiaries of the federal high-cost fund.

Sprint Nextel does not dispute that CETC receipts from the high-cost fund have increased over the past few years. This result is entirely anticipated and expected: Congress' decision to promote competition in all areas of the nation and to require explicit high cost subsidies has naturally led to increased universal service support to CETCs. However, it is a tortured and invalid leap of logic to then conclude that the federal high-cost USF is imperiled entirely due to the fact that CETCs are receiving more USF funds than they did a year, or two years, or five years ago. There is nothing improper about CETC participation in the USF program, and to lay the blame for all of the high-cost fund's problems at the collective CETC doorstep is totally unwarranted.

Commissioner Copps has astutely noted that the proposed CETC cap will only "inflamm[e] discord and disagreement among industry sectors," and "could lead to extended litigation," without solving any "enduring problem."<sup>7</sup> Rather than forcing

---

<sup>6</sup> See, e.g., *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, 19 FCC Rcd 16083 (2004).

<sup>7</sup> See Dissenting Statement of Commissioner Michael J. Copps attached to the *Recommended Decision*.

CETCs to bear the brunt of an “interim solution” to a problem that has multiple causes, the Commission and the Joint Board should have taken the bold steps necessary to fundamentally and rationally reform the high-cost fund, even if such steps involve painful but “shared sacrifices.”<sup>8</sup>

## **II. THE RECOMMENDED CAP IS DISCRIMINATORY AND ANTI-COMPETITIVE.**

A decade ago, both the Joint Board and the FCC vigorously endorsed competitive neutrality as a “guiding principle” in determining universal service support, and expressly adopted the requirement as an “additional principle” under 47 U.S.C. § 254(b)(7). In adopting this principle, the Commission stated that:<sup>9</sup>

Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.

As the Joint Board asserted, and as the Commission agreed, the competitive and technological neutrality standard is fully consistent with several provisions of Section 254.<sup>10</sup> Furthermore, “explicit recognition of competitive neutrality in the...distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and necessary to promote ‘a pro-competitive, de-regulatory national policy framework.’”<sup>11</sup> The Fifth Circuit Court of Appeals

---

<sup>8</sup> *Id.*

<sup>9</sup> *Universal Service First Report and Order* at 8801 (para. 47).

<sup>10</sup> *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 101 (1996); *Universal Service First Report and Order* at 8801-8803 (paras. 48-51).

<sup>11</sup> *Universal Service First Report and Order* at 8801 (para. 48), footnote omitted. *See also Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, 12 FCC Rcd 15639, 15658 (para. 42, footnotes omitted) (1997) (“disparity in the

subsequently affirmed the relevance of the competitive and technological neutrality principle, stating that the universal service program “must treat all market participants equally.... [T]his principle is made necessary not only by the economic realities of competitive markets but also by statute.”<sup>12</sup>

Given the unambiguous endorsement of the principle of competitive and technological neutrality by the Joint Board, the Commission, and the Court of Appeals, the Joint Board’s current recommendation to impose a CETC cap represents a startling and inexplicable about-face. By definition, the proposed CETC cap affects (negatively) only CETCs. The Joint Board has presented no other “interim” recommendation which would affect ILECs. By singling out a certain class of carriers for “special” treatment, the proposed cap will unfairly disadvantage CETCs in complete contravention with the bedrock principle of competitive and technological neutrality.

The Joint Board has attempted to justify the discriminatory impact of its proposed CETC cap on the grounds that CETCs and ILECs are subject to different regulatory treatment: (i) that “competitive ETCs, unlike incumbent LECs, have no equal access obligations;” (ii) that CETCs “are not subject to rate regulation;” (iii) that CETCs “may not have the same carrier of last resort obligations that incumbent LECs have;” and (iv) that “incumbent rural LECs’ support is cost-based, while competitive ETCs’ support is not.”<sup>13</sup> However, these observations are either irrelevant to the matter at hand, or are

---

treatment of classes of providers violates the requirement of competitive neutrality [in Section 253(b)] and undermines the pro-competitive purpose of the 1996 Act”).

<sup>12</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 622 (5<sup>th</sup> Cir. 2000).

<sup>13</sup> *Recommended Decision*, para. 6.

highly misleading, and fail to justify the discriminatory nature of the proposed CETC cap:

- High-cost funds are not used to support equal access activities;<sup>14</sup> therefore, equal access obligations have no bearing on an analysis of the high-cost universal service program.
- Contrary to the implication in the *Recommended Decision*, rate regulation has hardly been an unmitigated disaster for the ILECs. It is true that ILECs' ability to set local service rates has been limited by state regulatory commission policies and rules. (ILECs are, however, made whole by a combination of explicit USF support and implicit support from above-cost access rates.) It is also true that rate regulation has provided these carriers with decades of high-cost support, and decades of cost-of-service regulation complete with a generous rate of return (which is routinely exceeded). Rate regulation has enabled ILECs to recoup in full many of the costs which CETCs must scramble to recover in far more uncertain circumstances (*i.e.*, in a competitive market). As the Commission has consistently determined, a carrier need not be subject to the full panoply of state regulation to be eligible for universal service support;<sup>15</sup> rate regulation simply has no bearing on a carrier's eligibility for universal service support.
- Carrier of last resort obligations are similarly irrelevant to a consideration of high-cost support eligibility since, as the Commission concluded a decade ago, "section 214(e) does not grant the Commission authority to impose additional eligibility criteria" (such as carrier of last resort obligations) as a condition of being designated an ETC.<sup>16</sup> In any event, in areas in which a carrier has been designated an ETC, that carrier is subject to service obligations which closely mirror carrier of last resort obligations.<sup>17</sup>

---

<sup>14</sup> *Universal Service First Report and Order* at 8820 (para. 78). Any RLEC that is using federal universal service support to pay for its equal access obligations is violating Section 254(e). Indeed, it is not clear what equal access costs remain to be recovered. Insofar as Sprint Nextel is aware, none of the ILECs even assesses an interstate Equal Access recovery access charge any more.

<sup>15</sup> *Universal Service First Report and Order* at 8859 (para. 147); *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371, 6384 (para. 30, footnote omitted) (2005) ("*Universal Service 2005 Report and Order*"). ("We agree with the Joint Board's assertion that "states should not require regulatory parity for parity's sake.")

<sup>16</sup> *Universal Service First Report and Order* at 8856 (para. 142).

<sup>17</sup> The Commission has stated that:

...we require that an ETC applicant make specific commitments to provide service to requesting customers in the service areas for which it is designated as an ETC. If the ETC's network already passes or covers the potential

*Footnote continued on next page*

- RLECs' high-cost universal service support is not, in fact, truly or entirely cost-based. Approximately one-third of the rural ILECs are average schedule companies (*i.e.*, these ILECs provide no carrier-specific cost information at all),<sup>18</sup> and the financial data for the remaining "cost" RLECs is subject to minimal independent regulatory scrutiny. Moreover, as noted above, the cost standard applied to the rural ILECs for universal service distribution purposes is embedded costs, which the Commission has previously found to be an economically unsound standard (*see* fn. 5 *supra*). Even if it were economically rational to use embedded costs, such costs are not even the sole factor considered in computing RLEC high-cost support; RLECs' high-cost distributions are based on the RLECs' claimed costs in relation to a national benchmark, which gives them an incentive to increase, not decrease, their claimed costs. And, use of RLEC costs to justify a CETC cap makes little sense because CETCs serve both rural and non-rural areas (CETCs' high-cost support in non-rural areas is based on the more efficient forward-looking cost standard). In any event, the Commission has specifically and repeatedly found that basing CETCs' high-cost support on ILEC embedded costs does not give preferential treatment to competitors.<sup>19</sup>

In short, ILECs are not laboring under an insurmountable regulatory burden which would justify abandonment of the bedrock principle of competitive neutrality. Quite the contrary, ILECs have benefited from decades of implicit (inflated access) and explicit

---

customer's premises, the ETC should provide service immediately. In those instances where a request comes from a potential customer within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.

*Universal Service 2005 Report and Order*, 20 FCC Rcd at 6381 (para. 22), footnotes omitted. *See also*, *Universal Service First Report and Order* at 8856-7 (para. 143, footnote omitted) ("section 214(e)(4) already imposes exit barriers similar to the protections imposed by traditional state COLR regulation").

<sup>18</sup> *See* USAC Form HC-01.

<sup>19</sup> *See, e.g.*, *Universal Service First Report and Order* at 8933 (para. 289); *Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, 15 FCC Rcd 16227, 16232 (para. 10) (2000) ("*Western Wireless Order*").

subsidies that already give them a substantial competitive advantage over their competitors.

Some parties may consider the proposed CETC cap to be a relatively painless means of bringing the high-cost universal service fund to more sustainable levels because the cap is only an “interim” measure. However, the fact that a proposal is “interim” does not justify violation of the competitive neutrality principle. As the Commission has emphasized, a USF requirement that violates the competitive neutrality principle “cannot be saved merely because it is transitional.”<sup>20</sup> Moreover, “interim” in the regulatory context has frequently proved to be far longer than such term is conventionally used. There is a very real possibility that the Joint Board may not produce a recommendation on comprehensive high-cost universal service reform within the next six months (*Recommended Decision*, para. 1), or that inertia, political pressures or other factors could extend the proposed CETC cap’s lifespan beyond the 18-month timeline envisioned by the Joint Board (*id.*).

More important than the harm to individual CETCs inflicted by the proposed CETC cap is the harm to consumers that results from FCC action inhibiting competition. Even an “interim” CETC cap could discourage competitive entry and expansion, and undermine CETCs’ ability and willingness to invest aggressively in rural and other high-cost markets. Furthermore, making ILEC-provided services relatively less expensive than CETC service (by an amount equal to the high-cost support provided to the ILEC that is not available to their competitors) provides an artificial incentive and incorrect

---

<sup>20</sup> *Western Wireless Order* at 16232.

economic signal to consumers to select the ILEC over the CETC, even if the ILEC is the less efficient competitor<sup>21</sup> – a reversal of the policy that efficient carriers that win customers in the marketplace should be rewarded. The long-term effect of impeding or suppressing competitive entry and expansion could easily outweigh any short-term USF savings generated by the proposed CETC cap.

### **III. THE RECOMMENDED CAP IS UNFAIR TO CONSUMERS IN MANY STATES.**

As described above, the proposed CETC cap would be set on a state-by-state basis at 2006 distribution levels. The proposal is unfair to consumers in the many states that had little or no CETC high-cost USF distributions in 2006, effectively locking them out of the CETC fund for the entire period that the proposed CETC cap is in effect.

In 2006, there were twelve states that had \$0 CETC support, and another eight states that had \$1.5 million or less in CETC support.<sup>22</sup> Adoption of the proposed cap will penalize the many states with little or no 2006 CETC distributions, both by freezing competitive ETCs' presence in their rural markets, and by forcing their residents to continue to be net contributors to the CETC high-cost fund, for as long as the proposed CETC cap remains in place. This can hardly be considered fair or in the public interest.

---

<sup>21</sup> *Universal Service First Report and Order* at 8935 (para. 292) (“the 1996 Act’s mandate to foster competition ... and the principle of competitive neutrality compel us to implement support mechanisms that will send accurate market signals to competitors”).

<sup>22</sup> *Recommended Decision*, Appendix A. At the other end of the distribution spectrum, five states had between \$51.2 - \$139.6 million in CETC support (40% of total CETC disbursements) in 2006 (*id.*).

#### **IV. THE RECOMMENDED DECISION DOES NOT PROPERLY CONSIDER SECTION 254(b) AND SECTION 254(e).**

As the Commission has acted to implement universal service policies since 1996, reviewing courts have spoken often on the importance of the Commission's reasoned consideration of the guiding principles and mandates adopted by Congress in 47 U.S.C. § 254.<sup>23</sup> The *Recommended Decision* fails to even cite to Sections 254(b) and 254(e), and as a result, the Joint Board has not analyzed whether its proposal would be consistent with these statutory provisions. Without such a reasoned analysis, the Commission's adoption of the *Recommended Decision* would be unlawful. In addition, when such an analysis is done, it becomes clear that the *Recommended Decision* is contrary to these statutory principles and mandates.

##### **A. The Joint Board's *Recommended Decision* Does Not Meet the Requirements of Section 254(b).**

In Section 254(b), Congress directed that the Commission must base its policies for the preservation and advancement of universal service on six enumerated principles and any other principles identified by the FCC. While the Commission has some flexibility to balance these principles, it must "demonstrate that its balancing calculus takes into account the full range of principles Congress dictated to guide the Commission in its actions."<sup>24</sup> No such evaluation is evident in the *Recommended Decision*.

---

<sup>23</sup> *Tx. Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 411 (5<sup>th</sup> Cir. 1999) (Commission must consider § 254(b) principles and follow § 254(e) commands); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615 (5<sup>th</sup> Cir. 2000) (same); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1199 (10<sup>th</sup> Cir. 2001) (Commission has a mandatory duty to base policies on Section 254(b) principles); *Qwest Comms. Int'l v. FCC*, 398 F.3d 1222, 1234 (10<sup>th</sup> Cir. 2005) (Commission must define properly when support is "sufficient," and explain how sufficiency is achieved).

<sup>24</sup> *Qwest Comms. Int'l v. FCC*, 398 F.3d at 1234.

The Joint Board did not consider how its recommendation would impact the availability of quality services at just, reasonable, and affordable rates. 47 U.S.C. § 254(b)(1). By arbitrarily capping support on a state level, and thereby restricting the support available to CETCs, there is a significant risk that this principle will be undermined.

The Joint Board did not consider how its recommendation would impact access to advanced telecommunications services in all regions of the nation. 47 U.S.C. § 254(b)(2). In light of the fact that wireless network facilities are more than ever able to deliver both basic and advanced services to end users, Commission action to arbitrarily limit support to wireless ETCs may compromise this important policy goal.

The Joint Board did not consider how its recommendation would impact the comparability of services and rates between urban and rural areas. 47 U.S.C. § 254(b)(3). The Tenth Circuit Court of Appeals determined that this was an extremely important exercise in crafting a high-cost funding mechanism, having twice directed the Commission to base non-rural high-cost policies on a reasoned construction of “reasonable comparability.”<sup>25</sup> Here, the Commission has not defined “reasonable comparability” at all, and the Joint Board has not examined how a CETC funding cap will affect this goal. It is certainly possible (and indeed likely), for example, that a CETC cap would adversely impact comparability as states are unable to obtain increased CETC support as CETCs serve additional lines in high-cost areas.

The Joint Board did not consider whether its recommendation would provide for

---

<sup>25</sup> *Qwest Corp. v. FCC*, 258 F.3d at 1202; *Qwest Comms. Int’l v. FCC*, 398 F.3d at 1234.

specific and predictable support mechanisms. 47 U.S.C. § 254(b)(5). Sprint Nextel questions whether the proposed per-state cap on CETC funding, which prevents CETCs from estimating per-line support amounts from year to year, is consistent with the goal of predictability. This is even more important since the Commission and many states have imposed new requirements on CETCs to prepare and implement multi-year service improvement plans for the use of federal high-cost support.<sup>26</sup>

The Joint Board did not consider how its recommendation would impact access to advanced telecommunications services for schools, libraries, and rural health care facilities. Although Sprint Nextel would agree that this principle is, in part, addressed by other support mechanisms, the inability to access high-cost universal service support will limit CETCs' ability to deploy facilities to serve such users in high-cost areas. 47 U.S.C. § 254(b)(6).

The Joint Board did consider whether its recommendation would be consistent with the principle of competitive neutrality, which the Commission has adopted as an "additional principle" pursuant to 47 U.S.C. § 254(b)(7).<sup>27</sup> As discussed above, however, the Joint Board's analysis on this point is based on a misunderstanding of (i) what services are supported by high-cost mechanisms, and (ii) a decision to abandon the concept of portability of support – which the Fifth Circuit Court of Appeals has found is "dictated by the principle[] of competitive neutrality."<sup>28</sup>

In sum, the Joint Board's proposed CETC cap bypasses the necessary step of

---

<sup>26</sup> See, e.g., 47 C.F.R. § 54.202.

<sup>27</sup> *Recommended Decision*, ¶ 6.

<sup>28</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d at 622.

considering the Section 254(b) principles and weighing those principles to achieve a reasoned outcome that meets the objectives of Congress. For these reasons, the Joint Board's proposal should be rejected.

**B. The Joint Board's Recommended Decision Does Not Meet the Requirements of Section 254(e).**

In Section 254(e), Congress provided that universal service support should be "sufficient" to achieve the purposes of Section 254. It is well established that Commission action to implement a high-cost funding mechanism must define the term "sufficient" and must do so in a way that properly balances Section 254(b) principles.<sup>29</sup> The Joint Board's recommended CETC funding cap ignores and raises significant concerns on this point.

First, the Joint Board has not considered, much less concluded, that its rate cap would provide for sufficient funding. Second, under the Joint Board's proposal, many states will have little or no funding available for CETCs. It is difficult to understand how this could be deemed sufficient to support competitive universal service. Moreover, the Joint Board's proposal caps support to CETCs indefinitely without regard to number of new lines served by CETCs. This cannot be reasonably deemed to be sufficient as required by law.

The Commission should thus reject the Joint Board's proposed CETC cap as being insufficient to meet the requirements of Section 254(e).

---

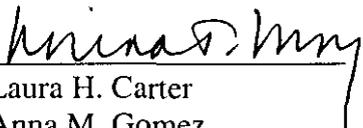
<sup>29</sup> *Qwest Comms. Int'l v. FCC*, 398 F.3d at 1234.

## V. CONCLUSION.

The proposed CETC cap is contrary to the public interest and fails to satisfy statutory requirements in many respects: it ignores the many factors contributing to the federal high-cost fund's precarious financial position; it is discriminatory and anti-competitive; it is unfair to the millions of consumers in the many states that received little or no CETC distributions in 2006; and it fails to properly consider the requirements of Section 254(b) and Section 254(e) of the Act. The proposed CETC cap should accordingly be rejected. If, despite the numerous serious flaws in this proposal, the Commission does adopt the Joint Board's recommendation, it should select 2007 rather than 2006 as the base year, in order to mitigate the negative impact of the proposed CETC cap on competition and on the consumers in the states that received little or no CETC high-cost support in 2006.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

  
Laura H. Carter  
Anna M. Gomez  
Norina T. Moy  
2001 Edmund Halley Drive  
Reston, VA 20191  
(703) 433-4503

June 6, 2007