

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

In the Matter of)	
)	
Universal Service Contribution)	WC Docket No. 06-122
Methodology)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	

REPLY COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”), pursuant to the Public Notice released on March 7, 2011, (DA 11-432), hereby respectfully submits its reply comments in the above-captioned proceedings regarding a request from the Universal Service Administrative Company (“USAC”) for guidance from the Commission “regarding situations in which a contributor attempts to provide post-dated certificates for its resellers after a finding by USAC that the contributor does not have appropriate documentation to justify its reseller classifications.”¹

Sprint agrees with Verizon that flexibility with respect to certifications is reasonable and that a prohibition on late-filed certifications would require a rulemaking.² Such a prohibition on certain late-filed certifications would go beyond the Wireline Bureau’s delegated authority, which is limited to “procedural, non-substantive changes to the administrative aspects of the reporting requirements.”³

¹ Letter from Richard Belden, Universal Service Administrative Company, to Sharon Gillette, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 06-122 and CC Docket No. 96-45 (March 1, 2011).

² Comments of Verizon and Verizon Wireless, April 6, 2011, at 1-3.

³ *Form 499-A Deadline Stay Denial Order*, 20 FCC Rcd 5167, 5169 ¶6 (2005).

The “guidance” that USAC is seeking would require a substantive change since it would effectively eviscerate the carrier’s carrier rule.⁴ That rule is designed to prevent double payment of USF contributions by requiring contributions be made only on end-user revenues. However, if USAC is able to automatically reject certain reseller certifications or other documents that support a wholesale carrier’s classification of revenues, double USF payments may result. Because the primary goal of the certification process is to ensure that correct USF payments are made, USAC should not be permitted to exclude any information that would ensure the proper implementation of the carrier’s carrier rule.

The carrier’s carrier rule was upheld in *Vonage Holdings Corporation v. FCC*.⁵ There the Commission based its suspension of the carrier’s carrier rule on a possible decrease in the fund due to a change in the contribution methodology applicable to interconnected VoIP providers. The court found that the Commission “effectively required VoIP providers to make duplicative USF contributions for two quarters: once directly on their own interstate and international revenues and a second time indirectly in the form of higher costs passed along from carriers who sell them telecommunications inputs.”⁶ The court rejected the FCC’s rationale for the double payment and vacated the FCC’s suspension of the carrier’s carrier rule.

Sprint recognizes the need, under the Commission’s carrier’s carrier rule, for proper classification of end-user revenues on the wholesale and resale carriers’ Form 499As. This methodology places much of the compliance burden on the wholesale

⁴ 47 CFR 54.706(b).

⁵ 489 F.3d 1232 , 1244 (D.C. Circuit 2007).

⁶ *Id.*

service provider, and not on the provider of services to the end-user. Despite good faith efforts to collect the certifications, some may not be filed in a timely manner. Sprint agrees with Verizon's statement concerning the reasons for delayed certifications:

“[t]here are many reasons why a reseller may be delayed in providing an updated annual certification to a carrier. For example, reseller customers may in fact make required contributions to the fund but simply neglect to submit a timely certification to their wholesale service provider because of an administrative oversight. And what ultimately matters is whether contributions are in fact made – not the date of the certification.”⁷

Thus, the wholesale provider should be afforded some flexibility to demonstrate that the revenues have been properly classified.

In addition, consideration should be given to the ways in which wholesale carriers seek to ensure accurate and timely information from their reseller carriers. For example, many carriers include in their certification form a statement that requires the resale customer to provide notification of a change in the representations made in the certification form. Wholesale carriers may also require the resale carriers to certify that that the reseller will continue to file the FCC Form 499 worksheets as required by the FCC. Wholesale carriers that include statements such as these in their certifications may reasonably presume that the reseller is continuing to contribute into the USF unless the reseller informs the wholesale carrier otherwise.

In order to avoid impermissible double USF payments, Sprint recommends that when an issue arises concerning a reseller's certification, USAC should be required to review the reseller's Form 499A to determine whether the reseller properly contributed into the Universal Service Fund based on its end-user revenues. If USAC finds that the reseller has not contributed properly into the USF based on its end-user revenues, it

⁷ Comments of Verizon and Verizon Wireless at 3.

should require payment directly from the reseller based on the reseller's end-user revenues. If these steps are taken, there should be no violation of the carrier's carrier rule, and the appropriate contribution should be made to the USF based on end-user telecommunication services revenues.

For the foregoing reasons, when USAC identifies a potential issue with respect to the categorization of wholesale revenues on the Form 499A, Sprint respectfully requests that the Commission protect against any unlawful duplicate USF contributions by (1) directing USAC to review the reseller's USF contributions to determine if it has contributed properly into the USF based on its end-user revenues and (2) to collect any required USF payments directly from the carrier providing service to the end-user.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

/s/ Charles W. McKee

Charles W. McKee
Vice President, Government Affairs

Marybeth M. Banks
Director, Government Affairs
900 7th Street NW Suite 700
Washington, DC 20001
(703) 592-5111

April 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments of Sprint Nextel Corporation" was filed electronically or via US Mail on this 21st day of April, 2011 to the parties listed below.

/s/ Jo-Ann Monroe

Jo-Ann Monroe

Chin Yoo
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
Chin.Yoo@fcc.gov

Charles Tyler
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
Charles.Tyler@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th St., SW, Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com