

Second, Nextel Partners strongly disagrees with ITA's claims that Nextel Partners' application is deficient, and with ITA's statement of the standard for the Commission to apply to Nextel Partners' Application. These issues are addressed briefly below.

A. AN ETC DOES NOT NEED TO HAVE UBIQUITOUS COVERAGE AT THE TIME ITS SEEKS ETC DESIGNATION

Nextel Partners seeks designation throughout the study areas of 5 rural telephone companies, and in identified exchanges served by Citizens Telecommunications. Nextel Partners Application, Attachment 1. The ITA protest claims Nextel Partners' application is deficient because Nextel Partners "does not provide service in the entirety of Albion's, Filer's and Mud Lake's service territories." ITA Protest, p. 3.

ITA's observation that Nextel Partners' current signal coverage does not extend to certain exchange boundaries is simply not relevant. The Federal Communications Commission ("FCC") has made abundantly clear that an ETC applicant need not provide ubiquitous service as a condition of designation:

Thus, we find that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.¹

Instead, the FCC requires a competitive ETC to demonstrate a commitment to extend its network to meet reasonable requests for service over time:

We find the requirement that a carrier provide service to every potential customer throughout the service area before receiving ETC designation has the effect of prohibiting the provision of service in high-cost areas. As an ETC, the incumbent LEC is required to make service available to all consumers upon request, but the incumbent LEC may not have facilities to every possible consumer. We believe the ETC requirements should be no different for carriers that are not incumbent

¹ *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, CC Docket 96-45, FCC 00-248, ¶ 17 (rel. August 10, 2000) ("Declaratory Ruling").

LECs. A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. We find, therefore, that new entrants must be allowed the same reasonable opportunity to provide service to requesting customers as the incumbent LEC, once designated as an ETC.²

To the company's knowledge, every state commission to address this issue has acknowledged and applied this FCC ruling, and rejected claims like those asserted by ITA.

In Case No. GNR-T-03-8 the Idaho Commission correctly recognized that when an ETC applicant seeks only access to the federal universal service program the federal standards for eligibility control. "Because Clear Talk is only seeking ETC status for the purpose of seeking federal subsidies the Commission's review will employ the federal requirements that must be satisfied rather than this State's requirements."³ In the same Order the Commission acknowledged, and correctly applied, the federal rule that the applicant need not provide fully ubiquitous service at the time of its application. "The FCC has stated that a common carrier does not have to actually provide the supported services in its service area prior to its designation as an ETC."⁴ The ITA's incorrect understanding of the applicable standard has already been rejected by the Idaho Commission.

Nextel Partners has the intent and ability to meet the service obligations of an ETC. ITA's conclusion that Nextel Partners' application contains "manifestly false" statements in this regard shows ITA's misunderstanding of the law to be applied in this docket.

² *Id.*

³ Order No. 29261, pp 3-4.

⁴ Order No. 29261, p. 4.

B. THE COMMISSION SHOULD CONSIDER APPROPRIATE PUBLIC INTEREST FACTORS

ITA claims that designating Nextel Partners as an ETC will not serve the public interest. Again, Nextel Partners is prepared to participate in a hearing to allow the Commission to address the public interest question based on an evidentiary record. Nextel Partners is confident that the Commission will find this standard is met.

The 1996 Telecommunications Act was adopted to bring competitive telecommunications services to monopoly markets. Significantly, Congress wanted to ensure that consumers in rural areas have access to the same telecommunications services as consumers in urban areas, and to use universal service funding to further that goal. 47 U.S.C. § 254(b)(3). Nextel Partners provides high-quality telecommunications services in rural areas, at rates comparable to those in urban areas. Designating Nextel Partners as an ETC will ensure that it can continue to expand its network in rural areas, and to provide its high-quality services to consumers in rural Idaho.

The FCC (and nearly every state commission addressing the issue) has clearly held that consumers benefit from increased competition:

Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.... [W]e find that the provision of competitive service will facilitate universal service to the benefit of consumers in Wyoming by creating incentives to ensure that quality services are available at “just, reasonable, and affordable rates.”⁵

Nextel Partners will ask the Commission to make a similar finding for the state of Idaho.

⁵ *In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, ¶ 17 (rel. Dec. 26, 2000) (“*Wyoming Order*”) (finding that designating Western Wireless as an ETC in rural telephone company areas is in the public interest).

The public interest standard requires consumer benefits to be weighed against any adverse consumer impacts that would occur. In this regard, ITA suggests its members' areas may not be able to support competition from an additional ETC. ITA Protest, p. 6. If the ITA companies prove this claim, they will be the first to do so anywhere. Significantly, the FCC has rejected similar claims from Wyoming companies that have densities as low as .3 lines per mile.⁶

Nextel Partners also observes that by attaching to its Protest a copy of comments filed in the pending Joint Board inquiry, ITA improperly invites the Commission to consider matters that are not relevant to Nextel Partners' application for ETC designation. ITA expressed concerns about the size of the federal program and that the manner in which support is calculated and distributed might be appropriate issues for the Joint Board to consider, but they have no bearing on whether Nextel Partners should receive ETC designation in Idaho.

Finally, the Commission should reject ITA attempts to apply criteria in this proceeding that are contrary to law and common sense. For example, if customers are able to make local calls instead of long-distance calls, that is good for consumers, contrary to claims of ITA. ITA Protest, p. 7. In addition, while it is true that Nextel Partners does not provide equal access to interexchange service, it would be unlawful for the Commission to deny Nextel Partners' application for that reason:

[W]e do not include equal access to interexchange service among the services supported by universal service mechanisms. Equal access to interexchange service permits consumers to access the long distance carrier to which the consumer is presubscribed by dialing a 1+ number. As discussed below in section VI, including equal access to interexchange service among the services supported by universal service mechanisms would require a Commercial Mobile Radio Service (CMRS) provider to provide equal access in order to receive universal service support. We find that such an outcome would be contrary to the mandate

⁶ *In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Order on Reconsideration, ¶ 19 n. 43 (rel. Oct. 19, 2001).

of section 332(c)(8), which prohibits any requirement that CMRS providers offer "equal access to common carriers for the provision of toll services."⁷

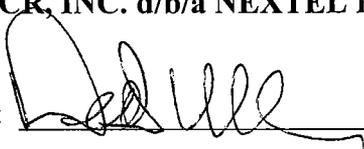
Claims regarding equal access, and other unlawful criteria, should simply be dismissed by the Commission.

CONCLUSION

Nextel Partners will address these and other matters further in the contested hearing, and respectfully requests that the Commission decide the issues presented in this docket based on applicable law and sound public policy.

Respectfully submitted, June 16, 2003

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⁷ *In the Matter of Federal-State Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 88776 (rel. May 8, 1997); *as corrected by Federal-State Board on Universal Service*, CC Docket No. 96-45 Erratum, FCC 97-157, ¶ 147 (rel. June 4, 1997)

CERTIFICATE OF SERVICE

I hereby certify that on the ~~11th~~ day of June, 2003, I caused to be served true and correct copies of the Response of Nextel Partners to ITA Protest, by the method(s) indicated below, upon:

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