

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
	)	

**REPLY COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint Nextel”) hereby submits its reply to comments filed on June 6, 2007 regarding the Joint Board’s proposal to cap high-cost Universal Service Fund (“USF”) disbursements to competitive eligible telecommunications carriers (“CETCs”). While specific comments and assertions by supporters of the Joint Board’s proposal do warrant rebuttal (and Sprint Nextel does so below), the focus here should extend beyond a debate over whether a CETC cap should be imposed for 18 months. At stake is a larger principle: whether fostering competitive alternatives to incumbent local exchange carriers (“ILECs”) in high-cost areas is a policy which the Federal Communications Commission (“FCC” or “Commission”) wishes to encourage, or discourage. If the Commission concludes, as it should, that fostering competition in high-cost areas generates net benefits to consumers in those areas, it must reaffirm its commitment to the principle of competitive and technological neutrality, and reject the proposed CETC cap.

**I. THE BENEFITS OF COMPETITION FAR OUTWEIGH THE PURPORTED BENEFITS OF AN 18-MONTH CAP.**

The record in the federal universal service proceeding reflects a long-term, explicit commitment by the Commission and the Joint Board to promote competitive entry and

expansion in high-cost areas. In its first major universal service decision released after enactment of the Telecommunications Act of 1996, the Commission adopted competitive neutrality as a principle to guide its deliberations on universal service policies and regulations.<sup>1</sup> Over the next decade, the Commission made numerous other USF-related decisions based in part on a competitive neutrality analysis,<sup>2</sup> and the Court of Appeals affirmed the relevance of the principle of competitive and technological neutrality in *Alenco Communications v. FCC*.<sup>3</sup>

By now, it would seem a settled economic truism that competition benefits consumers by offering more choices, better services, and lower prices. It would also seem clear that the Commission's historic policy of distributing USF support to both incumbent and competitive eligible service providers in a competitively neutral manner has helped to advance affordable, high quality service in high-cost areas. In the instant proceeding, however, certain parties appear to question the value of competition, complaining that "it is inconceivable that Congress really envisioned assessing universal service surcharges in order to support giving consumers in high-cost areas a choice between a myriad of competitive local carriers;"<sup>4</sup> that federal USF funds have been used "to build more wireless infrastructure in rural areas...already served by, at the very least,

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<sup>1</sup> See, e.g., Sprint Nextel, p. 6, citing *Federal-State Joint Board on Universal Service First Report and Order*, 12 FCC Rcd 8776, 8801 (1997).

<sup>2</sup> For example, Commission decisions to establish ETC criteria, to grant specific ETC designation applications, and to base USF support to certain carriers on forward-looking costs, were made with an eye towards encouraging efficient and even-handed competition in high-cost areas.

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

<sup>4</sup> Alaska Telephone Association, p. 4.

an incumbent local exchange carrier;”<sup>5</sup> and that providing USF support to multiple carriers creates “a huge unnecessary Fund burden.”<sup>6</sup> Still other parties pay grudging lip service to the importance of competitive neutrality, but degrade it to a secondary consideration which can be opportunistically sacrificed to further other universal service goals.<sup>7</sup>

Such attempts to downgrade the competitive neutrality principle – and downgrade rural consumers’ need for and right to enjoy the benefits of competition -- should be rejected. The Commission adopted this principle pursuant to Section 254(b)(7) on a par with other statutory principles, and has stated unequivocally that one of the goals of the universal service program was to bring “the benefits of competition...to as many consumers as possible.”<sup>8</sup> Even if competitive neutrality could somehow be considered a “secondary” principle (which Sprint Nextel vehemently disputes), there is no justification for deliberately violating this principle in alleged furtherance of other goals.

Perhaps recognizing the economic fallacy of overt attacks on the competitive neutrality principle, some proponents of the CETC cap proposal simply echo the Joint

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<sup>5</sup> Telephone Association of Maine, p. 1.

<sup>6</sup> Valley Telephone Cooperative, p. 4, adding, without apparent irony, that USF to CETCs “has become a corporate financial entitlement program” (*id.*).

<sup>7</sup> *See, e.g.*, TDS, p. 4 (“competition is not the central concern of universal service”); NASUCA, p. 6 (competitive neutrality is an FCC, not a statutory, principle, and therefore is less important than the need for “specific, predictable and sufficient support”); NTCA, p. 11 (the public interest test “should not focus on whether support will enhance competition but whether universal service is being maintained and preserved in accordance with the principles of Section 254”).

<sup>8</sup> *Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration*, 13 FCC Rcd 5318, 5321-22 (para. 2) (1997). *See also, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15507 (para. 7) (1996) (the states and the Commission must “ensure that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition”).

Board’s “difference in regulatory treatment” rationale – that CETCs are somehow less entitled to high-cost support than are ILECs because CETCs are not subject to equal access obligations, rate regulation, carrier of last resort requirements, or USF disbursements based upon their own costs.<sup>9</sup> Here, too, the justification is sorely lacking. As Sprint Nextel and many other parties demonstrated, these factors are irrelevant to decisions about the disbursement of federal high-cost universal service support, and fail to justify the evisceration of the competitive neutrality principle.<sup>10</sup> The Commission has previously found that equal access, carrier of last resort, and ILEC regulatory requirements may not be used as ETC eligibility criteria (and thus as high-cost USF disbursement criteria). Further, rural incumbent LECs’ (“RLECs”) own high-cost receipts can hardly be considered to be “cost-based.”<sup>11</sup>

Certain proponents of the proposed CETC cap do offer one rather novel “justification” for limiting high-cost support to competitive carriers: CETCs don’t really need the money; they greedily seek ETC designation and request high-cost CETC funds even if they are “readily able to compete without universal service subsidies.”<sup>12</sup> This argument is totally without merit. As neither the Act nor the FCC’s rules even remotely

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<sup>9</sup> *See, e.g.*, GVNW, p. 7; Century, p. 6; Embarq, p. 2; NTCA, p. 2.

<sup>10</sup> *See, e.g.*, Sprint Nextel, p. 8; CTIA, p. 12; Dobson Cellular, p. 6; Rural Cellular Association, p. 26.

<sup>11</sup> *See, e.g.*, Sprint Nextel, p. 9; CTIA, p. 16; Dobson Cellular, p. 7; Rural Cellular Association, p. 30.

<sup>12</sup> Verizon, p. 4, footnote omitted. *See also* ITTA, p. 8 (questioning “whether it is appropriate to grant CETC status and attendant USF support to carriers that previously operated profitably in the geographic markets....”); CenturyTel, p. 4 (same); and State Independent Telephone Association of Kansas, p. 5 (speculating that reduced high-cost funding to CETCs would not “entail a revenue deficiency jeopardizing the operations of any affected carrier”). None of these ILECs explains why it makes economic sense to heavily subsidize incumbent carriers if competitive carriers are so much more efficient.

contemplates any limit on USF support to those carriers that can compete “without universal service subsidies” (however that is defined), the ILECs’ ruminations here are merely a red herring. (Sprint Nextel would note, however, that if a profitability criterion were adopted, high-cost universal service support would have to be denied to each of the many ILECs that earned a rate of return in excess of 11.25% -- the FCC’s prescribed rate of return, which has not been changed in over 20 years, and which is very arguably supra-competitive.<sup>13</sup>) There is nothing improper or illicit about seeking CETC designation; all such applications are subject to eligibility and public interest reviews by state or federal regulatory bodies. In the absence of reasonable evidence that a competitive carrier has failed to satisfy the requirements associated with its ETC designation, unsupported allegations to the contrary<sup>14</sup> should be dismissed.

## **II. THE COMMISSION MUST REJECT THE PROPOSED CETC CAP TO PROTECT CONSUMERS AND TO COMPLY WITH STATUTORY REQUIREMENTS.**

Sprint Nextel agrees that the upward pressures on the federal USF contribution factor are deeply worrisome, and that broad reforms of the rules governing high-cost distributions to both ILECs and CETCs, such as those suggested by Sprint Nextel and others, are critical to the sustainability of the federal USF.<sup>15</sup> Sprint Nextel also agrees that the proposed CETC cap might prevent the USF contribution factor from rising slightly over the period in which the cap is in effect. However, even if the proposed cap

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<sup>13</sup> To cite but a few examples, ARMIS reports for 2006 indicate that AT&T’s interstate rate of return was 26.41%; Verizon’s was 21.19%; Qwest’s was 42.72%; CenturyTel of Alabama’s was 38.42%; United Telephone of Indiana’s was 55.92%; and Cincinnati Bell-Ohio’s was 50.5%.

<sup>14</sup> See, e.g., CenturyTel, pp. 4-5.

<sup>15</sup> See, e.g., Sprint Nextel, p. 2; Centennial, p. 3; Chinook Wireless, p. 5; CTIA, p. 2.

were competitively neutral – which it clearly is not – the proposal must be rejected because of the harm it will inflict on consumers and because it fails to comport with other statutory requirements.

Verizon has stated (p. 2) that the proposed cap will benefit consumers by “reducing pressures on the fund that have led to an increasingly high contribution factor.” However, any short-term benefits that might be squeezed out from the proposed cap would be far outweighed by the harm to consumers resulting from the stifling of competition and the drag on network investment in high-cost areas. Adoption of the proposed cap will have a chilling effect on competitive entry and expansion, and will deter or delay CETC network investment in high-cost areas.<sup>16</sup> These detrimental results will reverberate in high-cost areas long after the scheduled expiration of the proposed cap.

The negative effect of the proposed CETC cap will be exacerbated if the “interim” cap is extended. As various parties pointed out, “interim” regulatory policies and requirements have a distressing tendency to become semi-permanent;<sup>17</sup> indeed, several ILECs go so far as to recommend that the CETC cap should be permanent or at least remain in place until such time as comprehensive USF reforms have been implemented.<sup>18</sup> Consumers (scores of whom contacted the Commission to urge continued support for wireless services in rural areas) should not be denied better, more

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<sup>16</sup> As AT&T stated (p. 7), the proposed cap could throw CETC capital infrastructure deployment projects “into disarray.” *See also* GCI, p. 8; Rural Cellular Association, p. 16; CTIA, p. 29 (if the proposed cap is adopted, CETCs should be allowed to file revised service improvement plans).

<sup>17</sup> *See, e.g.*, Sprint Nextel, p. 10; Dobson Cellular, p. 8; SouthernLine Wireless, p. 23.

<sup>18</sup> *See, e.g.*, Frontier, p. 2; Minnesota Independent Coalition, p. 4; Verizon, p. 5; NTCA, p. 3; Wisconsin State Telecommunications Association, p. 4.

affordable services, and public and personal safety in rural areas should not be compromised,<sup>19</sup> because of a desire on the part of incumbent carriers to avoid competition for as long as possible.

If the Commission does adopt a cap,<sup>20</sup> it should, at a minimum, use 2007 rather than 2006 as the base period, to allow affected parties an opportunity to respond to the new circumstances. Adjusting the base period also would incorporate 2007 ETC designations found by the state PUCs (and potentially by the FCC as well) to be in the public interest.<sup>21</sup> As the Montana PSC noted (p. 7), use of a forward date would allow the customers of wireless CETCs in Montana “to be treated comparably to how [they]... have and will benefit in other states.”

In addition to protecting consumers’ interests, the Commission is obliged to evaluate whether the proposed CETC cap comports with the requirements of Sections 254(b) and 254(e). As demonstrated by Sprint Nextel and others, it is evident from even a cursory review that the proposed cap undermines, even violates, the statutory requirements that service be available at “just, reasonable and affordable prices”; that

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<sup>19</sup> See, e.g., Michael Cox, Meade County, KS Sheriff, p. 1 (“[r]ural consumers want and need expanded and improved wireless services in rural areas for public safety, economic development, business and personal needs that are equally important to them as they are to urban consumers.”); Melissa Turner, Grant County, AR 911 Supervisor, p. 1 (“wireless service provides a very valuable safety tool”); Tim Wallace, Washburn County, WI Office Of Emergency Management, p. 2 (“[m]uch of the expanded availability of wireless service in rural areas would not have occurred without the USF support provided to wireless ETCs who could not have economically extended their networks without such support”).

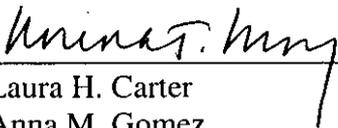
<sup>20</sup> If the Commission does adopt a cap, the principle of competitive neutrality requires that it impose the same cap, utilizing the same methodology, on all ETCs receiving federal high-cost support.

<sup>21</sup> See, e.g., Sprint Nextel, p. 2; Nebraska PSC, p. 1; Rural Independent Competitive Alliance, p. 3. See also, CTIA, p. 5 (use latest quarter); Dobson Cellular, p. 14 (4 quarters prior to the effective date of an order adopting a cap); Montana PSC, p. 7 (2010).

advanced services be promoted; that rural and high cost areas have service comparable to that available in urban areas; that support be specific and predictable; and that support be “sufficient.”<sup>22</sup> To avoid such statutory violations, and to avoid costly and drawn-out legal challenges to a rule of highly questionable legality, the Commission should reject the proposed CETC cap.

Respectfully submitted,

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<sup>22</sup> *See, e.g.*, Sprint Nextel, p. 12; AT&T, p. 7 (because CETCs can’t accurately estimate the support they expect to receive in the coming years, the cap is not “predictable”); CTIA, p. 20; Dobson Cellular, p. 2.