Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Comprehensive Review of the Universal Service Fund Management, Administration and Oversight	))	WC Docket No. 05-195

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (Sprint Nextel) hereby respectfully submits its comments on the Notice of Inquiry (NOI) released September 12, 2008 (FCC 08-189) in the above-captioned proceeding.

In the NOI (para. 1), the Commission has requested comment "on ways to further strengthen management, administration, and oversight of the Universal Service Fund ("USF" of "Fund"), how to define more clearly the goals of the USF, and to identify any additional quantifiable performance measures that may be necessary or desirable; [and] … to what extent the Commission's oversight of the USF can be improved." As discussed briefly below, Sprint Nextel believes that the Commission can strengthen the USF program by taking the following steps:

- Issue administrative subpoenas when requesting confidential subscriber information, to ensure carrier's provision of such information consistent with their privacy obligations under the Customer Proprietary Network Information (CPNI) and Electronic Communications Privacy Act (ECPA) statutes.

- Withhold high-cost USF support for lines associated with traffic pumping schemes.

- Reduce certain administrative burdens on service providers participating in the low income and E-rate programs.

- Decline to adopt internal control measures applicable to USF program participants.

1. The Commission Must Balance USF Audit Needs and Privacy Obligations.

The Commission has announced that it will be devoting more resources to auditing the USF operations of program beneficiaries, service providers, and contributors in order to reduce waste, fraud and abuse of Universal Service Program funds.[1] In some of the audits of the High-Cost USF, the Commission, USAC, and/or auditors hired by USAC have requested that Eligible Telecommunications Carriers (ETCs) provide customer invoices to verify claimed line counts and high-cost support. While Sprint Nextel understands the purpose of such information requests, and is willing to cooperate with auditors in order to demonstrate the validity of our reported high-cost lines, we must balance such demands for customer information with our statutory obligations under Section 222 (47 C.F.R. § 222, Privacy of Customer Information) and Title 18 (the Electronic Communications Privacy Act, with particular reference to 18 USC 2702(a)(3))[2] to protect the privacy of our customers' information. The potential penalty for unauthorized disclosure is severe,[3] which has led some ETCs to decline to provide the

[1] *See, e.g., Semi-Annual Report of the FCC Office of Inspector General, October 1, 2007 – March 31, 2008*, p. 6 (OIG received $21.28 m. in January 2008 to be used, among other things, "to manage an increasing number of [USF] audits that, in FY 2008, will total more than 800").

[2] 18 USC 2702(a)(3) states that "a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity," except as prescribed in Section 2703(c) (governmental entity obtains a warrant; obtains a court order; or has the consent of the subscriber to such disclosure).

[3] Carriers can be sued by any party aggrieved by any violation of chapter 18 for $1000 per disclosure plus punitive damages, attorney's fees and other litigation costs. *See* 18 USC 2707(a).

requested information absent court order, governmental warrant, or specific customer consent.

The Commission could obtain the customer information needed to audit USF results, and simultaneously protect ETCs against complaints of unauthorized disclosures, by issuing administrative subpoenas requesting the information to the ETC. The Inspector General clearly has the authority to issue such subpoena,[4] and there is no reason to suspect that ETCs presented with such subpoena would not promptly comply.

Improper Payments Information Act (IPIA) error rates and beneficiary audit results have been skewed to the extent that some ETCs have declined to provide requested confidential customer information on the grounds that disclosure of such information would violate the privacy statutes. Issuance of an administrative subpoena as recommended above would expedite document production and would help the Commission to gain a more accurate picture of the extent to which federal USF programs are suffering from waste, fraud or abuse, and the underlying causes of such deficiencies.

For the reasons cited above, Sprint Nextel urges the Commission to direct the OIG to issue administrative subpoenas in cases in which auditors request or require access to confidential subscriber information.

2. High-Cost USF Support Should Not Be Available for Lines Associated with Traffic Pumping Schemes.

The Commission has compiled an extensive record about the traffic pumping schemes perpetrated by certain competitive and incumbent local exchange carriers (LECs).[5] By manipulating the rules, these LECs have been able to charge rates of several

[4] *See Inspector Generals' Act of 1978*, 5 U.S.C.A. App. 3 § 6(a)(4).
[5] *See, e.g., Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135.

cents per minute (based on extremely low historical demand levels) on dramatically higher levels of pumped "free" conference calling, chat line, etc. traffic, thereby allowing the LEC to earn unreasonable returns far in excess of the maximum authorized level. In many cases, it appears that the pumped traffic does not terminate to homes or businesses physically located in the LEC's designated area; instead, the LEC sends the calls to its traffic pumping partner's platform, which may be collocated in the LEC end office, with the calls subsequently routed over the Internet to their ultimate destination.

The Commission should make high-cost USF available to eligible LECs only for lines serving residential and business customers actually in the LECs' designated high-cost service areas. It is not in the public interest to provide such support to LECs whose "customers" are not physically located in the high-cost community – that is, for "lines" that are merely cross-connects in the LEC's end office rather than physical loops to homes or office buildings in the high-cost community. At a minimum, any LEC that declines to certify that it is not engaging in traffic pumping activities,[6] and claims high-cost USF support but has no residential or single-line business lines (and instead reports only multi-line business lines), should be subjected to careful scrutiny to ensure that its claimed line counts are for actual residential and business customers, and not merely their traffic pumping partner(s). Withholding high-cost support for "lines" associated with traffic pumping schemes will help stabilize the high-cost universal service fund.

3. Reduce Administrative Burdens on Service Providers

Participation in the E-rate and Lifeline programs imposes significant administrative burdens on service providers. To ease this burden, without sacrificing the

[6] *See, e.g.,* comments filed by Sprint Nextel in WC Docket No. 07-135 on December 17, 2007, p. 19.

efficacy of either program, Sprint Nextel recommends the following streamlining measures:

- If a service provider's Lifeline customer count is fewer than 2500 or less than 1% of its total ETC line count (whichever is lower), the service provider has the option of foregoing the filing of Form 497, the Lifeline and LinkUp Worksheet. (The service provider would still be required to provide Lifeline services to all of their qualifying customers.) For some service providers with relatively few Lifeline/LinkUp customers, the cost of preparing Form 497 exceeds the reimbursement amount. A voluntary waiver of Lifeline/LinkUp discount reimbursement would also modestly ease the burden on the USF, and reduce the administrative burden on USAC.

- E-rate service providers should be removed from the BEAR reimbursement process, and reimbursement checks should flow directly from USAC to the school or library.[7] By eliminating the service provider middleman, this streamlining measure will help to reduce the incidence of lost, stolen, or delayed BEAR checks due to the school or library.

- E-rate service providers currently do not have visibility to the Form 471 Attachment 21 filed by the school or library. Access to Attachment 21 would help service providers to identify the type and quantity of products and services for which the applicant is seeking an E-rate discount, and to confirm the unit prices and the pre-discount eligible recurring and non-recurring charges.

- Sprint Nextel recommends that USAC be required to promptly post on its website the following types of information relating to the high-cost program: ILEC zone changes, and the effective date of such changes;[8] information on how various support payments are calculated and the timing of associated disbursements; and documentation relating to implementation of the CETC cap calculations by state. In addition, USAC should provide disaggregation maps in industry standard software (not merely PDF) format. Ready access to this information will help ETCs to report their line counts accurately (thus increasing the accuracy of USF distributions and reducing the need for any subsequent adjustments), and will aid ETCs in estimating their current and future high-cost USF receipts.

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[7] Reimbursement checks for discounted invoices should continue to come directly to the service provider.

[8] The amount of high-cost USF support per line varies by zone, and CETCs report their line counts by ILEC wire center. Thus, an unpublicized shift of a wire center from one zone to another can cause inaccuracies in reported line counts by zone and corresponding inaccuracies in USF distributions.

4. The Commission Should Not Adopt Internal Control Measures for Program Participants.

The Commission has asked "what steps, if any, the Commission should take with respect to the establishment of internal control measures for program participants" (NPRM, para. 31). The Commission should decline to take any such steps. Program participants vary hugely in size, focus (participants number in the thousands and include end user customers; service providers (carriers and non-carriers); and USF contributors), level of participation, and existing control systems, practices and procedures. It would be impossible for the Commission to design effective and reasonable internal control measures that would accommodate such diversity among participants. Rather than attempting to dictate what accounting/computer/record keeping, etc. systems a program participant must implement, the Commission should instead simply require that program participants comply with the applicable rules, and leave it to the individual participants to determine how such compliance is to be achieved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing comments of Sprint Nextel Corp. was filed electronically or via US Mail on this 13th day of November 2008 to the parties listed below.

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