

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

In the Matter of)	
)	
Universal Service Contribution)	WC Docket No. 06-122
Methodology)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”), pursuant to the Public Notice released on May 9, 2011 (DA 11-853), hereby respectfully submits reply comments in the above-captioned proceedings regarding the request from the Universal Service Administrative Company (“USAC”) for guidance on the appropriate treatment of text messaging revenues reported on the FCC Form 499-A.

In its April 22, 2011 letter to Ms. Sharon Gillette, Chief, Wireline Bureau, USAC states that it has found that carriers are reporting revenues derived from text messaging service in two different ways: (1) as non-telecommunications revenue that is not subject to USF contribution on Line 418.3, and (2) as telecommunications revenue that is subject to USF contributions that is subject to USF contribution on Line 409.¹ According to USAC, the inconsistent treatment of text messaging revenues “may result in carriers incorrectly collecting USF charges from their customers” and “may result in some carriers over contributing to the USF, while others may be under contribute to the USF.”²

¹ USAC Letter at 1.

² *Id.* at 4.

Text Messaging is an “information service” as defined in the Communications Act,³ not a “telecommunications service”⁴ subject to USF contributions. Accordingly, it would be inappropriate to report text messaging revenue on Line 409.

The Communications Act defines an “information service” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”⁵ “Short messaging service (“SMS”), which USAC identifies as “[t]he most common format [of text messaging] in use today,”⁶ and which Sprint provides, meets this definition. Specifically, SMS is a service that stores and forwards text messages. The “store and forward” feature of SMS is integral to the product, as it is described in Wikipedia:⁷

Messages are sent to a Short message service center (SMSC) which provides a "store and forward" mechanism. It attempts to send messages to the SMSC's recipients. If a recipient is not reachable, the SMSC queues the message for later retry.^[26] Some SMSCs also provide a "forward and forget" option where transmission is tried only once. Both mobile terminated (MT, for messages sent *to* a mobile handset) and mobile originating (MO, for those sent *from* the mobile handset) operations are supported. Message delivery is "best effort", so there are no guarantees that a message will actually be delivered to its recipient, but delay or complete loss of a message is uncommon. Users may request delivery reports to confirm that messages reach the intended recipients, either via the SMS settings of most modern phones, or by prefixing each message with *0# or *N#.eee

³ 47 U.S.C. § 153(20).

⁴ 47 U.S.C. § 153(46).

⁵ *Id.*

⁶ USAC Letter at 2, referencing Newton’s Telecom Dictionary.

⁷ http://en.wikipedia.org/wiki/SMS#SMS_today, Technical details.

Because messages are “stored” if the recipient’s device is turned off and then forwarded when it is turned on, SMS clearly meets the definition of an “information service.”

In addition, SMS has other features integrated into it that define an “information service.” For example, the text messages may be converted to voice messages when they are sent from a mobile phone to a wireline phone. The message is automatically read to the recipient when he or she answers the phone. Thus, there is a “transformation” of the information from text to voice. In addition, a message delivery confirmation may be requested by the sender to confirm delivery, which requires “processing” information concerning the status of the delivery and “generating” a message that is sent to the phone on which the message was initiated after the message has been identified as delivered. SMS also currently permits broadcasting messages to devices identified by area code, which requires the service provider to search its databases to identify such devices. Based on all of these features, SMS must be categorized as an “information service.”

In its letter, USAC states that “Text messaging is the sending of messages in plain text to various wired or wireless devices” and that “[p]lain text is sent and plain text is received – there is no change in the form or content of customer’s information.” Clearly, USAC has failed to consider the numerous functionalities described above that are integral to SMS and that require its classification as an “information service.”

As the Commission ruled in implementing the 1996 Act, “information service providers (ISPs) and enhanced service providers are not required to contribute to [USF] support mechanisms to the extent they provide such services.”⁸ And as the Commission

⁸ *First Universal Service Order*, 12 FCC Rcd 8776, 9179 ¶788 (1997).

has explained to Congress, “telecommunications services and information services are mutually exclusive categories.”⁹

Because text messaging incorporates many of the capabilities identified in the definition of an “information services,” the Bureau must advise USAC that “text messaging,” as the term is commonly understood, should be reported as a non-telecommunications service. As such, text messaging revenue should be reported on Line 418 with other non-telecommunications service revenues. This treatment is consistent with the current instructions for Line 418, which state that this line should include “information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases.”¹⁰

If the Bureau concludes that all text messaging services should contribute into the USF, the Bureau will have exceeded its legal authority. The Commission has delegated to the Bureau narrow authority with respect to USF matters. Specifically, it has determined that the Bureau’s authority is limited to “administrative aspects of the reporting requirements, not to the substance of the underlying programs.”¹¹ The application of USF obligations to all text messaging services would amount to a new

⁹ *Universal Service Report to Congress*, 13 FCC Rcd 11501, 11523 ¶43 (1998).

¹⁰ 2011 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), page 20.

¹¹ *1999 Contributor Reporting Requirements Order*, 14 FCC Rcd 16602, 16621 ¶40.

substantive legal obligation that may be imposed only after compliance with the notice-and-comment requirements of the Administrative Procedures Act (“APA”).

Moreover, if the Bureau advises that the USF obligation applies to all text messaging services, the ruling should be applied on a prospective basis. The Commission’s rules give USF contributors the right to recover their contribution costs from their customers,¹² and the Commission has recognized that service providers “routinely pass those costs along to their customers.”¹³ It would be unjust to impose retroactively a new obligation on service providers because they would not be able to recover their costs from their customers.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

/s/ Charles W. McKee

Charles W. McKee
Vice President, Government Affairs
Federal and State Regulatory

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

June 6, 2011

¹² See 47 C.F.R. § 54.712(a).

¹³ *Universal Service Reconsideration Order*, 23 FCC Rcd 6221, 6222 n. 2 (2008).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing “Comments of Sprint Nextel Corporation” was filed electronically or via US Mail on this 6th day of June, 2011 to the parties listed below.

/s/ Marybeth M. Banks

Marybeth M. Banks

Claudia Fox
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
Claudia.Fox@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