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*Attorneys for NPCR, Inc. d/b/a Nextel Partners*

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

In the Matter of the Petition of IAT ) Case No. GNR-T-03-8  
Communications, Inc. d/b/a NTCH-Idaho, Inc., or )  
Clear Talk, for Designation as an Eligible )  
Telecommunications Carrier )

In the Matter of the Application of NPCR, INC. ) Case No. GNR-T-03-16  
d/b/a NEXTEL PARTNERS Seeking )  
Designation as an Eligible Telecommunications )  
Carrier that may receive Federal Universal Service )  
Support )

**NEXTEL PARTNERS' MEMORANDUM IN OPPOSITION  
TO IDAHO TELEPHONE ASSOCIATION'S MOTION TO COMPEL  
RESPONSES TO DISCOVERY REQUEST NO. 4**

**I. INTRODUCTION**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") respectfully submits this memorandum in response to the motion of The Idaho Telephone Association ("ITA") to compel discovery responses. For the reasons set forth below, ITA's Request No. 4 is not reasonably

calculated to lead to the discovery of relevant and admissible evidence in this proceeding. Rather, ITA's request is a thinly veiled "fishing expedition" plainly intended to unduly burden Nextel Partners and forestall competitive entry within the ITA members' service areas. As such, ITA's motion to compel Nextel Partners' response to Request No. 4 should be denied.

## II. ARGUMENT

ITA erroneously seeks to compel Nextel Partners' response to Request No. 4. ITA's discovery request and Nextel Partners' response are as follows:

### **REQUEST NO. 4:**

Please provide copies of the documents relating to Nextel's decision to file for ETC status of Idaho, including but not limited to memorandums, board of directors minutes, management presentations, correspondence and financial analysis and forecasts.

### **OBJECTION:**

Nextel Partners objects to this request as calling for information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. To the extent this request seeks information not previously disclosed in public documents, such information is confidential, privileged and a Trade Secret.

(Emphasis added).<sup>1</sup>

Although the initial basis for Nextel Partners' objection to Request No. 4 is clearly stated — *i.e.*, that ITA's request is not reasonably calculated to lead to the discovery of any information related to the issues presented in this proceeding — ITA offers the Commission no legal or factual argument or authority to support its present motion. Rather, ITA simply repeats its discovery request and asks that Nextel Partners be compelled to answer. This is not enough.

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<sup>1</sup> Nextel Partners maintains that the information sought by ITA is confidential and proprietary business information. In the event Nextel Partners becomes obligated to produce this information, it will only do so subject to the confidentiality agreement and protective order in this proceeding.

Pursuant to IPUC Procedural Rule 221(5), the scope of discovery available to ITA is governed by the Idaho Rules of Civil Procedure 26(b), which provides in relevant part:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

*Id.* (emphasis added). Accordingly, ITA must as a threshold explain how or why its information request is reasonably calculated to lead to the discovery of admissible evidence. Because ITA has failed to make such a showing, its motion to compel should be denied.

In any event, even if ITA had attempted to support its present motion, it would have failed. Nothing in the Telecommunications Act of 1996 (the “Act”) or state law makes any pre-filing discussion, analysis or decision-making by the ETC applicant relevant to the application proceeding. Rather, the sole criteria for ETC designation are set forth in 47 U.S.C. § 214(e)(1)-(2) and 47 C.F.R. § 54.101, which generally require that the applicant demonstrate (1) it is a common carrier; (2) it has the capability and commitment to provide the supported services by use of its own equipment or a combination of its own equipment and that of other providers; (3) it will advertise the availability and cost of the supported services in media of general distribution; and (4) in areas served by a rural telephone company, that its designation is in the public interest. Accordingly, there is no legal basis for reviewing an applicant’s internal, decision-making process related to its filing of an ETC application.

Indeed, the Texas State Office of Administrative Hearings recently rejected a nearly identical discovery request directed to Nextel Partners. In that proceeding, the Administrative Law Judge (“ALJ”) held that the intervenor’s failure to articulate how or why such discovery would be relevant to the issues presented in an ETC proceeding was dispositive. *See Application of NPCR, Inc. d/b/a Nextel Partners for Eligible Telecommunications Carrier Designation*, SOAH Docket No. 473-03-3673, PUC Docket No. 27709, *Order No. 5* at 12-13 (Aug. 29, 2003)<sup>2</sup> (“The objection is sustained and the motion is denied. The ALJ finds that [intervenor] has again failed to demonstrate why the reason Nextel [Partners] seeks ETC status in Texas is relevant in this proceeding.”) Moreover, Nextel Partners is not aware of any ETC proceeding in which discovery into the applicant’s pre-filing analysis or decision-making process was permitted. Consequently, ITA’s motion should be denied as exceeding the scope of Idaho R. Civ. P. 26(b).

### **III. ORAL ARGUMENT NOT REQUESTED**

As the Commission will note, ITA did not request oral argument in its Motion. *See* IPUCRP 56.03: “If the moving party desires oral argument or hearing on the motion, the moving party must so state in the motion.”

Nextel Partners does not request oral argument. Accordingly, the Commission may decide the Motion based on the record, consisting of the Motion and this Memorandum.

### **IV. CONCLUSION**

For the forgoing reasons, ITA’s Request No. 4 is not reasonably calculated to lead to the discovery of admissible evidence, and its motion to compel must, therefore, be denied.

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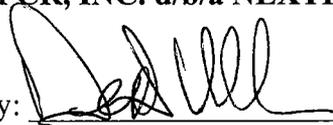
<sup>2</sup> *See* [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/27709\\_59\\_406450.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/27709_59_406450.PDF)

Dated: October 4, 2003

Respectfully submitted,

**NPCR, INC. d/b/a NEXTEL PARTNERS**

By: \_\_\_\_\_



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**CERTIFICATE OF SERVICE**

I hereby certify that on October 7, 2003 I caused to be served true and correct copies of the foregoing document, **Nextel Partners' Memorandum In Opposition To Idaho Telephone Association's Motion To Compel Responses To Discovery Request No. 4**, by the method(s) indicated, upon:

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